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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

Re: Docket No. FR-6250-P-01, “Affirmatively Furthering Fair Housing”  
(RIN 2529-AB05)

The National Housing Law Project (NHLP) and the undersigned organizations engaged in housing justice advocacy submit this comment letter in response to the Department of Housing and Urban Development’s Affirmatively Furthering Fair Housing rulemaking.

We support the steps that HUD has taken to restore the Affirmatively Furthering Fair Housing (AFFH) regulation. Finalizing the AFFH rule is not only an important part of HUD’s statutory obligation to AFFH, but also this administration’s commitment to “advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” We commend HUD for putting forward a proposed AFFH rule that:

- Requires community engagement throughout the fair housing planning process;
- Reincorporates language that recognizes a balanced approach to implementing the obligation to affirmatively further fair housing;
- Maintains the requirement for program participants to engage in fair housing analysis and create a fair housing document (the Equity Plan) while also increasing the focus on setting goals in each issue area;
- Requires integration of the Equity Plan with other planning documents, such as the Consolidated Plan;
- Increases transparency with HUD publishing Equity Plans and requiring annual progress reports;
- Provides technical assistance for program participants;
- Provides for compliance review and a procedure for HUD to challenge the validity of AFFH certifications; and
- Creates a complaint process to ensure that program participants are meeting their AFFH obligations.

It is imperative that these components remain in the final rule for the AFFH regulation to accomplish its purpose. We recommend the following improvements to ensure that HUD publishes a final rule that achieves HUD’s aims and results in program participants meeting their AFFH obligation. In light of HUD’s streamlined approach to the rule, we also provide recommendations for additional assistance that HUD should provide to program participants, for example, through technical assistance and/or subregulatory guidance.

## I. Data sets

***In addition to providing its own data, HUD should work with other federal agencies to identify non-HUD data sets that program participants could access for their fair housing analysis.*** Given that USDA's Rural Development's housing programs fund affordable rental and homeownership programs in rural communities across the country, HUD should identify its data sets for inclusion by program participants. In addition, DOJ collects data from state and federal criminal legal systems that can identify the areas where people return home after incarceration. Program participants could use such data to ensure that their policies help promote fair housing choice for these individuals, who might otherwise be subject to unlawful discrimination. CFPB and HHS are examples of other federal agencies with access to data that could provide for a robust fair housing analysis.<sup>1</sup> HUD currently has some data sharing agreements with the EPA, which could be helpful to program participants evaluating the impact of their decisions and policies (such as zoning, siting, land sales, air permitting, and water permitting) on environmental justice communities. Once HUD has identified these data sources, HUD could work with these agencies and provide TA to program participants to access and incorporate the data into their analysis.

***HUD should require program participants to use data sets that paint a full picture of terminations of federal housing assistance, evictions, and displacements, not just one point in time on the eviction court process.*** In 2021, HUD submitted [a report to Congress on the feasibility of creating a national evictions database](#). The report details the different types of evictions that tenants experience: court-ordered evictions, administrative evictions (from HUD-assisted programs), and extrajudicial evictions (which take place outside of the court system, either by threat or more explicitly illegal means, such as lockouts). Numerous reports have shown that these evictions have a disproportionate impact on protected classes, and HUD should require program participants to incorporate this type of data into their fair housing analysis. For court-ordered evictions, it is important for the data to capture the full court process, from pre-trial activities (such as notices and pre-trial diversion programs) to the eviction filing to the execution of the writ. Because HUD does not yet collect this information nationally, program participants may require assistance from their court systems, which HUD could support. For administrative evictions, HUD should have access to this information that can be shared in the aggregate with state and local governments. HUD can also mandate that the area public housing authority share aggregate data with the state and local government. For extrajudicial evictions, HUD could potentially provide TA on how to work with local researchers to collect this information.

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<sup>1</sup> For example, CFPB's tenant complaint system could be a source of data with regard to abusive tenant practices impacting protected class members, such as the use of application fees to steer protected class members or the identification of tenant screening companies that engage in discriminatory practices to avoid using or recommending their services. HHS can provide data on people with disabilities who are transitioning from institutions to community living and help jurisdictions identify where the need for action might be the greatest.

**HUD should publish success rates for individual PHAs and make publicly available data about where voucher families are leasing up.** HUD does not currently publish success rates for individual PHAs. For the housing choice voucher program, it is imperative that PHAs and other stakeholders have access to the data needed to analyze significant disparities in housing needs and opportunity, with particular attention to barriers to increase voucher success rates and utilization rates in higher resource areas and continued source of income discrimination. Success rates are the share of new voucher recipients who successfully lease up. For example, if 100 families received a voucher from a PHA in the last three months, and 50 of them lease-up, the PHA has a 50% lease-up success rate. Of those families that were able to use the voucher, it is important for program participants to understand where they live so they can identify potential fair housing issues. For example, in California, landlords circumvent statutory protections that ban source of income discrimination and take steps to opt out of the housing choice voucher program by making units unlivable to avoid admitting or retaining voucher tenants. In Vermont, exorbitant rents and a rental vacancy rate below 2% (only Connecticut has a lower vacancy rate) make it easy for landlords to ignore voucher holders.

**HUD should include in the HUD-provided data (a) identification of all census tracts within the geographic area of analysis that are “disadvantaged communities” based on socioeconomic, environmental and climate risk indicators under the [Justice40 Initiative](#) criteria and (b) an accessible summary of the potential and actual environmental hazards and climate resiliency concerns and historic preservation requirements applicable within their geographic area of analysis.** Such summary should be in a form that is accessible to all program participants and their communities, and include visual digests of all relevant data from HUD’s Environmental Review Online System (“HEROS”) and any shared datasets with the EPA, which evaluate the proximity of federally assisted site-based housing to toxic sites, including those sites on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, otherwise known as Superfund). This is particularly important for communities served by PHAs due to historic disinvestment in public housing. Localities and their area PHAs across the country are faced with having to plan for the demolition, disposition, and/or conversion of their public housing stock. As part of the repositioning, compliance with the National Environmental Policy Act and related federal laws, such as the Clean Air Act, is required to determine whether the proposal to reposition the public housing may adversely affect resident health and safety, or otherwise negatively impact the surrounding environment and the project site. As part of the environmental review process, the program participants must also comply with the historic preservation requirements under Section 106 of the National Historic Preservation Act. HUD should also provide program participants data in the possession of HUD that is not readily or publicly available but that has the potential to greatly impact available affordable housing and fair housing in a jurisdiction. For example, data regarding a jurisdiction’s applications and plans to demolish, dispose, convert, or reposition publicly supported housing should be highly relevant to a participant’s analysis. At a minimum, the HUD-provided data should include for the geographic area of analysis a summary of all:

1. HUD-required applications for the demolition, disposition or conversion project (e.g., HUD Forms HUD-52860 and all addenda A-G, Form HUD-5837, RAD on-line only applications,) and associated decisions;
2. Results of any government-required (i) fair housing reviews, (ii) environmental reviews, (iii) capital and physical needs assessments, (iv) market study and appraisals, (v) health and safety inspections;
3. Voucher location patterns, success rates, and utilization rates, especially where the end result of any proposed conversion will result in site-based units not being replaced and tenants receiving tenant protection vouchers;
4. Reports of government audits, investigations or other oversight reviews and studies on project implementation and impacts;
5. Whether any census tracts within the geographic area of analysis are considered “disadvantaged communities” based on socioeconomic and environmental or climate indicators under the Justice40 Initiative criteria; and
6. Other available data on public safety, community assets, climate resilience, and energy efficiency.

## II. Definitions

***The rule should avoid conflating the expansion of affordable housing with fair housing.*** There is a long history of jurisdictions interpreting the expansion of affordable housing, in and of itself, as meeting their AFFH obligations. The 2015 AFFH Rule’s mandate that program participants analyze and address disproportionate housing needs made it clear that more is required. By including disparities in housing quality and stability under the rubric “inequitable access to affordable housing and homeownership opportunities,” the proposed rule would allow jurisdictions to ignore the balanced approach adopted within the rule and once again prioritize the expansion of affordable housing at the expense of taking actions to address ongoing, persistent disparities among households already in housing, such as:

- increased exposure to toxic and industrial pollution,
- lead-based paint, mold or other substandard housing conditions due to a failure to hold owners accountable for poor conditions,
- the effects of aggressive screening, crime-free programs and nuisance property ordinances,
- the risk of displacement (due to local eminent domain, condemnation, gentrification, conditions, etc.), and
- evictions.

As discussed further in Section IV, Equity Plan Analysis, we propose that HUD make “significant housing disparities,” a stand alone fair housing goal category for disparities that aren’t related to the expansion of affordable housing, but relate to the existing conditions of housing in a community. Expansion of affordable housing is an important goal, but does not by itself make housing available to protected classes. Building new affordable housing (that addresses the needs of all protected groups, and does not fall into the common trap of only building small units for older adults) in well-resourced communities - combined with affirmative marketing - is more important to fair housing than simply building more affordable housing. And investments in new

affordable housing in well-resourced communities should be balanced with investments that create or support resources being added to locations where prior affordable housing was built and address other disparities in under resourced communities, such as higher unsafe and hazardous conditions, increased risk of flooding (especially in disaster prone areas), and increased proximity to environmental toxins and heavy industry.

***The definition of affordable housing opportunities can be improved by defining “affordable” and “meets basic habitability requirements.”*** Currently, the rule does not define what it means by housing that is affordable. Jurisdictions cannot define for themselves what is affordable housing. We recommend that the definition explicitly clarify that housing is considered "affordable" when households are devoting less than 30% of their income for housing costs (i.e. rent or mortgage, plus utility costs) and that the analysis of affordable housing must be conducted at each of the following income levels: extremely low income (less than 30% AMI), very low income (less than 50% AMI) and low income (less than 80% AMI). For example, without such a definition, a jurisdiction might cite LIHTC projects in well-resourced areas, but most LIHTC projects are not "affordable" to a household with an income less than the fixed 60% AMI or 50% AMI (and the occasional 40% AMI). Similarly, the HOME and HTF program rules set fixed standards that imply affordability but do not mean assisted households do not experience cost burden or even severe cost burden.

