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Civil Rights Groups Sue HUD over Suspended Implementation of Affirmatively Furthering Fair Housing Rule

Read the full complaint [here](#). Register for our press call with co-counsel and co-plaintiffs, scheduled for May 8 at 11am EST [here](#).

The National Fair Housing Alliance (NFHA), Texas Appleseed, and Texas Low Income Housing Information Service (Texas Housers) today asked a federal court in Washington, D.C., to order the U.S. Department of Housing and Urban Development (HUD) to reinstate a federal requirement that local and state governments address segregated housing patterns as a condition of receiving HUD funding. The complaint alleges that HUD unlawfully suspended the requirement in January 2018, effectively removing civil rights oversight of as much as \$5.5 billion per year until 2024 or later for almost 1,000 jurisdictions. In its place, HUD proposes that funding recipients revert to a fair housing planning process that HUD itself and the [Government Accountability Office](#) (GAO) have found is ineffective.

The obligation to “affirmatively further fair housing” (AFFH) has applied to all HUD funding since the Fair Housing Act was passed in 1968. But it was not until July 2015 (47 years later) that HUD adopted the first effective set of federal regulations—known as the AFFH Rule—to guide the compliance efforts of local and state recipients of HUD’s block grant funds. The AFFH Rule was adopted after years of study and consultation with stakeholders; HUD considered more than 1,000 formal comments before finalizing the Rule. Before HUD’s unlawful suspension of the AFFH Rule, advocates around the country had convinced many local governments to adopt strategies to eliminate housing discrimination and promote residential integration.

For some municipalities, the AFFH Rule would be delayed until at least 2024, affecting the lives and opportunities of millions of people. By suspending implementation of the Rule, local municipalities will receive government funds with no accountability.

In their lawsuit, the plaintiffs allege that HUD’s attempt to delay and dilute the AFFH Rule violates the Administrative Procedure Act, which sets out procedural and substantive requirements for the adoption and modification of federal regulations. HUD failed to provide advance notice or opportunity to comment on the suspension and failed to articulate any plausible reason for the suspension. Plaintiffs also allege that HUD’s action violates HUD’s own AFFH duty. The plaintiffs seek a court order requiring HUD to restart the implementation of the AFFH Rule immediately.

The plaintiffs are represented by the NAACP Legal Defense and Educational Fund, Inc. (LDF), the Lawyers' Committee for Civil Rights Under Law, the law firm of Relman, Dane & Colfax PLLC, the American Civil Liberties Union (ACLU), the the Poverty & Race Research Action Council (PRRAC), and Public Citizen Litigation Group.

“It took HUD almost 50 years to create an effective way to ‘affirmatively further’ fair housing—one that would actually eliminate the barriers that keep people of color trapped in segregated, low-opportunity neighborhoods,” [said Sherrilyn Ifill](#), **LDF President and Director-Counsel**. “For Secretary Ben Carson and HUD to wipe away the rule just as it was beginning to take effect is shameful and contradicts what has been a fundamental principle of HUD’s mission. The court must order HUD to reinstate this critical rule and ensure that the agency does not take any arbitrary or illegal actions that threaten access to safe and affordable housing.”

Under HUD’s pre-2015 process, jurisdictions throughout the country routinely ignored problems of segregation and discrimination while continuing to collect HUD funds. For instance, Muskegon County, Ohio, [overlooked complaints](#) over several decades from a predominately African-American neighborhood that was denied access to public water service, even as surrounding white neighborhoods were served. Westchester County, New York, repeatedly certified its compliance with AFFH requirements even as it steered affordable housing developments into the most segregated neighborhoods in the county and permitted many white jurisdictions to resist affordable housing altogether. And Houston, Texas, has repeatedly closed its eyes to unequal municipal drainage systems in which predominantly white communities are protected from storm surges with engineered drainage while communities of color are relegated to [open ditches](#) that predictably overflow into adjoining homes.

The AFFH Rule created a greatly improved system for HUD grantees, including local governments, states, territories, and public housing authorities, to fulfill their obligation to affirmatively further fair housing. The Rule’s required Assessment of Fair Housing (AFH) is an in-depth, holistic planning process that leverages data and robust community participation to inform the selection and prioritization of measures to overcome entrenched barriers to housing discrimination, residential integration, and access to opportunity.

