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February 22, 2024

The Honorable Secretary Marcia Fudge
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Dear Secretary Fudge,

On behalf of The Leadership Conference on Civil and Human Rights' Fair Housing and Lending Task Force, we write to share our 2024 priorities for the U.S. Department of Housing and Urban Development (HUD). We applaud the steps that HUD has taken in the last three years to advance fair housing opportunities and create strong, sustainable, inclusive communities and quality affordable homes for all, including by reinstating HUD's discriminatory effects rule and investing in fair housing enforcement. We were also pleased to see the Administration's commitment to address housing insecurity, particularly for marginalized communities, as articulated in the Blueprint for a Renters Bill of Rights.¹ In the next several months, we urge HUD to continue this important work by finalizing additional rules and guidance in key areas, including: affirmatively furthering fair housing (AFFH); criminal history eligibility restrictions; tenant screening; Section 8 Management Assessment Program; source of income discrimination; implementation of the Violence Against Women Act (VAWA); and enhanced voucher protections. While the list that follows does not reflect all of the priorities of our member organizations, it highlights issues that are at the top of the coalition's agenda.

I. Affirmatively Furthering Fair Housing

We applaud HUD on the steps that it has taken to finalize a new AFFH rule. The proposed rule applies lessons learned from the implementation of the Obama Administration's 2015 AFFH rule and positions both HUD and its grantees to realize the Fair Housing Act's (FHA) promise of inclusive communities free from discrimination. Since HUD sent a final rule to the Office of Management and Budget for review before finalization and publication, now is a critical time for the Department to focus its energy and resources on the development of necessary sub-regulatory resources and a plan for the rollout of technical assistance and training.

¹ WHITE HOUSE DOMESTIC POL'Y COUNCIL AND NAT'L ECON. COUNCIL, BLUEPRINT FOR A RENTERS BILL OF RIGHTS (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf> (RENTERS BILL OF RIGHTS).

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In particular, as it did in conjunction with its 1995 and 2015 rules, HUD should develop and disseminate written guidebooks that explain in detail how program participants can engage in effective fair housing planning. Instead of just one guidebook, HUD should recognize the unique contexts in which its different types of program participants operate and draft separate guidebooks for states, local governments, and public housing agencies (PHAs), respectively. These guidebooks can and should have some overlapping content, but recognize that the levels of control and influence that each category of program participant has over different policy domains vary. For instance, a guidebook for PHAs would include greater detail on the ways in which inadequate Housing Choice Voucher payment standards and restrictions on portability can contribute to segregation and limit access to opportunity, while a guidebook for local governments may address those issues at a higher level but include greater depth on how to effectively analyze the role of land use and zoning regulations. These tailored guidebooks will not only be useful to program participants, but also to civil rights, fair housing, and grassroots organizing groups seeking to mobilize residents to engage in the AFFH rule's mandated community participation process for the development of fair housing plans. Residents are more likely to be motivated to engage when they understand what is at stake in the planning process, and the recommendations that they urge their program participants to adopt are more likely to align with the purposes behind the AFFH mandate under those circumstances.

Training and technical assistance will also be essential to the successful rollout of a new AFFH rule. As with the written guidance, we ask that HUD develop training curricula that are tailored to the circumstances of different categories of program participants. Additionally, HUD should consider developing different training curricula for program participants operating at different scales (smaller jurisdictions versus larger ones) and in different contexts (urban versus suburban versus rural). HUD should train program participants (both states and counties) whose analysis includes places where other units of general local government are subrecipients on how to use their authority and influence to ensure that their subrecipients comply with the AFFH mandate.

With respect to technical assistance, HUD should strive to strike an appropriate balance between technical assistance that is oriented towards ensuring that the plans that program participants initially submit are as strong as possible and technical assistance that helps guide program participants to a state of compliance following the initial submission of an unacceptable plan. Achieving this balance may mean a greater frontloading of technical assistance than occurred following publication of the 2015 rule, when some program participants were not able to access substantial technical assistance until their first submissions were passed back by HUD.

