

## ISSUE: Oppose Efforts to Undermine Fair Housing Enforcement, Including HUD's Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact Rules

In 2015, HUD released its Affirmatively Furthering Fair Housing (AFFH) rule, which implements two of the primary goals in the Fair Housing Act of 1968. The first goal is to end housing discrimination and promote diverse, inclusive communities. A second, less well-known goal is meant to affirmatively further fair housing – to actively dismantle segregation and foster integration in its place. Until 2015, the second goal had been largely forgotten, neglected and unenforced for decades.

The AFFH rule is a locally driven evaluation and goal-setting process that requires cities and towns across America to analyze and publicly report racial bias in their housing patterns every three to five years, and to set goals to reduce segregation. The rule is a tool provided to the local communities for them to implement in the best way possible for their communities. HUD's strong AFFH rule provides clarity and teeth to the law's long-standing obligations while also providing a number of tools communities can leverage to implement strong local fair housing programs.<sup>1</sup>

**Disparate Impact:** In 2013, HUD also finalized a Disparate Effects rule – a uniform standard for analyzing evidence of disparate impact in cases brought under the Fair Housing Act. In 2015, the U.S. Supreme Court upheld the disparate impact doctrine under the Fair Housing Act in *Texas Department of Housing and Community Affairs vs. Inclusive Communities Project*. The disparate impact doctrine bars policies that have a discriminatory impact even if there is no intention to discriminate. This tool is very important to fair housing and fair lending advocates combating modern-day redlining where an intention to discriminate can be nearly impossible to prove.

Congressional opponents of HUD's AFFH rule and disparate impact rules have repeatedly sought to undermine them through "riders" or amendments in the annual appropriations process by barring HUD from spending any money to enforce them. More broadly, Congress has sought to undermine fair housing enforcement by not funding or underfunding it.

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<sup>1</sup> "Affirmatively Furthering Fair Housing." Affirmatively Furthering Fair Housing Final Rule. Retrieved from [https://www.huduser.gov/portal/affht\\_pt.html#final-rule](https://www.huduser.gov/portal/affht_pt.html#final-rule).

## Who Can Act:

The U.S. Congress, the House of Representatives and Senate Appropriations and Budget Committees, the U.S. Department of Housing and Urban Development (HUD)

## NCRC's Position:

NCRC opposes H.R. 482 (Rep. Paul Gosar (R-AZ-4)) and the companion S. 103 (Sen. Mike Lee (R-UT)), the Local Zoning Decision Protection Act and any similar bills that would block HUD from implementing and enforcing its AFFH rule.

NCRC also urges Congress to oppose all amendments in the FY 2018 budget and appropriations process to defund HUD's AFFH or disparate impact rules, and also to defund or underfund the Fair Housing Initiatives Program (FHIP) and broader fair housing enforcement.

NCRC urges HUD Secretary Ben Carson to continue to implement the Assessment of Fair Housing process under the AFFH rule. HUD must finalize the assessment and geospatial tools immediately, including the assessment tools for states and Public Housing Agencies (PHAs).