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March 16, 2020

Submitted via Regulations.gov

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 10276
Washington, D.C. 20410-0500

Re: Docket No. FR-6123-P-02: Affirmatively Furthering Fair Housing (RIN 2577-AA97)

Dear Office of General Counsel:

This comment is submitted on behalf of the National Law Center on Homelessness & Poverty (Law Center) in response to HUD's Proposed Rule, "Affirmatively Furthering Fair Housing," dated January 14, 2020. Located in Washington, DC, the Law Center is the nation's only legal advocacy organization dedicated solely to ending and preventing homelessness using the power of the law, with more than 30 years of experience in policy advocacy, public education, and impact litigation.

The Law Center strongly opposes the adoption of HUD's Proposed Affirmatively Furthering Fair Housing (AFFH) Rule.¹ The proposed changes to HUD's 2015 AFFH Rule (2015 Rule) are inconsistent with HUD's statutory obligation to affirmatively further fair housing.¹ We support the continued implementation of the 2015 Rule because it creates a fair housing planning framework that emphasizes meaningful community participation, requires HUD review, and provides data and maps to better inform fair housing analysis.

In contrast to the 2015 Rule, the proposed regulation is not actually a fair housing rule at all. It conflates affordable housing with fair housing. While our organization strongly supports expanding high-quality affordable housing in our communities, the Proposed Rule would not work to accomplish that important goal, nor the larger goal of promoting access to high-quality housing in neighborhoods of opportunity. Instead, it will effectively eliminate an inclusive fair housing planning process meant to meaningfully address the nation's shameful legacy of residential and neighborhood segregation. HUD should withdraw the Proposed Rule and instead focus on fully implementing the 2015 Rule.

A. The Proposed Rule Ignores Segregation and Paints a Substantially Incomplete Picture Regarding Housing Discrimination within Our Nation’s Communities

We strongly oppose HUD’s proposal to eliminate any discussion or analysis acknowledging the continuing role that residential segregation plays within communities across the country. In fact, the word “segregation” only appears in the Proposed Rule’s preamble description of the 2015 AFFH Rule.

This is concerning not only because residential segregation is incompatible with fairness and justice, but also because it is a driver of the nation’s massive homelessness crisis.¹ A long, inglorious history of housing and zoning policies creating racial and socioeconomic segregation has led to concentrated poverty and impoverished social networks among people of color, which in turn increases risk of homelessness because they have fewer resources to draw upon when their housing is threatened.² Today, 70% of poor Blacks and 63% of poor Hispanics live in high-poverty communities as compared with only 35% of poor Whites.³ Black people are also 24% less likely to live in safe, adequate housing than White people.⁴ Hispanic people are 12% less likely.⁵

Moreover, discriminatory tenant screening, real estate, and lending practices leave people of color with fewer replacement housing options once other housing is lost. According to HUD’s own data, people of color are shown fewer rental units and are more often denied leases based on credit history compared to White people.⁶ Black and Hispanic renters are also quoted higher rental prices than White renters and told less frequently that deposits and other move-in costs can be negotiated.⁷ With fewer options, people of color are also more likely to have worse housing and to pay more for it.

This leads directly to grossly disproportionate rates of homelessness among people of color, even when controlling for poverty.⁸ According to HUD’s own data, Black people make up 40% of the homeless population,⁹ yet they comprise only 13% of the general population. Latinx, Native American, and Pacific Islander rates of homelessness are also disproportionately high.¹⁰ In total, people of color constitute over 60% of the nation’s homeless population even though they make up only a third of the general U.S. population.

People experiencing homelessness are also significantly more likely to have disabilities compared to either the U.S. population or individuals living in poverty.¹¹ One in 85 adults with disabilities experienced sheltered homelessness compared to one in 344 adults without

¹ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

² JEFFREY OLIVET ET AL., CENTER FOR SOCIAL INNOVATION, SUPPORTING PARTNERSHIPS FOR ANTI-RACIST COMMUNITIES: PHASE ONE STUDY FINDINGS 12 (2018), <https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf>.

³ JT. CTR. FOR HOUS. STUDIES OF HARVARD UNIV., THE STATE OF THE NATION’S HOUSING 1, 27 (2019), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf

⁴ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS (2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

⁵ Id.

⁶ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

⁷ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS (2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

⁸ See George R. Carter III, From Exclusion to Destitution: Race, Affordable Housing, and Homelessness, 13 CITYSCAPE 33 (2011), https://www.huduser.gov/portal/periodicals/cityscape/vol13num1/Cityscape_March2011_from_exclusion.pdf.

⁹ U.S. DEP’T OF HOUS. & URBAN DEV., THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS (2019), <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf>.

¹⁰ Id.