HUD should provide training and technical assistance to fair housing organizations, grassroots community organizing groups, and groups that represent individuals and communities with protected characteristics, in addition to program participants. By making those resources available to stakeholders, HUD would reinforce to program participants that community stakeholders are integral to the fair housing planning process and that the Department is serious about its commitment to community participation. It would also likely improve the quantity and quality of community engagement by demystifying what can appear to be a complex and arcane process. With respect to the implementation of the 2015 rule, HUD's training and technical assistance resources were generally not available to community stakeholders, but some

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stakeholders received training and technical assistance through philanthropically-funded initiatives. In places where such resources were available, such as New Orleans and Los Angeles, the community participation process was more successful. HUD should learn from that experience.

In addition, we urge HUD, the Department of Education, and the Department of Transportation to reengage and reissue their 2016 joint guidance letter urging state and local housing, transportation, and education agencies to work together to affirmatively promote fair housing and school integration (<https://www2.ed.gov/documents/press-releases/06032016-dear-colleagues-letter.pdf>). As the lead agency responsible for cross-agency collaboration on AFFH, pursuant to Executive Order 12892, we hope that HUD will redouble its efforts to engage the Secretaries of Transportation and Education in reissuing an expanded joint guidance letter.

We also urge HUD to enter Memorandums of Understanding with other executive agencies responsible for distribution of federal infrastructure funding—such as Treasury, Commerce, Environmental Protection Agency, and Labor—as those agencies also have a responsibility to ensure AFFH is complied with in the implementation of those programs under Executive Orders 12259 and 12892. The Executive Orders require the head of each executive agency to ensure that its programs and activities are administered affirmatively to further the goal of fair housing. “Programs and activities” are those that are funded, operated, administered, or undertaken by the federal government; federal grants; loans; contracts; insurance; guarantees; and federal supervision or exercise of regulatory responsibility.

II. Criminal History Restrictions

HUD should work expeditiously to publish and then finalize a regulation prohibiting overly restrictive criminal record screening in HUD-assisted housing. The proposed rule *Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Accessing or Maintaining HUD-Assisted Housing*, which is now under review at the Office of Management and Budget, may be the basis for that action. It is well-understood that, due to severe and persistent racial disparities in the criminal legal system,² Black, Latinx, and Indigenous households are more likely to be denied housing when landlords impose tenant screening policies that exclude households with members with arrest or conviction records. Additionally, policies that exclude households based on arrest records, which do not establish that an individual has committed an offense, or records of conviction that are old or for minor or irrelevant offenses cannot be justified. Indeed, most studies have found that criminal history is not a good predictor of housing success.³

² See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR BLINDNESS* 4 (2011); ELIZABETH KAI HINTON ET AL., *VERA INST. FOR JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM* (2018), <https://www.vera.org/publications/for-the-record-unjust-burden> (researching the effects of disparate treatment of Black people in the criminal legal system).

³ Rebecca J. Walter, et al., *One Strike to Second Chances: Using Criminal Backgrounds in Admission Decisions for Assisted Housing*, HOUS. POL’Y DEBATE (Apr. 24, 2017), <https://www.nlihc.org/sites/default/files/One-Strike-to-Second-Chances.pdf>. Moreover, because communities of color are disproportionately targeted by police, relying on risk of rearrest as a proxy for whether someone poses a risk to the safety of others could have a disproportionate

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In guidance for HUD-assisted landlords in 2015 and broader guidance in 2016,⁴ HUD took important steps to counteract these pernicious policies, but more action is needed. Notwithstanding HUD’s guidance, many HUD-assisted landlords have continued to apply discriminatory policies. By issuing a rule, HUD would enhance the enforceability of its conclusion that the FHA limits reliance on criminal history exclusions; provide itself with additional tools for obtaining policy changes through compliance review mechanisms, rather than enforcement mechanisms; and strengthen the durability of its recommendations, as rules are more difficult to rescind than guidance.

Access to HUD-assisted housing, in particular, is critical for people with arrest or conviction records as such individuals tend to have extremely low incomes and are often at risk of homelessness. HUD-assisted programs tend to offer the deepest levels of affordability and are therefore a needed part of the safety net. By taking action to eliminate criminal record screening in HUD-assisted housing, consistent with statutory provisions that mandate some limited criminal record screening, HUD could enhance compliance with the FHA and reduce recidivism, prevent homelessness, and strengthen communities.

