October XX, 2018

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
431 Seventh Street SW, Room 10276
Washington, DC 20410-0500

RE: Docket Number FR-6123-A-01, Affirmatively Furthering Fair Housing: Streamlining and Enhancements

To Whom It May Concern:

DESCRIBE YOUR ORGANIZATION HERE. Over the past four years, NAME OF ORGANIZATION has strongly supported HUD's efforts in implementing the AFFH rule and its ultimate goal of ensuring that all have access to decent, safe and affordable housing in strong and healthy communities.

**General Comments**

Before providing our comments to the proposed rule, we want to emphasize our opposition to amending the current rule. As practitioners, we understand that completing the initial Assessments of Fair Housing (AFH) was time consuming for some program participants and required revisions in some cases and we appreciate HUD's desire to implement an efficient and impactful process. However, HUD should note that creating positive, lasting results requires analysis and engagement with the community. This process is essential to ensure that all people have access to housing and opportunity and that HUD fulfill its statutory responsibilities. The existing AFFH regulations (Final Rule) provide a clear framework for program participants to assess the fair housing landscape in their jurisdiction. Rather than rework an entire rule based on early experiences with the tool implementing the rule, we strongly encourage HUD to solicit feedback from jurisdictions that have completed the process and use that feedback to update the tool. HUD should pilot new approaches with select groups of program participants, some of whom are continuing to use the data and process to inform their planning efforts.

This year marks the 50th anniversary of the passage of the Fair Housing Act of 1968 (the Act). The Act is responsible for the elimination of many discriminatory housing practices, which historically impeded housing and economic opportunities for racial, ethnic, and religious minorities, women, and others. While the Act has provided important legal protections against blatant discriminatory practices, there is still hard work to be done to achieve its full potential to provide access and opportunity where decades of policy and practice have restricted it. Full implementation of the Act is not only HUD's statutory duty, but is essential to create vibrant communities that offer opportunities for all people.

It is important to understand why HUD spent several years creating a new AFFH rule. As HUD itself notes in the Final Rule, the past approach to AFFH, the Analyses of Impediments (AIs), was not effective since HUD did not provide sufficient guidance, data, and generally did not

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enforce compliance. A 2010 U.S. Government Accountability Office (GAO) report also found a lack of compliance with the affirmatively furthering fair housing requirements and recommended that HUD, through regulation, "require grantees to update their AIs periodically, follow a specific format, and submit them for review."[1] The Final Rule and its associated tool follow these recommendations by 1) creating a structured format through which grantees must present their activities listed above through the AFH, 2) providing data through which they can identify impediments, plan evidence-based actions, and measure their progress, and 3) setting a transparent process through which AFHs are updated and assessed. As a mission-driven practitioner which often navigates regulatory compliance at the federal, state, and local levels, we find the level of transparency included in the Final Rule extremely helpful and believe it allows for sufficient local autonomy. Furthermore, our experience has taught us that government works best when it is grounded upon concrete data and standardized criteria in assessing regulatory compliance.

As noted in the ANPR, the rule was published three years ago, but HUD never published all of the assessment tools required to implement it. Fifteen months of data from submissions is insufficient to determine if the tools are effective. Rather than undertaking the time consuming and equally uncertain process of rulemaking, HUD should draw upon the significant input on the Final Rule and the tools to make revisions, as necessary, to the tools and guidance using the existing flexibility of the rule.

The ANPR asserts that the current regulations are ineffective in addressing the lack of affordable housing supply. We agree that a lack of housing supply has adverse impacts on the Fair Housing Act's protected classes; however, the lack of adequate supply is not a failure of the Final Rule. First, the rule has not been in effect long enough to make any reasonable assessment of its impact on supply. Further, the lack of supply across the country is a result of many factors including rising land and construction costs, a shortage of construction labor, and inadequate federal, state, and local subsidies to bridge the gaps between incomes and rents—challenges that exist outside the scope of the Act. Other factors, including local regulation and zoning that prohibits affordable housing in high opportunity areas or discriminatory practices that prevent investment in distressed neighborhoods are identified in the Final Rule and can be addressed through a meaningful AFFH process, but will take longer to show results. We therefore encourage HUD to consider how additional AFH guidance and technical assistance can be used, as one part of a comprehensive approach, to increase the supply of affordable housing in communities across the country.

