



May 19, 2016

Dear Senator:

The Lawyers' Committee for Civil Rights Under Law urges you to reject any amendments to the Senate appropriations bill for the U.S. Department of Housing and Urban Development that would halt hard-won progress toward ending residential segregation in the decades since Congress enacted the Fair Housing Act of 1968 (FHA). Despite many gains, residential segregation remains pervasive in this country. In particular, African Americans and Latinos are more likely to live in segregated communities and to face stark resulting disparities in areas including housing, health, education, employment, and criminal justice.¹ The amendment discussed below would further entrench these unjust patterns.

H.R. 2577, S. Amdt. 3897 – Affirmatively Furthering Fair Housing

An amendment introduced by Representative Mike Lee (R-UT) to the Transportation, Housing and Urban Development Appropriations Bill would prohibit the Department of Housing & Urban Development (HUD) from implementing and enforcing its Rule on Affirmatively Furthering Fair Housing.² This ill-advised amendment misconstrues the existing legal landscape and should be rejected.

In enacting the FHA, Congress mandated that HUD fulfill a statutory duty to affirmatively further fair housing (AFFH). 42 U.S.C. § 3608. As one of FHA's core provisions, the duty to AFFH provides a tool for HUD and its grantees to proactively spur residential integration, instead of relying on piecemeal approaches. *Id.* § 3608(e)(5). For over four decades, HUD and the federal courts have consistently interpreted this mandate to require that HUD grantees take proactive steps to promote residential racial integration.³

The Rule does not change this legal landscape, which has been in place since 1968. It simply gives HUD the ability to more effectively enforce the affirmatively furthering fair housing mandate by increasing access to opportunity for millions of families and promoting more inclusive communities. The Rule creates a new fair housing planning document called the Assessment of Fair Housing to replace the current Analysis of Impediments to Fair Housing Choice, clarifies definitions of key terms, and provides new data and mapping tools to

¹ National Commission on Fair Housing & Equal Opportunity, *The Future of Fair Housing* 5-6 (2008).

² 80 Fed. Reg. 42271 (July 16, 2015).

³ See *Otero v. New York City Hous. Auth.*, 484 F.2d 1122, 1129-30 (2d Cir. 1973); U.S. *ex rel.* Anti-Discrimination Center of Metro New York, Inc., 668 F. Supp. 2d 548 (S.D.N.Y. 2009); 24 C.F.R. §§ 91.225(a)(1), 91.325(a)(1).



jurisdictions.⁴ Funding is critical to ensure HUD's ability to robustly enforce its AFFH mandate.

Far from usurping local authority, the Rule ensures that States and localities receiving federal funding from HUD make allocation decisions through increased community engagement and public participation in the fair housing planning process. The Rule will lay the groundwork for local solutions to housing discrimination that meet community needs, and it explicitly rejects the suggestion that there are one-size fits all solutions that can be put into practice from Washington, D.C.

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Housing discrimination and residential segregation have proven to be enduring obstacles to the realization of a just, equal society in the United States. This amendment attempts to hobble the executive branch's ability to further the congressional mandate to expand fair housing opportunities throughout the country. By voting against this amendment, that would limit fair housing opportunities, you will have done your part to ensure that Congress does not reverse nearly half a century of commitment to equal opportunity in housing.

Thank you for your consideration.

Sincerely,

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⁴ Rule, *supra* note 2.