

January 4, 2017

JAN 05 2017

Happy New Year Commissioner Zorc,

BOARD OF COUNTY
COMMISSION

As you will recall, I provided a presentation on April 12, 2016 to the IRC BOCC regarding HUD & the Affirmatively Furthering Fair Housing Rule (see enclosed). In the interest of protecting our small community from the federal over reach of HUD and AFFH, I am submitting a proposal calling for a policy change (more effective than a Resolution), that would protect the county from HUD's federal AFFH mandates which are often embedded in grants such as CDBG's and others.

As an example, I have included a copy of the Sedgwick County, Kansas policy change that we could use as a model. The verbiage is as follows:

"WHEREAS, the Board of County Commissioners adopted Resolution 2008-12 on February 13, 2008 creating a "Grant Application and Award Policy," and most recently amended the policy on April 17, 2013; and

WHEREAS upon review, it has been determined that it is desirable that this policy should be amended to better serve current needs, which include not entering into grant agreements that require an Assessment of Fair Housing pursuant to the federal regulations contained within the Affirmatively Furthering Fair Housing Final Rule.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, that:

Section 1. The revised Grant Application and Award Policy is attached hereto and incorporated herein by reference, and it is hereby adopted and shall be incorporated in the Sedgwick County Policies and Procedures Manual, replacing earlier versions of said policy."

My proposal is supported by Senate member Mike Lee, S.B.1909 and House member Paul Gossar, H.B. 1995. I will be presenting a similar bill to our State Representatives. However, the time-sensitive nature of this issue clearly points to our responsibility on a local level to prevent federal over reach of HUD/AFFH, by protection through local policy changes. I am requesting the call for policy change to be addressed under "Commissioners Matters" at your earliest possible convenience.

Thank you very much for your response to this matter.

Phyllis Frey



772-713-0909

①

Indian River County Legislative Delegates Session, December 21, 2016

Speaker: Phyllis Frey, American Coalition 4 Property Rights

I am here to speak about the Affirmatively Furthering Fair Housing Rule under the department of Housing & Urban Development, with a proposal for legislation that advances protection of Home Rule of Law from federal overreach.

Currently, under Home Rule of Law local agencies control land use and zoning laws that largely control where you live, the value of your home and what it costs to keep it. These factors are controlled by our local communities and reflect our living and voting preferences.

HUD & the AFFH rule is about to change all of that. Here's how. If an applicant accepts a Community Development Block Grant, or others embedded with the AFFH rule, HUD now controls your communities' planning & zoning rights and land use. HUD's AFFH rule also forces your city or county to join a region, whether you want to or not, placing the priorities of the region and RPC's above local councils, commissions, P&Z Boards and Home Rule of Law.

Grant applicants must use HUD's data tables and jurisdictions that force compliance with adjoining counties that change your zoning plans to conform with regional zoning plans. This effectively annexes your community to a region while you forfeit control of local planning and zoning land use.

Case histories prove that when a grant recipient fails to comply with AFFH, HUD will respond with a compliance review followed by a lawsuit from the Dept. of Justice. This egregious assault on private property, constitutional and home rule must be stopped through legislation that will protect our small communities from grants embedded with HUD's AFFH rule.

My proposal is supported by Senate member Mike Lee in S.B. 1909, and House member Paul Gossar, H.B. 1995. Documentation I've provided shows that cities and counties across the U.S. are protecting themselves through similar policies. In IRC, CDBG's are being applied for and approved. Where is the oversight? Where is our protection? The best means for protecting Home Rule of Law is through new or amended legislation. During the first week in January I will provide a template for a bill. Florida should not agree to funding or assistance to any grants containing the Affirmatively Furthering Fair Housing Rule.

INDIAN RIVER COUNTY
LEGISLATIVE DELEGATION
2017 LEGISLATIVE SESSION

HEARING: Wednesday, December 21, 2016

Subject

HOUSING AND URBAN DEVELOPMENT
AFFIRMATIVELY FURTHERING FAIR HOUSING
RULE

Proposal for Legislative Protection of Constitutional
Right to home Rule of Law

Documentation for Delegates, Indian River County 2017
Legislative Session

RE: Housing and Urban Development
Affirmatively Furthering Fair Housing rule

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- VII. Summary presented to City of Vero Beach, FL & Indian River County re: HUD/AFFH
- VIII. Analysis of HUD's Proposed AFFH Rule

INDIAN RIVER COUNTY LEGISLATIVE DELEGATION
2017 LEGISLATIVE SESSION
Hearing: Wednesday, December 21, 2016

**** MUST BE TYPED OR PRINTED ****

Name of Organization: American Coalition 4 Property Rights		
Contact Person: Phyllis Frey		
Address: 275 Date Palm Road		
City: Vero Beach	State: FL	Zip: 32963
Phone: 772-234-3995		Mobile: 772-713-0909
Email: global6@msn.com		
Name of person speaking: Phyllis Frey		
Is this a funding request? Yes ___ No <u>X</u>		
Is this a legislative proposal? Yes <u>X</u> No ___		
Plan/Objective: Educate our Representatives regarding Housing and Urban Development's Affirmatively Furthering Fair Housing rule, with a request for call to action.		
Requested Delegation action: Adopt legislation that protects our small Florida communities from HUD's AFFH rule that usurps local home rule of law, constitutional and private property rights.		
Have you met with a State Legislator regarding this issue? Yes ___ No <u>X</u>		
If yes – Who have you met with:		
Will you be distributing materials at the hearing? Yes <u>X</u> No ___		

Please return this form Friday, December 16th to:

Margaret Mitchell

1801 27th Street, Bldg. B
Vero Beach, Florida 32960

THE AMERICAN COALITION 4 PROPERTY RIGHTS
Requested information submitted to
INDIAN RIVER COUNTY 2017 LEGISLATIVE DELEGATION
by: Speaker Phyllis Frey
December 21, 2016

Legislative topic: Affirmatively Furthering Fair Housing rule,
Housing and Urban Development

Issue statement: Under the Affirmatively Furthering Fair Housing rule, if a city, county or state accepts HUD grants containing the AFFH rule, HUD bypasses local home rule of law. HUD then controls planning, zoning, land use and forces local municipalities to join a region. Lawsuits by the Department of Justice will ensue following a compliance review.

Florida statute 123, Chapter 186.507 charges Regional Planning Councils with adopting strategic policy plans that address affordable housing. By using grants that contain the AFFH rule, local communities are now controlled by the RPC's and the AFFH federal mandates.

Amendments to existing legislation must include the prevention of the Department of Housing and Urban Development (HUD) from implementing the Affirmatively Furthering Fair Housing (AFFH) rule.

Statistics: Statistics show that in August, 2015 a developer in Rockford, Illinois proposed 69 affordable housing units. The town council, the county Board and the public decided to build 49 units instead. HUD responded with a compliance review for failure to affirmatively further housing with a threat to refer the case to the Department of Justice. The local council and Board reversed their vote.

The landmark case in Westchester county, NY arose when HUD mandated that 750 affordable housing units be developed in the community. HUD attempted to dismantle local land use control and zoning ordinances by withholding grants. The County insisted that HUD violated home rule provisions of the state of NY and fought HUD's anti-constitutional mandates for seven years.

HUD is receiving increasing numbers of third party AFFH-related complaints in NY, DE, IL, LA, WI and CA where lawsuits are forcing communities into line. <http://www.sustainablefreedomlab.org>

In Indian River County, the city of Fellsmere recently received a Community Development Block Grant. On December 13, 2016 the IRC Board of County Commissioners announced a pending CDBG for 2019. The

city of Vero Beach Cultural Arts Council will be applying for grants under the auspices of the Treasure Coast Regional Planning Council. The Historical Society continues to apply for CDBG grants. Where is the oversight to determine if AFFH and its mandates are contained within these grants? It is imperative that we pass legislation to stop HUD's AFFH rule.

Names of Legislators already supporting the issue:

Proposals to eradicate HUD's AFFH rule are supported by House member Paul Gossar who sponsored H.R. 1995, Local Zoning and Property Rights Protection Act 2015. This bill reverses HUD's AFFH rule.

<http://gosar.house.gov/press-release/house-passes-gosar-amendment-protecting-local-zoning-rights-federal-overreach>

(printed text attached)

Senate member Mike Lee sponsored S. 1909 Local Zoning Decisions Protection Act 2015 effectively stopping HUD's overreach.

http://www.lee.senate.gov/public/index.cfm/speeches?ID=2D16964B-AD7D-4180-854_D03FFB0d2EF14

(printed text attached)

Other groups opposed to HUDs AFFH rule:

Additionally, counties such as Sedgwick county, Kansas and Douglas county, CO, Rockford, Il & Westchester County, NY have passed similar legislation and/or fought lawsuits to protect local communities from HUD/AFFH: <http://sustainablefreedomlab.org/wp-content/uploads/2015/11/Sedgwick-County-AFFH-Grant-Policy-Markup.pdf>

(printed text attached)

President-elect Trump has promised to stop the Affirmatively Furthering Fair Housing rule and reduce HUD regulations by 70%

<http://www.sustainablefreedomlab.org>

(printed text attached)

Please refer to all documentation contained in the distributed information packets for your convenience.

