

Housing on a level playing field

By: [Joe Nathanson](#) July 30, 2020



Back the 1960s, at another time when the nation was reckoning with issues of race and racism, a series of landmark laws were passed: the Civil Rights Act of 1964, ending segregation in places of public accommodation and barring discrimination by employers and labor unions; the Voting Rights Act of 1965, to finally break down the barriers to voting; and the Fair Housing Act of 1968, prohibiting discrimination in the rental, sale, or financing of housing on the basis of race, religion, national origin or sex.

Included in the language of the fair housing legislation was the requirement that states and localities receiving funding from the federal government for its housing programs (e.g., Community Development Block Grant, Housing Choice Voucher Program Section 8, public housing capital and operating funds) demonstrate that they are “affirmatively furthering fair housing” (AFFH).

Along with that was the requirement that grantees prepare, every several years, an “Analysis of Impediments to Fair Housing,” documenting how local practices in the real estate industry, in mortgage lending and other sectors supporting the ability to rent or own a home were being conducted in a nondiscriminatory manner.

So, to be clear, these requirements have been a part the bargain for a half century: If localities are to receive assistance from the U.S. Department of Housing and Urban Development, they must demonstrate that their housing programs do not discriminate against the protected classes.

Obama administration changes

Some reporting on the subject would have one think that the Obama administration, in making changes to the AFFH rule in 2015, was introducing an entirely new element to the operation of federal housing programs. The intent of the changes was, in addition to documenting the patterns of local housing market practices, to have grantees formulate a plan to remedy the impediments to making housing available on an equal playing field.

Civil rights and fair housing activists hailed the changes, noting what they saw as steps to end the reality of decades-long patterns of government-enabled segregation. Conservatives decried the changes as “social engineering.”

One prominent voice in the conservative community holding such a view was that of Dr. Benjamin Carson, Sr. This is the very same Dr. Carson, who, after an illustrious career as a pediatric neurosurgeon at Johns Hopkins Hospital and retirement, turned to a new career in politics. After a campaign for the 2016 Republican presidential nomination and briefly leading in the polls, he was ultimately offered and, to the surprise of many, accepted the position in the Trump cabinet as HUD secretary.

Trump administration reaction

In his new office, Carson has had the opportunity to act on his concerns regarding “social engineering.” Earlier this year, the secretary announced that the department would move away from the 2015 changes, remarking that “Washington has no business dictating what is best to meet your local community’s unique needs.”

And, in late July, it was announced that the Trump administration would be scrapping the Obama-promulgated regulation, with Carson saying that the revised AFFH rule was “unworkable and ultimately a waste of time for localities to comply with.”

The National Fair Housing Alliance decries this backsliding. It notes that “the 2015 rule recognized that many fair housing problems are region-wide and encouraged regional collaboration among jurisdictions to address those problems. The proposed 2020 rule not only abandons this approach, its proposed ranking of jurisdictions according to their AFFH performance may actually pit them against one another, as jurisdictions seek to be distinguished from their neighbors in order to obtain extra benefits and avoid penalties.”

Baltimore regional collaboration

In fact, the Baltimore region is pursuing the aims of the Fair Housing Act on a collaborative basis.

The work is being done by the Baltimore Regional Fair Housing Alliance, consisting of the metropolitan area’s HUD entitlement jurisdictions (Cities of Baltimore and Annapolis, along with Anne Arundel, Baltimore, Harford, and Howard Counties) and the public housing agencies of those jurisdictions, with staff support at the Baltimore Metropolitan Council.

As this alliance nears completion of the latest Analysis of Impediments, it recognizes that the 2015 rule does add some additional burden in the form of more extensive and rigorous analysis, but the proposed change “removes all consideration of how publicly supported housing relates to living patterns that may be segregated by protected class, a fairly foundational concept in fair housing litigation.” It also “removes any consideration of disproportionate housing needs by protected class.”

During this election season, while some are taking an extreme view that the 2015 rule change constitutes “abolishing the suburbs,” others view it as holding true to the very purpose of the Fair Housing Act.

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