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April 24, 2023

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

RE: Docket No. FR-6250-P-01; Affirmatively Furthering Fair
Housing

Dear Madam/Sir:

These comments on the proposed Affirmatively Furthering Fair Housing (AFFH) regulation are filed by Mobility Works, a nonprofit organization that works to promote self-determination among low-income families by expanding housing choice and opportunity. We provide training, advocacy, and technical assistance on *housing mobility* through a consortium of researchers, practitioners, and policy experts.

Mobility Works applauds HUD for issuing the proposed new rule to implement the AFFH provisions of the federal Fair Housing Act and the related PHA Equity Plan requirements. In line with the Act, housing mobility programs work to redress historical and ongoing housing inequities, particularly with regard to race and class, and thanks to decades of effort by advocates, attorneys, practitioners, and HUD-assisted tenants, more communities around the country are implementing them. HUD's Community Choice Demonstration is also bringing attention and resources to housing mobility and spurring mobility program development and potential improvement, but even with these advances in the field, not enough communities are working actively to expand opportunity for American families. Many HCV households remain consigned to high poverty neighborhoods, and without a strong AFFH rule that holds voucher administering agencies

accountable, significant progress on this issue is unlikely. The publication of this proposed rule is a crucial step in providing HUD grantees with the guidance and support they need to help fulfill the promise of the Fair Housing Act. The proposed rule is strong, and we have several recommendations that we believe will strengthen it further, focusing on the advancement of housing mobility.

Among the definitions in §5.152, we commend the new description of **affirmatively furthering fair housing**, which builds upon the definition in the 2015 rule. It explains that meaningful action must include "eliminat[ing] inequities in housing and related community assets," and provides greater precision in several other places that contribute to the efficacy of the definition. It is

important that these refinements and, most importantly, the following addition, are retained in the final rule:

...it extends beyond a program participant's duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination the Fair Housing Act was designed to redress.

The increased specificity will help HUD grantees understand their obligation under the Act not just to identify and attempt to avoid civil rights violations, but to make measurable progress toward its goals.

We also affirm the addition of the term **well-resourced areas**; however, in 10 of its 29 uses, it appears as “well-resourced areas *of opportunity*” (pp 8568, 8531, 8551, 8558, 8559, 8562, 8565, 8566, and 8568), which introduces an undefined element to the term, essentially creating a new term. We recommend that the words “of opportunity” not be appended to the defined term unless a definition is provided for the full phrase.

We appreciate the increased transparency proposed via **publication** of submitted Equity Plans and annual progress evaluations on HUD-maintained web pages as it will allow greater accountability of both HUD and its grantees to the public. We recommend that HUD provide a way for members of the public to sign up to receive email notification when new content is published, similar to how one may do so for the *HCV Connect Newsletter* at <https://public.govdelivery.com/accounts/USHUDPIH/signup/28268>.

With the introduction of the term **community engagement**, we appreciate the substantive difference from its predecessor **community participation** in the 2015 rule. The inclusion of “planning processes” and not just “decisions and outcomes” in the requirement to solicit input from interested parties is a good move toward ensuring that more voices of those affected by HUD grantees’ policies and practices are incorporated from the start, when they have the greatest potential to shape outcomes. We affirm HUD’s further step to require participants to “engage with their communities prior to and during the development of an Equity Plan” (§5.158(c)(1)). In order for HUD to ensure that these Plans are truly reflective of a community’s needs and aims, we recommend that HUD require engagement at particular inflection points, including the initial education and context setting for the rule and process, identification of fair housing issues, narrowing among the identified issues, identification of goals to address the issues, and commenting on the draft Plan before it is submitted.

We are encouraged by the requirement that participants “actively engage with a wide variety of diverse perspectives within their communities” (§5.158(a)(6)) and strongly recommend that for PHAs, broader engagement of HUD-assisted households be explicitly included. We recognize the proposed revisions to §903.13(a) and (c) that dictate how PHAs must work with Resident Advisory Boards to develop and finalize the Equity Plan, and we recommend that PHAs also be required to conduct outreach to all households receiving rental assistance they administer.