Phyllis Frey, Chairperson, The American Coalition 4 Property Rights
275 Date Palm Road
Vero Beach, FL 32963
772-713-0909

(2)

SEDGWICK CY, KS REFUSES AFFH-RELATED GRANTS

Sedgwick County, KS is refusing AFFH related grants. Notice on the (next) cover page commissioners state they are changing policy. That is stronger than issuing a resolution.

Sedgwick county is issuing both, giving citizens more time to consider a grant's implications if future commissioners should try to reverse the policy.

A county mayor can apply for CDBG grants without going to the commissioners. A document should be drafted to vote on and change that.

HUD officials know that they often change their AFFH name and re-name programs that attempt to conceal the fact that AFFH is embedded in their documents. An attorney should include wording covering any programs with similar anti-local rule and pro-regional outcomes.

**A RESOLUTION ADOPTING A REVISION TO THE SEDGWICK COUNTY, KANSAS
GRANT APPLICATION AND AWARD POLICY**

080 - 2016

WHEREAS, the Board of County Commissioners of Sedgwick County, Kansas, is authorized by K.S.A. 19-101 to do all acts in relation to the property and concerns of the County necessary to the exercise of its corporate and administrative powers; and

WHEREAS, the Board of County Commissioners adopted Resolution 2008-12 on February 13, 2008 creating a "Grant Application and Award Policy," and most recently amended the policy on April 17, 2013; and

WHEREAS, upon review, it has been determined that it is desirable that this policy should be amended to better serve current needs, which include not entering into grant agreements that require an Assessment of Fair Housing pursuant to the federal regulations contained within the Affirmatively Furthering Fair Housing Final Rule.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, that:

SECTION 1. The revised Grant Application and Award Policy is attached hereto and incorporated herein by reference, and it is hereby adopted and shall be incorporated in the Sedgwick County Policies and Procedures Manual, replacing earlier versions of said policy.

SECTION 2. This resolution shall take place upon its passage and adoption.

Commissioners present and voting were:

DAVID M. UNRUH	<u>Aye</u>
TIM R. NORTON	<u>No</u>
KARL PETERJOHN	<u>Aye</u>
RICHARD RANZAU	<u>Aye</u>
JAMES M. HOWELL	<u>Aye</u>

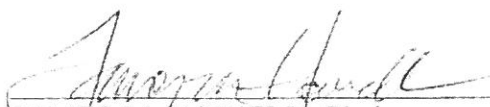
Dated this 1st day of June, 2016.


ATTEST:


KELLY B. ARNOLD, County Clerk

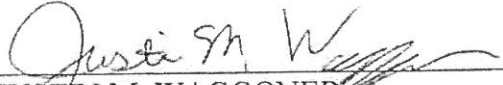


BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

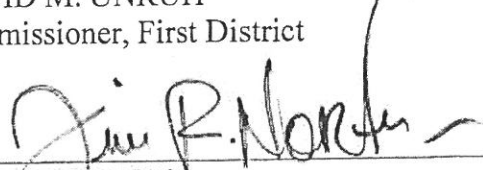

JAMES M. HOWELL, Chairman
Commissioner, Fifth District

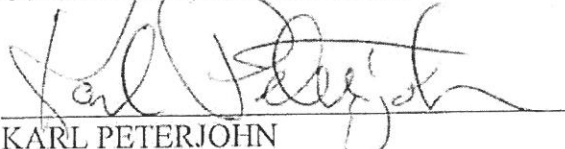

RICHARD RANZAU, Chair Pro Tem
Commissioner, Fourth District


APPROVED AS TO FORM:


JUSTIN M. WAGGONER,
Assistant County Counselor


DAVID M. UNRUH
Commissioner, First District


TIM R. NORTON
Commissioner, Second District


KARL PETERJOHN
Commissioner, Third District

	CHAPTER:	POLICY:
		PAGES: 5
SUBJECT: Grant Applications & Awards		
RELATED POLICIES:	ENABLING RESOLUTION: 2008-12	
	RESOLUTION DATE: February 13, 2008 REVISED RESOLUTION & DATE: 64-2013; April 17, 2013 _____-2016; June 1, 2016	
OFFICE WITH PRIMARY RESPONSIBILITY: Finance		

I. PURPOSE

This policy establishes an orderly procedure for the approval of grant applications by the Board of County Commissioners prior to submittal. Sedgwick County will only research, pursue and obtain federal, state and private foundation grant funding that is consistent with the County's Goals and Objectives and the current goals of the Board of County Commissioners.

II. POLICY STATEMENT

The Board of County Commissioners is the lawful governing board of Sedgwick County; therefore it is the responsibility and duty of the Commission to approve grant applications and authorize the Chairman or designee to approve the commitment of Sedgwick County to fulfill any and all obligations incurred in the grant application.

III. DEFINITIONS

Authorized Organization Representative (AOR) – an employee who registers with the Grants.gov website and is approved by the e-business point of contact for Sedgwick County and is thereby authorized to submit grant applications to Federal Agencies via Grants.gov, after proper approvals are obtained.

Grant – award of financial assistance from a federal, state, or local agency or a public or private business or foundation to a recipient to carry out a public purpose. Grants may be in the form of a Cooperative Agreement or a Contract. A competitive grant is one that requires submission of an application that is reviewed, scored and compared with other grant applications where funding is allocated based on specific criteria provided in the application. A non-competitive grant is one that is an allocation of funding based on a

formula or other determining factors other than a competitive or comparative process. Non-competitive grants may also require the submission of an application.

Grants.gov – A website listing numerous federal grant opportunities. An AOR can submit grant applications through this site.

Grants Manager – The Division of Finance, Accounting Department Revenue Manager shall serve as Grants Manager and be responsible for reviewing grant applications, delegating Legistar grant related agenda items to the proper senior staff for review, and tracking grant applications through the Legistar process.

IV. PROCEDURES

APPROVALS

MATCHING FUNDS OR PLEDGED RESOURCES. Any grant or service contract, whether new or renewal, or which requires as a condition for award, matching funds from the County or a pledge of County resources beyond normal operations, must be approved by the Board of County Commissioners if such funding or resources are not readily available in the approved department or agency budget, and a fund transfer or authorization to use reserves is needed to meet the match requirement. If funding is available through the approved budget and no transfer or use of reserves is needed, then the match requirement \$25,000 or less, may be approved by the County Manager, and the grant or contract shall be approved consistent with the other provisions of this Policy.

A. ADDITIONAL FULL-TIME EQUIVALENT POSITIONS.

1. GRANT APPROVAL. Any grant, whether new or renewal, for which the County will be required or need to employ persons in new or additional full time equivalent (FTE) positions must be approved by the Board of County Commissioners.

2. FULL-TIME EQUIVALENT POSITION APPROVAL. The Board of County Commissioners shall approve all new or additional FTE positions associated with any grants approved under this Policy.

B. COUNTY MANAGER APPROVAL TO APPLY FOR AND ACCEPT NEW GRANTS. Approval must be obtained from the County Manager prior to submitting a new grant application or accepting a new grant award in a monetary amount of \$100,000.00 or less.

C. BOARD OF COUNTY COMMISSIONERS APPROVAL TO APPLY FOR AND ACCEPT NEW GRANTS. Other than as already provided, any new grant in a monetary amount of \$100,000.01 or more must be approved by the Board of County Commissioners.

D. COUNTY MANAGER APPROVAL TO APPLY FOR AND ACCEPT GRANT RENEWALS. Other than as already provided, a grant renewal, with no additional

requirements or change in conditions, in a monetary amount of \$100,000.00 or less must be approved by the County Manager.

E. BOARD OF COUNTY COMMISSIONERS APPROVAL TO APPLY FOR AND ACCEPT GRANT RENEWALS. Any other grant renewal of \$100,000.01 or more will need to be approved by the Board of County Commissioners.

F. MATERIAL FUNDING INCREASE. Any grant renewal or extension which has an increase in funding of 25% or more and the new amount exceeds \$100,000.01 shall be considered a new grant and must be approved in accordance with the new grant policy.

The County Manager will notify the Board of County Commissioners of any submissions of new grants or grant renewals.

G. AFFIRMATIVELY FURTHERING FAIR HOUSING. Sedgwick County will not apply for or agree to accept any funding or assistance, whether directly through the federal government or pass-through funding from the State of Kansas that:

1. Requires an Assessment of Fair Housing; or
2. Is from any grant program with the United States Department of Housing and Urban Development within the Affirmatively Furthering Fair Housing Final Rule (24 C.F.R. Parts 5, 91, 92, *et al.*, and 24 C.F.R. § 5.150, *et seq.*), as stated within 24 C.F.R. § 5.154(b)(1), that requires a recipient to complete an Assessment of Fair Housing, including the following United States Department of Housing and Urban Development programs:
 - a. Community Development Block Grants;
 - b. HOME Investment Partnerships;
 - c. Emergency Solutions Grants; and
 - d. Housing Opportunities for Persons with AIDS.