The rule should better define what is meant by housing that “meets basic habitability requirements” by including in the definition housing that meets housing quality standards in effect by any federal agency, unless a locality or state has more rigorous standards. For example, HUD currently has in place Housing Quality Standards (HQS) for vouchers and NSPIRE standards for other HUD-assisted housing, and local or state provisions that exceed HQS or NSPIRE.

***HUD should ensure that place-based strategies are designed to avoid displacement, benefit existing residents and preserve the cultural character of the communities receiving investment.*** The same structural conditions that created disinvestment in communities of color also put long-time residents and businesses at risk of displacement when significant levels of investment finally do arrive. Residents of such communities tend to have lower incomes and tend to rent, not own, the homes and commercial spaces in their neighborhood. The final rule should state in no uncertain terms that investment in underserved areas must be accompanied by intentional strategies designed to protect the existing residents and eliminate racial barriers to full economic and cultural participation in the revitalized neighborhood. Failure to do so runs the risk that program participants will displace members of protected classes and gentrify their neighborhoods in the name of affirmatively furthering fair housing.

***HUD must include a standalone definition of “accessible” or “accessibility.”*** The proposed rule refers to both terms throughout – including in the content requirements of the Equity Plan (§ 5.154) and requirements for robust community engagement (§ 5.158), but does not define them. Additionally, while the new “affordable housing opportunity” definition includes “housing that is accessible to people

with disabilities, including by providing necessary accessibility features,” it does not clarify what “accessible” or “accessibility” means in the context of equity. When these terms are not defined, the result is the construction of units that are simply not accessible for most people.<sup>2</sup> It is important for HUD to clarify that program participants must, in engaging with the public and developing its equity plan and fair housing goals, analyze and consider housing that is *both* affordable and accessible for people with disabilities.

To truly create accessible and integrated communities, HUD should ensure that the definitions make clear that program participants need to address accessibility for people with different types of disabilities. As such, the definition of “accessible” or “accessibility” should not only include physical access, but access for people with mobility and sensory disabilities, programmatic access, housing with supports, and housing and community assets in integrated settings. It should cross-reference to HUD’s definition of “accessible” at 24 C.F.R. § 8.3 and also refer to HUD’s other requirements for disability access in housing: Effective communications (24 C.F.R. § 8.6), New construction (24 C.F.R. § 8.22), Alterations of existing housing (24 C.F.R. § 8.23), Distribution of accessible units (24 C.F.R. § 8.26), Occupancy of accessible units (24 C.F.R. § 8.27), Accessibility standards (24 C.F.R. § 8.32) and Housing adjustments [i.e., reasonable accommodations] (24 C.F.R. § 8.33). For programmatic access, it should be clear in the proposed rule that facilities, programs, activities, and services should all be accessible and usable by a person with a disability in a manner in which they can benefit from and fully participate in the programs, activities, and services. In addition, HUD should provide additional guidance to grantees that cross-references the following accessibility requirements: HUD requirements under the Federal Fair Housing Act (FHA)<sup>3</sup>; HUD Requirements under Section 504 of the Rehabilitation Act<sup>4</sup>, federal

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<sup>2</sup> See, e.g., HUD’s voluntary compliance agreement with the City of Los Angeles, <https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf>; see generally, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opportunity/physical\\_accessibility](https://www.hud.gov/program_offices/fair_housing_equal_opportunity/physical_accessibility).

<sup>3</sup> The Fair Housing Accessibility Guidelines, March 6, 1999, found at 24 C.F.R. Part 100, and Appendix II to the Fair Housing regulations (24 C.F.R. Ch. I, Subch. A, App. II). The preamble to the guidelines is at Appendix III to the Fair Housing regulations (24 C.F.R. Ch. I, Subch. A, App. III); see <https://www.hud.gov/sites/dfiles/FHEO/documents/1991FH%20Accessibility%20Guidelines.pdf>; 24 C.F.R. § 100.205; The Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994, at Appendix IV to the Fair Housing regulations (24 C.F.R. Ch. I., Subch. A, App. IV); The Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of The Fair Housing Act, <https://www.huduser.gov/portal/publications/destech/fairhousing.html> (Feb. 25, 2008); and The Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act, <https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>.

<sup>4</sup> 24 C.F.R. Part 8, including 24 C.F.R. § 8.22 (requirements for minimum percentages of fully accessible Mobility and Hearing/Vision Units) and § 8.32 (Accessibility Standards) and the Uniform Federal Accessibility Standards (UFAS) found at 24 C.F.R. Part 40, Appendix A, and 24 C.F.R. §§ 40.4 and 40.7 (Standards/Availability of Accessibility Standards).

requirements under the Americans with Disabilities Act<sup>5</sup>, and the HUD Deeming Memo.<sup>6</sup>

***HUD should improve the definition of underserved communities by amending it to include immigrant communities and sexual assault survivors.***

***Immigrant Communities.*** Currently, the categories of underserved communities as set forth in the rule include categories of “communities of color” and “low-income communities or neighborhoods,” but these categories are too broad and do not fully account for the unique discrimination faced by immigrant communities such as discrimination on the basis of national origin and familial status, but where their immigration status is often weaponized against them. For example, it is not uncommon for rental property owners to adopt policies that require adult residents to provide documentation of legal immigration status, which is currently being litigated as having an unlawful disparate impact upon Latino tenants in violation of the Fair Housing Act.<sup>7</sup>

Further, as housing attorneys, we have defended evictions and litigated cases where housing providers have discriminated against our clients based on their country of origin by demanding that tenants provide social security numbers to rent a unit, threatening to call ICE or report tenants to immigration, or enforcing occupancy limits and standards that disproportionately impacted immigrant families of color, particularly single mothers with children. These housing providers then bring eviction cases or engage in discriminatory conduct even though state and federal fair housing laws prohibit it. Notwithstanding HUD action to repeal the discriminatory mixed-status rule in April 2021 and DHS’ rescission of the 2019 public charge rule, immigrant families still face discrimination when accessing housing opportunities. Housing providers still regularly use immigration status to wield power and control over immigrant tenants, including when they are trying to access housing, request improved housing conditions, rebuff sexual harassment, or stop evictions and retaliation. Housing providers, including those receiving federal housing and community development funds, regularly fail to provide meaningful language access during housing admission, eviction and termination processes, notwithstanding requirements under Title VI, the FHA, and related HUD guidance explaining fair housing protections for persons with limited English proficiency.<sup>8</sup>

Additionally, during the COVID-19 pandemic, immigrant communities, who are disproportionately employed in fields that could not be converted to remote work, faced challenges in timely accessing emergency rental assistance to stay housed due to inaccessible platforms and applications that were hard to access, difficult to navigate,

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<sup>5</sup> 28 C.F.R. § 35.151 and 36 C.F.R. § 1191, and Appendices B and D. In particular, the 2010 Standards include 28 C.F.R. § 35.151 + 2004 ADAAG Standards; 2010 ADA Standards for Accessible Design, [https://www.ada.gov/2010ADASTandards\\_index.htm](https://www.ada.gov/2010ADASTandards_index.htm); DOJ Guidance on the 2010 ADA Standards for Accessible Design, <https://www.ada.gov/regs2010/2010ADASTandards/Guidance2010ADASTandards.htm>.

<sup>6</sup> The HUD Deeming Memo (HUD’s modified version of the 2010 ADA Standards for Accessible Design, HUD-2014-0042-0001, 79 Fed. Reg. 29671 (May 23, 2014)).

<sup>7</sup> See *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415 (4th Cir. 2018), cert. denied, 139 S. Ct. 2026 (2019) (currently on appeal to the United States Court of Appeals for the 4th Circuit, following remand to United States District Court for the Eastern District of Virginia.)

<sup>8</sup> HUD, Office of General Counsel Guidance on Fair Housing Protections for Persons with Limited English Proficiency (Sept. 15, 2016), <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>.

and improperly translated<sup>9</sup>, which led to delays, denials, and in many cases, evictions. Many states and localities also imposed citizenship or eligible immigration status requirements as a condition of being eligible for emergency rental assistance. Accordingly, HUD should amend this definition so that jurisdictions can examine how their policies and practices have excluded immigrants from meaningful fair housing choice and equitable access to opportunity, including safe environments, high achieving schools and resources, as well as how disproportionate housing needs such as overcrowding, dilapidated housing conditions, sexual harassment, and displacement risk such as eviction has impacted this community. Jurisdictions should also have to consider how they can better support immigrant communities, such as by providing or financially supporting culturally competent services to immigrant communities.

**Sexual assault survivors.** The categories of underserved communities include survivors of domestic violence, which the undersigned organizations fully support. But it is critical to also expressly identify survivors of sexual assault as another underserved community. Sexual assault is consistently identified as a significant factor in homelessness and housing insecurity, especially for women, children, families, and particularly for LGBTQ+ individuals and communities of color. Survivors must often leave their homes to escape further harm or heal from trauma, yet do not have the means to secure permanent, affordable and independent housing. Complex relationships exist between housing insecurity, sexual assault, and power. Homelessness and sexual violence often affect the most vulnerable members of society. When access to basic needs such as housing and safety are compromised, individuals can experience heightened risks of violence. Access to safe, affordable housing free from discrimination can be a critical protective factor from sexual violence.

According to the [National Intimate Partner and Sexual Violence Survey](#) (“NIPVS”), 26.8% of women and 3% of men have experienced a completed or attempted rape in their lifetime. Almost half of women and almost a quarter of men have experienced other forms of unwanted sexual contact. Almost 9.5 million women and almost 4.5 million men experienced sexual violence in the past year. Sexual violence continues to happen at a young age: 48.7% of female victims of rape were first raped before the age of 18 and 40.9% of male victims made to penetrate were first victimized before age 18. New data also confirms that the vast majority of victims know the perpetrator with most incidents being committed by an acquaintance or intimate partner.

