

March 6, 2020

**Submitted via [www.regulations.gov](http://www.regulations.gov)**

The Honorable Benjamin S. Carson, Sr.  
Secretary of Housing and Urban Development  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, D.C. 20410

**Re: HUD's Affirmatively Furthering Fair Housing Notice of Proposed Rulemaking, HUD-2020-0011, RIN 2577-AA97**

Dear Secretary Carson,

Thank you for the opportunity to comment on the Affirmatively Furthering Fair Housing (AFFH) Notice of Proposed Rulemaking from the U.S. Department of Housing and Urban Development (HUD). The National Disability Rights Network (NDRN) writes in opposition to HUD's proposed rule.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on community integration to ensure people with disabilities who want to live in the community can do so.

People with disabilities and their families face a national shortage of accessible and affordable housing. People with disabilities often have few financial resources and remain among the country's poorest, and far too often, encounter discrimination when seeking housing. The lack of accessible and affordable housing makes moving from segregated facilities into the community extremely challenging for people with disabilities. This new proposed rule would exacerbate challenges that people with disabilities face who wish to live in the community leading to unnecessary institutionalization and homelessness. It remains extremely important to expand, not limit, opportunities for people with disabilities to live in inclusive housing in the community, and to protect the rights guaranteed under the Fair Housing Act.

The proposed rule will harm fair housing for people with disabilities. First, as stated in the 2015 Final Rule, for individuals with disabilities integration means being able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. Additionally, segregation includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

In the proposed rule, both of these concepts and the definitions of integration and segregation for people with disabilities have been removed. These concepts would no longer be required considerations in fair housing planning. However, they are integral to achieving the goals of the United States Supreme Court's *Olmstead* decision, and are an essential part of affirmatively furthering fair housing, promoting fair housing choice, and fostering inclusive communities that are free from discrimination. Without them, people with disabilities who are stuck in institutions due to a lack of housing would be left out of fair housing plans.

Second, disability discrimination complaints are the most common type of complaint filed with HUD and fair housing agencies. Despite the fact that the number of complaints of discrimination against people with disabilities has continued to rise in recent years, under the proposed rule, none of the agencies or communities that receive HUD funding would be required to take any action to address discrimination faced by people with disabilities to meet the requirements of the rule. Jurisdictions would be required to pick a minimum of three "goals" towards fair housing choice or obstacles to fair housing choice, but the proposed rule does not require covered entities to address all of the groups who are protected under the Fair Housing Act, or even to address the most significant barriers to fair housing. A jurisdiction could fully comply with the new certification requirements of the proposed rule without addressing fair housing for people with disabilities at all.

The 2015 Rule came into being after the Government Accountability Office (GAO) found that HUD's prior process to implement the AFFH requirement, which relied on an Analysis of Impediments (AI), was ineffective.<sup>1</sup> Specifically, the GAO found that "HUD's limited regulatory requirements and oversight" contributed to many HUD program participants placing a "low priority on ensuring that their AIs serve as effective planning tools." In its recommendations, GAO emphasized that HUD could assist program participants by providing more effective guidance and technical assistance and the data necessary to prepare fair housing plans. The proposed rule not only undoes progress in the development of fair housing plans achieved by the 2015 Rule, but provides for even less guidance and oversight than under the AI process. This proposed rule represents a huge step back in fair housing compliance.

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<sup>1</sup> U.S. Government Accountability Office (GAO) "HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans," GAO-10-905, Sept. 14, 2010.

Again, NDRN strongly opposes the proposed rule, which unnecessarily harms people with disabilities and we urge HUD to withdraw it. HUD must uphold its commitment to affirmatively furthering fair housing for people with disabilities and other covered classes, and in doing so, reinstate the 2015 AFFH Rule. Please contact Cyrus Huncharek, Public Policy Analyst, at [cyrus.huncharek@ndrn.org](mailto:cyrus.huncharek@ndrn.org) should you have any questions or concerns with these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Curtis L. Decker", is positioned above the printed name.

Curtis L. Decker  
Executive Director