Grant Application

Departments wishing to apply for a grant will use the Legistar system to apply for grants or accept grants as they would an agenda item. When the application has completed the Legistar review process, the County Manager will review each grant related application with other agenda items.

Using the Legistar system for grant applications follows the same general steps currently used to process regular agenda item. "Grant Application" should be selected as the type of item and the submitter should use the "Grant Form" template. It is important that grant applicants include all of the information listed in the "Grant Form" template so that the reviewers and Board of County Commissioners are prepared to make an informed decision.

File Edit View Window Help

Font

Title

CONSIDERATION OF GRANT IN THE AMOUNT OF \$ ____ FOR ____.

Presented by:

RECOMMENDED ACTION: Approve the application for the grant, and if awarded authorize acceptance of the grant, the establishment of budget authority as provided in the Financial Considerations section of this Request, and implementation of the Staffing Table changes identified in the Personnel Considerations section of this Request.
(In above paragraph DELETE Budget Authority Adjustment and Personnel Considerations if they are not required)

Body

Grant Renewal: Yes or No

Never Applied: Yes or No

Applied, not awarded: Yes or No

Grant Summary and Timeline:

Financial Considerations:

Grant period starts:

Grant period ends:

Source of funding:

Grant \$

Required Match \$

Required Cash Match \$

Required In-Kind Match \$

Other funding \$

TOTAL SOURCES:

Uses of funding (Note: Include any Required Matches in your totals)

Operational costs \$

Personnel \$

Contractual services \$

Operational supplies \$

Equipment \$

Indirect administrative costs \$

Capital projects cost \$

TOTAL USES \$

Source of matching funds:

Source of other funding:

(Total Uses of Funding should Match Sources)

(Personnel matches should include Position Numbers and Cost Centers)

Budget Authority Adjustment:

Personnel considerations:

Expected measurable outcomes:

Alternatives:

Policy considerations:

Legal considerations:

The County Counselor's Office must review a hard copy of the grant terms and conditions for all applications prior to submission. Once the County Counselor's Office approves the terms and conditions of the application, the documents will be signed by the reviewer and returned to the Division/Department to submit with the grant agenda request. Division/Departments shall attach the completed application forms, terms and conditions approved by the County Counselor's Office to the grant related agenda item as well as a budget form.

Divisions/Departments are responsible for delivery of all documents that require signature of the Chairman to the County Clerk's Office by no later than Monday of the week prior (nine calendar days) to the scheduled Board of County Commissioners (BOCC) Agenda meeting. All documents submitted to the Clerk's office must include the Legistar file number, BOCC Agenda Meeting Date and signature areas properly identified.

When the grant application template is complete, the submitting department will use the "grants" approval sequence, and mark Grants Committee "in control" which will include the grants manager, the budget director, the departmental budget analyst, the deputy chief financial officer and the county counselor's office. As with any other Legistar item, each reviewer is asked to review grant applications in a timely manner and to identify potential issues involved with the grant, application or supporting materials. The department may include the originator of the Legistar item as last reviewer so that they know when it is

Home » Newsroom

House Passes Gosar Amendment Protecting Local Zoning Rights from Federal Overreach

SHARE

Jun 9, 2015 | Issues: Spending Cuts and Debt

For Immediate Release

Date: June 9, 2015

Contact: Steven D. Smith

Steven.Smith@mail.house.gov

WASHINGTON, D.C. - Today, U.S. Congressman Paul A. Gosar, D.D.S. (AZ-04) released the following statement after his amendment preventing the Department of Housing and Urban Development (HUD) from implementing the Affirmatively Furthering Fair Housing (AFFH) regulation passed the House by a vote of 229-193 and was attached to the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for Fiscal Year 2016:

"As the president reaches the end of his second term, he has made it clear that his top priorities during his waning days are furthering his far-left political agenda by forcing big government programs on the American people. His new AFFH regulation is one of the most far-reaching attempts yet to punish communities that don't submit to the president's liberal ideology. American citizens and communities should be free to choose where they would like to live and not be subject to

federal neighborhood engineering at the behest of an overreaching federal government.

"Furthermore, HUD officials shouldn't be holding hostage grant monies aimed at community improvement based on its unrealistic utopian ideas of what every community should resemble. Local zoning decisions have traditionally been, and should always be, made by local communities, not bureaucrats in Washington DC. I am extremely pleased to see the House put a stop to this attempt by the Obama Administration to control a fundamental aspect of the American dream."

Additional:

Congressman Gosar's amendment is endorsed by Americans for Limited Government, Freedom Works, Council for Citizens Against Government Waste, Taxpayers for Common Sense and Eagle Forum.

Americans for Limited Government supported the Gosar amendment stating, "Housing discrimination based on race has been illegal since the 1960s, and people should be allowed to choose for themselves where they live without D.C. bureaucrats nationalizing zoning decisions for political reasons."

An amendment to this same appropriations bill blocking funds from going to this misguided rule successfully passed in the 113th Congress. More information on that amendment can be found HERE. Congressman Gosar appeared on Fox Business Network to discuss the issue. Click HERE to watch the clip.

In addition, Congressman Gosar's bill, the Local Zoning and Property Rights Protection Act, H.R. 1995, rejects this overreaching rule is currently cosponsored by 20 members in the House.

The AFFH regulation will increase local taxes, depress property values, and cause further harm to impoverished communities that are actually in need of these funds. According to reports, in 2012, this rule would have negatively impacted more than 1,200 municipalities throughout the country, costing these communities to forfeit millions that are meant help the neediest families.

A trial run of the AFFH rule already took place in New York state. The rule was a failure and a local county was initially forced to forego \$12 million in funds that would have benefited the community due to the impractical and unrealistic requirements associated with misguided agency regulation. The county had intended to use a large portion of these block grant funds to establish public housing for individuals in need.

Stanley Kurtz, a senior fellow at the Ethics and Public Policy Center and writer for National Review, has been following this issue for years and published an article prior to the vote entitled, Obama's Next Transformation: And How to Stop It.

###



Speeches

Defunding HUD's Affirmatively Furthering Fair Housing Rule ([http://www.lee.senate.gov/public/index.cfm/speeches? ID=2D16964B-AD7D-4180-854D-03FFB0D2EF14](http://www.lee.senate.gov/public/index.cfm/speeches?ID=2D16964B-AD7D-4180-854D-03FFB0D2EF14))

May 18 2016

Defunding HUD's Affirmatively Furthering Fair Housing...



Mr. President: In a piece of legislation of this size, there is always much to praise – and, unfortunately, even more to criticize.

I rise today, specifically, to correct one major mistake in this bill. As currently written, it permits the Department of Housing and Urban Development to proceed in the implementation of its radical new regulation, the insultingly misnamed “Affirmatively Furthering Fair Housing Rule,” or AFFH.

Proponents of AFFH, including President Obama, claim that it fulfills the original purpose and promise of the Fair Housing Act of 1968.

But the truth is, HUD's new housing rule isn't the fulfillment – but a betrayal – of the Fair Housing Act of 1968.

The original intent of the Fair Housing Act was to protect the God-given right of individuals and families – no matter their skin color or ethnicity – to buy and rent homes where they please. By contrast, the explicit purpose of HUD's new rule is to empower federal bureaucrats to dictate where a community's low-income residents will live.

This is not what "progress" looks like, Mr. President.

AFFH not only grants unprecedented new powers to HUD that were not contemplated by – and have no legitimate basis in – the Fair Housing Act of 1968, but it will ultimately hurt the very people it purports to help: public-housing residents – especially African-American public-housing residents – who too often find themselves trapped in dysfunctional, broken neighborhoods.

To make matters worse, this new rule will end America's unique – and uniquely successful – commitment to localism and diversity, and make neighborhood-level construction decisions subject to the whims of future presidents.

If this past year has not yet done enough to give you pause about handing over such power to the Executive Branch, you're not paying close enough attention.

So I'm offering an amendment today – number 3897 – that would prohibit HUD from using any federal taxpayer money to carry out the Affirmatively Furthering Fair Housing Rule.

The House of Representatives has already passed this amendment – twice – and will likely to do so again in the near future. We should follow the House's lead.

Here's how the rule works.

AFFH requires cities and towns across the country to audit their local housing policies, under close supervision by HUD regulators, who may have never have lived anywhere near there.

If any aspect of a community's housing and demographic patterns fails to meet HUD bureaucrats' expansive definition of "fair housing," the local government must submit a plan to reorganize the community's housing practices according to the preferences and priorities of the bureaucrats.

Critics of AFFH often say – as I have said – that this rule turns HUD into a National Zoning Board with the power to unilaterally rewrite local zoning laws and land-use regulations in every city and town in America.

But that's not quite how the rule works, and it's why Senator Collins' amendment would not do anything to prevent the implementation of AFFH.