Rates of sexual violence are particularly high for American Indian, Alaska Native, and multiracial women. Native American women face both a lack of housing and disproportionate rates of violence. Racial and gender disparities have been exacerbated as a result of the pandemic, the economy, racist, transphobic, and homophobic attacks, and on-going natural disasters. At the same time, immigrant and LEP survivors face the dual threat of violence and instability due to their status, and are often not routed to culturally specific organizations who can meet their needs, including language access.

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<sup>9</sup> See Nina Narahari, Sydney Pon, Salomé Ragot, Jasmijn Sloopjes, *Responding to COVID-19: Immigrants Face Major Barriers to Accessing Essential Services in the SF Bay Area, A BIMI Policy Report* (2020), pp. 4-7, <https://bimi.berkeley.edu/sites/default/files/shared/docs/COVID-19%20Immigrants%20Face%20Barriers.pdf>.



NIPVS confirms that sexual violence has severe short and long term impacts. Among females, 1 in 7 victims contracted a sexually transmitted infection; 1 in 3 were injured; 2 in 3 were concerned for safety; 2 in 3 were fearful; and 1 in 7 became pregnant. Among male victims made to penetrate, 1 in 25 contracted a sexually transmitted infection; 1 in 18 were injured; 1 in 5 were concerned for safety; and 1 in 5 were fearful. Additionally, several health conditions were more prevalent in sexual violence victims including asthma, frequent headaches, chronic pain, and difficulty sleeping.

In a recent survey of local sexual assault programs conducted by National Alliance to End Sexual Violence, homeless survivors were ranked as the most underserved community. Sexual assault can happen anywhere, anytime, to anyone. It can create [immediate housing needs, and housing needs throughout the lifespan](#). Far too often, “anywhere” means in a person’s home. Indeed, “[t]he majority of sexual assaults take place in or near victims’ homes or the homes of victims’ friends, relatives, or neighbors,” National Sexual Violence Resource Center, quoting Mindlin and Vickers (2010). Sexual violence that occurs outside of the home – in school, at work, in faith communities, online, in shelters, in prisons, jails and detentions centers, anywhere – can impact housing stability for survivors throughout the lifespan. Studies have noted that: (1) living on the streets puts individuals at an increased risk of additional assaults; (2) survivors of sexual assault may need housing because a perpetrator is a threat to them in their home or because their housing is unsafe in more general ways, or because they lack psychological safety in their home; (3) survivors may not feel safe or comfortable at home right after an assault, whether or not it occurred in their home; (4) survivors of sexual assault may need a place to stay to process what to do next (forensic exam, report, etc.); (5) housing needs may arise due to non-offending parents and children losing housing; landlords not helping to make housing safe; landlords engaging in sexual violence; couch surfing; lack of training on sexual assault victims; or teens being kicked out of their homes after disclosing sexual violence; (6) adult survivors of childhood sexual abuse and survivors of adult sexual assault may have long-term economic impacts directly resulting from the trauma of abuse that may make it difficult for them to find and keep safe housing; and (7) the trauma of the sexual violence, whenever it occurred, impacts a survivors mental and physical wellbeing to the point that their income and therefore housing is unstable. Thus, program participants should have to work with survivors and survivor advocates to consider and evaluate the unique housing and support needs of sexual assault survivors.

**Persons with criminal histories.** We support HUD expanding the scope of individuals and families to include under the definition of underserved communities, and, in particular, including persons with criminal histories. People with criminal histories have long been excluded from the discussion on fair housing, notwithstanding the United States serving as the “epicenter of mass incarceration,”<sup>10</sup> and the racial disparities presented by our carceral system, which includes the criminal legal system.<sup>11</sup> As HUD recognized in its recent directives, persons with criminal history continue to

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<sup>10</sup> See Vera, *Incarceration Statistics*, <https://www.vera.org/incarceration-statistics>, last accessed on April 10, 2023.

<sup>11</sup> *Id.*

face “daunting barriers to obtaining and maintaining housing.”<sup>12</sup> Further, as the Prison Policy Institute explains, “People who have been incarcerated multiple times are twice as likely to be homeless as those who are returning from their first prison term.” Moreover, “being homeless makes formerly incarcerated people more likely to be arrested and incarcerated again, thanks to policies that criminalize homelessness.”<sup>13</sup> As such, with stable housing, people have the opportunity to support themselves and their families and leave the criminal legal system behind them. The disparities faced by persons with criminal histories are well established and persistent, particularly for non-white persons, including without limitation, Black men and women, and Hispanic men and women who are incarcerated at higher rates than their white counterparts, which did not cease during the COVID-19 pandemic, even though the population of people who are incarcerated decreased. Recent statistics show that 1 in 41 Black adults are incarcerated in state prisons.<sup>14</sup>

Accordingly, it is important to keep persons with criminal histories within the definition of underserved communities because even in the midst of data referenced by HUD in its various directives on the use of criminal histories in housing decisions and terminations, persons with criminal histories continue to face exclusions in their reentry, which has impacted their abilities to remain stably housed. In addition to the common barriers that impact persons with criminal histories, such as use of unreasonable look back periods (e.g., 99 years), use of arrests alone as proof of criminal activity, use of overbroad categories of criminal activity (e.g., no felonies), and underuse of mitigating circumstances, housing providers, which include cities that are using crime-free and nuisance ordinances, under the guise of public safety that exclude persons of color from their neighborhoods. The inexcusable racist and sexist motivations in communities with these crime-free and nuisance ordinances that have inflicted unnecessary damage and pain on communities who are disproportionately represented in our criminal legal system are examples of why persons with criminal histories should remain in the definition of underserved communities. Additionally, a number of cities, counties, and jurisdictions have enacted ordinances that criminalize human behavior such as resting or sleeping in public, and have increased monetary resources and enacted ordinances and legislation that punishes this human behavior, which continues the cycle between imprisonment and homelessness. The assault on those who are unhoused and seeking to reenter society is further compounded by recent pushes in many states to nationalize legislation to eliminate unhoused encampments<sup>15</sup>, which demonstrates the need for

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<sup>12</sup> HUD, *Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, 1 (June 10, 2022),

<https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>.

<sup>13</sup> Lucas Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, August 10, 2018, Prison Policy Institute, <https://www.prisonpolicy.org/reports/housing.html>, last accessed on March 10, 2023.

<sup>14</sup> See Vera, *Incarceration Statistics*, *supra* note 10.

<sup>15</sup> Roshan Abraham, *A Palantir Co-Founder Is Pushing Law to Criminalize Homeless Encampments Nationwide*, *Vice*, March 13, 2023, available at <https://www.vice.com/en/article/qjvdmq/a-palantir-co-founder-is-pushing-laws-to-criminalize-homeless-encampments-nationwide>, last accessed on March 13, 2023.

HUD to include systems-impacted persons in the definition of underserved communities.

### III. Community Engagement

***HUD should not allow program participants to combine community engagement requirements across planning processes.*** Proposed § 5.158 allows program participants to combine their AFFH community engagement requirements with other community, resident or citizen participation requirements where “the engagement regarding the Equity Plan meets all the criteria set forth” in the rule. While this appears to be an attempt to reduce the burden on program participants, it is unlikely that a combined process will meet the community engagement requirements in the proposed rule and instead will result in the fair housing analysis and issues being overlooked or given short shrift. Moreover, HUD has provided other methods of reducing the burden on program participants, such as the ability of PHAs and jurisdictions to rely on each other’s data gathering and analysis as well as conducting combined community engagement and submitting joint Equity Plans, which are not fundamentally at odds with a program participant’s obligations under the rule. Instead of encouraging program participants to consolidate their community engagement efforts, HUD should encourage as much interaction with the community as needed to consider their engagement *robust*. Each plan’s community engagement requirement has a distinct purpose. Combining the AFFH community engagement into a single public hearing or meeting with the ConPlan or PHA Plan public or resident participation requirements is likely to lead to rushed discussions without relevant input and clear direction. It’s equally important for program participants to hear from affected community members about their housing and community development needs in determining which fair housing strategies to adopt. Furthermore, meetings where community members are asked to identify fair housing *needs* should be sequenced before meetings dedicated to *solutions*. HUD must ensure that all discussions or activities meant to satisfy community engagement requirements have clear goals *and* ample time to accomplish them. The AFFH community engagement provisions must be separate from and in addition to ConPlan and PHA Plan requirements.

Further, community engagement focusing on fair housing issues must remain distinct from community participation requirements in other planning processes, such as for the [Consolidated Plan](#), which serves as a broader community-wide framework designed to help states and local jurisdictions assess and prioritize their affordable housing and community development needs and market conditions, and to make data-driven investment decisions that align and focus funding from the CPD formula block grant programs. The breadth, scope, and level of detail included in these documents varies significantly across jurisdictions. It thus makes sense to have separate community participation and consultation processes specific to fair housing planning. Similarly, PHAs are required to ensure that their PHA plans are “consistent” with comprehensive housing affordability studies (CHAS) or consolidated plans (ConPlans) in their jurisdictions which outline local housing needs. 42 U.S.C.A. § 1437c-1(c)(2)(B). In order to optimize meaningful community engagement in the

development of the Equity Plan, relevant information from the most current PHA plans, CHAS, and ConPlans can be made available, in plain language and translated into multiple common languages, sufficiently in advance of and at the community engagement meetings for the fair housing plan. After the development and approval of an Equity Plan, program participants should ensure that the most recent ConPlans and PHA Plans are updated to be consistent with the goals, strategies and actions contained in the Equity Plan.

