

Drain AFFH from the Washington Swamp: Overturning HUDs Affirmatively Furthering Fair Housing Requirements

Abstract

The Obama administration used the 2010 Government Accountability Office (GAO) report to advance their Affirmatively Furthering Fair Housing (AFFH) urban centric agenda. Douglas County, Colorado identified concerns with the AFFH requirements as they prescribe urban living patterns as a one-size fits all approach that makes it impossible for suburban and rural communities to comply. High profile lawsuits were initiated by advocacy groups in 2009, coupled with the GAO response regarding HUDs lack of AFFH engagement in 2010. These convergent circumstances allowed the Obama administration to seize the opportunity to push their social agenda through the new AFFH rule.

Douglas County fought the implementation of these regulations for three years, but our suggestions and pleas for revisions were ignored. HUD willingly complied with Obama's agenda and established over reaching regulations so prescriptive the county was forced to decline HUD funding through the Community Development Block Grant (CDBG) program in 2016. The onerous requirements were developed in a vacuum, with negligible input from rural and suburban communities. These regulatory requirements will be impossible to achieve for non-urban areas and could possibly invite future discrimination lawsuits, both of which waste local resources. We are hopeful that the Trump administration will reverse the new requirements and reinstate the previous approach to AFFH. This action will demonstrate the administration's support of non-urban communities whose eligible citizens are just as important as those in urban areas. Your leadership reversing this legislation would allow Douglas County to reinstate our model CDBG program which has allowed us to serve our vulnerable residents for over two decades.

Problem

Little has been done to implement the Fair Housing Act of 1968, when Congress directed HUD and its program participants to affirmatively promote fair housing choice and equal opportunity. HUD shirked its duty, stalled in a quagmire of inaction for 45 years before attempting to provide clarity and support to grantees. Obama used HUDs ineffectiveness in addressing fair housing as an opportunity to validate their assumptions of discrimination and lack of opportunity. It appeared HUD would finally be held accountable for halfheartedly implementing the Fair Housing Act for half a century.

The Westchester New York lawsuits highlighted HUDs lack of guidance and involvement with AFFH. In 2010 the Government Accountability Office (GAO) launched an investigation and reviewed HUD's involvement and oversight of AFFH. The GAO found HUDs participation to be ineffective and recommended HUD "enhance its fair housing obligations by providing greater clarity and support to jurisdictions receiving HUD funding and facilitate local decision-making on fair housing priorities and goals". Douglas County agreed: HUD should provide oversight and guidance. In our experience administering the CDBG program it was obvious that a reporting template or tool, using clearly defined measures and community input, was needed to guide jurisdictions in preparing a thoughtful assessment identifying community needs.

The Obama administration manipulated the GAO decision, and used it as an excuse to unleash the administration's social engineering agenda. The first sign that an unfunded mandate was about to be levied upon communities receiving HUD funds was on July 19, 2013, when HUD published the Affirmatively Furthering Fair Housing proposed rule (finalized July 16, 2015). The

rule indicated that “customized assessment reporting templates would be made available to grantees, given their differing responsibilities and the geographic areas served” (Source: HUD Rule on AFFH). HUD lied. Their solution was a one-size fits all regional approach for every jurisdiction, regardless of location, size, density or resources.

The AFFH regulations are complex and onerous, ignoring market forces and inhibiting our ability to determine local priorities. The new regulations force us to adhere to prescriptive requirements and artificial living patterns. The assessment questions are inappropriate for individual counties and cities because of HUDs emphasis on regionalism.

The assessment includes a list of contributing factors, or missing attributes that constitute the potential for localized discrimination. The county maintains that correlation can and does imply causation, but that the two are not automatically linked. For example, by listing local land use and zoning regulations as a contributing factor in the assessment, the public and special interest groups may well assume that zoning is linked to a lack of accessible housing. Beyond assumptions, all ranges of housing types are market driven. Changes to zoning regulations or incentives available through local governments have not been found to have a positive impact on these assumptions.