In the 10 months since the rule was finalized, it has become clear that the mechanics of AFFH are much more underhanded and subversive than critics have often claimed.

Under the new rule, HUD doesn't replace local Public Housing Authorities – it conscripts them into its service.

Mr. President, this gets to the heart of the difference between my amendment and the amendment offered by my colleague, Senator Collins.

The danger of AFFH is not that HUD will direct local governments and public housing authorities to make specific changes to their zoning policies. It will just threaten them, by tying obedience to federal Community Development Block Grants.

CDBG is a federal-grant program controlled by HUD that allocates \$3 billion per year to local governments to help them address a variety of community-development needs, including providing adequate and affordable public housing.

Traditionally, local officials have been free to use their CDBG grant money according to their community's needs and priorities. But under AFFH, HUD officials will withhold a local government's CDBG funds unless that local government adopts HUD's preferred housing policies.

Predictably, proponents of the rule claim that this will be a collaborative process, with local-government officials in the driver's seat while the bureaucrats at HUD merely provide "support" and "guidance." But the 10-month track record of AFFH suggests that the opposite will be true.

In fact, I have already heard from the Housing Authority of Salt Lake County predicting that the costs of complying with AFFH will stretch their already-thin resources, add hundreds of hours of bureaucratic paperwork to their workloads, and eliminate their autonomy to determine the best ways to provide adequate low-cost housing to their community.

Mr. President, the problem with HUD's new rule has nothing to do with the intentions behind it.

In a press release announcing the finalization of AFFH, HUD Secretary Julian Castro said: "Unfortunately, too many Americans find their dreams limited by where they come from, and a ZIP code should never determine a child's future."

I completely agree.

There's no disputing that the neighborhood in which a child grows up affects his educational, social, and professional outcomes in the future. Nor is there any disagreement that far too many children today are raised in dysfunctional neighborhoods because it's the only place their parents can find affordable housing.

The lack of affordable housing is not a new problem in America – just ask anyone who has ever had to pay rent in one the major metropolitan areas controlled by the Democratic Party. But neither is the solution.

The best way to make housing more affordable is to allow more housing to be built. And the best way to help low-income citizens find fair and affordable housing is to empower them to live in a neighborhood that meets their needs.

The history of Chicago is instructive here.

In the 2000s, Chicago's city government demolished many of its public-housing facilities without a plan to replace them.

Those with the resources and wherewithal to choose where to live moved to places where housing is cheap and economic opportunity is plentiful. But the less fortunate were relocated to more remote, less prosperous towns, like Dubuque, Iowa, at the behest of – who else – the Department of Housing and Urban Development.

In 2008, the city of Dubuque was struggling to meet the needs of its own public-housing residents. Yet it stepped HUD, declaring that the city's housing policies would fail to meet the agency's fair-housing standards – and that, therefore, the city would be ineligible to receive federal funding from HUD – unless the local government actively recruited Section 8 voucher holders from Chicago.

Unwilling to lose access to federal funding on which the city had come to rely, the small Iowan town acquiesced to HUD's demands.

This imposed an enormous administrative burden on the city's resource-strapped housing agencies, but HUD's real victims were Chicago's public-housing residents who were forcibly displaced to an unknown town 200 miles from the city they used to call home.

Mr. President, unless we pass this amendment to defund the disastrously misguided AFFH rule, this is what the future of public housing in America will look like.

I urge my colleagues to join me in supporting this amendment and reaffirming that low-income families are not statistics to be managed by distant bureaucrats – they're human beings, our neighbors in need, who deserve to be treated with dignity and respect.

I yield the floor.

Permalink: <http://www.lee.senate.gov/public/index.cfm/2016/5/defunding-hud-s-affirmatively-furthering-fair-housing-rule> (<http://www.lee.senate.gov/public/index.cfm/2016/5/defunding-hud-s-affirmatively-furthering-fair-housing-rule>)

August 17, 2015

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-5173-N-05 HUD Affirmatively Furthering Fair Housing Assessment Tool
(30-day notice)

To Whom It May Concern:

Douglas County, Colorado has developed a response to the notice of proposed information collection (FR-5173-N-05) entitled "Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment-30-Day Notice Under Paperwork Reduction Act of 1995" published in the Federal Register on July 16, 2015.

Douglas County supports Fair Housing and has made every effort to affirmatively further fair housing for our residents. We believe the approach we have implemented since receiving Community Development Block Grant (CDBG) funds in 2004, is innovative and proactive and the right approach for our residents. We have attempted to serve as a model recipient of HUD funds by encouraging collaboration, engaging stakeholders and working to provide equal access to housing opportunities for all of our residents.

After reviewing the proposed Fair Housing Assessment Tool we find it to be unclear and ineffective. We find both Option A and Option B included as a part of the Assessment of Fair Housing (AFH), are inadequate. The Tool must be refined and parameters must be established. The County requests that HUD make substantial revisions to the Tool, as outlined in this letter.

The Tool does not clearly define the intent of what it means to affirmatively further fair housing. The information and definitions provided are vague, subjective and therefore open to interpretation. We request that HUD clarify their intent before we are asked to move forward and effectively complete an Assessment of Fair Housing.

After reviewing the contributing factors identified in the tool we find many to be contradictory in nature. Addressing one contributing factor may actually *create* barriers to furthering fair housing in another contributing factor. We request HUD provide metrics for each factor outlined in the tool. A

table should be created considering contributing factors in an urban, suburban and rural context as defined by the U.S. Census Bureau. The table should include metrics that define each contributing factor, providing grantees and housing authorities clear guidelines of what it means to successfully affirmatively further fair housing.

Once this tool has been revised, we request a full 60-day comment period in order for staff to conduct a thorough review of the tool. This tool represents significant impacts to our programs and our community and we need to ensure that we understand HUD's intent and the required steps to move forward.

Organizations such as NACo, NAHRO, NACCED, and NCDA submitted concerns during the initial 60-day comment period (ending November 25, 2014) that went largely unaddressed. For example, see NACo's response letter dated November 25, 2014, commenting on the proposed Assessment Tool. NACo urged HUD not to mandate use of the Tool. Douglas County wholeheartedly supports the comments previously offered by these organizations. We strongly encourage HUD to take seriously the responses from these organizations, as well as responses from the grantees and housing authorities that will be required to implement the Tool. Approving the Tool *as is* will negate the County's rights and seriously hamper our ability to effectively respond, manage local affairs, and affirmatively further fair housing.

The definition of Affirmatively Furthering Fair Housing must be refined. The definition is shown below with the red text indicating unclear phraseology:

"Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful action that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."

NACo raised concerns about how these terms are defined in their original response letter. Essentially, how will we know when we have taken *meaningful* actions? How can we *overcome* patterns of segregation? How will we know which *opportunities* are important enough to provide access, when each

individual resident will value opportunities differently? In short, how much is enough to succeed? These are questions Douglas County expects HUD to address as part of these revisions.

The definitions and examples provided in the Assessment Tool are unclear and highly subjective. Definitions in the Tool are written in broad expansive terms, making it impossible to identify HUD's intent. In the analysis section of the Tool, a list of 40 contributing factors is put forward, with the statement that it is not an exhaustive list. Communities are expected to consider these and other factors as part of the analysis, but the definitions and examples provided remain unclear. Many of these 40 factors are ambiguous and potentially contradictory. Furthermore, as the Fair Housing Act is now being interpreted to include lack of access to opportunities, our future efforts will be ineffective because local input is diminished through the prescriptive list of contributing factors we will be obligated to address in the Tool.

Douglas County has identified several key concerns with the contributing factors provided in the Tool. First and foremost, we question why market driven factors are included on the list of examples of contributing factors. For example, the "location of employers" is an important issue driven by the free market. While the connections between work and housing choice are undeniable, local governments are limited in their influence over the market, and should not be held accountable through an Act that is meant to provide fair and equal access to housing. Douglas County supports the business community and ensures that all land development proposals are reviewed fairly during the planning process.