Finally, we are concerned by the ANPR's mischaracterization of the findings of the "Moving to Opportunity" research by stating that the benefits on deconcentrating poverty are likely limited to certain age and demographic groups. One of the cited paper's coauthors, Dr. Lawrence Katz notes that "Overall, the research shows that deconcentrating poverty is likely to greatly improve the health and well-being of low-income families and to have long-run economic and educational

[1] U.S. Gen. Accounting Office, Highlights of GAO-10-905, HOUSING AND COMMUNITY GRANT: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans. September 2010

benefits for the children of low-income families."[2] The research found that every year spent in a low poverty neighborhood appears to be beneficial. Earlier analysis of the same data found that adults moving to better neighborhoods experience improved physical and mental health. Moving families to higher opportunity neighborhoods has significant demonstrated long-term effects that should not be discounted. It is HUD's obligation, as the agency charged with enforcing the duty to affirmatively further fair housing, to encourage program participants to evaluate whether conditions in their communities restrict protected classes of people from the opportunities and outcomes that access to low poverty communities would provide. The Final Rule provides a framework for that analysis, but does not prescribe a particular strategy. While scaling mobility initiatives will be challenging, there is broad bipartisan support for such initiatives and thoughtful local analysis could help shape well informed future policy.

**Specific Comments**

1. ***What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?***

Community participation is a critical component of the AFH process. How program participants engage members of their community, as well as how those views are eventually represented or reported in the AFH, substantially impacts a community's ability to overcome impediments to fair housing. Under the Final Rule, community participation and consultation must occur in the development of the AFH prior to formulating the Consolidated Plan, as the AFH must inform and be incorporated into these subsequent planning processes. We believe the current process should be maintained since it allows the AFH process to meaningfully inform the Consolidated Plan. In addition, we believe this ultimately minimizes public burden since it spreads out the work for participants.

If AFFH public participation requirements are ultimately included as part of the Consolidated Plan process, HUD will need to overhaul that process to ensure meaningful engagement on issues specifically related to AFFH. To achieve this, HUD will need to adjustment Consolidated Plan timelines and provide guidance and resources for communities.

2. ***How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should***

[2]Henry Grabar, ***Ben Carson Ends Obama Era Efforts to End Segregation,*** https://slate.com/business/2018/08/ben-carson-ends-obama-era-efforts-to-reduce-housing-segregation.html (August 13, 2018)

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***jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?***

A strictly qualitative approach to fair housing will not affirmatively further fair housing in communities where decades of policy and practice have shaped the local housing market and infrastructure. In order to effectively carry out their statutory duty to affirmatively further fair housing, HUD and program participants must take an evidence-based approach. As pointed out in the 2010 GAO report, HUD's previous approach was less data driven, had limited use as an effective fair housing planning tool, and did little to hold jurisdictions accountable to meeting their AFFH duties. A standardized dataset has three distinct benefits: 1) it provides participants with a fairer and less burdensome method of assessing their fair housing impediments and progress; 2) it lessens HUD's burden when undertaking compliance activities, ultimately allowing the Department to devote more of its limited capacity to technical assistance; and 3) it creates a more level playing field for participants serving rural areas, which are less likely to have access to local or external datasets. While a standard dataset should be available to all communities, program participants also should be permitted to utilize alternate data sources when more current data or data better reflective of the program participant's service area is available. In all circumstances, program participants should be permitted to complement quantitative data with their own data and qualitative evidence. HUD should provide guidance and instructions on the types of local information that may be useful, such as planned redevelopments, new employers that will invest in communities, and other forward looking or contextual factors.

We share concerns previously expressed by program participants and the associations that represent them that the prior assessment tools instructed program participants to identify causation between fair housing issues and contributing factors. In many cases, there are correlations, but the multi-dimensional nature of communities generally precludes identifying causation with the data available. We encourage HUD to pose open ended questions that encourage a well-rounded analysis and that does not invite inferences based on only specific factors. This could be accomplished through changes to the tools or instructions and does not require amendment of the rule.

