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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Submitted electronically through the Federal Rulemaking Portal at www.regulations.gov

Re: Affirmatively Furthering Fair Housing, Docket No. FR-6250-P-01

To Whom It May Concern,

The undersigned Illinois-based fair housing and advocacy organizations actively work to fight housing discrimination and promote affordable and safe housing for all. Together, we provide the following comments on the Affirmatively Furthering Fair Housing (AFFH) Rule, which was published for comment at 88 Fed. Reg. 8516 (February 9, 2023). Our organizations compliment HUD for taking the necessary steps to build upon the previous 2015 AFFH Rule, which helped repair harms caused by widespread discriminatory housing policies and practices and concurrently encourage the pursuit of more inclusive communities. The proposed AFFH Rule creates a framework to help jurisdictions leverage federal resources to address housing-related disparities caused by both public and private actions, as well as advance fair housing and equal opportunity for the entire community.

The proposed regulation includes a number of beneficial components including:

- The establishment of a simplified planning process with a focus on actionable goal development and prioritization.
- Increased HUD oversight through required annual progress reports which will help ensure jurisdictions meet their objectives.
- A newly established community complaint process which will increase transparency and enforceability, as well as encourage more active involvement of community members in fair housing planning and activities. This process emphasizes community knowledge as a key component for evaluating fair housing planning progress and success.
- A focus on housing affordability which recognizes the access, or lack thereof, that individuals have to affordable homeownership and rental opportunities. In addition, this emphasis on affordability highlights community concerns regarding housing market pressures, rising costs, gentrification and displacement, unjust evictions, and the attendant fair housing implications of these issues.
- New definitions pertaining to “Affordable Housing Opportunities,” “Enabled Choice,” “Integration,” and “Segregation,” which are particularly helpful from a disability and accessibility perspective, and with minor improvements (see section Data on Segregation and Integration below) can set powerful standards to move the needle on residential desegregation.

Additionally, we would like to offer our recommendations to strengthen the following components of the Rule: 1) community engagement; 2) Public Housing Authority (PHA) requirements; 3) the community complainant process; 4) accessibility and disability rights; 5) data on segregation and integration.

1) **Community Engagement, Section 5.158**

Over the past decade or more, many of our organizations monitored or assisted in the development of local Analyses of Impediments to Fair Housing and Assessments of Fair Housing. Most recently, the Chicago Area Fair Housing Alliance led the community engagement effort for the draft Cook County Regional Assessment of Fair Housing and several signatory organizations served on the Advisory Committee for this draft plan. Through this experience, we learned that successful community engagement must include the following practices:

- Earmarked funding and resources specifically for community engagement and accessibility supports.¹
- Early identification of: 1) populations most impacted by housing discrimination and instability; 2) identification of potential barriers to engagement activities; and 3) opportunities and resources to mitigate barriers to engagement.
- Targeted, proactive outreach to impacted populations in partnership with trusted community leaders and organizations.
- Obtaining feedback from people with disabilities who live in group settings, such as group homes, nursing homes, psychiatric hospitals, and facilities for those with a developmental or cognitive disability. Such perspectives are critical to establish goals for transitioning populations out of institutions and into communities.
- Multiple opportunities for engagement that utilize multiple platforms. These should include in-person large group sessions, smaller roundtables or interviews, virtual engagement sessions, and surveys.
- Centering conversations on core issues in the participants' own language and experiences by avoiding jargon or focusing too heavily on data or statistical analysis.
- Promoting open dialogue by discussing: past fair housing injustices; how participants' responses will be used; what components of the plan they can influence; and how the plan will or will not impact real world circumstances.
- Providing opportunities for participants to remain engaged throughout the planning process in order to identify issues and craft solutions.
- Being mindful about times and locations of events to accommodate target audiences.
- Acknowledging the expertise of participants and the value of their input. Where possible, compensating participants for their travel, childcare, time, etc.
- Acknowledging participants may face ongoing and significant housing issues and that asking them to speak about these issues can be traumatic. Where possible, provide referrals for supports.
- Additionally, ongoing and consistent feedback and technical assistance from local experts is critical to connect local knowledge to data analyses, identify themes and major issues, and provide targeted recommendations to address the issues identified. Such experts include fair

¹ Such funding can support community-based organizations, tenant advocacy organizations, service providers, etc. assist in community outreach and engagement with target audiences.

housing and civil rights organizations, community-based organizations and housing advocates, data analysts, affordable housing providers, and social service providers.