Included below are two excerpts from the contributing factors that demonstrate the expansive terms and subjectivity that must be resolved. The language used in Land Use and Zoning Laws implies that zoning is immutable. Well-reasoned communities like Douglas County operate with a zoning ordinance that provides for a variety of zone districts, uses and lots sizes without federal interference. Rezoning options available through the land development process allows Planned Development (PD) zone districts to include multi-unit and mixed use developments. The contributing factor regarding land use below should be removed from the Tool, and local control restored:

Land Use and Zoning Laws

"The term "land use and zoning laws" generally refers to regulation by local government of the use of land and buildings, including regulation of the types of activities that may be conducted, the density at which those activities may be performed, and the size, shape and location of buildings and other structures or amenities. Zoning and land use laws affect housing choice by determining where housing is built, what type of housing is built, who can live in that housing, and the cost and accessibility of the housing. Examples of such laws and policies include, but are not limited to:

- *Limits on multi-unit developments, which may include outright bans on multi-unit developments or indirect limits such as height limits and minimum parking requirements.*
- *Minimum lot sizes.*
- *Occupancy restrictions, which regulate how many persons may occupy a property or the relationship between those persons.*
- *Inclusionary zoning practices that mandate or incentivize the creation of affordable units.*
- *Requirements for special use permits for all multifamily properties or multifamily properties serving individuals with disabilities."*

The contributing factor identified as Displacement of Residents Due to Economic Pressures is ill conceived. Terms lacking definition are shown below in red text. Economic pressures are largely driven by market factors that jurisdictions do not influence or control. Being a relatively young county with 94% of the housing stock built after 1978, we believe the potential for residents being displaced due to economic factors in Douglas County is non-existent. This exemplifies the uniqueness of each grantee and jurisdiction. The description provided lacks clarity, purpose and the potential resolution HUD expects through implementation of the AFH. Including the description as a contributing factor implies that it *should* be addressed. The contributing factor regarding displacement of residents below should be removed from the Tool, and local control restored:

Displacement of Residents Due to Economic Pressures

"The term "displacement" refers her to a resident's undesired departure from a place where an individual has been living. "Economic pressures" may include, but are not limited to, rising rents, rising property taxes related to home prices, rehabilitation of existing structures, demolition of subsidized housing, and public and private investments in neighborhoods. Such pressures can lead to loss of existing affordable housing in areas experiencing rapid economic growth and a resulting loss of access to opportunity assets for lower income families that previously lived there. Where displacement disproportionately affects persons with certain protected characteristics, the displacement of residents due to economic pressures may exacerbate patterns of residential segregation."

In addition to lack of clear definition and intent, benchmarks and metrics have not been identified to guide us in determining if these factors are a fair housing concern for our community. Douglas County is concerned that the mere identification of these factors subjects all grantees to the judgment of special interest groups, as it will be financially impossible for any community to address every factor. Given that so many factors have been identified for consideration, and no clear guidelines were provided to judge them by, it will be extremely difficult to comply with the new AFH requirements.

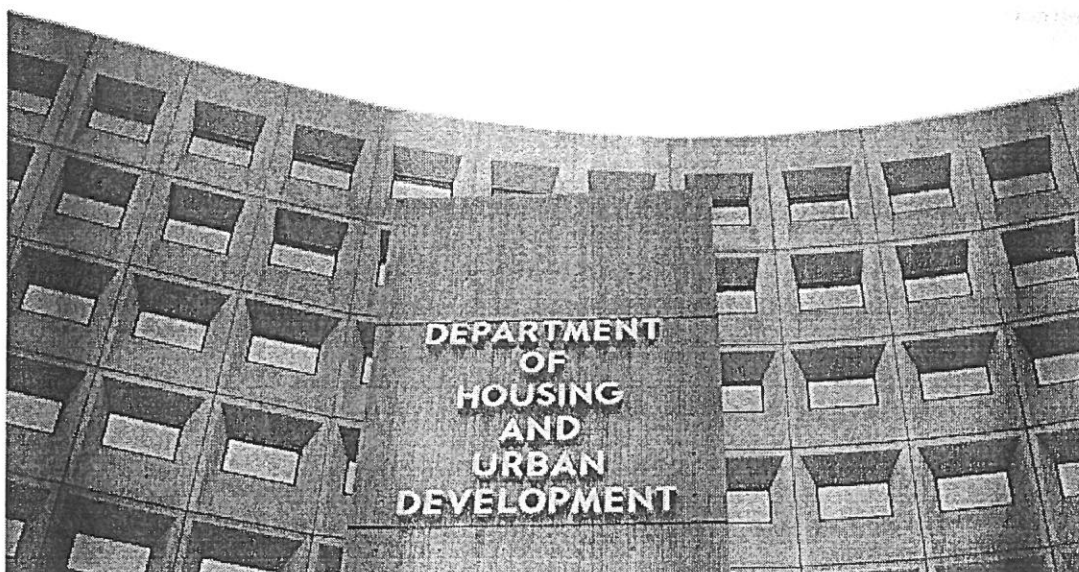
Metrics are also needed to assist Regional HUD staff when they review grantee's AFH Tool. We are assured that the Assessment Tool will include opportunities to provide local knowledge and local data. How can HUD regional staff be expected to reasonably assess local data provided from grantees throughout a multiple-state region? An explanation of how HUDs staff will review the AFH, including the contributing factors, must be provided in the revised Tool. Metrics must be provided to facilitate a fair and consistent review of AFH submittals.

Each jurisdiction, across the nation is unique. As such, we have the right and the ability to efficiently direct local funds to have a positive impact on affirmatively furthering fair housing. Douglas County believes it is imperative to refine the intent, provide clear definitions, establish metrics and set clear parameters in the Tool. These steps are required to assist grantees and public housing authorities to move forward in *successfully* affirmatively furthering fair housing. Refinements of the Tool, followed by a 60-day comment period, are essential to this public process and will allow us to continue serving Douglas County residents in meaningful ways.

Thank you for this opportunity to comment on the AFH Tool.

Sincerely,

Jennifer Eby, AICP, Community and Resource Services Manager
100 Third Street
Castle Rock, CO 80104
jeby@douglas.co.us



26 APR WHY ONE TOWN SAID "NO" TO HUD

Posted at 20:42h in Uncategorized by John Anthony • 6 Comments • 3 Likes • Share

When Castle Rock, CO refused to apply for a HUD grant, the recipients of the money were upset. But, Castle Rock had done their homework. Their response to the grantees should be read by every public official who ever considers accepting a federal grant.

HUD shielded their 2015 rule, Affirmatively Furthering Fair Housing from public view for nearly a year.

The agency withheld the proposal announcement from the spring and fall 2012 Unified Agendas. The Office of Management and Budget finally released the proposal to the public on December 21, 2012, during the Christmas holiday, after government operations had shut down. Because of the timing of the release, AFFH received little notice.

Now we know why.

Through a labyrinth of application requirements and legalese, the agency can force HUD grant recipients to...

- reverse voters decisions,
- alter zoning laws and land use regulations, and
- join a region against the community's will

In the history of HUD, there has never been this type of dangerous grab of local authority and personal property rights. The Castle Rock letter explains.

Letter from the Castle Rock Town Council to HUD Grantees

(Link to original letter)

Note* The Town Council letter was addressed to the following grantees...

Exec. Dir. Audio Information Network of Colorado

Reg. Dir. Catholic Charities of Central Colorado

Exec. Dir. Crisis Center of Castle Rock

Exec. Dir. Douglas County Housing Partnership

Exec. Dir. Douglas/Elbert Task Force

Vol. Chairman Parker Task Force for Human Services

Exec. Dir. Southeast Community Outreach

Grants Mgr. Society of St. Vincent de Paul

Thank you for your letter concerning CDBG funds and the Town of Castle Rock. Last year, when faced with the question of whether the Town should become an entitlement community under the CDBG program, the Council declined to pursue that status because it would result in unclear and unwarranted interference from the Department of Housing and Urban Development (HUD). For years, Castle Rock has accepted various grant monies offered by HUD through Douglas County. This money was parceled out by Town Council mainly to fix alleyways and make curbs ADA accessible. But last year HUD added very alarming strings to the grants; 377 pages of new rules that give HUD drastic new powers over our cities and counties that in affect eliminate the zoning and planning powers of your local elected officials which can now be overruled by HUD bureaucrats in Washington DC.

If we continue to accept the HUD grants, we will be forced to prepare detailed taxpayer-financed studies of our schools, retail, housing, and other community aspects to HUD who will decide if our neighborhoods are "furthering fair housing." That means that even though our town has never been found in violation of the anti-discrimination housing rules that have been law for over 50 years, HUD on a whim could force us to build low-income, government subsidized housing into our neighborhoods if HUD decides we aren't racially balanced enough. This is already happening across the U.S.; just google Westchester County, New York.

One example: according to HUD, if your family home sits on a quarter-acre property, your neighborhood is potentially discriminatory. It would be much less racist if a high-rise low-income apartment building went up next door, never mind local zoning regulations.

The result for us could be reduced property values, a large population increase due to an influx of people from the cities to our suburbs, more crime, large local tax increases to support HUD's mandate, and loss of local zoning control and other local decisions.

As a Town Council, we will resist all federal attempt to destroy our local sovereignty, be it from HUD, the EPA, or any other government agency. Council will always defend our resident's right to make their own local decisions without federal interference. While I appreciate the many good works that are represented by your programs, accepting onerous federal grant requirements, which harm our community, cannot be the price to pay for federal monies.

