



May 12, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Reid:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), we urge you to oppose any budget amendments that would prohibit the United States Department of Housing and Urban Development (“HUD”) from implementing or enforcing its “Affirmatively Furthering Fair Housing” (“AFFH”) rule.¹ Since its founding by Thurgood Marshall over 75 years ago, LDF has utilized litigation, policy advocacy, public education, and community organizing strategies to stymie racial segregation and promote racial integration in housing. LDF has litigated fair housing cases in virtually every area of the housing market, often under the Fair Housing Act of 1968 (“FHA”),² to ensure access to housing and opportunity for African Americans.

Just a year ago, the United States Supreme Court reaffirmed a bedrock principle of the FHA and recognized its “continuing role” in “moving the Nation toward a more integrated society.”³ The obligation to “affirmatively further fair housing” and the accompanying HUD rule that provides critical guidance to local communities in fulfilling this obligation are essential tools that support the ongoing effort to fulfill the promise of the FHA.

The reported plan of Senator Mike Lee to introduce an amendment to the FY17 T-HUD/MilCon-VA appropriations bill would roll back one of the FHA’s most critical tools to redress structural inequality and racial segregation in communities across the country.

¹ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272, July 16, 2015, <https://www.federalregister.gov/articles/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>.

² See, e.g., *Cent. Ala. Fair Hous. Ctr. v. Lowder Realty*, 236 F.3d 629 (11th Cir. 2002) (sales); *Price v. Gadsden Corp.*, No. 93-CV-1784 (N.D. Ala. filed Aug. 30, 1993) (lending); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992) (insurance); *Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994) (public housing and assistance programs); *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106 (D.D.C. 1987) (redevelopment); *Kennedy Park Homes Ass’n. Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (exclusionary zoning); *Ragin v. New York Times Co.*, 923 F.2d 995 (2d Cir. 1991) (advertising).

³ *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

In July 2015, HUD announced the issuance of the final AFFH rule.⁴ The rule not only clarifies the obligation of recipients of federal housing funds (counties, municipalities and public housing agencies) to affirmatively address racial segregation, but also pledges to provide them with the tools they need to identify and address issues that contribute to racial segregation and economic inequality. The rule emphasizes local control over the development and implementation of data-driven solutions to remove barriers for opportunity in housing. In fact, the AFFH rule closely mirrors the 2010 Government Accountability Office's report and recommendation that HUD issue guidance to reform its process for implementing the FHA's affirmatively furthering obligation as well as LDF's own calls for HUD to adopt a more rigorous analysis for evaluating compliance with the requirement.⁵

HUD's AFFH rule will assist local governments in fulfilling the requirements of the FHA by identifying and effectively undermining discrimination against African Americans and communities of color who have consistently been locked out of equal opportunities in housing. The purpose of the FHA was to serve as a powerful tool for combatting the structural inequality resulting from decades of public and private segregative practices. Although our nation has made progress toward eliminating discrimination and dismantling historic segregation in housing, we simply cannot afford the rollback of any law, policy, or rule that addresses the limitation of housing choices and opportunities for people of color. To that end, we urge you to ensure that communities are equipped with the tools and assistance they need to promote racial integration and expand access to opportunity and to oppose any amendment that would seek to do otherwise.

Should you have any questions, please contact Coty Montag, Deputy Director of Litigation, at cmontag@naacpldf.org or 202.682.1300.

Sincerely,



Sherrilyn A. Ifill, President and
Director Counsel

Coty Montag, Deputy Director of
Litigation

cc: Members of the Senate

⁴ *Supra* note 1.

⁵ See LDF Letter to U.S. Department of Housing & Urban Development re: Affirmatively Furthering Fair Housing Assessment Tool, Docket No. FR-5173-N-02, Nov. 25, 2015, http://www.naacpldf.org/files/case_issue/HousingComments.pdf; LDF Letter to U.S. Department of Housing & Urban Development re: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing, Sep. 17, 2013, http://www.naacpldf.org/files/case_issue/Fair%20Housing.PDF.