¹¹ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOMELESSNESS IN AMERICA: FOCUS ON INDIVIDUAL ADULTS 6 (2018), https://www.usich.gov/resources/uploads/asset_library/HIA_Individual_Adults.pdf

disabilities.¹² Among adults in families with children in shelters, nearly 22% have a disability. Disability rates are also 8% higher among children and youth experiencing homelessness compared to their peers. While people with disabilities may qualify for certain income supports, they often face challenges when applying for them, and they have fewer accessible housing options.¹³ Moreover, federal law requires that people with disabilities are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with non-disabled people to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. Yet, the Proposed Rule removes the concepts and the definitions of integration and segregation for people with disabilities. They would no longer be required considerations in fair housing planning.

Furthermore, the “inherent barriers” to fair housing choice included in the AFFH certification only explicitly mention one protected class – persons with disabilities¹⁴--but make no further attempt to directly connect disparities in access to housing opportunities with longstanding patterns of segregation and discrimination against other protected classes, such as people of color.

The Proposed Rule will not affirmatively furthering fair housing. In *N.A.A.C.P. v. Secretary of HUD*, the court noted that the Fair Housing Act's legislative history “suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to *assist in ending discrimination and segregation*, to the point where the supply of genuinely open housing increases.”¹⁵ In order to assist in ending discrimination and segregation, HUD must first acknowledge the role that discriminatory policies and practices have historically played, and continue to play, in our nation's communities, and affirmatively right those wrongs.

The Proposed Rule does the opposite, as it would allow a program participant to complete its AFFH certification without addressing (or even mentioning) the impact of housing segregation in a jurisdiction or region, and without demonstrating that its supply of affordable housing is not concentrated in segregated neighborhoods suffering from underinvestment and fewer high-quality options for work, school, and services.

B. The Proposed Rule Eliminates Important Opportunities for Specific Community Engagement Regarding Fair Housing Issues

We strongly oppose HUD's proposed elimination of public engagement that specifically focuses on fair housing issues. Strong community participation ensures that program participants' resulting analysis and goals reflect the input of local stakeholders, including residents who are members of protected classes. As HUD itself states in the *AFFH Rule Guidebook*, “Community participation can have many benefits, including cost-effectiveness, instilling ownership and support of fair housing planning in the broader community, and building trust and relationships throughout the community.”¹⁶ However, those benefits are essentially ignored by HUD in its Proposed Rule.

¹² Id.

¹³ Housing and Homelessness as a Public Health Issue, AM. PUB. HEALTH ASS'N (2017), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>

¹⁴ See e.g., Proposed 24 C.F.R. § 91.225(a)(1)(i)(B) (local jurisdiction certification).

¹⁵ 817 F.2d 149, 155 (1st Cir. 1987) (emphasis added).

¹⁶ HUD, *AFFH Rule Guidebook*, Version 1, at § 3.4 (Dec. 31, 2015).

We support instead the 2015 Rule’s approach to community engagement. Many jurisdictions sought input from homeless service and advocacy organizations in the Community Participation Process required under the 2015 Rule, indicating that the process of public engagement helps to bring homelessness into the broader conversation regarding fair housing.

C. HUD’s Approach Declares Local Protections as Inherent Fair Housing Barriers without Explanation or Local Context

In addition to opposing the Proposed Rule’s approach to goal-setting generally, we also strongly oppose HUD’s proposal to designate -- without explanation or context -- certain locally adopted resident protections as “inherent barriers to fair housing choice.”¹⁷ Among these “inherent barriers” are “certain types of rent control.”¹⁸ Rent control laws help to stabilize the cost of housing and prevent the displacement of communities of color and/or persons with disabilities from high quality neighborhoods. They also help to prevent homelessness.¹⁹

In gentrifying neighborhoods, rental housing can quickly become unaffordable to people who live there.²⁰ Research shows that increases in rent result in increased homelessness.²¹ Rent control, conversely, provides tenants with housing stability.²²

We reject HUD’s approach of designating locally adopted resident protections as “inherent” barriers to fair housing choice. Instead, HUD should continue implementing the 2015 AFFH Rule, which takes the general approach of examining fair housing issues, contributing factors, and fair housing goals within local context and with the benefit of strong local community engagement.

D. Conclusion

We support HUD’s 2015 Rule and strongly oppose HUD’s Proposed Rule. The federal government has a critical role and a duty to advance fair housing choice. HUD must ensure that meaningful fair housing analysis, informed by data and community participation, as well as the goal-setting resulting from that analysis, continues.

If you have any questions, please contact Tristia Bauman at tbaum@nlchp.org or at 202-638-2535.

Sincerely,

Tristia Bauman
Senior Attorney
National Law Center on Homelessness & Poverty

¹⁷ See e.g., Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions).

¹⁸ Proposed 24 C.F.R. § 91.225(a)(1)(i) (local jurisdictions). Regulations for states and consortia use the language “rent controls.” Proposed 24 C.F.R. § 91.325(a)(1)(i)(I) (states); Proposed 24 C.F.R. § 91.425(a)(1)(i)(A)(9) (consortia).

¹⁹ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 17 (2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

²⁰ Id.

²¹ CHRIS GLYNN & EMILY B. FOX, DYNAMICS OF HOMELESSNESS IN URBAN AMERICA 1 (July 28, 2017).

²² NAT’L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 17 (2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