Sincerely,

Paul Donahue Mayor, District 1

Jennifer Green, Mayor Pro Tern, District 3

Renee Valentinem Councilmember District 5

George Teal, Councilmember District 6

Mark Heath, Councilmember District 2

TAGS: AFFH, Affirmatively Furthering Fair Housing, Castle Rock, HUD

6 COMMENTS



U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

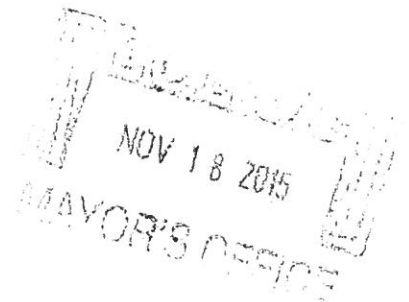
Midwest Regional Office, Region V
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard – Room 2101
Chicago, Illinois 60604-3507

Office of Fair Housing and Equal Opportunity

November 12, 2015

Lawrence J. Morrissey
Mayor
City of Rockford, Illinois
425 E. State Street, 8th Floor
Rockford, IL 61104

Subject: Civil Rights Compliance Review under Title VI
HUD Case Number: 05-16-R001-6



Dear Mr. Morrissey:

By this letter, the US Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity (FHEO) is notifying the City of Rockford that FHEO will conduct a Title 6 compliance review of the City. We will undertake this review under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulations found at 24 CFR Part 1. In addition to the Title VI Compliance Review, FHEO will also be reviewing the City's obligation to Affirmatively Further Fair Housing.

This review is being conducted due to the actions taken by the City Council in regards to proposed New Towne project by the Rockford Housing Authority.

Title VI of the Civil Rights Act of 1964 (Title VI) provides that "...no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD's program participants to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination.

A finding that the City is not in compliance with Title VI of the Civil Rights Act or its obligation to affirmatively further fair housing may result in the suspension or termination of federal financial assistance (24 CFR § 1.8.)

Further, if evidence develops that Title VIII of the Fair Housing Act has also been violated due to discriminatory land/use and zoning practices, the evidence will be referred to the Department of Justice pursuant to 42 U.S.C. 3610.

FHEO is obligated to inform you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws enforced by this Office. Any individual alleging such harassment or intimidation may file a complaint with FHEO and the Office would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, upon request, release of this document may be necessary along with related correspondence and records. In the event that such a request is made, we will protect personal information, the release of which could constitute an unwarranted invasion of privacy, to the extent allowed by law.

Please be advised that a data request letter will be sent under separate cover and we will be contacting you to schedule on-site interviews.

If you have any questions, please contact Kimberly Nevels, Chicago FHEO Center Director, at 312-913-8429.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maurice McGough".

Maurice McGough, Director
Region V

Office of Fair Housing and Equal Opportunity

City of Vero Beach, April 5, 2016

Indian River County Board of County Commission, April 12, 2016

I would like to thank you for the opportunity to speak today about the Affirmatively Furthering Fair Housing Rule, and how your decisions regarding this and other grants will affect not only the future development of our county, but home rule of law.

Currently, under home rule of law, the local agencies that control land use and zoning laws largely control where you live, the value of your home, and what it will cost to keep it. Right now these factors are controlled by our community and local officials who reflect our living preferences.

HUD and the AFFH Rule is about to change that. On July 8th, 2015, Secretary for Housing and Urban Development Julian Castro announced the finalization of the Affirmatively Furthering Fair Housing Rule based upon the current Administration's conclusion that HUD has not been aggressive enough in managing grant money at a local level. Hence the new rule.

Under the new regulation, if you accept HUD grants, in order to assure fair housing compliance, their agencies then control your land use, your zoning laws and force you to join a region. Here's how:

HUD grant applicants are required to complete an assessment of fair housing. This involves a house-by-house analysis of data involving race, ethnicity, concentrations of poverty, English proficiency, disabilities and housing.

Next you will list community resources such as better schools, jobs, transportation, housing, parks and recreational facilities.

Finally, you will itemize any barriers that could make it harder for the public to access community resources. HUD even provides a list of 40 barriers on contributing factors that must be reduced or eliminated for AFFH. Some include current zoning laws, or failure to cooperate with a region. They expect you to resolve these issues.

To receive the grant money you must also engage the public in completing your assessment of fair housing. That means civil rights advocates, affordable housing developers, community development organizations, and any interested members of the public who must be allowed to participate in finding potential areas of discrimination.

Applicants must use HUD's data tables and jurisdictions on regional trending maps to design your plan to remove the barriers and comply with adjoining counties and regions. By requiring your community to compare your demographics with those of the region, HUD assures that your zoning plans will conform to the regional zoning plans. This effectively annexes your community with the region.

HUD's documentation clearly states quote, "This rule does not impose any land use or zoning laws on any government." End quote. But paragraphs later, the same rule says quote, "HUD will assist recipient to adjust their land use and zoning laws to meet the legal obligations of AFFH." End quote. So, while HUD says it does not personally affect your zoning laws, if you take the grant money, they WILL obligate you to impose them.

The legal obligation HUD refers to is a statement applicants must sign, quote, "Your jurisdiction agrees to take no action materially inconsistent with its obligation to affirmatively further fair housing." End quote. Under AFFH regulation, your community will lose control of local zoning and land use and you can be forced to join a region whether you want to or not.

According to legal analysts Fox Rothschild, LLP attorneys at law, this statement establishes the basis for False Claims Act lawsuits, by the Department of Justice or private individuals.

When a grant recipient fails to affirmatively further fair housing, HUD can respond with a compliance review, loss of grant money, or lawsuits. Lawsuits can also be initiated by third parties, the very same people that you invited to participate in your community's fair housing assessment.

Here's an example. In August of 2015, a developer proposed 69 affordable housing units in Rockford, Illinois. The town council, the county Board and the public decided to build 49 units instead of 69. Shortly after the decision, HUD received a complaint against Rockford for choosing fewer housing units. HUD responded with a compliance review for potential civil rights violations, failure to affirmatively further fair housing with a threat to refer the case to the Department Of Justice. Public officials reversed the vote.

HUD is receiving increasing numbers of third party AFFH-related complaints in NY, DE, IL, LA, WI and CA,---the list goes on--- where

lawsuits are forcing communities into line, including the landmark case of Westchester County, NY.

It was recently published that Vero Beach has the highest disparity of income in the United States. Even though we have over 200 charitable organizations, even though we have Habitat for Humanity that has provided over 600 new or remodeled homes, and other lower income housing based upon local decision-making. Even though our county continues to upgrade infrastructure in the neediest of areas, HUD will target our community and challenge our local decisions.

Under AFFH ruling, the government demand for balanced and integrated living patterns forces communities into regional living, impedes local rule and suppresses community decisions.

One of the methods for implementation of HUD grants as we have already experienced is through Regional Planning Councils. In 2012 HUD offered a \$4.25 million grant through Seven 50, a 50-year redevelopment plan supported and promoted by the Treasure Coast Regional Planning Council. Three counties and their cities, excluding Sebastian and Fellsmere wisely voted "no thank you." But under the new AFFH Rule, HUD will be returning. The TCRPC was recently invited by the COVB to create a visioning overlay for new zoning, density, building heights and low income housing because quote, "They are able to get the grants" according to the city manager.

When this chamber was filled to historic levels and there were long lines at the podiums with citizens who objected to the terms and conditions of the HUD grant that would have usurped home rule of law, this Board wisely voted NO. But the Regional Planning Council has its own agenda for how it intends to redevelop our community. You are our last line of defense for protecting home rule of law. We ask that you consider this.

Thank you for your time.

Analysis of HUD's Proposed AFFH Rule

Michael Allen
Relman, Dane & Colfax, PLLC
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Washington, D.C. 20036
Telephone: 202/728-1888
E-mail: mallen@relmanlaw.com

Briefing on the Proposed HUD Rule Affirmatively Furthering Fair Housing Tuesday, July 30, 2013

Overview

With the passage of the Fair Housing Act in 1968, Congress first imposed on the U.S. Department of Housing and Urban Development (HUD) and recipients of HUD funds, the obligation to affirmatively further fair housing (AFFH). 42 U.S.C. §3608; *see also* 42 U.S.C. §§5304(b)(2), 5306(d)(7)(B)(Housing and Community Development Act of 1974, as amended); 42 U.S.C. §12705(b)(15) (consolidated planning); 42 U.S.C. §1437C-1(d)(16) (public housing). HUD has promulgated regulations implementing the AFFH requirements for entities receiving block grant and public housing funds. *See* 24 C.F.R. §§570.602; 91.225, 91.325, 91.425, 903.7(o).

HUD recently proposed new regulations to clarify and expand the AFFH obligations of HUD “program participants” (States and municipalities that receive HUD block grant funds and public housing authorities, or PHAs). *See* Proposed Rule on Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710-43743; July 19, 2013 (Proposed Rule). The Proposed Rule requires program participants to address “fair housing issues,” which are defined as “local or regional segregation..., racial or ethnic concentrations of poverty, disparities in access to community assets, disproportionate housing needs based on race [and other protected classes] and evidence of illegal discrimination....” §5.152. Comments are due on September 17, 2013.

The Proposed Rule’s revised definition of AFFH, at §5.152, frames all of a participant’s obligations:

“Affirmatively furthering fair housing means taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws.

The rule's preamble notes that "a program participant's strategies and actions may include strategically enhancing neighborhood assets," 78 Fed. Reg. 43716, but this strategy should not be implemented in a manner that perpetuates segregation. §5.152.