***HUD should require program participants to hold more than three community engagement meetings as part of the development of the Equity Plan and specify the timing for holding these meetings.*** Additional community engagement meetings are necessary to accomplish the robust community engagement contemplated under § 5.158. The community engagement process used by the Pittsburgh AFFH Task Force (convened by the Pittsburgh Commission on Human Relations) highlights the need and effectiveness of meaningful engagement of members of fair housing protected classes at all stages of the process by program participants. PCHR reached out to advocates representing underserved communities, fair housing attorneys, community-based organizations and individuals who are directly affected by the fair housing barriers, and invited them to participate (and nominate others to participate) on an AFFH Task Force. Task Force members formed subject matter committees to evaluate data, identify fair housing barriers and disparities, and identify potential policy recommendations. The Task Force held five AFFH overview sessions at various times and at different, accessible locations, on bus lines, with targeted outreach to underserved populations and community leaders. These sessions included brief overviews of AFFH, the barriers and disparities identified by the Task Force committees, and summaries of potential policies to address those barriers and disparities. That was followed by a detailed Q&A, where attendees informed Task Force members of additional barriers they experience, provided feedback on the potential policies and suggested additional policies for the Task Force to consider. The Task Force committees drafted detailed policy recommendations based on the information learned at the AFFH overview sessions. A second round of five community feedback sessions was then held to review the draft policies and obtain community suggestions for revisions and additions. Task Force committees further refined the policy recommendations based on the feedback received at the community feedback sessions. The full AFFH Task Force then held meetings, open to the public, to finalize the recommendations.<sup>16</sup>

Community views on important issues of fair housing, including persistent residential segregation, significant housing disparities, and pervasive discrimination, must receive due consideration throughout the fair housing planning process. As such, program participants must be required to convene at least one meeting at each of the following five stages prior to and during the development of the Equity Plan:

1. Reviewing of data (to review the HUD-provided data and local data being reviewed and to provide community level data and information).

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<sup>16</sup> Those recommendations can be seen here: <https://pittsburghpa.gov/chr/affh>, last accessed on April 10, 2023.

2. Identifying fair housing issues (to identify all fair housing issues within each of the required fair housing goal categories, including significant housing disparities in housing needs, conditions, and stability).
3. Establishing which fair housing issues to prioritize.
4. Establishing fair housing goals.
5. Commenting on a draft Equity Plan before its submission to HUD.

***HUD should take additional steps to support the involvement of historically underserved and excluded members of protected classes during the community engagement process.*** We approve of HUD's decision to require meetings, rather than hearings, to fulfill the community engagement requirements in the Equity Plan. HUD uses the term "meeting" when outlining requirements for the Equity Plan. In contrast, other planning processes like the Consolidated plan require public "hearings", not "meetings". Compared to the formal hearing process, a series of meetings have the potential to be much more inviting and accessible to underserved communities.

Currently, even in the best case scenarios, community engagement processes fall short of reaching the most marginalized community members whose experience and input is key for the development of Equity Plans. For example, formerly-incarcerated individuals and their families are purposefully excluded by local jurisdictions and are often excluded from subsidized housing and thus not well represented on Resident Advisory Boards. Robust outreach to the diverse, low-income residents who have historically experienced exclusion, including but not limited to racial and ethnic minorities, limited English proficient (LEP) persons, persons with disabilities, formerly incarcerated persons and/or justice-system involved persons, unhoused or formerly homeless persons, and residents and applicants of PHA-supported housing who are experts with lived experiences and most directly impacted by generations of public disinvestment, segregation and other discrimination is critical to achieve a meaningful Equity Plan analysis that holds program participants accountable for advancing a more just housing future.

HUD should improve the definition contained in 5.158(d) to reflect those groups led by, made up of or connected to underserved communities. In addition, HUD should explicitly include fair housing organizations, legal services programs, disability rights groups, community organizing groups, domestic violence and sexual assault programs, linguistically and culturally specific organizations, and environmental justice organizations in the non-exhaustive list of organizations to consult with. Program participants should also proactively identify and invite fair housing and other local advocacy groups and legal organizations who have established relationships with members of protected classes and underserved communities (such as organizations serving LGBTQ+ people, homeless individuals and families, formerly incarcerated and justice-involved people, and youth transitioning out of foster care) to collaborate in the community engagement process and activities.

For community engagement to be most effective, HUD needs to specifically incentivize the inclusion and prioritization of underserved populations. As a best practice, HUD could partner with and encourage local jurisdictions to partner with community based organizations that are directly connected to and comprised of

members of protected classes. Community based organizations could include tenant unions, tenant associations, and resident groups. In areas without a robust tenant organizing presence, local jurisdictions should partner with non-housing-related organizations that have meaningful connections to members of protected classes, such as school districts, worker centers and unions, and other places that support individuals and families in need. Examples of other organizations that can assist with community engagement include service providers, fair housing organizations, legal services programs, and social workers. For example, HUD already provides funding to some fair housing organizations and HUD participants, which would allow them to participate in local community engagement efforts. Additional funds should be provided to support the capacity of these and other community based organizations to bring people together, particularly underserved groups, and run a community meeting, both in person and virtually. Some considerations that carry costs include staff time of these community based organizations to get the word out, door knock, share information about these meetings, provide childcare and refreshments, and help to co-facilitate. Interpretation at these meetings must be from trusted sources that are already in relationship with the community.

People with disabilities are often unable to participate in community meetings due to communication barriers, segregation from communities, and lack of transportation access. Thus, they are often not considered in the planning processes that directly and disproportionately impact them, and are undercounted in data collection. Hearing directly from people with disabilities is critical to figuring out what housing issues they face and what types of housing work for them. As mentioned earlier, HUD should require that program participants have some of their public meetings virtually so that those who cannot attend in-person meetings can participate, and require that captioning, ASL, and auxiliary aids be provided. HUD should require that program participants adequately inquire and plan for accommodations needed during meetings, including having a designated point of contact to discuss accommodations. Because of the barriers people with disabilities face in community participation, program participants should organize meetings for different times of the day, different days of the week, and in accessible locations near transit.

Other considerations to support a robust community engagement process that is inclusive of the diverse members of traditionally excluded underserved communities include:

- Providing transportation and childcare funding to support and enable participation in meetings;
- Requiring program participants to send notice of public meetings in multiple languages, including to residents and applicants of all publicly supported housing; which notice should inform the public that the HUD-provided data and any local data are available, with the location and date such data and information became (or will become) available for review and inspection, and that one or more public meetings will take place as part of the AFFH Equity Plan process, provide a concise summary of the community participation process, efforts made to broaden community participation; the date, time and location of the meetings, and with other relevant information, such as notice of the anti-retaliation and other civil rights protections;

- Making publicly and readily accessible through multiple forums, including through fair housing organizations, community advocacy groups and legal aid organizations that serve members of protected classes and specific underserved communities, the HUD-provided and available local data, in summary form and in plain-language;
- Providing targeted outreach to tenant-based Section 8 voucher holders - e.g., Boston Housing Authority, as part of its Resident Empowerment Coalition, has a tenant organization specifically comprised of tenant-based Section 8 voucher households, who are organized by S8TI ([Section 8 Tenants Incorporated](#)) and City Life/Vida Urbana (by zipcode), and also active voting members of the Resident Advisory Board; Chicago Area Fair Housing Alliance convenes Section 8 voucher tenant leader boards for the Chicago Housing Authority and the Housing Authority of Cook County;
- Providing HUD guidance on community engagement requirements and best practices (once developed) to PHAs and other program participants and requiring the same to be shared with potential stakeholders for additional suggestions for community engagement.

#### IV. Equity Plan Content Analysis

##### A. Equity Plan Content Analysis - All program participants

We recommend the following improvements to the Equity Plan Content analysis for all program participants, local government, States, insular areas and PHAs:

**Public Comment Period.** HUD should clarify when the 60 days for providing public comment begins. We recommend that the 60 days should begin to run with the public availability on HUD's website, rather than the date submitted. That would provide consistency and offer a clear way for the public to determine when public comment is open and deadlines for timely submitting it to HUD.

**HUD should take additional steps to incentivize regionalization and regional analysis.** We support HUD's incentivizing collaboration between PHAs with overlapping or adjacent jurisdictions. HUD could further incentivize regional planning by offering more generous timing requirements to account for regional planning complexities, and offer that HUD TA providers specifically support regional planning, so municipalities do not have to front that or as much of that cost. In the Chicago area, for example, Enterprise Community Partners and local fair housing groups brought together smaller municipalities and housing authorities with Cook County and the City of Chicago and their public housing authorities.

**HUD should require additional analysis by all program participants in the Equity Plan on those policies or practices that lead to the presence, continuation of, or higher concentration of environmental hazards as impediments to fair housing.** We appreciate that the proposed rule names the role of environmental justice

in the duty to affirmatively further fair housing. For example, in Louisiana, Black people are more likely to live in the path of chemical plants and oil refineries in Louisiana's "cancer alley." This is not by accident. State and local governments, despite their AFFH obligations, often permit, zone, and site these toxic facilities around historically Black and low-income communities. One such example can be found in St. Gabriel, La., a majority Black town that has over 30 facilities within a 10-mile radius. To make matters worse, when these facilities shut down in preparation for natural disasters, they release excess toxic pollutants.<sup>17</sup> At the same time, PHAs continue to have housing where there is a continued presence of lead-based paint hazards and that is [proximate to toxic industry](#) as a result of state and local permitting, zoning, siting decisions, and land sales.

HUD should require additional analysis by all program participants in the Equity Plan on the existence of environmental hazards in the community and what policies or practices led to their presence, which in turn creates an impediment to fair housing. State and local governments and PHAs should have to consider the environmental and health impacts of their actions and policies, which are currently missed under civil rights reviews conducted by HUD and the EPA. For example, there are several pending civil rights investigations before HUD and the EPA where program participants are accused of engaging in a pattern and practice of civil rights violations that lead to the siting of toxic industry proximate to or within existing environmental justice communities. Local governments are using their land use powers of zoning, land sales, and permitting to further burden and harm environmental justice communities by designating these communities as industrial parks or corridors, while state governments do their part to greenlight the polluter's request for air and water permitting. Renters, especially subsidized renters, are often unable to move away from the harm. Homeowners are also trapped, having lost most or all of the wealth they would have gained from homeownership. In Genesee Township, Michigan, for example, the [township has been accused of concentrating heavy, toxic industry](#) within the one majority Black census tract and environmental justice community of the township, directly at the border with Flint, Michigan. For its part, the [state of Michigan repeatedly granted air permits](#) for the heavy, toxic industry to operate within environmental justice communities, including within Genesee Township. As another example, the [City of Chicago actively sought to move a metal shredding facility from a wealthy, white neighborhood to a majority Black and Latinx neighborhood and environmental justice community](#). All three of these governments, despite receiving federal housing and community development funds, did so without consideration of their civil rights obligations, including the duty to affirmatively further fair housing. A proactive directive to evaluate the environmental justice, fair housing, and health implications of their actions could potentially deter program participants from taking these harmful actions to begin with.

