



## MEMORANDUM

**TO:** COG Board of Directors  
**CC:** Housing Directors Advisory Committee, Human Services Policy Committee, and Region Forward Coalition  
**FROM:** COG Regional Fair Housing Project Team  
**SUBJECT:** Response to the U.S. Department of Housing and Urban Development (HUD) Decision to Rescind the 2015 Affirmatively Furthering Fair Housing Rule by the Metropolitan Washington Regional Fair Housing Project Team  
**DATE:** August 5, 2020

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In 2017, local governments in metropolitan Washington, with their Public Housing Authority (PHA) partners, came together to collaborate on a new, rigorous approach to furthering fair housing and to address the aims of the 1968 Fair Housing Act to end discrimination and racial segregation in our communities.<sup>1</sup> This memo addresses HUD's recent action and next steps in the regional fair housing effort.

## OVERVIEW OF THE FAIR HOUSING ACT

The [Fair Housing Act](#), passed on April 11, 1968 in the wake of the assassination of Rev. Dr. Martin Luther King, Jr., prohibits discrimination concerning the sale, rental, and financing of housing based on race, color, religion, national origin, sex, (and as amended) disability and family status. The Fair Housing Act is designed not only to prevent discrimination, but also to reverse patterns of residential segregation.

## HOW ARE JURISDICTIONS MEETING THEIR OBLIGATIONS UNDER THE FAIR HOUSING ACT?

Since 1994, cities, counties, and states that receive federal funds through the U.S. Department of Housing and Urban Development (HUD) have complied with the Fair Housing Act through the ["Analysis of Impediments to Fair Housing Choice."](#) In 2000, the U.S. Government Accountability Office reported that ["HUD needs to enhance its requirements and oversight of jurisdictions' fair housing plans."](#) The result was a revised federal rule making process, completed in 2015.

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<sup>1</sup> Participating jurisdictions include: City of Alexandria, VA; Arlington County, VA; the District of Columbia; Fairfax County, VA; Loudoun County, VA; Montgomery County, MD; and Prince William County, VA. Housing Authority partners include: the District of Columbia Housing Authority; Fairfax County Redevelopment and Housing Authority; Rockville Housing Enterprises; Alexandria Redevelopment and Housing Authority; and the Housing Opportunities Commission of Montgomery County, MD.

## IMPORTANT CHANGES FOR THE METROPOLITAN WASHINGTON REGION

In 2018, HUD suspended the 2015 AFFH rule. At that time, COG member governments which receive entitlement funding from HUD and their Public Housing Authority partners affirmed their prior decision in 2017 to collaborate to complete a fair housing plan that addresses both local and regional challenges and goals to further fair housing.

HUD encouraged this collaborative approach, providing technical assistance from Enterprise Community Partners beginning in 2019 to support the effort. On July 23, 2020, HUD [rescinded the 2015 rule](#) and replaced it with the “Preserving Neighborhood and Community Choice” rule.

It is not only the substance of this change that the governments of the metropolitan Washington region find deeply troubling, but the way this rule was rescinded is also of great concern. It reflects an abdication of the federal government’s responsibility to allow for proper review and feedback on the proposed rule change. Instead of following the traditional rule making process, the 2015 AFFH rule has been replaced by administrative fiat. The timing of this rule change is not only suspect, but unconscionable given the nation’s current reckoning with its history of systemic racism.

Further, the new rule not only severely weakens the ability of HUD to provide oversight regarding how local jurisdictions are using taxpayer funds to ensure fair housing choice, it also leaves local governments vulnerable to lawsuits for failure to properly comply with the 1968 Fair Housing Act.

It is not the risk of liability that motivates this region to proceed as planned, however.

COG and its member governments and PHA partners on the regional Fair Housing Project Team have long recognized the importance of how housing policy, practice, and a history racial segregation in our communities continue to shape our neighborhoods. The disparate life outcomes that have been made even more apparent during the current COVID-19 pandemic reflect the stark reality that we have much work to do to [advance equity](#) and shape a fair and just society in this region.

## WHERE DO WE GO FROM HERE?

Regional leaders recognize that cooperation is key to reversing years of racial segregation and disinvestment. The now-rescinded rule required local jurisdictions to evaluate their data within a larger geographical context, demonstrating that housing markets and jurisdictional borders do not always neatly correspond.

Our metropolitan area – connected by two states and the District of Columbia – has a shared future and a shared stake in ensuring that our homes, our health system, our educational institutions, and our economy provide an opportunity for every resident to thrive.

Therefore, COG’s [Regional Fair Housing Project Team](#) remains committed to gathering and examining data for patterns of racial bias and segregation, engaging communities and those impacted by fair housing choice, creating a plan for concrete actions at the local level, and undoing past patterns of residential segregation regionwide.

We recognize that in this highly mobile area, one jurisdiction cannot solve our region’s housing equity challenges alone.

As COG Board Chair Derrick L. Davis [recently stated in the Washington Post](#), “Housing forms the foundation for economic mobility, academic success and quality of life. However, closer examination of past housing and land-use policies reveals a pattern of systemic racism and presents an important opportunity for local governments in our region to enact a culture change and prioritize and advance equity.”

As a region, we will continue to collaborate on a regional Analysis of Impediments to Fair Housing, together with our local and regional federal partners, advisors, and stakeholders to ensure that we are doing all that we can to affirmatively further fair housing in the spirit of the Fair Housing Act.

We will not let an arbitrary decision, which circumvents a long-established federal process requiring reflection and comment among stakeholders deter us from doing what we know is right to advance housing equity in our region.

This regional fair housing plan, the first in more than twenty years, is expected to be completed in May of 2021. We welcome you to become or remain involved in this important effort to advance housing equity and create truly inclusive communities.