Recognizing that "[s]egregation carries a heavy social cost," 78 Fed. Reg. 43714, the Proposed Rule replaces the Analysis of Impediments (AI) with a new framework—the Assessment of Fair Housing, or AFH—through which program participants must identify, analyze and mitigate barriers to fair housing choice, and ties it to other planning processes through which federal, state and local resources are allocated. In other words, it creates a fair housing lens for all of a participant's decisions about housing and community development needs. Participants must submit AFHs to HUD, which can reject noncompliant AFHs, and impose a range of sanctions for noncompliance, up to and including withholding federal funds.

The new framework requires greater reliance on data (which will be supplied by HUD), greater transparency and public participation in the development of the AFH, and greater accountability with respect to expanding housing choice. Most importantly, it will require program participants to initiate and follow through on jurisdiction-specific community conversations about race, segregation and access to opportunity areas.

Finally, the Proposed Rule emphasizes that a participant's AFFH obligation is not bounded by what it can do with the HUD funds it has received. The strategies and actions "will be accomplished primarily by making investments with federal *and other resources*...." §5.152; 78 Fed. Reg. 43716. This regulatory language reinforces a provision that has been in HUD's *Fair Housing Planning Guide*, at p. 1-3, since 1996:

Applicability: Although the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-funded programs at the State or local level. The AFFH obligation extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded.

Procedural Issues in the Proposed Rule

- HUD will provide uniform data sets to allow participants to identify fair housing issues. §5.154(c)
- Participants are required to develop and submit an initial AFH to HUD 270 days before the start of the block grant or PHA funding cycle. §5.160(a). If the AFH is not submitted by August 16 of the fiscal year for which funds were appropriated, a participant will automatically lose CDBG funds. §5.160(b). Participants will be required to submit an AFH every five years, §5.160(c), or when "a significant material change in circumstances occurs that calls into question the continued validity of the AFH...." §5.164.

- AFHs must be submitted to HUD, which will review them, and “may choose not to accept an AFH, or a portion of the assessment, if it is inconsistent with fair housing or civil rights laws or if the assessment is substantially incomplete.” §5.162(b). HUD can also turn down an AFH that is “developed without the required community participation or the required consultation.” §5.162(b)(1). HUD has 60 days from the date of submission to review, and an AFH is deemed “accepted” if HUD does not give the participant written notice to the contrary within that period. §5.162(a).
- HUD’s acceptance of an AFH “does not mean that HUD has determined that a jurisdiction has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Act; or has complied with other civil rights laws, regulations or guidance.” §5.162(a)(2)
- The Proposed Rule enhances the public participation and consultation requirements, §5.158, and aligns the AFH regulations on this topic with those relevant to the expenditure of block grant funds under the Consolidated Plan process. §§91.100, 91.105, 91.110, 91.115 and the PHA Plan process. §903.15. While there is no explicit complaint process established in the Proposed Rule, the public participation and consultation requirements are likely vehicles for community groups to lodge objections with HUD that an AFH does not meet HUD’s requirements.
- The proposed Rule leaves in place HUD’s enforcement powers with respect to the AFH and compliance with participants’ AFFH obligations. *See, e.g.*, 24 C.F.R. §§91.500(b)(HUD approval action); 570.304 (making of grants); 570.485(c)(making of grants); 570.601 and 570.602 (civil rights certification requirements); 570.904 (equal opportunity and fair housing review criteria); 570.910—570.913 (corrective and remedial actions).
- Proposed Rule encourages regional AFHs and collaboration between municipalities and PHAs. §5.156.

Substantive Issues in the Proposed Rule

- AFH must identify goals to AFFH and to inform fair housing strategies in other planning processes including, but not limited to housing, education, transportation, and environment. §5.154(d)
- AFH must consider all fair housing issues in a jurisdiction. §5.154(d)(1)
- Participants must use HUD data to identify the existence and extent of: (1) segregation, (2) racially or ethnically concentrated areas of poverty; (3) disparities in access to community assets, (4) disproportionate housing needs and (5) illegal discrimination. §5.154(d)(2)
- AFH must “identify the primary determinants influencing conditions” listed in previous point. §5.154(d)(3)

- AFH must set and prioritize goals for mitigating or addressing these determinants. §5.154(d)(4)
- The Proposed Rule requires the jurisdiction's Consolidated Plan and related submissions to HUD to describe how the priorities and specific objectives of the jurisdiction will affirmatively further fair housing, and that the description should be done by setting forth strategies and actions consistent with the goals and other elements identified in an AFH. §§91.215, 91.220, 91.315, 91.320, 91.415, 91.420. This will ensure that fair housing planning drives decisions about how housing and community development funds will be spent.
- The Proposed Rule defines the AFFH certification to mean that a block grant recipient "will take meaningful action to further the goals identified in the AFH ... and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing." §§91.225, 91.325, 91.425.
- Although the Proposed Rule does not prescribe the specific strategies any participant must adopt, or actions it must take, it does emphasize that any strategies selected should "overcome segregated living patterns and support and promote integrated communities." §5.152 The Proposed Rule directs participants "to examine relevant factors, such as zoning and other land-use practices that are likely contributors to fair housing concerns, and to take appropriate actions in response." 78 Fed. Reg. 43716. .

time to change in control to "Board of County Commissioners". Once the agenda item has been changed "in control" to Board of County Commissioners you may want to add a department head or division director as an FYI.

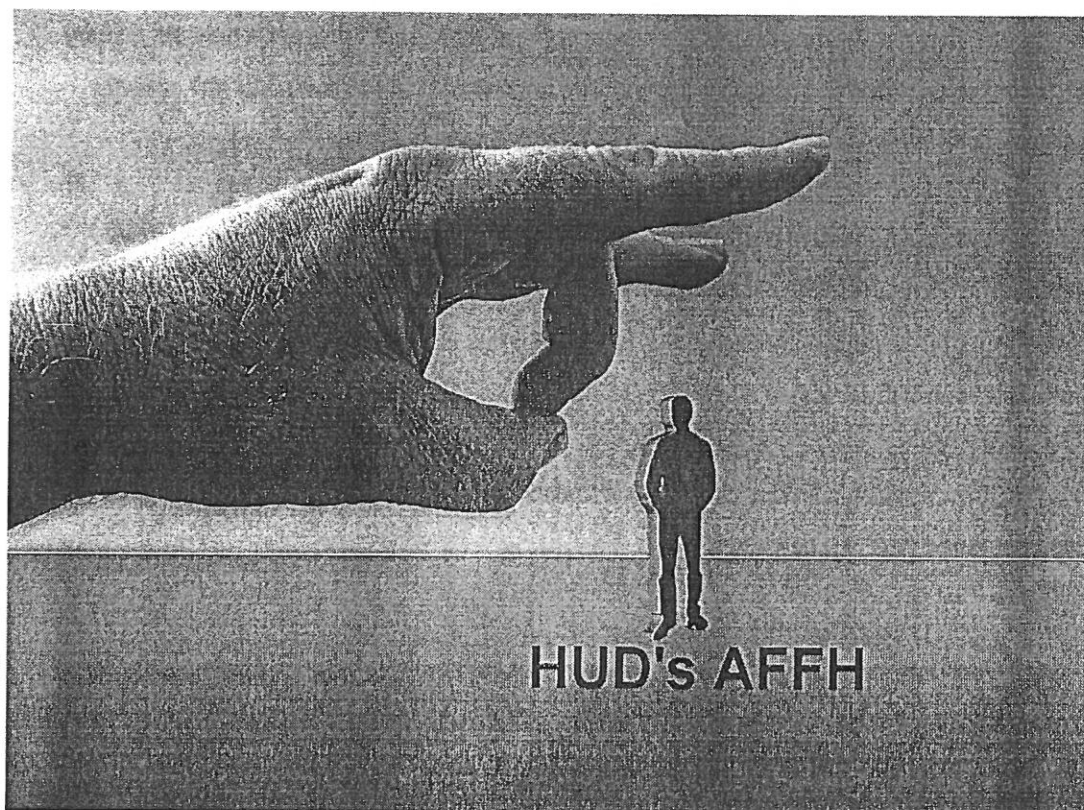
The director of the submitting department, or a designee, shall present the grant application to the Commission at the regular meeting and receive approval or denial of the item. Upon approval, the County Clerk will obtain signatures from the Commission Chairman or designee; scan and record the documents in a P-Drive folder and forward the documents to the department to complete the grant application process. Divisions/Departments may submit their electronic grant applications once the Agenda request has been approved by the Board of County Commissioners. Screen prints or printouts of the electronic application process or any other application material that was not available in Legistar may be scanned and sent to the Grants Manager via email. In cases where the **complete** signed grant application is scanned and filed by the County Clerk's Office in the P-Drive the Grants Manager may access it there.

