



HUD Sued Over Fair Housing Rule

A HUD ploy aimed at forcing the courts to determine if the Obama administration's rewrite of the 1968 Fair Housing Act into a strict enforcement tool has been successful is challenged in federal court as *HAL* projected it would be in the Jan. 12 issue (*HAL*, Issue No. 18-02).

Led by the National Fair Housing Alliance, an amalgam of fair housing centers across the country commissioned by HUD to be its surrogates in Fair Housing Act enforcement, the groups, including the Texas Low Income Housing Information Service and Texas Appleseed, ask the U.S. District Court for the District of Columbia to issue an immediate halt to further suspension of HUD's Affirmatively Furthering Fair Housing (AFFH) rule and to rule on a permanent injunction against the HUD suspension

AFFH was activated in 2015 after seven years of preparation reinterpreting the Fair Housing Act to focus on aggressive enforcement. The original law called for aggressive application but did not spell out the meaning of "aggressive."

The rule is intended to racially and ethnically integrate suburban neighborhoods in 1,200 metro areas by increasing building density to accommodate tenement-style housing construction for poor inner-city families.

HUD lawyers developed a set of penalties to be applied to any transgression of the FHA the department determined to be valid. HUD left no stone unturned in its coverage of all bases to eliminate any enforcement loopholes, including expansion of protected class categories.

Any community among the 1,200 HUD targets that failed to obey the AFFH and all its subcategories could lose all of its property zoning prerogatives and much of its federal subsidies for refusal to comply.

The Trump administration took office on the premise it would toss the AFFH rule. HUD Secretary Ben Carson called it social engineering. But reality soon set in. Political pressures emerging from the Congressional Black and Progressive caucuses proved to be too much for a fledgling administration enmeshed in political fights on several fronts and HUD settled on an alternative strategy.

Carson instead chose to settle the arguments by forcing court action. HUD anticipates a different ruling on AFFH on what the administration contends is forced desegregation based on racial and ethnic quotas in each zip code of a metro area.

The lawsuit lays open an earlier prod by the department to determine the validity of the Obama administration's revision of the Fair Market Rent rule by incorporating a provision to allow financially-enhanced vouchers to be used by poor families in wealthy neighborhoods under its Small Area Fair Market Rent rule.

HUD lost the SAFMR battle, forcing the department to begin sweetening Section 8 housing vouchers to allow poor families to rent more expensive apartments in better neighborhoods equipped with safer schools and more job opportunities.

The SAFMR lawsuit was filed last October and received a quick hearing with a decision handed down in late December rejecting Carson's move to shut down the SAFMR rule in two dozen of the nation's largest metro areas.

HUD officials expect a similar quick turnaround on the AFFH lawsuit. Carson in January suspended the rule for two years, fully expecting a legal challenge.

If HUD loses as it did on SAFMRs, public housing authorities would be required to analyze housing stock and develop a plan to address patterns of segregation and discrimination. If HUD refuses to accept a public housing authority's Fair Housing Assessment as sufficient, the PHA, city or county would have to rework it or risk losing all federal subsidies.

HUD suspended AFFH by telling local governments they would not be required to submit an Assessment of Fair Housing until their next submission date falling after Oct. 31, 2020. The submission, based on a three-year submission cycle, would absolve any recipients of federal subsidies from submitting an assessment until 2024 at the earliest.

Info: Read the complaint with accompanying *Federal Register* Jan. 5, 2018 notice at

www.cdpublications.com/docs/9450

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