Douglas County submitted multiple public comments stating this was an ill-advised approach and HUD should revise the assessment template with input from the local jurisdictions administering HUDs programs. We requested HUD provide a table where these contributing factors are considered in an urban, suburban and rural context with metrics provided for each factor. This would help provide the parameters administrators need to properly assess our community and the guidance we believe HUD Regional staff will need to consistently review AFFH assessments. HUD ignored our comments.

HUD’s prescriptive new AFFH requirements will actually create barriers in our community and make it difficult for our jurisdictions to continue to further our fair housing efforts. The AFFH assessment template was developed with input from a task force of consultants and east coast academics predisposed to their own agendas. Not one of them will be required to pay for the assessment or implement the solutions required to address the gaps. The task force assisted HUD in creating an unfunded mandate through this overly complex assessment, which will likely require a consultant to complete.

Douglas County has every reason to fear that the AFFH will restrict local control as the template questions are heavily weighted to dense urban centers and ignore market forces. HUDs rubric doesn’t fit Douglas County’s mix of rural, suburban and urban centers. The questions are inappropriate for the Douglas County setting, and as a result it will be impossible to demonstrate success. Without the potential for success, Douglas County is vulnerable to HUD forcing urban centric solutions, intended to address the discrimination and lack of fair housing choice that is often present in large east coast cities, but is inappropriate in rural and suburban areas like Douglas County.

The AFFH template and questions are ill-suited to jurisdictions outside large urban areas. Douglas County cannot successfully comply with the AFFH requirements, eventually allowing HUD to dictate changes to our local zoning ordinances or the development of low-income housing. Zoning is a police power granted by states to each jurisdiction. Zoning is not something the federal government controls; therefore we believe HUD is exceeding their authority.

These concerns stem from lawsuits filed by the Anti-Discrimination Center against Westchester County, New York. In these cases the court determined that discrimination had occurred. Westchester was required to develop 750 units of new affordable housing throughout the county over a span of 7 years. The settlement required the county to resolve public policies and private practices, such as exclusionary zoning regulations, that resulted in racial discrimination. Congress identified HUD as the agency responsible for monitoring the resulting settlement. It is important to note that prior to the discrimination lawsuit, HUD staff had not previously identified a fair housing concern in Westchester County.

The Obama administration used HUD's poor performance and lawsuits from advocacy groups to justify implementing an assessment tool to prescribe urban living patterns. The requirements force jurisdictions to perform an overly ambitious regional analysis as part of their community assessment. Due to the ambiguity and complexity of this assessment, local jurisdictions will be forced to hire a consultant, resulting in an expensive unfunded mandate.

For more than a decade the County operated a model CDBG program that has been recognized nationally for its innovations. Applicants were awarded funding only after a rigorous competitive application process. Technical assistance was provided to build service capacity for low-income clients. High performing subgrantees were able to leverage funds against the grants they were awarded.

Subgrantees assist our residents at risk of becoming homeless or suffering financial hardship. In Douglas County, 16% of our residents are income-qualified to receive assistance using these funds. Our population is just as valuable and important as the low income residents who live in urban areas. The programs funded by CDBG provided critical services that helped our vulnerable residents maintain their independence. We believe help should be available, allowing residents "a way out" vs. "a hand out" to regain their self-sufficiency and stay engaged in our local economy.

Conclusion

Historically, Douglas County ensured CDBG funds were available through local organizations to allow our residents to thrive. We fought to keep the CDBG program by engaging with HUD, responding to their requests for public comments, to effect changes that would allow us to continue the program. Even after a lengthy discussion with HUD staff in Washington DC, our concerns were not addressed. In its current form, the community assessment template does not clearly define the intent or the metrics of what it means to successfully further fair housing. We believe it is financially unfeasible for any community to dedicate the funds and staff necessary without a clear definition of success.

Douglas County will not accept CDBG funds as long as the current community assessment template remains in effect. This is why we are asking the new administration to reign in HUD by unraveling these social engineering policies and to reinstate Douglas County as a model CDBG grantee. We are advocating for a clear and reasonable process that includes relevant measures without impinging upon the local control that makes our programs unique and successful. We want to help the eligible residents in need of these services. To help our vulnerable population we first need help from the new administration to return to an AFFH process that will not add an undue and harsh administrative burden to CDBG program operations.