It is also important to consider that environmental racism both causes disabilities and exacerbates them. People with disabilities are specifically exposed to and vulnerable to environmental injustice as a result of decades of ableist as well as racially

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<sup>17</sup> Sara Sneath, 'Ticking Time Bombs': Residents Kept In The Dark About Risks To La.'s Chemical Plants During Storms, WWNO (Dec. 7, 2020), <https://www.wwno.org/coastal-desk/2020-12-07/ticking-time-bombs-residents-kept-in-the-dark-about-risks-to-la-s-chemical-plants-during-storms>.



exclusionary policies and land use decisions. And some are also more vulnerable to environmental injustice because of the nature of their disability.<sup>18</sup> For example, the percentage of people with disabilities living in areas with greater exposure to PM2.5 pollution is significantly higher than in areas with less exposure, even when controlling for other variables; this is especially true for individuals with cognitive and independent living difficulties.<sup>19</sup> As a result, explicitly requiring consideration of such issues in the Equity Plan is critical.

***HUD should require all program participants (not just PHAs) to analyze the cumulative fair housing implications of all demolition, disposition, conversion, “repositioning” and/or other loss of publicly supported housing in the geographic area of analysis.*** Publicly supported housing is home to a disproportionate number of members of classes protected under federal civil rights laws.<sup>20</sup> In rural areas, USDA’s multifamily housing programs are often the only source of affordable, stable, safe, decent housing, including for housing choice voucher tenants. However, the stability of that housing is at risk due to Section 514 and 515 properties leaving the program early by prepaying their mortgages or exiting the program upon their mortgages maturing.<sup>21</sup> For these reasons, projects involving the demolition, disposition, conversion, or “repositioning” of publicly supported housing raise serious fair housing concerns, especially where deeply subsidized site-based units are not replaced or the project relies upon vouchers, despite limited success using vouchers in the community. Yet, there is often a lack of transparency and oversight over these repositioning projects, including whether the program participants have considered other options to minimize the permanent displacement and/or loss of publicly supported housing, such as funding decisions to support maintaining and preserving or redeveloping affordable units. Often ignored [is specific consideration of the role of local government](#) in pressuring or

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<sup>18</sup> Catherine Jampel, Intersections of disability justice, racial justice, and environmental justice, *Environmental Sociology* (2018), <https://doi.org/10.1080/23251042.2018.1424497>.

<sup>19</sup> Jayajit Chakraborty, Disparities in exposure to fine particulate air pollution for people with disabilities in US, *Science of the Total Environment* (June 2022).

<sup>20</sup> For example, considering just HUD-funded projects nationally, through Choice Neighborhoods, more than 13,000 distressed and obsolete HUD-assisted housing units are scheduled to be replaced, with more than 30,300 total housing units to be created. At the same time, public housing which is home to some 1.8 million of the country’s lowest income people, the majority of whom are members of protected classes and underserved communities, has been rapidly repositioned to the Section 8 platform since 2012 under the Rental Assistance Demonstration (“RAD”), more than 214,000 public housing units located in 1,608 housing projects already converted, and there are some 54,805 additional public housing units in 487 projects in the RAD pipeline. Additionally, each year, some 10,000 public housing units are permanently lost due to deferred maintenance and other reasons, and about 23% of public housing failed their last REAC (Real Estate Assessment Center) health and safety inspection, leaving less than one million public housing units available nationally. As a result of the permanent loss since the “Faircloth Limit” on new public housing was established on October 1, 1999, HUD is now authorized to fund some 230,000 new public housing units (“Faircloth Authority”).

<sup>21</sup> According to a 2018 GAO report, between 2028 and 2050, “over 90% of RHS’s assisted multifamily properties and units could exit the program via loan maturation or prepayment.” *Rural Housing Service: Better Data Controls, Planning, and Additional Options Could Help Preserve Affordable Rental Units* (2018), <https://www.gao.gov/products/gao-18-285>; see also Housing Assistance Council, *Rural America is Losing Affordable Rental Housing At An Alarming Rate*, Rural Research Brief (March 2, 2022), [https://ruralhome.org/wp-content/uploads/2022/03/rural\\_research\\_brief\\_usda\\_rural\\_rental\\_housing.pdf](https://ruralhome.org/wp-content/uploads/2022/03/rural_research_brief_usda_rural_rental_housing.pdf).

incentivizing a PHA or other housing provider to demolish publicly supported housing and dispose of public [housing land](#). Current HUD requirements and policies for redevelopment or repositioning do not fully capture the serious fair housing implications of these decisions. Thus, program participants must be provided specific additional guidance to ensure a thorough and systematic evaluation of the fair housing impacts of redevelopment or loss of publicly supported housing on protected classes and underserved populations.

HUD can support program participants toward successful goal setting in this area by providing a tailored set of data which, at minimum, covers all of the capital projects reported to HUD (as recommended above under HUD-supported data) and by providing detailed steps program participants should undertake in their analysis. For example, future HUD guidance can ensure program participants assess:

1. The impact of redevelopment and/or housing loss on protected class groups, with respect to: (i) relocation burdens, (ii) permanent displacement risks, (iii) access to housing opportunities (including meaningful exercise of transfer requests and mobility choice) and community assets (e.g., proximity to quality schools, greenspace, healthy environment, healthcare, employment, and transit), and (iv) diverse housing needs (e.g., accessible housing or units with sufficient numbers of bedrooms for a family with children), as compared to (v) actual availability of comparable, affordable replacement dwellings and successful lease-ups by location, with consideration of how many residents relocate to a **“disadvantaged community” under the Justice40 initiative criteria** and (vi) the loss of permanent, deep subsidy units, as well as other diminution in resident rights and protections, including the right to transfer to a broader set of properties and locations;
2. The historical and foreseeable impacts of completed, permitted, and anticipated housing loss or redevelopment on (i) housing disparities in housing conditions, housing stability and housing needs, (ii) the supply and type of publicly supported housing by affordability, unit size, accessibility features, housing condition, and program requirements by location including census tracts designated as a **“disadvantaged community” based on socioeconomic, environmental and climate risk indicators under the [Justice40 Initiative criteria](#)**;
3. How redevelopment or loss of publicly supported housing (i) is influenced by local and state policies or practices with disparate, adverse effects on protected class groups; (ii) impedes or advances housing disparities in housing quality, housing stability and housing needs as experienced by protected class groups and underserved communities (including due to reduction in affordable housing, accessible affordable units, and affordable units with larger bedroom sizes for families with children, as well as changes in occupancy standards, loss of resident protections and rights associated with different publicly supported housing programs, including restriction, loss of transfer rights, or access to vouchers); (iii) impacts residential segregation, R/ECAP, and access to well-resourced areas by protected class groups.

**HUD should make “significant housing disparities” a separate fair housing goal category in the Equity Plan.** A balanced approach to AFFH must encourage program participants to prioritize both the expansion of affordable housing and homeownership opportunities, and actions that improve existing housing conditions, stabilize existing affordable housing, and help members of protected classes avoid involuntary displacement. As such, HUD should add an explicit mandate for recipients to analyze and address “significant housing disparities,”<sup>22</sup> such as housing quality, housing stability and exposure to health and/or environmental hazards. Such disparities cannot be adequately addressed by expanding access to affordable housing, but instead relate to the existing realities of housing in a community and make it clear that the expansion of affordable housing opportunities must be done in a way that affirmatively furthers fair housing goals (e.g., by providing greater locational choice, by helping to stabilize residents in a neighborhood that is experiencing market pressures, by ensuring localities create affordable housing addressing the needs of a range of protected classes, i.e., families with children, persons with disabilities). The strategies that are required to address access to housing opportunities are different from those that address disparities in existing housing quality, housing stability and exposure to health and environmental hazards. Including these issues within the same fair housing category will cause many recipients to prioritize the expansion and placement of affordable housing at the expense of actions that eliminate harmful disparities in existing housing conditions. A balanced approach to AFFH must encourage program participants to prioritize both the expansion of housing opportunities in an inclusive and integrated manner and actions that improve existing housing conditions and help members of protected classes remain in their homes and neighborhoods if they so choose, without harm to their health, wellbeing, or wealth. HUD should incorporate the reference to housing stability (subsection 3(iii)) along with housing quality and health/environmental hazards into this new fair housing goal category.