3. ***How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERs), or utilize an alternative structure?***

We believe the Final Rule strikes an important balance between program participant burden and local accountability by mandating the AFH occur every five years with annual progress reported

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through the Consolidated Annual Performance and Evaluation Report (CAPER). We have seen how quickly neighborhood characteristics can change and we have seen how difficult it can be to reverse destructive patterns of displacement and deterioration once they have begun. Reporting annually on AFH goals ensures that program participants are paying attention to these trends and that they are taking active measures to address them through place-based investment and the preservation of affordable housing.

4. ***Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?***

The four areas for analysis identified in the rule provide an appropriate framework for identifying fair housing issues. The definition of Fair Housing Issues in 24 CFR 5.152 is not exclusive to those four areas. The rule leaves room for program participants to identify conditions that "restrict fair housing choice or access to opportunity," including, but not limited to 1) integration and segregation patterns and trends; 2) racially or ethnically concentrated areas of poverty; 3) significant disparities in access to opportunity; and 4) disproportionate housing needs. The rule appropriately does NOT preclude the identification of other fair housing issues and allows participants to identify contributing factors before developing goals and strategies. Given the localized and complex nature of these issues, HUD should provide program participants guidance on the types of issues and contributing factors to consider, but should allow flexibility in the number of issues identified and goals and strategies pursued. While in some cases, communities may choose to focus on particular conditions that restrict fair housing, a single initiative or a status quo approach should not be acceptable.

HUD should encourage regional collaboration by considering how the process can be streamlined for regional entities to avoid duplicative community engagement sessions and allow for data analysis that is appropriately tailored to the geography of the collaboration. Additional flexibility in the use of funding or in aligning deadlines for compliance may also be helpful.

5. ***How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?***

Because the impediments to fair housing, resources to address them, and organizational capacity of jurisdictions vary widely across the country, HUD should defer to local communities in establishing objectives to address obstacles to fair housing and associated metrics and milestones for measuring progress, provided that (i) these goals are justified by both quantitative data and

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qualitative community input; (ii) that the community is making consistent efforts towards their goals; and (iii) the community is measuring and assessing progress towards goals.

6. ***How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?***

HUD can help ensure the highest level of program participant performance by providing clear guidance, standardized and easy to use data, technical assistance, and strong compliance incentives. By providing uniform data and comprehensible direction as a starting point for program participants, HUD can free up its staff and resources to provide technical assistance to help program participants assess fair housing in their communities and design well-tailored, impactful goals. We believe that HUD should proactively provide technical assistance to any program participant struggling to meet their requirements before enforcing compliance sanctions. This should be easier for HUD to do under the current Final Rule since the Department is able to ascertain annual progress, which was not the case under the previous AI process. Our organizations also encourage HUD to seek opportunities to incentivize communities to strive to further fair housing in addition to focusing on timely and consistent enforcement using available tools.

7. ***Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., ''safe harbors''), and if so, what should they be?***

We do not believe the rule should incorporate safe harbors because HUD is not in a position to define all exemptions and since this may hinder HUD's statutory responsibility to enforce the Fair Housing Act. The complexity of local and environmental factors that may impact the fair housing landscape in a given community mean that each program participant should evaluate their quantitative and qualitative factors rather than reverting to safe harbors that may be insufficiently tailored to their community. However, as noted in the ANPR, a lack of affordable housing supply is a significant challenge for many communities and disproportionately impacts protected classes under the Fair Housing Act. In recognition of the need to preserve scarce affordable rental units, we recommend that HUD issue subregulatory guidance that the preservation of affordable rental homes that benefit from state or federal rental assistance or subject to state or federal use restrictions should be deemed consistent with the duty to affirmatively further fair housing. The rule must maintain the current balanced approach to fair housing in which the preservation of existing affordable housing and reinvestment in distressed or gentrifying neighborhoods are considered as valid strategies equal to mobility and moving to high opportunity areas, as the current AFFH rule does.

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We have worked extensively with local governments and organizations across the country that are making concerted efforts to invest public funds in communities that have experienced disinvestment and neglect. These areas often include concentrations of racial or ethnic groups and have disproportionately high poverty rates, but we firmly believe that these targeted investments are a critical tool to improve housing options and quality of life for families and individuals living in these communities. In other cases, we have saved housing occupied by minorities at risk of being converted to market rate by increasing market pressures. Jurisdictions must feel empowered to both revitalize distressed areas as well as to promote and preserve housing in areas of high opportunity.

We would be happy to provide additional information on our comments.

Sincerely,

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