III. Tenant Screening

Landlords routinely rely on information regarding criminal legal contact, eviction history, and credit history, as well as algorithmically-generated recommendations or scores based on those factors, to evaluate potential tenants.⁵ This data, however, does not provide landlords with accurate or useful information to determine whether a prospective tenant will pay rent on time or create an actionable nuisance. As with prior criminal legal contact,⁶ there is little evidence that eviction history⁷ or credit history⁸ is predictive of whether someone will pay rent or cause an actionable nuisance, and these factors disproportionately exclude people of color from housing. Moreover, the information that tenant screening companies provide on these variables is often inaccurate and incomplete.⁹ Finally, despite tenant screening companies’ claims that they

impact on people of color; Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders*, Psych. Svcs. (Jan. 13, 2015),

<https://ps.psychiatryonline.org/doi/full/10.1176/ps.2009.60.2.224>; CAEL WARREN, SUCCESS IN HOUSING: HOW MUCH DOES CRIMINAL BACKGROUND MATTER? (2019),

https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf.

⁴ U.S. Dep’t of Hous. & Urban Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions 6 (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (hereinafter “2016 Guidance”).

⁵ CHI CHI WU, ET AL., NAT’L CONSUMER LAW CTR., DIGITAL DENIALS: HOW ABUSE, BIAS, AND LACK OF TRANSPARENCY IN TENANT SCREENING HARM RENTERS (2023), <https://www.nclc.org/resources/digital-denials-how-abuse-bias-and-lack-of-transparency-in-tenant-screening-harm-renters/>

⁶ See Section II, *supra*.

⁷ *Id.*

⁸ *Id.* at 56-57; NAT’L CONSUMER LAW CTR., MISSION CREEP: A PRIMER ON USE OF CREDIT REPORTS & SCORES FOR NON-CREDIT PURPOSES 7 (2022),

https://www.nclc.org/images/pdf/credit_reports/Mission_Creep_rpt.pdf (“[T]here are no quantitative or scientific studies showing that credit reports and scores accurately predict a successful tenancy.”).

⁹ CHI CHI WU, ET AL., *supra* note 5.

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can predict tenant outcomes, algorithmically-generated eligibility assessments are frequently generated using biased, inaccurate, and incomplete data.¹⁰

We were pleased to see that President Biden’s Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence encourages HUD to issue additional guidance that addresses “the use of tenant screening systems in ways that may violate the Fair Housing Act (Public Law 90-284), the Fair Credit Reporting Act (Public Law 91-508), or other relevant Federal laws, including how the use of data, such as criminal records, eviction records, and credit information, can lead to discriminatory outcomes in violation of Federal law.”¹¹

We urge HUD to swiftly finalize strong guidance that clearly states that both tenant screening companies and landlords must comply with the FHA by ensuring that tenant screening reports and any algorithms they rely on do not disproportionately exclude people of color from housing opportunities and prohibiting reliance on criminal legal contact, eviction history, or credit history. We hope that HUD will also provide concrete guidance and best practices to tenant screening companies and landlords on the steps they should take to identify and eliminate algorithmic bias.

IV. Section 8 Management Assessment Program (SEMAP)

The annual SEMAP assessment is HUD’s most important accountability tool for PHAs that administer Housing Choice Vouchers, and, like all other HUD accountability systems, SEMAP must be aligned with HUD’s AFFH mandate. Based on the listening sessions held by HUD last year, we understand that HUD is finally considering in the revised SEMAP rule: a) progress in reducing voucher concentration (the proportion of families living in higher poverty neighborhoods) and b) progress in increasing the proportion of families who are able to access lower poverty neighborhoods, as *mandatory* factors in grading PHA performance. These new measures are particularly important for programs located in metropolitan areas, where racial and economic segregation are often recognizable characteristics of the voucher program, and where voucher holders often struggle to use their vouchers to rent apartments in high-opportunity neighborhoods. Accountability for locational outcomes is crucial, especially for PHAs that take little responsibility for their fair housing obligations and continue, year after year, with policies and practices that steer families to high poverty, segregated neighborhoods. Recent research has [confirmed](#) the long-term benefits for families who move from higher to lower poverty neighborhoods, and that many families [choose](#) to make these moves. We recognize that metropolitan PHAs have different areas of operations and different regional contexts. However, these differences should not matter if PHAs are measured on their annual

¹⁰ CONSUMER FINANCIAL PROTECTION BUREAU, TENANT BACKGROUND CHECKS MARKET 19 (2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf (hereinafter TENANT BACKGROUND CHECKS MARKET); Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

¹¹ Executive Order 14110, Section 7.3(c), “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,” 88 Fed. Reg. 75191 (Nov. 1, 2023), <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

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progress in helping families access lower poverty, often higher-opportunity neighborhoods, with significant scoring that provides real incentives. SEMAP is a crucial accountability mechanism to encourage PHAs to provide these opportunities.

