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October 15th, 2018

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Subject: A Public Comment on HUD's *Affirmatively Furthering Fair Housing: Streamlining and Enhancements* (Docket No. FR-6123-A-01)

This comment is in response to the Department of Housing and Urban Development (HUD) invitation for public comment on the matter of streamlining Affirmatively Furthering Fair 1
Housing (AFFH), or "Affirmatively Furthering Fair Housing: Streamlining and Enhancements" (Docket No. FR-6123-A-01).

We belong to a non-partisan policy research organization and specialize in the areas of urban economics, regulation, urban planning, and housing affordability. Collectively, we have decades of experience in these topics.

We understand that the Department of Housing and Urban Development is interested in streamlining the AFFH rule with an eye toward reducing regulatory burden, improving outcomes, providing for local control and innovation, increasing housing supply, and more efficiently using HUD resources.

From our perspective, AFFH has a tenuous relationship with the Fair Housing Act (FHA) legislation, and there is not a linear relationship between the FHA legislation and AFFH. Specifically, the FHA is focused on discrimination and the relationship between landlord and tenant and AFFH is focused on segregation.

Additionally, AFFH governs programs, including Community Development Block Grants (CDBG) and Home Investment Partnerships, that award funding to political groups and businesses to build urban renewal or affordable housing projects. Programs that award subsidies to entities constitute less-efficient—and therefore less-effective—ways of improving housing affordability or low-income tenants' lives than do direct transfers to low-income people.

In general, directing subsidies to low-income people, rather than entities, constitutes a more direct and economically efficient approach. These activities can be funded and managed by states.

That said, the current public comment period is an invitation to provide comments focused on improving AFFH, rather than analyze the legal origins of the rule, or reform or eliminate less-efficient HUD programs. Therefore, we set our concerns regarding AFFH's legal origins and existing subsidy programs aside to focus on the issue at hand for the remainder of the comment.

Suggested Improvements to AFFH

The current AFFH rule requires that HUD program participants collect and share data with HUD to qualify for funds and undergo a fair housing planning process designed to help program participants remove barriers to racial and economic integration. The current process is administratively burdensome, but also does not ensure program participants act to reduce racial or economic segregation. For example, program participants may come to the wrong conclusions about why it is that racial or economic segregation exist in their area under the current rule.

As one of us outlined in the article *What Secretary Carson Should Know about Affirmatively Furthering Fair Housing (AFFH)*,

> If policymakers are interested in determining the cause of racial segregation in cities, they don't have to collect data and guess at it. A major cause of racial segregation is already known: zoning regulation. Zoning regulation segregates by race because race is frequently correlated with income. [Zoning segregates by income because housing type is correlated with household income.]
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> Zoning segregates by income through density limits, minimum lot sizes, and by reducing the supply of housing in cities, thereby creating regional housing affordability issues that push low-income racial minorities out.
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> San Francisco's mass exodus of racial minorities is a good example of this in practice. As one Atlantic article put it, 'The people moving out [of San Francisco] are less likely to have completed college, and they tend be older, African American, and Hispanic…Perhaps no aspect of the annual migration in and out of San Francisco is as notable as the outflow of African Americans.'
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> The data supports the idea zoning increases segregation. In one study, over half of the difference in levels of racial segregation between leniently regulated (less-segregated) Houston and restrictively zoned (more-segregated) Boston were a result of restrictive regulation. In another study, reducing zoning regulation was estimated to reduce the difference in racial segregation by at least 35% between the most and least segregated areas.
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> Regulations that limit development density may have the largest impact on racial segregation. Up-zoning (or increasing allowable development density) would reduce segregation naturally as individual choice improves. Up-zoning would support property

rights and improve housing affordability as it increases housing supply.

Furthermore, as described in the study *Zoning, Land Use Planning, and Housing Affordability*, more restrictively zoned areas receive a greater share of HUD subsidies. In fact, restrictively zoned states received twice as many HUD subsidy dollars, even *after* accounting for poverty. This suggests current HUD funding schemes are encouraging and incentivizing poor local policy choices on the part of cities and states.

Specific programs that are currently governed by AFFH rules, like Community Development Block Grants (CDBG), follow a similar pattern: the most restrictively zoned states receive 35 percent more CDBG funding than the least restrictively zoned states, by our calculation. Unfortunately, federal subsidies will always create market distortions of one type or another, but the current distortions are arguably especially pernicious.

