



Affirmatively Furthering Fair Housing

by Britny McKenzie
Policy Coordinator, Fair Housing Justice Center
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The United States' history of discrimination and residential segregation is long and painful. The Fair Housing Act (FHA) was signed into law during the summer of the 1968 race riots and seven days after Martin Luther King Jr. was assassinated. The Kerner Commission, assembled by President Johnson to assess the state of the nation, declared, "Our nation is moving toward two societies, one black, one white—separate and unequal."¹

The FHA prohibits discrimination in selling, renting, insuring, and financing housing and presently bans discrimination based on race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability.² Knowing that the FHA alone could not end this pervasive, overarching, and profoundly embedded discriminatory behavior, Congress included a provision to Affirmatively Further Fair Housing (AFFH). It requires the Department of Housing and Urban Development (HUD), a federal agency responsible for addressing and improving housing needs and enforcing fair housing laws, and its grantees to combat discrimination, reduce segregation, and increase accessible and inclusive communities³ in its housing, development, policies, and programs.⁴

Federal Government AFFH Responsibilities

It has been 54 years since the passage of the FHA. Since its implementation, it has yet to be vigorously enforced. Cities and states across the nation that received federal funds could choose to submit an Analysis of Impediments report assessing impediments to housing

¹ [Affirmatively Furthering Fair Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

² [U.S.C. Title 42 - THE PUBLIC HEALTH AND WELFARE \(govinfo.gov\)](#)

³ <https://www.hud.gov/sites/documents/FHPG.PDF>

⁴ [AFFH Fact Sheet \(hud.gov\)](#)

choice in the public and private sector.⁵ As the FHA did not contain a requirement to assess compliance, cities across the country were not held responsible for tackling housing inequalities.⁶ As a result, state and local governments largely ignored the AFFH provision of the FHA until HUD, under the Obama administration, promulgated the AFFH rule and Assessment of Fair Housing (AFH) rule in 2015.⁷ In conformance with the FHA, this rule required all jurisdictions to create a detailed planning process to help their communities overcome disparities in opportunity, fair housing choice, and racially concentrated poverty.⁸ The 2015 rule clarified that jurisdictions must not take any actions inconsistent with their AFFH obligations.⁹

The Trump administration took significant actions to repeal prior agency and judicial interpretations of the AFFH commitment, undermining HUD's and program participants' ability to comply with their AFFH obligation.¹⁰ The administration continued to strike at fair housing by proposing to revise a crucial standard of proof known as the disparate impact rule, which has been vital in challenging neutral policies and practices that have a discriminatory effect on protected classes.¹¹ According to the National Fair Housing Alliance, these changes exacerbated housing discrimination and resulted in an eight percent increase in housing discrimination complaints.¹²

Shortly after taking office in 2021, President Biden disseminated a public memorandum to the HUD Secretary entitled "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies." In the memo, the President emphasizes that it is the United States' duty to "provide redress to those who have experienced housing discrimination, to eliminate racial bias and other forms of discrimination in all stages of home-buying and renting, to lift barriers that restrict housing and neighborhood choice, to promote diverse and inclusive communities, to ensure sufficient physically accessible housing, and to secure equal access to housing opportunity for all."¹³

Importantly, HUD released its proposed new Affirmatively Furthering Fair Housing (AFFH) rule yesterday, January 19, 2023. The proposed rule, which builds on and refines HUD's 2015 rule, will require program participants to identify fair housing issues facing their communities, using both data provided by HUD and local knowledge, and then commit to

⁵ <https://www.hud.gov/sites/documents/FHPG.PDF>

⁶ [Affirmatively Furthering Fair Housing | PolicyLink](#)

⁷ [Guidance on HUD's Review of Assessments of Fair Housing \(AFH\)](#)

⁸ I.d (6)

⁹ [National Fair Housing Alliance Applauds the Biden Administration for Advancing Housing Equity - NFHA](#)

¹⁰ [View Rule \(reginfo.gov\)](#)

¹¹ [Opening Acts October 4, 2019 - Fair Housing Justice Center](#)

¹² [New NFHA Report Highlights Unprecedented Attacks on Fair Housing and Alarming Uptick in Discrimination Complaints - NFHA \(nationalfairhousing.org\)](#)

¹³ [Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies | The White House](#)

mind the many ways fair housing was neglected after the FHA's passage and seek to prevent repetition of inadequate enforcement.

Don't let history repeat itself. Urge your local and state officials to commit to uplifting fair housing policy and eradicating housing discrimination. Visit fairhousingjustice.org to learn more.