



# Is HUD's Fair Housing Rule Here to Stay?

BY DANIEL J. MCGRAW | MAY 2, 2017



(Photo by Another Believer)

Fair housing advocates, people who want to see a reversal of the racial segregation prevalent in U.S. cities, and fans of open data have kept a wary eye on the Obama-era Affirmatively Furthering Fair Housing (AFFH) rule, issued by HUD in 2015, since President Donald Trump was elected in November.

[AFFH requires municipalities](#) that receive HUD funding to report in detail — using maps and other data — how their housing policies aren't promoting segregation. Many local housing authorities have since taken up the work, from Philadelphia to New Orleans and, [Jake Blumgart reported for Slate](#) in March, AFFH has "already made housing a little bit fairer in some of America's most segregated places." However, before Ben Carson took his spot as new HUD secretary, he [expressed skepticism](#) of the rule. And a [bill](#) introduced in the U.S. House of Representatives in January seeks to kill AFFH. Sponsored by Rep. Paul Gosar, a Republican from Arizona, it takes aim at the data tools that are a critical part of AFFH: "No federal funds may be used to design, build, maintain, utilize, or provide access to a federal database of geospatial information on community racial disparities or disparities in access to affordable housing."

There still may be reason for cautious hope from those who want to see AFFH enforced.

Moderate Republicans in the Senate did help to quash a movement to derail the rule in 2016. One of those, Georgia Senator Johnny Isakson, [said at the time](#), "All regulations can be abused if the agency does it. They can take it and extrapolate things they shouldn't be doing. You know, in Atlanta we've done some positive things with HUD — expand access to housing by inviting the private sector through positive government moves. That's the way I hope it will happen." Further, getting rid of AFFH — while Congress is still dealing with a possible repeal of the Affordable Care Act and tax reform — has been put on the back burner by some estimates.

"The House has already tried to do bigger-picture things and has failed to do so, and the clock is ticking," says Kyle Kondik, managing editor of "Sabato's Crystal Ball," the University of Virginia Center for Politics' nonpartisan newsletter on American campaigns and elections, "because the closer you get to the midterm election, and everyone's political seat is on the line, there is less interest in doing anything."

Gosar hasn't indicated he's giving in however. Republicans opposed to the AFFH rule argue that HUD is forcing "federal zoning control" on local jurisdictions, and imposing big city standards on smaller rural counties and cities that don't have the budget or staffers to comply with the data requirement. In introducing the January bill, which is co-sponsored by 23 other Republicans, [Gosar referred to it](#) as the "Bill to End Obama's War on the American Suburbs."

"Bigger issues like healthcare reform, tax reform and immigration have dominated Capitol Hill during Trump's first few months in office," says Steven Smith, Gosar's communication director. "While Congressman Gosar is still working with GOP leadership on bringing [the bill] to the House floor this year, it is also possible that we might use the appropriations process to block funding for AFFH in 2017. The Congressman believes it's important to stop this overreaching federal mandate as soon as possible."

Conn Carroll, a spokesman for Senator Mike Lee of Utah, who also opposes AFFH, says Lee is keeping the options open on either repealing the AFFH regulations, or perhaps using funding appropriation denials to get rid of it. "We are hearing from all kinds of people from cities who have a hard time using the tool," Carroll says. "It is very expensive and very hard to use and difficult. This is a backdoor way for the federal government to force states to do what they want them to do. We are hearing from people in the [public housing agencies] that the AFFH tool is not good for them."

When asked to provide the names of agencies that have contacted Lee's office with such complaints, Carroll said, "I'm just not in a position to share any more communications between us and [Utah public housing agencies]."

Twenty-two municipalities participated in kicking off AFFH compliance, and 105 have committed to the reporting in 2017. These include big cities like Denver, Boston, Nashville, Los Angeles and

Buffalo, and smaller cities like Jonesboro, Arkansas, Council Bluffs, Iowa, Daly City, California, Enid, Oklahoma, and Rapid City, South Dakota. And nationally respected affordable housing advocacy organizations such as the National Low Income Housing Coalition, National Fair Housing Alliance, Corporation for Supportive Housing and the Lawyers' Committee for Civil Rights Under the Law have urged communities to back AFFH efforts and cooperate with HUD.

“The city leaders and city hall administrators we’ve talked to like this and want to work within the new rules,” says Diane Yentel, president and CEO of the National Low Income Housing Coalition. “It requires them to look at and unwind what might have been decades of segregated communities. It requires them to take a look at their community and find where there are high concentrations of segregation and poverty and disparity of opportunities exist. How did we get here, what led us here, and what can we do.”

“The cities we help and follow are finding this is making their city more equitable, and the long-term interest of their community is first and foremost,” says Megan Haberle, director of housing policy at the Poverty & Race Research Action Council.

Yentel says Republicans who see this as top-down planning are wrong, and Marion McFadden, vice president of public policy for Enterprise Community Partners and a former deputy assistant secretary for grant programs with HUD, agrees.

“There seems to be concern about federal government overreach, but HUD is giving the cities the time and space they need,” McFadden says. “Lots of communities don’t know what the history is, but more than anything else, this lets them know how we got to where we are and lets them know how not to impede things further. HUD is being reasonable in this.”

Not everyone sees the rule as reasonable. "I'm still opposed to [AFFH]. It is a huge administrative burden for us," says Barbara Bozon, executive director of Central Texas Housing Consortium (CTHC) in Temple, Texas. "Fair housing is important, but we don't feel what they are asking us to do in terms of measuring school enrollment and transportation infrastructure is something we can do well with any meaningful depth." CTHC oversees about 1,200 public housing and voucher units.

Ed Ware, communications director for the Norfolk Redevelopment Housing Authority (NRHA) in Virginia, says AFFH "needs major modification. We aren't the subject matter experts in gauging the education or transportation systems in our community. HUD also uses this to judge projects in a phase-by-phase basis, not the overall long-term results." NRHA operates 3,500 public housing units, and 2,800 housing voucher living spaces.

Robert Silverman, professor of urban and regional planning at the University at Buffalo, thinks AFFH could actually be more helpful to small local governments. "In the past, there was always a report municipalities and counties had to do for fair housing, but HUD didn't give them clear distinction of what to measure and a deadline for doing so," he says. "HUD has provided them with a template, and I haven't heard from any cities that don't think doing these data studies of how housing is used in their communities is not important for them."

Silverman doesn't believe there's enough support in Congress to pass a bill that ends AFFH, and in any case, Ware says, that's not even what he'd want to see.

"We are not in favor of the bill we've seen that would get rid of AFFH," Ware says. "There needs to be some modification in this program, but not killed in Congress."

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