

Banking and Finance Law Daily Wrap Up, COMMUNITY DEVELOPMENT **—HUD rolls back fair housing grant certifications to pre-1994** **definitions, (Jul. 24, 2020)**

Banking and Finance Law Daily Wrap Up

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By Jacob Bielanski

A rule finalized July 23 drew immediate criticism for being "cruel," as it effectively un-does an Obama-era change known as "affirmatively furthering fair housing" (AFFH) that HUD Secretary Ben Carson said proved "complicated, costly and ineffective."

The Department of Housing and Urban Development finalized a [rule](#) on July 23 effectively ending 2015 efforts at fair housing, broadly referred to as "affirmatively furthering fair housing" (AFFH), a move that immediately drew criticism from Democrat leaders in Congress and the Center for American Progress (CAP).

In a [press release](#) on the rule publication, HUD Secretary Ben Carson said AFFH "proved to be complicated, costly, and ineffective." Carson had previously suspended the use of a 92-question "grading" tool, called Assessment of Fair Housing (AFH), in 2018. HUD has effectively replaced AFFH regulations with an effort Carson called Preserving Community and Neighborhood Choice (PCNC). The change brings HUD's definition of "affirmatively furthering" back to a pre-1994 interpretation, according to the final rule's own description. PCNC, according to the statement from Carson, would certify housing projects as "fair" if it "rationally addresses" any of the qualities of being "affordable, safe, decent, free of unlawful discrimination, and accessible under civil rights laws." HUD maintains the ability to withdraw federal funds if a grantee jurisdiction is found to not be upholding its own AFFH commitment.

CAP released a brief [statement](#) July 23 calling the rule change "cruel," and criticizing its timing less than a week before a coronavirus-related moratorium on evictions was set to expire. "Black, Native, Latinx, LGBTQ, and disabled Americans—the people most affected by COVID-19—are also the most vulnerable to housing discrimination and will disproportionately lose their homes, and their refuge from the virus, thanks to the Trump administration," CAP Poverty to Prosperity Program Vice President Alexandra Cawthorne Gaines said.

In its January proposal, HUD argued that the former rule was "too prescriptive in outcomes for jurisdictions" and that rule requirements were "resource-intensive and complicated." It said rule requirements, such as an analysis of disparities in "access to public transportation, quality schools and jobs [and] environmental health hazards" called on skill sets not normally available to public housing authorities (PHA). The proposal noted that the 49 inaugural AFH surveys submitted between October 2016 and December 2017 resulted in 63 percent that required HUD revisions or were "never accepted."

[House Speaker Rep. Nancy Pelosi](#) (D-CA) and [Sen. Sherrod Brown](#) (D-OH) argued that the change was a step back for ending housing segregation, and separately sought to re-institute the 2015 AFFH rule, in separate statements released July 23.

"It's a dark day for the country when the President boasts about maintaining housing segregation, and the agency charged with carrying out the Fair Housing Act becomes a tool to help him do it," Brown, the ranking member on the Senate Committee on Banking, Housing, and Urban Affairs, said.

In the final rule, HUD said it was waiving notice-and-comment requirements under the Administrative Procedures Act, noting that while it was legally allowed to do so under an exemption in the law, a 1969 policy letter signed by HUD and other federal agencies pledged to adhere to recommendations that would require the rule to be subject to stricter standards for notice-and-comment. In justifying an exception to HUD policy, the department said AFFH

"has already been the subject of extensive public debate," referring to both the notice-and-comment periods for the original 2015 rule and the same period that concluded earlier this year.

Companies: Center for American Progress

RegulatoryActivity: CommunityDevelopment