In consideration of the above points, HUD should go beyond simply emphasizing the importance of community engagement, by **providing clear guidance and best practices for conducting engagement activities.**

Specifically, we make the following recommendations in response to each subpart of Question 5:

- 5.a.: We agree HUD should require various meeting platforms, including in-person and virtual options. For in-person meetings, we agree HUD should require multiple meetings held at various times of day in accessible locations. If a minimum is set, it should be scaled based on geography and population size.
- 5.b.: Yes, requirements and best practices should be tailored to the geographic area. Key elements, like those listed above, should remain central to all engagement activities, regardless of geography. However, other aspects like the number of meetings and the effectiveness of virtual meetings depends on geography and population size.
- 5.c.: Virtual meetings should not replace in-person engagement, but should be added to reach those unable to attend in person sessions. Such meetings, whether in-person or virtual, should be fully accessible with real-time captioning, sign language, and other assistive technology readily available and without the need for prior request.
- 5.d.: As noted above, HUD needs to provide specific guidance and best practices for community engagement. This can be in the form of technical assistance offerings, guidebooks, etc.
- 5.e.: We suggest surveying grantees/program participants to understand the technical assistance offerings that would be most helpful. In our experience, technical assistance is needed on the following: accessibility; identifying target populations and community partners; creating an outreach plan; establishing advisory committees; creating accessible and impactful outreach materials, surveys, or other feedback tools; providing tips and support to facilitate impactful community engagement sessions; and documenting engagement feedback and ensuring it influences plans and goals.
- 5.f.: Yes, we believe that it is important for HUD to establish a minimum amount of time for public comment on the proposed plan, as well as a minimum amount of notice for public meetings. Scaling based on population size and providing for more time for larger population will help ensure the word gets out to those most impacted.

2) **Public Housing Authorities, Sections 5.150 through 5.180**

The proposed Rule outlines the requirements of the Equity Plan and the questions to which grantees/program participants must respond. We note that local governments and states have 7 topical areas for consideration, and Public Housing Authorities (PHAs) only have 5. One of the key areas missing for PHAs is Access to Homeownership and Economic Opportunity. **PHAs should be required to answer questions pertaining to Homeownership and Economic Opportunity within the Equity Plan.**

Since 2000, HUD has provided PHAs with the flexibility to establish Homeownership Programs. This allows PHAs to shift the typical tenant-based voucher that pays a portion of one's rent to a voucher that pays either a down payment or a portion of one's mortgage each month. When initially devised, HUD heralded this program as "one of the most exciting developments in tenant-based assistance," noting

that, “under this program, many low-income families will have the opportunity to use Federal housing assistance that would otherwise be paid to a landlord as rent to purchase and build equity in a home of their own.”² The Chicago Area Fair Housing Alliance conducted research into this program and found that, at least locally, the vast majority of voucher holders desire the opportunity to become homeowners and there are ample opportunities to grow these programs and make homeownership attainable and sustainable.³ That being said, the PHA Equity Plan should include prompts for PHAs to assess the feasibility and value of starting such a program, and where Homeownership Programs already exist, identify opportunities for growth and innovation.

Pertaining to Questions 8.k and 8.l., we do not believe PHAs should have greater flexibility in completing an Equity Plan as compared to local governments. PHAs have a central role in affirmatively furthering fair housing. As such, they should be held to the same standard and prompted to consider the same questions as local governments. Additionally, requirements around community engagement must be emphasized equally among local governments and PHAs. In completing Equity Plans, it is absolutely critical that PHAs be required to engage with **both** public housing and Housing Choice Voucher participants, as well as adhere to engagement best practices as noted above.

3) **Community Complaint Process, Sections 5.170 through 5.174**

With enhancements to the newly established Complaint process, HUD can ensure Complaints, the ensuing investigations, and any proposed remedies all work towards this Rule’s goal of affirmatively furthering fair housing.

To improve these provisions, HUD should:

- **Connect individuals and groups with legal resources before and after they have filed a Complaint**

While HUD’s efforts to streamline and simplify the AFFH Rule will lower certain barriers for individuals and groups to participate in the AFFH planning process, it should offer additional support at the Complaint stage. AFFH’s Complaint process described in Section 5.170 is closely analogous to the process of filing a lawsuit and may be difficult for self-represented individuals and groups to navigate on their own. Program participants, on the other hand, will likely be represented by attorneys in any ensuing hearing or compliance meetings, creating a natural power imbalance. To combat this, HUD should (a) make resources available for potential complainants to review before filing and (b) provide those same resources to complainants once a Complaint is initially processed and reviewed by HUD. The resources should include examples of what types of claims can and cannot be reviewed under the Rule, along with referrals to local legal aid and civil rights organizations. Providing this information early in the Complaint process will promote a better record of potential violations before HUD begins its investigation.