The rule should also acknowledge that disproportionate needs by protected groups for affordable housing should be taken into account when goals are set and strategies are determined. For example, California’s guidance utilizes “disparities in housing needs and in access to opportunity” to suggest programs address the disparity. Examples include incentivizing new residential development to include below-market rate housing; conserving affordability of existing housing, such as limitations on rents or conversion of such housing to higher rent or higher priced housing; encouraging systematic code enforcement activities that maintain housing stock while ensuring such

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<sup>22</sup> Significant housing disparities means substantial and measurable differences in the conditions and quality of housing, housing stability, and housing needs based on protected class and related to where individuals of a particular protected class reside in the program participant's geographic areas of analysis. Housing stability may be adversely affected by factors such as, but not limited to, discriminatory zoning, rising rents, deterioration and loss of existing affordable housing, discriminatory screening and tenant selection, and displacement due to economic pressures, evictions, source of income discrimination, demolition, disposition and other loss of publicly supported housing or public land, and/or building, sanitary and/or other habitability code violations, noncompliance, and nonenforcement. Housing conditions may reflect discriminatory compliance and enforcement of applicable policies, codes and standards intended to ensure a safe, sanitary, healthy, and stable housing environment that is energy efficient, environmentally sustainable and climate resilient.

enforcement does not cause displacement; and promoting housing mobility strategies and displacement mitigation strategies to ensure equitable access to opportunity.”<sup>23</sup>

***To aid with an analysis of significant housing disparities, HUD should require program participants to identify and report on existing policies and ordinances that protect tenants in their Equity Plans.*** This would prompt program participants to take an honest inventory of how their policies perpetuate or reduce disparities in housing conditions such as quality, stability and exposure to health/environmental hazards. This analysis should include both policies that prevent evictions and displacement as well as policies designed to recalibrate the imbalance of power between landlords and tenants in eviction court. Examples of policies and laws to prevent evictions and displacement, include good cause requirements for evictions and lease non-renewals; eviction prevention resources; rent stabilization laws; limitations against evictions for non-payment of de minimis amounts of rent; prohibitions against retaliatory evictions and illegal evictions; tenant’s ability to enforce right to habitability against landlords, including allow affirmative defenses based on conditions in evictions cases; affirmative inspection programs, including lead-based paint inspection and remediation policies; and the ability of tenants to assert fair housing violations as affirmative defenses in eviction cases. For PHAs in particular, such tenant protections include policies to prevent serial eviction filings; and policies to ensure that evictions are the last resort and provide the least harm. Examples of policies and laws that recalibrate the imbalance of power between landlords and tenants in eviction court include right to counsel/access to counsel; access to eviction diversion, ideally mandatory and pre-filing; and stronger due process (procedural) protections for tenants: e.g., notices. PHAs should also report whether they are complying with local and state laws aimed at protecting current and prospective tenants. Examples include fair chance housing laws that provide procedural protections (notice, opportunity to dispute) and substantive protections (limiting the use of records) to justice-involved individuals.

Although Section 5.154(d)(7) of the Proposed Final Rule instructs program participants to describe how existing policies and ordinances impact specific fair housing issues, a narrative description alone does not require program participants to critically evaluate their housing and community development policies with a fair housing lens. Instead, a balanced approach to AFFH must encourage program participants to both analyze and take action to eliminate significant housing disparities, such as proposing to eliminate their crime-free program or nuisance property ordinance or changing their zoning laws to no longer concentrate toxic industry in majority minority neighborhoods, we ask HUD to (1) add significant disparities in housing quality, housing stability and exposure to health/environmental hazards to the analysis, and (2) request more specific information.

***HUD should require program participants to revise their Equity Plan following presidentially declared disasters.*** The proposed rule would require a

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<sup>23</sup> California Department of Housing and Community Development Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements (April 2021 Update) at 15, [https://www.hcd.ca.gov/community-development/affh/docs/AFFH\\_Document\\_Final\\_4-27-2021.pdf](https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf).

revision if there is “a presidentially declared disaster that impacts a program participant’s jurisdiction and is expected to result in additional Federal financial assistance for the jurisdiction, under [the Stafford Act].” It is crucial to have an Equity Plan ready to go quickly to meet any additional funding sources in the pipeline. We agree with other comments that having a revised Equity Plan as soon as possible can help decrease the capacity strain of a CDBG-DR Action Plan because equity will have already been discussed at length in the Equity Plan. As another commenter noted, having an Equity Plan ready is an important source of raising and fostering discussion of equity early in the recovery process.

The long term impacts of disasters disproportionately fall on the shoulders of people of color in the United States. The housing landscape changes fundamentally and dramatically post-disaster. The steep reduction in available units due to damage and sometimes temporary occupation by recovery workers results in a shortage of available rental units and inflated rents. Rent inflation also results from increased insurance costs and home renovations completed with insurance funds. The result is a recipe for mass-displacement that disproportionately impacts people of color. Racial minorities in the United States are more likely to live in areas that are vulnerable to rising temperatures and flooding, according to the Environmental Protection Agency.<sup>24</sup> The enduring legacy of racial segregation, and hundreds of years of discrimination and disinvestment, have resulted in the concentration of people of color in geographic areas more vulnerable to environmental disasters. For example, four of the seven zip codes that suffered the costliest flood damage from Hurricane Katrina were at least 75% Black.<sup>25</sup>

When public housing or Project-Based Section 8 housing is damaged or destroyed by a disaster, tenants face limited options after their FEMA temporary housing options expire. Often their subsidized housing providers are still litigating insurance claims 18 months after a disaster, leaving tenants unable to rent on the private market with nowhere to go. A common approach is to provide Section 8 Housing Choice Vouchers to tenants to relocate from public or project-based subsidized housing. However, in the aftermath of a disaster these vouchers are virtually unusable because of shortages in the housing market (aggravated in jurisdictions without source of income protection and with high levels of discrimination), and inflated rents. For example, when public housing in Terrebonne Parish was damaged in Hurricane Ida, hundreds of public housing tenants were offered Section 8 Housing Choice Vouchers to port out of the jurisdiction, but no options to retain their housing assistance and remain in the geographic vicinity of jobs, school, family, and medical treatment. Tenants who needed to stay local relied on FEMA trailers, but the program is set to end in August, 2023. Meanwhile, due to delays in part caused by insurance litigation, the Housing Authority has not begun to rebuild the public housing. The impacted tenants are majority Black

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<sup>24</sup> Darryl Fears and Dino Grandoni, *EPA just detailed all the ways climate change will hit U.S. racial minorities the hardest. It's a long list.* The Washington Post (Sept. 2, 2012), <https://www.washingtonpost.com/climate-environment/2021/09/02/ida-climate-change/>.

<sup>25</sup> Thomas Frank, *Flooding Disproportionately Harms Black Neighborhoods*, Scientific American (June 2, 2020), <https://www.scientificamerican.com/article/flooding-disproportionately-harms-black-neighborhoods/#:~:text=The%20disparity%20was%20particularly%20acute.New%20Orleans'%20Lower%20Ninth%20Ward.>

families. This example points to the fact that when federally subsidized housing is lost, damaged, or removed from a jurisdiction's inventory due to a disaster or any other reason, equity planning is necessary to address the needs of displaced low income tenants. Furthermore, it highlights the need for equity planning to occur within 18 months of the federally declared disaster in order to plan for the needs of families displaced a second time when their FEMA temporary housing assistance ends.

***HUD should consider including contributing factors in subsequent guidance; California's AFFH law maintains the contributing factor analysis, but has not imposed an undue burden on program participants.*** In California, the jurisdiction is instructed to prioritize contributing factors and to engage in deep analysis only of the salient ones in order "to strongly connect to goals and actions, focus resources and maximize impact in the planning period." (HCD AFFH Guidance Chart 2 at 50-51 and 68-70.) Contributing factors are integral to California's independent AFFH law (Gov. Code section 8899.50) as incorporated into its Housing Element Law (Gov. Code section 65583(c)(10)(A)(iii),(iv)), and they have proven extremely helpful to advocates and the state Department of Housing and Community Development (HCD) in implementing the AFFH obligation. The state AFFH incorporates by reference HUD's 2015 Rule (Gov. C. 8899.50(b) and 65583(c)(10)(B)), which enables advocates and the state to utilize the Rule's contributing factors as a template/checklist against which they can measure the true depth and breadth of the local government's AFH. The wholesale loss of the contributing factor analysis in the new HUD Equity Plans will deprive both advocates and HUD of this tool and the uniformity it lends to the review process.<sup>26</sup> The draft rule could be amended to at least reference and/or recommend use of the contributing factors in preparing the Equity Plans. Contributing factors could be included in subregulatory guidance.

***HUD should require program participants to adequately analyze and address the housing needs of all protected classes and underserved populations in their Equity Plans.*** Program participants should expressly be required to adequately analyze and address the housing needs of all protected classes and underserved populations, and use available data to evaluate the particular impacts and disparities among these groups. In this way, program participants can gear their planning, future housing development, affirmative marketing, and admissions policies towards addressing those unmet needs. A few key examples of unmet housing needs among protected classes and the type of necessary requirements, analysis, and planning are identified below.

***People with disabilities.*** There is a dire lack of affordable and accessible housing for people with disabilities. Because accessibility standards and codes were implemented only in the past few decades, there is a severe shortage of housing for

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<sup>26</sup> The state's Housing Element Law and regulatory guidance actually require the AFH goals and strategies to link directly to the identification and prioritization of contributing factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights. (Gov. Code 65583(c)(10)(iii), (iv); HCD AFFH Guidance at 11-12, 25, 32 (April 2021) Affirmatively Furthering Fair Housing (ca.gov).) As a practical matter, in the short term at least (depending on whether the state amends its AFFH law) all California jurisdictions will remain required to prepare AFHs that comply with the 2015 Rule and assess the contributing factors.

people with physical, visual, and sensory disabilities,<sup>27</sup> especially in communities with an older housing stock. People with disabilities are also disproportionately rent-burdened and housing cost-burdened.<sup>28</sup> About 1 in 5 disabled people have extremely low incomes, compared with about 1 in 12 nondisabled people.<sup>29</sup> People with disabilities and their advocates also face barriers in enforcing the FHA’s design and construction requirements in private civil actions. Many individuals do not discover failures to comply with the design and construction mandates of the FHA until after the two-year period for filing such claims has passed, and even if they do, litigating and proving a claim often involves expensive expert analysis and testimony.<sup>30</sup> Thus, program participants should be required to regularly assess and evaluate barriers to accessible and affordable housing for people with disabilities and identify solutions to address those barriers in their equity plans.

HUD should add an explicit mandate for program participants to analyze and address the lack of affordable and accessible housing for people with disabilities. While “access to affordable housing opportunities” is specifically required for analysis and fair housing goal setting, HUD does not explicitly include accessible housing for people with disabilities as a requirement in the equity plan analysis. It should be clear that accessible housing includes physical accessibility, accessibility for people with mobility and sensory disabilities, housing with supports for people with disabilities, and housing in the most integrated settings. Accessible housing should not be relegated to certain parts of a housing complex, and housing that meet the needs for people with disabilities should not be segregated and limited to concentrated areas in the community.

