

# Memorandum



CITY OF DALLAS

DATE July 31, 2020

TO Honorable Mayor and Members of the City Council

SUBJECT **Repeal of 2015 Affirmatively Furthering Fair Housing Regulation**

On July 23, 2020, the U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson announced the repeal and replacement of the 2015 “Affirmatively Further Fair Housing” (AFFH) regulation. The City of Dallas Office of Fair Housing and Human Rights is working with the City Attorney’s Office to determine the impact of this change.

The 1968 Fair Housing Act (Act) was a milestone legislation designed to end a legacy of discrimination in housing and to provide for the first-time, open access to housing regardless of race, color, religion or national origin. The Act was later amended to add sex, disability and familial status as classes to be protected from housing discrimination.

In addition to outlawing discriminatory practices which had been in place for decades, the Act contained a provision requiring jurisdictions to affirmatively further fair housing. In 2015, under the Obama Administration, HUD promulgated a more aggressive AFFH regulation than in prior years, designed to promote fair housing choices and foster inclusive communities. The regulation was adopted after notice and public comment as provided in the Administrative Procedure Act.

The 2015 AFFH regulation, for the first time, provided a detailed definition of AFFH and provided a new process called an Assessment of Fair Housing (AFH), effectively replacing the prior process known as the Analysis of Impediments. The 2015 AFFH regulation defined AFFH to mean the following:

“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 actions 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.”

The 2015 AFFH regulation required jurisdictions to prepare an AFH and to develop strategic plans to address findings of the AFH, including a requirement to address issues of concentrated poverty and segregation. The City of Dallas, utilizing the University of Texas at Arlington (UTA) as a consultant, completed the City’s AFH in 2018.

Under the Trump administration, HUD will now repeal (pending final publication in the Federal Register) the requirements set forth in the 2015 AFFH regulation and will replace the 2015

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AFFH regulation with the Preserving Community and Neighborhood Choice (PCNC) regulation. It did so in a unilateral action by HUD which claimed that Secretary Carson had the authority to waive the notice and public comment requirements of the Administrative Procedure Act. To summarize, the PCNC regulation redefines AFFH to mean the following:

“The phrase “fair housing” in 42 USC 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437c-1(d)(16) means housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws.”

“The phrase “affirmatively further” in 42 USC 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437c-1(d)(16) means to take any action rationally related to promoting any attribute or attributes of fair housing as defined in the preceding subsection.”

The PCNC regulation also removes various monitoring and reporting obligations and requires local governments to self-certify that they are affirmatively furthering fair housing.

Here is a [link](#) to the Assessment of Fair Housing called for by the previous Administration which was developed in 2018 utilizing UTA as the consultant.

The City of Dallas Office of Fair Housing and Human Rights has been in contact with the HUD Office of Fair Housing and Equal Opportunity (FHEO) for Region VI in Fort Worth. FHEO has confirmed that the recipients of federal funds are still required to take steps to affirmatively further fair housing. They have also advised that they expect to issue additional guidance in the coming weeks. Staff will continue to monitor guidance received from HUD.

Should you have any questions, please do not hesitate to contact me or Beverly Davis, Director, Office of Fair Housing and Human Rights at [Beverly.Davis@dallascityhall.com](mailto:Beverly.Davis@dallascityhall.com).



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