² Dennis, Morgan, and Linda Pastilli. Housing Choice Voucher Homeownership Program Guidebook. Office of Public and Indian Housing, US Department of Housing and Urban Development. n.d.

³ Chicago Area Fair Housing Alliance. Public Housing Authority Homeownership Programs: Scaling up a Powerful Yet Underutilized Tool for Wealth Building Opportunities. https://www.cafha.net/_files/ugd/e6d287_dc93f126a8724d129784cd62c62c13b04.pdf

- **Engage with existing community resources as part of the investigation process**

Although HUD requires program participants to offer opportunities for community engagement as part of the creation of the Equity Plan, the proposed Rule does not provide for community engagement while HUD investigates purported violations. We think HUD should consider input from at least one specific community as it investigates potential violations of this Rule: organizations that are part of HUD's Fair Housing Initiatives Program (FHIP). FHIPs receive funding from HUD to investigate housing discrimination claims on behalf of individuals within the communities where program participants operate and FHIP staff are positioned to notice patterns of discrimination in those communities. As such, whenever HUD investigates Complaints under § 5.170(b)(2), it should solicit information from FHIPs that operate within the program participant's jurisdiction. Doing so will ensure HUD has an enhanced perspective on systemic barriers to housing equality within a given community and help HUD develop solutions that benefit that community.

- **Prioritize Voluntary Compliance Agreements over "assurances" when resolving Complaints filed against program participants**

Finally, while we understand and support HUD's decision to focus on finding informal and voluntary resolutions to problems it identifies throughout the AFFH Complaint process, HUD should not do so in a way that sacrifices tangible and thoughtful solutions in favor of efficiency. To accomplish this, HUD should always prioritize the reduction of any proposed resolution to a Voluntary Compliance Agreement (VCA) rather than simply relying on "assurances or special assurances of compliance" from program participants. This prioritization is necessary because program participants are already required to make a series of certifications and assurances about their commitment to affirmatively further fair housing as part of their Equity Plan, and it is likely a breach of these very assurances will form the basis for the Complaints filed against them. Complainants deserve more than another assurance from program participants that have violated fair housing commitments. VCAs provide an opportunity for Complainants and their communities to get robust and definitive commitments about program participants' plans to affirmatively further fair housing.

However, to the extent HUD is unwilling to emphasize the use of VCAs, it should at least establish a framework for when it will seek to resolve Complaints by way of a VCA and when it will simply seek out an assurance from a Program Participant. This framework should include clarity on whether HUD will determine remedies based on the type of alleged violation, the size of the program participant, or other factors. Clear guidance will give individuals, groups, and program participants more certainty when drafting, responding to, and negotiating Complaints.

4) Accessibility and Disability Rights

Throughout the proposed Rule, there are key areas where disability should be considered more centrally. We noted several of these areas in our comments above, but also want to answer several of the questions that HUD has asked as part of the proposed rule:

- Questions 3f. and 3.g, which pertain to data:

Disability advocacy organizations have long urged HUD to collect and make available data specific to the housing needs of people with disabilities. In 2015, HUD published a report titled the *Accessibility of*

*America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS).*⁴ It estimated that less than 4% of the nation's housing stock is accessible to those with moderate physical disabilities, and just 0.15% is accessible to those who use wheelchairs.⁵ Although the report is now a bit dated, it does provide **jurisdiction-specific data for over 25 large communities. HUD should provide this data** for those specific jurisdictions when they prepare their Equity Plans. In addition, if HUD has collected, but not disseminated, jurisdiction-specific data related to the accessibility of housing in other jurisdictions, this information should be shared with those jurisdictions. Moreover, **HUD should ensure all program participants are aware of the ongoing analysis conducted by the Technical Assistance Collaborative (TAC).** TAC notes, "there is *no United States housing market* in which a person living solely on Supplemental Security Income (SSI) can afford a safe, decent apartment without rental assistance."⁶ The TAC analysis is broken down for each state, and communities within each state. As a result, we know that in Illinois, a person with a disability who receives SSI benefits "would have to pay 109% of their monthly income to rent an efficiency unit and 120% of their monthly income for a one-bedroom unit."⁷ The situation is even worse in the Chicago metropolitan region, where a SSI beneficiary needs to spend 138% of the monthly SSI benefit to rent a studio apartment and 149% to rent a one-bedroom unit.⁸ Because this information is critical for the development of meaningful Equity Plans, HUD should provide program participants with the TAC analysis for their communities.