Grant Award

Upon receipt of the grantor's funding decision, the Department shall immediately forward a scanned copy of the award document/notification letter/denial letter to the Grants Manager via email and/or the grants P-Drive folder. In the case of an award, the Department shall also submit a Budget Form to the Grants Manager or appropriate Accounting staff via email for processing with the Budget Department at which time an internal order is established, the staffing table is established, the fund center budget is established, and ERP processes are set up in SAP to allow the fund center and internal order activity. Additionally, the grants list website (<http://www.scks.info/grants/>) will be updated with the new grant award information.

In cases where a county department does not officially apply for a grant but is issued an award as an allocation of funds by the grantor or an informal arrangement to provide funding for a county operated program the department receiving the award will process a grant award acceptance agenda item for BOCC approval prior to accepting the award and setting up budget authority in SAP. This grant award agenda item will also be processed through Legistar in the same manner as a grant application.

Departments and/or Divisions shall retain primary responsibility for developing the budget, preparing reports, program implementation, staff assignments and other items related to grant implementation and administration although some support services may be provided by central administration.



15 NOV A TRUMP STRATEGY TO NEUTER HUD'S AFFH

Posted at 12:47h in Articles by John Anthony • 3 Comments • 0 Likes • Share

When President Reagan took office in 1980, he promised to reduce the number of federal agencies and rules. Eight years later, his Presidential Task Force on Regulatory Relief failed to eliminate a single agency or even one of the thousands of federal regulations.

Today, President-elect Trump has promised to stop HUD's Affirmatively Furthering Fair Housing and reduce all regulations by 70%.

Unfortunately, it cannot be done with a "phone and a pen."

The good news is, even though the rescission process may be arduous, the change to the new administration will almost immediately blunt some of AFFH's worst consequences for communities. HUD does not want to risk exposing a confiscatory agenda that does little to help the poor.

Before I offer my suggestions for neutralizing HUD's anti-Constitutional activities, let me explain why this process of reigning in HUD and all federal agencies is imperative, no matter how rigorous it may be.

Most people may not realize that the federal agency bureaucracy, not Congress is now the primary lawmaking body in Washington DC. In 2015, while Congress passed 115 laws, over 400 agencies churned out 3378 regulations, all with the full force of a congressional law.

Our Founders never intended to create a nation swimming in laws. They knew that more laws encourage citizens to lose their self-reliance and become increasingly dependent on government for fairness, support and decision-making. That is why Congress alone has law-making authority and why the people control Congress.

As James Bovard states in his book, *Freedom in Chains*, laws cause citizens "to cede more of their judgment in daily life." He continues,

"Each additional law vesting new power in government agencies, or creating new penalties for private conduct, further preempts and politicizes the citizen's life."

Decades ago, Congress began surrendering their responsibilities to federal agencies so they could manage the details necessary to implement legislative laws. Today, those 'details' have enabled federal agencies to dwarf Congress. Unelected bureaucrats flood our nation with 3,000 to 4,000 new laws every year.

It does not stop there.

The 3000 plus federal regulations are a microdot compared to the rules we rarely hear about. Rules that former FTC economist Robert Rogowsky calls sub-rosa regulations. He describes them as:

"An impressive underground regulatory infrastructure that thrives on investigations, inquiries, threatened legal actions and negotiated settlements. Without having to "break cover" as one career regulator termed it, savvy bureaucrats can fulfill an agenda of intervention without resorting to rulemaking or other formal mechanisms. Threats of regulation or litigation and the skillful use of public opprobrium can be very effective instruments of a command and control economy."

Federal agencies' sub rosa regulatory activities and guidance number in the tens of thousands every year.

Clyde Wayne Crews, Jr, in a Dec 2015 report for the Competitive Enterprise Institute, explains that sub rosa regulations or 'guidance documents' can consist of agreements, bulletins, information sheets, manuals, memorandum, advisory opinions, clarification, etc. Most fall outside of the already weak regulatory review process required for agency rules.

The IRS drew from a culture of informal memos and unwritten innuendoes to delay and reject conservative Tea Party applicants for non-profit status. Since there were no traceable rules, the President easily declared there was not even a "smidgeon of corruption," even in the face of what later proved to be massive rights' violations.

In 1946, Congress passed the Administrative Procedures Act to protect consumers by creating a "notice and comment" rulemaking process. The APA gave citizens the opportunity to review proposed rules in the Federal Register and voice their responses before they became law. But, according to Crews, agencies frequently use decrees besides rules to sidestep the APA.

"...agency and presidential memoranda, guidance documents ("nonlegislative" or interpretive rules), notices, bulletins, directives, news releases, letters, and even blog posts may enact policy while flouting the APA's public notice and comment requirements for legislative rules."

Threats are another way agencies force constituents to comply that leave little evidence of the coercion and less recourse for the individual.

Operation Choke Point was a Department of Justice initiative that forced banks to withdraw services to politically disfavored businesses including payday loans, pawnshops and gun shops.

There was no law, no regulation or even an executive order. It was simply a list of targeted companies provided to banks accompanied by threats of internal reviews for failure to comply with federal guidelines.

As Prof. Tim Wu, a supporter of these agency tactics writes in the Duke Law Review,

"Rule by threats, I argue, is under some circumstances, a superior means of regulatory oversight."

HUD seems to agree.

There is nothing in the Fair Housing Act authorizing HUD to demand that Dubuque IA issue section 8 vouchers to low-income families in Chicago, 180 miles away in another state. Yet, under legal threat for a failure to affirmatively further fair housing, the city buckled to the bureaucrats' outrageous demands.

Federal agencies have become so powerful that they can now use existing Congressional authority to write rules and guidance documents to control virtually all of our society and economy without congress passing another law.

During his campaign, Donald Trump talked about "draining the swamp." Much of the swamp is in the federal agencies.

Because federal regulations have the force of law, and legislative protection, any long-term regulatory changes the new President makes will require working with Congress to create legislation. This means developing strategies to avoid a potential Senate filibuster.

It also means the administration will need the courts to uphold challenges to new laws, or to invalidate existing rules.

Here are strategies President Trump can explore to end HUD's AFFH, reign in future agency rules and begin to address the sub rosa regulatory culture. The information applies to most federal agencies:

Review the Cost-Benefit Analysis for HUD's AFFH – Though law requires it, agencies are notorious for ignoring or submitting shoddy cost benefit analyses. Review the actual financial effects of AFFH on communities. If appropriate, bring legal action to halt the program.

Form a HUD Action Review Committee. Require HUD departments to submit proposed Compliance Reviews or legal actions against grant recipients to HARC for approval. HARC reports to the HUD Secretary.

Encourage whistleblowers to expose dubious sub rosa activities. Begin a process of removing guidance documents, threats and practices that are antagonistic to local rule and property rights. Replace these activities with pro local autonomy practices and policies.

Congress can pass new legislation to counter the effects of AFFH. Courts tend to disfavor legislation designed to block existing agency regulations. Therefore, it will be necessary to have strong

Constitutional voices on the Supreme Court to uphold the new laws that protect local rule and property rights.

Redirect the Justice Department to focus on the primacy of property rights and local rule. DOJ actions should first consider the Constitutional rights of States and of the people above federal agency initiatives.

Use the appropriations process to limit regulatory activity. So far, Republicans have found it difficult say 'no' to agency appropriations. With a member of their own party in the presidency, this is now a viable solution.

Work with Congress to amend the Congressional Review Act. Congress has 60 days of legislative sessions following issue of a rule, in which to issue a joint resolution of disapproval and rescind an agency rule. The CRA generally fails because Congress lacks the votes to override the President's likely veto. Since the CRA passed in 1994, agencies have issued 84,310 regulatory rules, not counting hundreds of thousands of guidance documents. The CRA process rescinded one.

The President can work with Congress to amend the CRA to make it easier to rescind regulations.

Amend the Administrative Procedures Act. Change the Act to require Congressional approval for major regulations.

Pass legislation requiring Congressional oversight of guidance documents. Agencies issue 20 times as many guidance documents as they do rules, though they can have a powerful and terrifying effect on citizens, businesses and jurisdictions. It is time for Congress to review or limit them. Investigate attempts of agencies to use guidance documents to sidestep the Administrative Procedures Act or any regulatory oversight.

There is also much communities can do to protect themselves from HUD's AFFH while waiting for the administration's processes.

- Do not sit on the sidelines. Work with your Congressional representatives to support efforts to reign in federal agencies; and with your State representatives to block HUD's attempts to manage local authority and regionalize your communities.

- With a new party in power, expect a reduction in HUD's aggressive litigation actions. The agency does not want their aggressive tactics, nor their invasive programs, like "income diversity" or "Move to Opportunity," exposed.
- Until the administration or Congress rescinds HUD's AFFH rule, continue to reject HUD grants. Each time your community accepts a HUD grant and the AFFH rule is alive, you are creating a future retroactive liability.
- Look for alternate ways to fund housing and urban development. Some communities are looking at Foundations and Trust Funds that provide grants to communities. Others are researching donation matching with local corporations to fund projects.

Stay involved and informed. We face threats to our communities and property because for decades, we failed to follow legislation and monitor what our politicians were doing.

It is a mistake we cannot repeat.

3 COMMENTS