Center on Budget and Policy Priorities

202-408-1080

center@cbpp.org

www.cbpp.org

CBPP STATEMENT

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Contact:
Elizabeth Lee,
202-408-1080,
elee@cbpp.org

Trump Administration Rule Would Reverse Communities' Progress Toward Meeting Fair Housing Obligations

Statement by Peggy Bailey, Vice President for Housing Policy

The proposed rule the Trump Administration announced today would seriously weaken community efforts to enable all households to secure housing without facing discrimination.

The rule would largely reverse 2015 regulations designed to ensure that housing agencies and communities receiving Department of Housing and Urban Development (HUD) funding fulfill their obligations under the 1968 Fair Housing Act. That law requires them to identify barriers to housing access for certain specified groups and take affirmative steps toward ending housing discrimination and reversing damage from many decades of residential segregation and racist housing policies.

If the rule takes effect, ongoing housing discrimination and segregation will likely continue to be swept under the rug and HUD resources will do far less to reduce segregation and expand housing opportunities for people of color, people with disabilities, and other protected groups.

The proposal comes on top of another Trump Administration proposed rule, issued in August 2019, that would make it significantly harder for families or the federal government to fight local housing policies and practices that restrict access to housing.

Background

The Fair Housing Act requires housing agencies and other entities receiving federal housing-related funds to work *affirmatively* to ensure that people of color, people with disabilities, and others have equal access to housing. Lack of clear regulations prior to 2015 meant that the specific actions that housing agencies and communities were supposed to take were unclear, slowing progress. A 2010 Government Accountability Office (GAO) report found that, due to HUD's limited regulations and insufficient oversight, many communities didn't have plans, hadn't updated them recently, or had plans that were incomplete or lacked benchmarks for implementing the proposed strategies.

In 2015, HUD issued regulations — based on case law, the GAO findings, and broad input from the civil rights community, state and local governments, and housing agencies — to strengthen oversight for agencies and communities as they assess ongoing housing discrimination and devise strategies to combat it. The 2015 rule requires agencies and communities to examine the housing discrimination and access problems facing protected groups through analytically sound measures and then devise concrete plans, with implementation timeframes, to address the issues they identified.

Proposed Rule

Rather than build on the 2015 rule, the new Trump Administration proposal would create a "check the box" set of standards enabling agencies and communities to continue hiding ongoing segregation and housing discrimination from the public.

This would be deeply unfortunate. Federal housing and community development programs provide important resources to states and localities that help low- and moderate-income households — especially vulnerable populations such as people experiencing homelessness, people with disabilities, and seniors — afford housing and promote housing development and rehabilitation. The proposed rule would allow communities to use these resources in ways that lean into segregation and housing discrimination and shortchange many families' housing choices.

Rule Uses Flawed Measures for Assessing Discriminatory Practices

Under the proposed rule, HUD would use misguided measures to determine if a jurisdiction is marked by the impact of past housing discrimination or current discrimination. Instead of the robust evaluation required by the 2015 rule, that determination would be based on whether there have been legal findings of civil rights violations and whether there is an adequate supply of affordable, quality housing, even if it is concentrated in segregated neighborhoods. While some elements of these measures are valuable, they are deeply flawed measures of a jurisdiction's success in meeting its duty to affirmatively further fair housing.

Under the proposed rule, a jurisdiction could not be considered an outstanding performer if a court or administrative law judge ruled, in a case brought forward by HUD or the Department of Justice (DOJ), that it had violated civil rights law. This is problematic for several reasons.

- Only a small share of fair housing violations are litigated and, among the cases that are, most are pursued not by HUD or DOJ but rather by local legal services agencies and nonprofit organizations.
- Regardless of who brings the case forward, most are not fully adjudicated (which typically means that a final court decision is reached), but instead result in a settlement.
- As noted, another proposed rule from the Administration would make it harder for both the federal government and individuals to bring forward and win fair housing cases by sharply limiting their ability to challenge housing practices that have a discriminatory impact but may not, on their face, appear discriminatory.
- Even if the proposal were changed to include fair housing cases brought by non-federal entities, a significant number of fair housing claims go unchallenged due to lack of legal resources, among other reasons.
- A community might have a significant number of adjudicated cases *not* because it suffers from a higher prevalence of discrimination but because it has put resources into legal assistance for people protected by the Fair Housing Act to fight racism and discrimination.

The affordable housing measures in the proposed rule are also problematic. The supply and quality of affordable housing in a community do not, by themselves, show whether housing discrimination and segregation exist there. While the rule's recommendations for determining housing affordability and quality — such as median home values and rents, the availability of housing where vouchers can be used, rates of lead-based paint poisoning, and the accessibility of housing for people with disabilities — are important areas to study, they do not identify whether protected groups face housing discrimination. Nor do they

adequately address key questions about whether affordable housing is located *throughout* a community. For example, under the proposed rule, a jurisdiction could receive a high ranking even if people of color are segregated in low-quality housing in a few areas suffering from underinvestment and poor-quality schools.

Less Oversight, Reduced Collaboration Would Weaken Fair Housing Efforts

The proposed rule would reinstate the lax HUD oversight that GAO criticized in its 2010 report and the 2015 rule tried to address. Without proper oversight, communities would likely continue building affordable housing in low-income neighborhoods of color, thereby furthering segregation. If HUD does not intervene proactively, once that housing is built, it will be there to stay. By contrast, if HUD acts proactively, it can provide a counterweight to policymakers and local residents seeking to exclude low-income households from communities with lower poverty and better schools and job opportunities.

The proposed rule would also weaken collaborative efforts to promote fair housing. Recognizing that multiple state and local agencies have roles to play in ensuring that protected groups have meaningful housing opportunities and can access housing without facing discrimination, the 2015 rule pushed housing agencies and HUD funding recipients to work with other stakeholders — such as school districts and transportation authorities — to broaden housing opportunities in neighborhoods with better schooling and job opportunities. The proposed rule reverses course, requiring that agencies receiving HUD funding affirmatively further fair housing only by "reducing obstacles within the participant's *sphere of influence* to providing fair housing choice" (emphasis added).

The rule explains that housing agencies requested this change because they feel ill-equipped to address issues such as public transportation, school performance, and broader issues of where affordable housing is located. To be sure, housing agencies do not control policies in these areas. But if they collaborate with other agencies, they can help determine how public transportation can best serve their residents and how to help children receiving assistance access better schools. And they can benefit from the input of a broader set of stakeholders when considering where affordable housing and voucher-accepting landlords are most needed.

The federal government has an essential role in advancing fair access to housing, especially in communities with long histories of racist and discriminatory housing policies and practices. For example, our analysis found that in the 50 largest metropolitan areas, voucher-assisted families of color — most of whom are Black or Hispanic — are likelier to live in neighborhoods that HUD terms "minority-concentrated" than low-income renters of color *not* receiving federal assistance. This suggests that agencies administering the voucher program are currently exacerbating segregation. Robust implementation of the 2015 rule could help uncover and address this problem, but the Trump Administration's proposed rule would reduce the impetus on housing agencies to change how they implement the voucher program to further fair housing goals.

Instead of reversing course on fair housing, the Trump Administration should build on the 2015 rule by improving the admittedly imperfect fair housing assessment tools, creating opportunities to share best practices in furthering fair housing goals, and directly delivering technical assistance to housing agencies to break down the discriminatory barriers that prevent many families from obtaining safe, stable housing.

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