If policy makers want to improve racial and economic segregation and housing affordability, a useful update to AFFH would require cities to liberalize zoning regulations to qualify for HUD funds. In another public comment, *Conditioning HUD Grants on Housing Market Outcomes Furthers Fair Housing*, Mercatus Center policy researchers provide a helpful list of strategies that cities can use to liberalize their zoning codes (for example, see "Policy Test").

One issue with allowing program participants to qualify for funding by doing any one or even a variety of zoning reforms is that it is easy to offset liberalizations in one area of the zoning code with restrictions in another. For example, a city could legalize duplexes, while also increasing minimum unit size requirements, making duplexes impractical under the new rules.

Cities around the U.S. are already following this counterproductive pattern. For example, it was recently reported that Portland and Seattle have reformed zoning in some areas but "for every policy that encourages more housing construction, these cities have also passed a series of laws that discourage housing production."

If AFFH requirements were satisfied by reforming one aspect of the local zoning code, they would likely be neutralized elsewhere. Instead, HUD should encourage program participants to reduce the overall zoning burden in *real* terms and do so consistently over time. HUD would be better off requiring cities and states measure overall zoning burden and report the value. HUD administrators should ensure the value is accurate and decreasing over time for eligible program participants.

Of course, measuring regulatory burden is a notoriously difficult thing to do. Simply counting the number of regulations in a local zoning code, or the number of pages of regulations, can't provide an accurate or scientific measure of overall regulatory burden. However, Harvard economist Edward Glaeser pioneered a more accurate method of measuring the burden of zoning regulations in his landmark paper, *Why is Manhattan So Expensive? Regulation and the Rise in House Prices*.

Although Glaeser focuses the subject of his paper on Manhattan, he also measures and reports the zoning tax in other metropolitan areas. Glaeser's method for measuring regulatory burden could be replicated by cities and states at HUD's request. It would require pulling information on market prices and construction costs from a couple of sources and making one single calculation, the zoning tax, and then reporting that value to HUD (see below for calculation and potential data sources).

Calculation of Zoning Tax as a Proportion of Mean House Value:

The computation of the zoning tax as a fraction of mean house value is as follows for each area j:

$$\frac{ZoningTax_j}{MeanHouseValue_j} = \frac{\left(\dfrac{MeanHouseValue_j - CC_j}{MeanLotSize_j} - HedonicLandPricePerSqft_j\right) * MeanLotSize_j}{MeanHouseValue_j}$$

More details can be found in the associated paper, here.

Data Sources and Availability:

Market prices:

Public or free data:

- Local data on housing prices (e.g. NYC Housing and Vacancy Survey)
- Zillow data on housing prices

Private, for-sale data:

- Condominium sales records, First American Real Estate Corporation (covers 100% of U.S. housing stock)

Construction costs & land costs:

Public data:

- The American Housing Survey (AHS) provides data on state and metro area level, but not all metro level data is updated each year

Private, for-sale data:

- R.S. Means Company (Core online, starts at $237 a year, quarterly updated, only current year)
- Marshall & Swift (Cost estimates for >800 geographic areas, monthly updates)
- Zaxon (Data processed by NYU Center for Real Estate and Urban Development)

If the zoning tax in a city or state had declined during the previous period (or if it was zero in the previous period and stayed at that level) then a HUD program participant would qualify for funding that year. One significant benefit to this strategy is that HUD program participants could freely experiment with different methods of liberalizing zoning regulation, and determine what methods work best locally to accomplish the objectives of improving housing supply and choice without HUD administrators being overly prescriptive or involved in local affairs. As program participants work to reform zoning, the zoning tax for the area should decline as housing choice and supply grow. Racial and economic segregation should decline accordingly.

Moreover, when states receive funding directly (for instance through CDBG), this AFFH reform would help to align state and local municipalities' priorities. This is important because if zoning liberalization is to succeed then it will likely need to be reinforced by state-level reforms.

In summary, zoning is a better proxy for racial segregation, economic segregation, and barriers to housing choice and supply than other characteristics. By estimating the zoning tax in their respective areas, program participants would be measuring useful information that would point them towards a solution. We recommend HUD explore this as a solution to help streamline and improve the outcomes of AFFH and existing HUD subsidies.