- Question 4, which relates to additional regulatory changes:

HUD should require program participants to annually collect data on: (a) the extent to which federally assisted housing in their jurisdiction is accessible (with specific numbers and percentages) and (b) how many of these units are actually occupied by people with disabilities in need of accessible housing. Without this information, it is likely impossible for a program participant to know if it is in compliance with the accessibility requirements of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act.

- Question 8.c. relates to the content of the Equity Plan:

With respect to the analysis required of program participants as to the barriers people with disabilities confront throughout the community, **HUD should require the incorporation of the following into the analysis.** Otherwise, the concern is that program participants will provide a vague, perfunctory, and general analysis.

- The availability of modification funding to make homes/apartments accessible;
- the resistance of rental providers to applicants who rely on disability-related income (e.g., social security and social security retirement), and/or housing choice vouchers⁹;

⁴ U.S. Department of Housing and Urban Development, *Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS)*, (March 2015), available at <https://www.huduser.gov/portal/sites/default/files/pdf/accessibility-america-housingStock.pdf>.

⁵ *Id.* at p. 2.

⁶ <https://www.tacinc.org/resources/priced-out/> (emphasis in original)

⁷ *Id.*

⁸ *Id.*

⁹ As identified through local FHIP information and/or testing studies, in addition to fair housing complaints filed with local Commissions.

- admission or participation preferences for people with disabilities with respect to public housing, housing choice voucher programs, or other subsidized housing;
- the incidence of housing discrimination against people with disabilities in the jurisdiction, as based on the number and percentage of complaints filed with the local HUD office, and local FHAP office¹⁰;
- whether the jurisdiction, in order to meet the needs of people with physical or sensory disabilities, needs to formally increase the percentage of Section 504 units that are accessible to these populations;
- whether the jurisdiction ensures federally-assisted accessible units are used/reserved for people with disabilities who need such units, and “recycles” those units to people with disabilities when a prior resident moves out;
- whether the jurisdiction’s zoning code prohibits group homes from being placed within a community and/or forces group homes to be located in low opportunity areas;
- the number and percentage of schools in the jurisdiction that are accessible to people/students with disabilities, including high performing school, and how this impacts segregation and opportunity;
- the number and percentage of public buses, subway lines and stations, and commuter trains and stations in the jurisdiction that are accessible and how this impacts segregation and opportunity; and
- the availability of paratransit service in the jurisdiction, and how this impacts segregation and opportunity.

Specifically, for Public Housing Authorities, HUD should require participants to incorporate the following into the analysis.

- Admission or participation preferences for people with disabilities with respect to public housing and housing choice voucher programs;
- whether the PHA, in order to meet the needs of people with physical or sensory disabilities, needs to formally increase its percentage of Section 504 units that are accessible to these populations;
- whether the PHA manages a modification fund for voucher holders with disabilities;
- whether the jurisdiction ensures federally-assisted accessible units are used/reserved for people with disabilities who need such units, and “recycles” those units to people with disabilities when a prior resident moves out; and
- the extent to which PHA developments are sited within reasonable proximity to accessible community assets, including public transportation, schools, public infrastructure, and community-based support services.

5) Data on Segregation and Integration

As the Rule currently reads, jurisdictions appear to be exempt from assessing issues of exclusion and under-representation of protected groups in their communities. The Rule specifically directs jurisdictions to assess integration, segregation, and concentrations of poverty within the jurisdiction. However, it

¹⁰ Additionally, as identified through local FHIP information and National data through National Fair Housing Alliance’s annual trends reports.

does not direct them, and remains silent on, addressing the exclusion or under-representation of protected groups in a jurisdiction.

HUD's Equity Plan guidelines should explicitly require program participants to consider under-representations of protected groups, and direct jurisdictions to analyze their demographics and patterns against the region surrounding them, especially for communities located in Core Based Metropolitan Statistical Areas (CBMSAs). Regional segregation patterns have significant impacts on equity within jurisdictions and present barriers to HUD's goal of affirmatively further fair housing.