We support the inclusion of specific policies and procedures that impact neighborhood and housing access for disabled people, especially in light of the issues we often encounter and address in our advocacy, including (1) zoning requirements that create barriers (e.g. slow-growth measures, bans/strict limits on shared housing, lack of restrictions on short term rentals that reduce affordable housing stock) instead of opportunity for accessible housing (e.g. via by-right zoning for supportive housing, transitional housing, or emergency shelters, strong reasonable accommodation zoning ordinances); (2) nuisance ordinances or crime-free programs; (3) jurisdictions not monitoring or enforcing whether their housing stock is accessible to and occupied by people with physical and/or sensory disabilities; (4) jurisdictions not assessing whether its housing stock ensures that disabled people can live in integrated settings of their choice – not only within neighborhoods, but within buildings as well; (5) evictions that

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<sup>27</sup> Less than 5 percent of housing nationwide is accessible for people with moderate mobility difficulties, and less than 1 percent is accessible for wheelchair users. Lake, Jaboa et al. (2021) Recognizing and Addressing Housing Insecurity for Disabled Renters, <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/#:~:text=Less%20than%205%20percent%20of,is%20accessible%20for%20wheelchair%20users>.

<sup>28</sup> Watson, N. et al. (2017). Worst case housing needs 2017 report to Congress. Office of Policy Development & Research, U.S. Department of Housing & Urban Development, <https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs.html>.

<sup>29</sup> Popkin, Susa J. et al. (2022) People with Disabilities Living in the US Face Urgent Barriers to Housing. Urban Institute, [https://www.urban.org/sites/default/files/2022-10/People%20with%20Disabilities%20Living%20in%20the%20US%20Face%20Urgent%20Barriers%20to%20Housing\\_0.pdf](https://www.urban.org/sites/default/files/2022-10/People%20with%20Disabilities%20Living%20in%20the%20US%20Face%20Urgent%20Barriers%20to%20Housing_0.pdf).

<sup>30</sup> See e.g., *Garcia v. Brockway*, 526 F.3d 456 (9th Cir. 2008) (holding that FHA’s two-year limitations period governing private civil actions ran from the conclusion of design-and-construction phase).

are related to a person's disability.

We appreciate that the Equity Plan must include an assessment of barriers to transportation for disabled people, as well as related infrastructure such as sidewalks. HUD should also provide additional guidance to jurisdictions on assessing transportation barriers as they often focus narrowly on the Americans with Disabilities Act's technical requirements for fixed route and paratransit while overlooking its broader mandate for equal access to the transportation system as a whole. The type of transportation necessary varies by disability and need, and it should be clear that jurisdictions should consider not only fixed-route public transportation, but also specialized services such as paratransit, dial-a-ride, reduced-fare taxis, or volunteer driver programs. They should also consider availability of parking, drop off locations, bus stops, and shelters. A stronger transportation system would expand and improve affordable mobility options including: paratransit, door through door services; wheelchair accessible transportation network companies; demand response real time ride systems; volunteer driver program expansions; nonprofit service provider systems; stipends/free rides for caregivers; gas subsidies and more. Accessible, available, and affordable travel options make it possible for diverse groups of people to be active and engaged in their communities.

**Families with children.** So often, if affordable housing is built at all, it will be expressly designated for seniors or the unit sizes are not intended to accommodate families with children. This is often by design, as local governments [resist the development of family affordable housing due to discrimination on the basis of race and/or family status](#). As noted by HUD in the proposed rule, the Fair Housing Act recognized that "where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions." AFFH Proposed Rule, 88 Fed. Reg. 8522 (Feb. 9, 2023) (quoting 114 Cong. Rec. 2276–2707 (1968)). Thus, HUD should place a higher priority on requiring program participants to regularly assess and evaluate barriers to affordable housing opportunities for families with children and identify solutions to address those barriers in their equity plans. This includes analyzing a need for larger units and housing proximate to community assets. The following are areas program participants should have to specifically consider: (1) exclusionary zoning requirements, such as zoning codes that prioritize maintaining the "original character of the neighborhood," which is generally meant to keep land zoned for R-1 and R-2 single family housing, and to create barriers to change zoning to multifamily use; (2) policies that allow local council members to control zoning at a neighborhood or ward level, including by downzoning; (3) the allocation of program participant dollars or financing for affordable housing that practically or financially make the creation of housing for families with children infeasible or not possible; (4) policies that require the input or consent of a program participant before affordable dollars or financing are awarded to an affordable housing developer (i.e., such as a local government consent requirement as a part of an application for Low-Income Housing Tax Credits); (5) nuisance ordinances or crime-free programs that often actively target Black families; and (6) evictions related to family status discrimination.



**HUD should clarify that the Coordinated Entry System is included in the analysis of homelessness needs.** A critical pathway to housing for most unhoused individuals is the Coordinated Entry System. The unfortunate reality is that overwhelming disparities related to race, disability and/or experience with gender-based violence exist in the unhoused population – specifically, a significant overrepresentation of Black individuals,<sup>31</sup> LGBTQ+ individuals,<sup>32</sup> disabled individuals,<sup>33</sup> and survivors of domestic violence, sexual assault, and human trafficking.<sup>34</sup> The CES system can reinforce these existing disparities. While we appreciate that the Equity Plan demands an assessment of homelessness needs, the rule should make clear that the CES system is a part of that. For example, it is critical that such systems include culturally appropriate and broadly targeted assessments, clear notice of the right to reasonable accommodations from intake and throughout the process, waiver of unnecessary document requirements, and the allowance of support persons chosen by the unhoused individual to be present at the assessment.

## **B. Equity Plan Content Analysis - PHAs**

We recommend the following improvements to the Equity Plan Content analysis for PHAs:

**HUD should require PHAs to analyze and describe the barriers to accessing homeownership.** In the Equity Plan analysis for PHAs, 5.154(e)(4)(B)(ii)(A)(6), HUD requires PHAs to describe which protected class groups experience significant disparities in access to affordable homeownership opportunities. In addition, HUD should require the homeownership analysis to describe the barriers to accessibility of homeownership opportunities and programs to protected classes. The

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<sup>31</sup> See e.g., National Alliance to End Homelessness, Homelessness and Racial Disparities, <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>; Davalos, Monica et al. Who is Experiencing Homelessness in California? California Budget & Policy Center (while Black non-Latinx Californians are only 5.5% of the state's population, they comprised over 1 in 4 unhoused people), <https://calbudgetcenter.org/app/uploads/2022/03/5F-FP-V3-Homelessnes-Demographics.pdf>; Steve Lopez, Column: Black people make up 8% of L.A. population and 34% of its homeless. That's unacceptable., Los Angeles Times, June 13, 2020, <https://www.latimes.com/california/story/2020-06-13/column-african-americans-make-up-8-of-l-a-population-and-34-of-homeless-count-heres-why>; Kate Cimini, Black people disproportionately homeless in California, Cal Matters, October 5, 2019 (updated February 27, 2021), <https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california/>.

<sup>32</sup> Brodie Fraser et al., LGBTQ+ Homelessness: A Review of the Literature, National Institutes of Health: National Library of Medicine, National Center for Biotechnology Information, July 26, 2019 (LGBTIQ+ Homelessness: A Review of the Literature - PMC (nih.gov)).

<sup>33</sup> See, e.g. United States Interagency Council on Homelessness, Homelessness in America: Focus on Chronic Homelessness Among People with Disabilities (August 2018), [https://www.usich.gov/resources/uploads/asset\\_library/Homelessness-in-America-Focus-on-chronic.pdf](https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf).

<sup>34</sup> Breiding, M., Basile, K. C., Klevens, J., & Smith, S. G. (2017); Economic insecurity and intimate partner and sexual violence victimization, American Journal of Preventive Medicine, 53(4), 457–464, <https://doi.org/10.1016/j.amepre.2017.03.021>; Wong, L. H., Shumway, M., Flentje, A., & Riley, E. D. (2014), Multiple types of childhood and adult violence among homeless and unstably housed women in San Francisco, Violence and Victims, 31(6), 1171–1182, <https://doi.org/10.1891/0886-6708.VV-D-15-00132>.

analysis should also require PHAs to analyze the impact of their policies on access to homeownership opportunities. As part of the Section 8 voucher program, PHAs can provide a path to homeownership for participants. By including questions about this in the PHA analysis, HUD can encourage jurisdictions to make the possibility of Section 8 Voucher homeownership a reality. In setting goals to address homeownership barriers, PHAs could be encouraged to do this in concert with state and local governments, who often have financing or other tools available to support homeownership opportunities for low to moderate income populations.

***HUD should require PHAs to analyze the sociodemographic data that all PHAs are already required to collect for each housing program administered by the PHA.*** HUD should require all PHAs to consider in their analysis, a specific, uniform set of demographic information already required by law to be maintained by the PHAs in connection with all PHA programs. This is also an area where HUD should provide PHAs with technical assistance. These relevant demographic data points are identified below in **bold**. Because it would not be sufficient for a meaningful analysis of the PHA-administered housing programs to rely exclusively on their broader jurisdiction's general analysis of demographics, areas of segregation and integration, locations of R/ECAPs and opportunities, these PHA-provided data should be incorporated in the PHAs' required set of questions under § 5.152(e)(1) – (3). Incorporating these PHA-provided data empowers PHAs to perform meaningfully the comparative and historical analysis anticipated in § 5.152(e)(1) – (3).

The following de-identified sociodemographic data should be analyzed separately for the participant and applicant households: (1) **household composition characteristics**, including (a) membership in one or more protected class group, (b) household size, (c) household income (e.g., extremely low income, very low income, low income, moderate income based on area median income); (2) **housing stability** as indicated by housing cost burden that exceeds 30% and 50% of the household income; (3) **housing need** as indicated by locally-determined admissions priorities and/or preferences for “underserved communities” (e.g. homeless, low-income with children, formerly incarcerated, mobility/sensory disabled); (4) **occupancy/residential status** (e.g. homeless, housed renter, homeowner, doubled-up, under-housed, in transitional housing or shelter).