Under the Rule, HUD grantees must conduct AFHs on a regular schedule by using a HUD-approved tool. HUD reviews the AFHs and either approves or rejects them. In stark contrast, the pre-2015 process did not require jurisdictions to submit their fair housing plans to HUD. In fact, the GAO’s analysis found that many jurisdictions did not even complete them. These jurisdictions were falsely certifying to HUD that they were fulfilling their obligation to affirmatively further fair housing when they were not doing so.

“For thirty years, NFHA has promoted the affirmatively furthering fair housing requirement of the Fair Housing Act. We have advocated to HUD to release an effective AFFH Rule, educated jurisdictions, fair housing groups and community-based organizations about the AFFH requirements, and implemented programs designed to further fair housing,” said **Lisa Rice, President and CEO of NFHA**. “Each day HUD holds up requiring jurisdictions to fully comply with the law is another day that millions of people are being denied fair housing opportunities. HUD’s action is a clear example of ‘justice delayed, justice denied’.”

The need for vigorous HUD oversight of its grantees' compliance with fair housing laws is especially apparent in Texas. Plaintiffs Texas Appleseed and Texas Housers have a long track record of working to ensure the equitable use of federal housing and community development funds in the communities they serve, particularly in the aftermath of devastating hurricanes. The AFFH Rule is needed now more than ever as a bulwark against an unequal rebuilding process in the wake of Hurricane Harvey.

"We have spent over a decade working with state and local governments to provide understanding that segregation is not an accident—it is the product of decades of intentional government policy," said **Madison Sloan, Director of Texas Appleseed's Disaster Recovery & Fair Housing Project**. "Reversing segregation is critical—and not just for the communities that have been denied access to safe, decent neighborhoods through exclusion and disinvestment. It is research-based policy that benefits everyone. HUD's unlawful suspension of the AFFH rule is a huge step backward in the movement to create equitable, inclusive communities."

"Today, we challenge HUD's outrageous disregard of a landmark civil rights law. Fifty years after our nation made a commitment to end housing discrimination, too many cities and states still use government funds in ways that deprive people of housing choices and maintain residential segregation," said **Christina Rosales, Communications Director of Texas Housers**. "HUD painstakingly engaged in a multi-year public process to create a rule to put a stop to these illegal actions. Then in January, without due process and in violation of HUD's sacred obligation, Secretary Carson suspended that rule and has forsaken civil rights enforcement. Since Secretary Carson has refused to do his job, we ask the courts to direct him to do so."

"With this lawsuit, the civil rights community is standing up to Secretary Ben Carson and fighting back against an egregious attempt to roll back a hard fought victory," said **Kristen Clarke, President and Executive Director of the Lawyers' Committee for Civil Rights Under Law**. "The 2015 Affirmatively Furthering Fair Housing Rule was a bold attempt to strike at the heart of structural racism and inequality."

"The communities we work with have looked to the AFFH Rule to realize the legacy of the civil rights movement, and to help fulfill their modern-day dreams of equality and racial inclusion. This administration has chosen to obstruct that progress. With the rule suspended, our tax dollars will continue to be used, in effect, to underwrite continuing segregation, lack of housing choice, and unequal opportunity throughout our country. We must restore the AFFH Rule and together move forward again," said **Megan Haberle, Deputy Director of PRRAC**.

"What HUD has done in suspending the AFFH Rule can only be described as dereliction of its solemn duty to ensure that federal housing funds are distributed only to jurisdictions that comply with their civil rights obligations," said **Michael Allen, partner in the civil rights firm Relman, Dane & Colfax**. "Flouting the rule of law, HUD's action signals to every jurisdiction in the country that there will be no consequence for civil rights violations, and that HUD has no interest in helping cities, counties and states to expand housing opportunities for their residents."

“Domestic violence is a primary cause of homelessness for women and children. The AFFH rule played a crucial role in prompting communities to address the fair housing needs of domestic violence survivors, families with children, and others who have long been ignored. It needs to be reinstated,” said **Sandra Park, Senior Staff Attorney with the ACLU’s Women’s Rights Project.**

Read the full complaint [here](#).

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.