To illustrate this point, consider a town of 50,000 people in which only 500 are Black. Black residents would make up 1% of the total population. If the town had 10 census tracts and between 40 and 60 Black residents lived in each census tract, the most common measure of dissimilarity would show a very low level of segregation. Now, imagine that town located in a larger region where Black residents made up 10% of the total population. While the town would have a low level of segregation, it would be significantly under-represented by Black residents in the region.

In fact, under-representation is fairly common among municipal Community Development Block Grant (CDBG) recipients that will be required to implement Equity Plans. The Chicago region offers an example of how the lack of identifying under-representation would reduce the effectiveness of Equity Plans. The northwest corridor of communities in Cook County includes five entitlement jurisdictions – Arlington Heights, Des Plaines, Mount Prospect, Palatine, and Schaumburg. While Cook County is 22% Black and the Chicago CBMSA is 17% Black, these five municipalities have Black population shares of less than 5%. They are also contiguous communities with a variety of housing types and tenures, various housing affordability points, plentiful employment, well-resourced schools, and convenient transportation access. The fact that these communities have such low Black population percentages cannot be explained by unaffordability or a lack of resources available in the communities.

Based on the current wording of the Rule, these communities would not be required to analyze or provide remedies to the dramatic under-representation of Black residents in their Equity Plans, despite the fact that the communities have Black representations that are about one-seventh of the Cook County average.

We propose the following revisions to definitions in the proposed Rule:

Integration should be defined as a condition within the program participant's geographic area of analysis in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or with a disability or a particular type of disability when compared to the broader geographic area. Racial integration means that people of different racial groups are not highly concentrated in distinct geographic areas within a community (e.g. census tract or block group) and that persons within protected classes are not significantly under-represented in comparison to the program participant's Core Based Statistical Area (CBSA). For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 25, appendix B (2010) (addressing 28 CFR 35.130 and

providing guidance on the Americans with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

Segregation should be defined as a condition within the program participant's geographic area of analysis in which there is a high concentration of persons of a particular race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, or with a disability or a particular type of disability when compared to the broader geographic area. Racial segregation includes a concentration of persons of the same race regardless of whether that race is the majority or minority of the population in the geographic area of analysis. For example, in a community where persons of one race (e.g. white) are concentrated in one neighborhood and persons of another race (e.g. African American) are concentrated in a different neighborhood, racial segregation exists in each of the neighborhoods. Racial segregation also means the significant under-representation of a protected group in a program participant's geographic area of analysis in comparison to the program participant's Core Based Statistical Area (CBSA). For persons with disabilities, segregation includes a condition in which available housing or services are not in the most integrated setting appropriate to the individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (2010) (addressing 28 CFR 35.130). Participation in "housing programs serving specified populations" as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et. Seq.); and other Federal civil rights statutes and regulations.

We are happy to provide further information on any of the above-mentioned points, and we appreciate the opportunity to comment on this important Rule and look forward to swift promulgation.

Sincerely,

Access Living; Chicago, IL

BèBè's Ark; Chicago, IL

Business and Professional People for the Public Interest (BPI); Chicago, IL

CEDA; Chicago, IL

Center for Changing Lives; Chicago, IL

Chicago Area Fair Housing Alliance; Chicago, IL

Chicago Coalition for the Homeless; Chicago, IL

Chicago Lawyers' Committee for Civil Rights; Chicago, IL

Community Allies; St. Louis, Missouri

HCP of Illinois, Inc.; Chicago, IL

HOPE Fair Housing Center; Wheaton, IL

Housing Action Illinois; Chicago, IL

Housing Opportunities and Maintenance for the Elderly Inc. (H.O.M.E.); Chicago, IL

James B. Moran Center for Youth Advocacy; Evanston, IL

Metropolitan Tenants Organization; Chicago, IL

Northside Community Resources; Chicago, IL

Northwest Side Housing Center; Chicago, IL

Oak Park Regional Housing Center; Oak Park, IL

Open Communities; Evanston, IL

Prairie State Legal Services; Rockford, IL

Respond Now; Park Forest, IL

Shriver Center on Poverty Law; Chicago, IL

South Suburban Housing Center; Homewood, IL

The Alliance to End Homelessness in Suburban Cook County; Hillside, IL

UIC Law School; Chicago, IL

Uptown People's Law Center; Chicago, IL

Working Family Solidarity; Chicago, IL