Additionally, PHAs should be required to analyze by housing programs administered by the PHA, the number of habitable properties and residential units available to voucher tenants: (1) that are located in census tracts located in **R/ECAP** and/or designated as “**disadvantaged communities**” under the Justice40 Initiative criteria, (2) that are **occupied and vacant units**, (3) by **unit size mix** (number of units by number of bedrooms), (4) that have **accessibility features** or available for modification by unit size mix; (5) by **income-tiering** of participant households, (6) by **affordability** and **income-targeting** requirements, (7) by applicable **payment standards** (e.g., in relation to Small Area Fair Market Rents) , (8) by **housing conditions**, (8) by applicable **HUD program** and/or financing (e.g., Choice Neighborhoods, Moving to Work, HOPE VI, Rental Assistance Demonstration, Section 18 Demolition and Disposition, Section 22 and other Conversions, 32 Homeownership, Mixed Finance with LIHTC), (9) and that have special property amenities and

community assets (e.g. broadband access). This analysis should be broken down by the demographics of the participant and applicant households by protected class groups.

Further, PHAs should be required to analyze the impact of their policies on participant and applicant households who are members of protected class groups for each housing program administered by the PHA by analyzing the number and percentage of (1) **applicant households**, (2) **admissions criteria and preferences, and the resulting decisions**, reasons for denial, and requests for and results of informal review; (3) **reasonable accommodation and modification** requests and results; (4) **exception payment standard requests** and results; (5) **grievance requests** by result and denial reasons; (6) **family break-up and transfer requests** by type (e.g., under the Violence Against Women Act) result, denial reasons, and if pending, time since application; (7) housing choice voucher **requests for tenancy approval** and placement results and denial reasons, (8) housing choice voucher **search time extension requests** and results and denial reasons, (9) housing choice voucher **portability requests** into and out of the service area by result and denial reasons; (10) **evictions** by court filing reasons and results; and (11) **subsidy suspensions and terminations** by reason and results.

***HUD should issue future guidance and provide technical assistance that provides examples of PHA goals provided under 5.152(g)(3) to help PHAs establish goals that are within the PHA's direct control, authority, or discretion.***

HUD can increase PHAs success with goal setting and decrease their need for TA by equipping them with additional examples of policies and actions that PHAs are authorized to adopt and to prioritize to achieve “material positive change” for underserved communities and for protected class groups. To ensure effective action items by PHAs, as opposed to goal-setting that is not committing to meaningful action, the analysis should focus primarily on features of the housing programs that PHAs administer and have control over decision making, with a separate list of actions that require the cooperation or decision of other private, state or local actors. The specific policy areas which all PHAs, their affiliates, and ground lessees should be required to review carefully with robust community input as part of the goal-setting process include: (A) **fair housing marketing** and waiting list maintenance (e.g., efforts to address barriers to reaching underserved communities who are least likely to apply and elimination of first-come, first served policies with discriminatory impact), (B) **tenant screening, selection and assignment** (e.g., proper application of the mixed status rule including with the appropriate affirmative marketing, criminal records policy, content and scope of prior landlord-tenant history and references, rental history, credit history, including prior debts owed to PHAs which can be a bar to Section 8 admission), (C) **admissions and occupancy** (e.g., residency preferences which may discourage applications by nonresidents of protected classes), (D) **emergency and nonemergency transfers**, (E) compliance with obligations under the **Violence Against Women Act**, (F) **reasonable accommodation and modification**, (G) **language access**, (H) **rent setting and payment standards** including **utility allowance calculations** (e.g. whether allowance account for climate change use and medical use), (I) **self-sufficiency or**

**supportive services programs**, (J) **capital improvements or demolition, disposition, conversion** or other repositioning of publicly supported housing and related **relocation**, change in or **restrictions to transfer rights** or immediate access to choice mobility vouchers), (K) **digital or technology equity** (efforts to increase equitable access to online transactions, such as admissions, rent payment, language access needs, unequal access to internet, and needs of older adults), (L) Moving to Work (“**MTW**”) policy flexibilities that impact protected classes (e.g., tiered rents, work requirements, increase in the minimum rent); (M) **grievance and hearing** (e.g., accessibility, consideration of mitigating and totality of circumstances, and separately reasonable accommodation of disability; expanding the circumstances for which a hearing may be sought); (N) **resident file access**, (O) terminations and/or **evictions** (e.g., minimizing the practice of filing serial evictions), (P) **improving Housing Choice Voucher** administration by improving portability; improving inspection times and delays in approval of Request for Tenancy Approval (“**RFTP**”), search times and policy on extensions of search times, payment standards that are too low to reach lower poverty neighborhoods, lack of exception payment standards or Small Area Fair Market Rent, landlord or unit listings predominantly in high poverty neighborhoods, online marketing of available units for voucher which is not equally accessible, reasonable rent determinations resulting in overpayment of landlords in softer markets and underpayment of landlords in higher- demand markets, no or insufficient mobility counseling, lack of information or other barriers to voucher porting; (Q) **lease and notice improvements** including lack of required form lease rider to ensure incorporation of correct tenant rights and protections or notice requirements (e.g., under Rental Assistance Demonstration and VAWA), wide variability in house rules and lease addendum, including guest policy, animal policy, which may incorporate unlawful or onerous terms and is susceptible to disparate enforcement impacts of protected classes; and (R) **safety and security** including police/private security presence and anti-harassment policies based on protected class status (sexual harassment, harassment based on race, national origin, disability, etc.) by staff or other tenants.

## V. Complaint Process

### ***HUD should clarify the compliance procedures and the complaint process.***

We are supportive of the Agency’s commitment to resolving AFFH violations and modeling the complaint process for it after the process used for alleged Sec. 504 and Title VI violations. However, the rule should provide more clarity with regard to timeframes under which the responsible civil rights official (RCRO) will move from informal resolutions of matters to formal resolutions so as to avoid the use of dilatory tactics by participants who are, in fact, violating their AFFH obligations. For example, the rule is clear about the timeframes for effecting compliance under § 5.172 following the issuance of a Letter of Findings. Similar clarity is needed with regard to how long the RCRO should attempt informal resolution and the entry of a Voluntary Compliance Agreement, assurances or special assurances, before moving onto making a finding. HUD should also clarify how this process will work when there is a parallel or joint

complaint filed under the Fair Housing Act for discriminatory treatment or effect. Advocates have already attempted to file such complaints with HUD, even before the proposed rule, and HUD has in practice primarily focused on the Title VI investigation. Both program participants and advocates would benefit from clarity on how multi-jurisdictional complaints alleging AFFH violations, as well as Section 109, ADA, Title VI, 504, or FHA (for discriminatory intent or effect) violations would be handled and their relative time frames. HUD could update [this guidance](#) to provide further clarity. Ideally, HUD should retain all multijurisdictional complaints that include an AFFH violation and not refer the FHA complaint to a substantially equivalent agency, especially where the substantially equivalent agency may be a division of the program participant.

The proposed rule does not specifically include review by HUD of the annual progress evaluations. At a minimum, where a jurisdiction has entered into a Voluntary Compliance Agreement, or agreed to assurances or special assurances, HUD should review the annual progress evaluations to ensure compliance and that no actions are being taken contrary to their agreements or assurances.

Section 5.170(a) provides that a violation occurs when there is an “action that is materially inconsistent with the obligation to affirmatively further fair housing.” But the comment on page 187 (8539) equivocates. It states that “it generally would be insufficient for a complainant to allege that a routine decision made or routine action taken by a program participant does not affirmatively further fair housing” This will create confusion because, a program participant could consider many things “routine” especially if they are a part of a longstanding practice, such as to [delegate zoning decisions to local council members](#), or to [not monitor developers’ promises to create accessible housing](#). HUD should define what is a routine action or decision and what would be examples of material inconsistency that could serve as the basis for a complaint. In defining routine action or decision, it should make clear that any one individual action could be materially inconsistent with AFFH, regardless of how “routine” it is.

Finally, to promote the timely filing of complaints and provide guidance to the public as to what events might result in an extension of time for filing the complaint, the rule should include a non-exclusive list of what constitutes good cause for extension of time for filing a complaint. HUD should however also specify the relief available, including injunctive relief, damages and attorney’s fees.

\* \* \*

Thank you for your consideration of these comments.

Sincerely,

National Housing Law Project  
Bay Area Legal Aid  
Center for Elder Law & Justice  
Center for Law and Social Policy (CLASP)  
Central Alabama Fair Housing Center

Chicago Lawyers' Committee for Civil Rights  
Colorado Poverty Law Project  
Community Change  
Connecticut Legal Services, Inc.  
Disability Rights Advocates  
Disability Rights California  
Disability Rights Education and Defense Fund  
Disability Rights Florida  
Fair Share Housing Center  
Florida Housing Umbrella Group (HUG)  
Florida Legal Services, Inc.  
Greater Boston Legal Services  
Greater Napa Valley Fair Housing Center  
Greater Syracuse Tenants Network  
HOME Line  
Homeless Persons Representation Project  
Housing Assistance Council  
Jacksonville Area Legal Aid  
Legal Aid of Sonoma County  
Legal Aid Society of Palm Beach County  
Legal Services of Greater Miami, Inc.  
Mass Alliance of HUD Tenants  
Massachusetts Law Reform Institute  
Michigan Poverty Law Program  
National Low Income Housing Coalition  
Nebraska Appleseed  
The Network: Advocating Against Domestic Violence  
North American Climate, Conservation and Environment (NACCE)  
Pease Law, APC  
PolicyLink  
Poverty & Race Research Action Council (PRRAC)  
Public Counsel  
The Public Interest Law Project  
Public Justice Center  
Regional Housing Legal Services  
Sacramento Housing Alliance  
Shriver Center on Poverty Law  
Sonoma Valley Collaborative  
Southeastern Ohio Legal Services  
Southern Poverty Law Center  
Texas Appleseed  
Three Rivers Legal Services, Inc.  
334 East 92nd Street Tenant Association  
Washington Lawyers' Committee for Civil Rights and Urban Affairs  
Western Center on Law & Poverty  
William E. Morris Institute for Justice