To strengthen the Resident Advisory Board-related Equity Plan requirements, we urge HUD to enforce compliance with §903.13(b)(3) that households currently receiving housing voucher assistance are reasonably represented on PHAs’ Resident Advisory Boards, and we further

encourage a requirement to seek representation of voucher households living in well-resourced areas.

We support the latitude provided to participants in selecting modes of community engagement that are most helpful for their communities and agree that certain methods should be required at minimum. We believe, however, that the proposed three public meetings in the development of the Equity Plan and two public meetings for the annual engagement would be woefully insufficient to reach the “broadest possible audience” (§5.158(a)(5)) for large grantees. We therefore recommend that the required number of public meetings for each purpose be tiered according to participant size (defined for PHAs by number of housing units administered and for Consolidated Plan participants by amount of formula grant funding received).

Concerning the analysis content required in the Equity Plan for PHAs (§5.154(e)), we support the added flexibility proposed with broader questions. We do, however, recommend more explicit direction in several areas of analysis and reporting:

- At (1)(ii)(A), rather than referring generally to “the different categories of PHA owned or administered housing,” clarify that the demographic questions must be addressed for public housing, project-based vouchers, and tenant-based vouchers owned or administered by the PHA.
- PHAs should be leveraging project-based vouchers and funding available for replacement of public housing to get more affordable housing developed in well-resourced areas, so we affirm the importance of examining if and how “publicly supported housing siting decisions [have] resulted in an increase or decrease of patterns of segregation or integration in the area” ((2)(3)(B)), and what the PHA’s role has been in those decisions.
- At (4)(ii)(A), in discussing “community assets and affordable housing opportunities,” require that the data on disparate access to each of the seven asset categories be reported separately for public housing, project-based vouchers, and tenant-based vouchers.
- At (4)(iii)(B), concerning the assessment of “the availability of affordable rental opportunities in more well-resourced areas” add language probing whether the PHA has used the tools at its disposal to increase the availability of such rental opportunities, such as setting its payment standards at the highest permissible level.
- At (5)(i)(B), with the requirement to “describe the PHA’s mobility and portability policies and activities,” retain each of the named areas of intervention that can improve housing choice, and at the end of the paragraph add the phrase, “including for project-based voucher assisted households.”
- At (5)(ii) we agree with the inclusion of the requirement to describe the PHA’s efforts to advance equity through work with external stakeholders and recommend a requirement to describe, in particular, how the PHA cooperates with other entities in the enforcement of Fair Housing law.
- At (5)(iv), we affirm the emphasis on the ability of a PHA to implement “discretionary policies and practices” to comply with fair housing and civil rights laws and regulations, and we suggest adding voucher search time, payment standards, and leasing financial

supports such as security deposit and apartment holding fee assistance among the examples of policy areas to be examined and reported on.

Regarding the fair housing goals content (§5.154(g)), we strongly support the emphasis at (3)(ii) on housing mobility programs as a tool to overcome segregation and increase choice. We recommend that improvement, not just expansion, of mobility programs be suggested in this section, as expansion implies an increase in the number of households accepted into a mobility program, while improvement implies changes to the program that result in a higher proportion of accepted families moving to well-resourced areas. We also recommend the inclusion of the requirement to proactively inform households receiving project-based voucher and project-based rental assistance subsidies of the right to receive a tenant-based voucher to move AND to educate them about relocation options. HUD's recent report on implementation of the right to move with a voucher in properties converted under the Rental Assistance Demonstration indicates that *none* of the PHAs interviewed as part of the study offered mobility counseling services.¹

For PHAs that encompass high poverty or highly segregated neighborhoods, development of a strong housing mobility program is the single most important step they can take to affirmatively further fair housing for clients with vouchers. In the final rule, HUD should continue to emphasize this goal throughout the Equity Plan sections for PHAs and Consolidated Plan participants.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Rosenberg". The signature is fluid and cursive, with a large initial "V" and a long, sweeping underline.

Valerie Rosenberg
Executive Director

¹ Mark Treskon et al., "Evaluation of the Rental Assistance Demonstration (RAD): Early Findings on Choice Mobility Implementation (2023)", <https://www.huduser.gov/portal/portal/sites/default/files/pdf/RAD-Early-Findings-on-Choice-Mobility-Implementation.pdf>.