

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 570, 574, 576, 903

[Docket No. FR 6228-F-01]

RIN 2501-AD95

Preserving Community and Neighborhood Choice

AGENCY: Office of the Secretary, HUD

ACTION: Partial Waiver of 24 CFR 10.1 Notice-and-Comment Requirement

SUMMARY: Pursuant to section 7(q) of the Department of Housing and Urban Development Act (codified at 42 USC 3535(q)), and the waiver authority contained in 24 CFR 5.110, I hereby waive the 24 CFR 10.1 requirement that there be “public participation in rulemaking with respect to all HUD programs and functions” to the extent it would otherwise apply to any rules, regulations, or policies promulgated by HUD concerning the obligations of program participants to affirmatively further fair housing (AFFH). This partial waiver is being issued because the requirement of HUD grantees to AFFH has been the subject of significant debate and public comment over the course of many years and this rule will ensure that program participants have the timely clarity they need concerning their legal obligations as grantees.

BACKGROUND

1. In drafting the Administrative Procedure Act (APA) Congress decided to exempt any matter relating to “public property, loans, grants, benefits, or contracts” from the-notice-and-comment requirement for rulemakings. *See* 5 USC 553(a)(2).
2. In 1969, the Administrative Conference of the United States (ACUS) urged Congress to amend the APA to remove this exemption. Although Congress has never acted on ACUS’s recommendation, several agencies, including HUD, issued statements of policy that had the effect of voluntarily adopting ACUS’s recommendation. *See, e.g.,* 24 CFR 10.1.

AUTHORITY

1. 42 USC 3535(q) allows HUD to waive regulations subject to certain procedural requirements.
2. 24 CFR 5.110 grants the Secretary authority to waive “any provision of this title” for good cause and in conformance with the provisions of 42 USC 3535(q).
3. The waiver authority in 24 CFR 5.110 thus allows the Secretary to waive the requirements of 24 CFR 10.1.

4. This authority is not superseded by any statute as evidenced by Congress' exemption of matters relating to "public property, loans, grants, benefits, or contracts" under the APA.


FINDINGS

1. Over the past several years, HUD has received extensive public feedback about AFFH. Both through the notice-and-comment period in connection with the July 2015 AFFH Rule and the notice-and-comment period that concluded earlier this year, HUD has received tens of thousands of comments covering a wide range of stakeholders, including public housing agencies, other housing providers, organizations representative of housing providers, governmental jurisdictions and agencies, civil rights organizations, tenant and other housing advocacy organizations, and concerned citizens. There has also been a thorough public debate on these issues in print and online. In light of this public engagement, continued notice and comment concerning AFFH is unnecessary and would simply be a legal formality without adding substance to the debate.
2. The requirement to AFFH is tied to all of HUD's housing block grant programs, including, most significantly, the Community Development Block Grant Program. The State and local governments that rely on these programs to meet their housing needs deserve a prompt and clear explanation of their obligations – including their obligation to AFFH – as a program participant. Additional notice and comment will only further delay this necessary guidance.

DETERMINATIONS

1. To assist in ensuring that program participants in HUD grant programs are given timely information about their obligations, a partial waiver of 24 CFR 10.1 is granted for the purposes of promulgating this rule.
2. The granting of this waiver is consistent with the requirements of the APA and HUD's objectives to assist program participants in promoting fair housing. Pursuant to the authority contained in 24 CFR 5.110, the above findings constitute good cause for granting the partial waiver of 24 CFR 10.1.

For more information about this waiver, contact HUD's Office of General Counsel, 451 7th Street, SW, Washington, D.C. 20410; telephone number 202-708-1112.



Benjamin S. Carson, Sr.
Secretary

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