V. Source of Income Discrimination

Discrimination against families with Housing Choice Vouchers continues to be a pervasive barrier to opportunity, even in areas with source of income discrimination (SOID) laws on the books. Source of income discrimination undermines the effectiveness of HUD's largest housing program, and prevents families with vouchers from accessing lower poverty, less segregated communities. Almost 60% of families with vouchers live in areas with SOID laws, and yet local PHAs have done little to assist families who face this type of discrimination. We commend HUD for its recent action to permit state Fair Housing Assistance Program (FHAP) agencies to use FHAP funds for investigation, testing and prosecution of state and local SOID laws pursuant to HUD's AFFH authority, and its earlier action granting local FHAP agencies the same flexibility. We also [urge](#) HUD to issue guidance to PHAs on how to best support families who experience source of income discrimination, and general guidance on the discriminatory effect of minimum income requirements and credit checks in the context of the voucher program, where the lion's share of the rent is generally paid by the PHA. HUD should also provide guidance to PHAs and landlords of federally assisted properties laying out in clear terms that voucher discrimination may be a violation of the Fair Housing Act under the disparate impact doctrine. Finally, HUD should utilize its Secretary-initiated complaint authority to pursue disparate impact claims against rental companies that refuse voucher holders and pursue strong remedial settlement terms.

VI. Violence Against Women Act and Survivor Housing Protections

We sincerely appreciate HUD's dedication to implementing the Violence Against Women Act of 2022 (VAWA 2022) and the guidance issued over the last year. We also appreciate HUD's Office of Fair Housing and Equal Opportunity for quickly developing a plan to investigate, conciliate, and enforce alleged VAWA violations under its administrative complaint process. In conjunction with HUD's forthcoming notice of proposed rulemaking for VAWA 2022, we urge HUD to issue rulemaking or guidance concerning VAWA emergency transfers, family break-up, and the rights of survivors who have not been permitted to legally reside in a VAWA covered home.

- Emergency Transfers: Currently, due to current HUD policies, survivors are trapped in unsafe housing and only prioritized for moving within their immediate property. Such a policy traps survivors and forces them to endure more violence and trauma. HUD has also been obligated since the 2013 reauthorization to evaluate the use of Housing Choice Vouchers for emergency transfers but has failed to do so.
- Family Break-Up: HUD has either not issued a family break up policy for each covered housing program or created policies that do not meet survivor housing needs. Currently, survivors may be

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forced to live in the same unit as the person accused of harming them, even after reporting the violence and asking for the person to be removed from the lease and unit.

- Rights of Survivors: HUD has also failed to implement the Justice For All Act, which clarifies that survivors who are not named on the lease, often due to the violence, can still access VAWA protections. Currently, covered housing providers are claiming survivors not named on a lease are unauthorized occupants and evicting them.

We urge HUD to address these gaps in conjunction with its forthcoming rulemaking process.

As part of its forthcoming rulemaking process, HUD should also address Section 603 of the 2022 VAWA reauthorization, which protects the right of landlords, homeowners, tenants, residents, occupants, guests, and applicants to report crime or seek emergency assistance and not be penalized based upon their requests for assistance, or based upon a crime where they are the victim or otherwise not at fault. Section 603 is not limited to protecting VAWA survivors and was included to address the growing number of local governments who have crime-free or nuisance property programs or ordinances. As of October 1, 2022, local and state governments receiving Community Development Block Grant (“CDBG”) funding must not engage in any practices that violate Section 603. However, HUD must promulgate regulations to ensure that state and local governments receiving CDBG funding review their laws and policies and report that their laws and policies do not interfere with the rights guaranteed under Section 603.

Finally, in 2011, HUD issued groundbreaking guidance when it issued “Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act.” The guidance could benefit from a supplemental update that would include all survivor groups, including survivors of sexual assault, human trafficking, dating violence, and stalking. This updated guidance should also include important case law updates and further consideration of intersectional claims.

VII. Enhanced Voucher Protections

At the start of the Biden administration, a group of fair housing and civil rights advocates met with HUD to discuss the need for HUD to finalize Enhanced Voucher program regulations that have been pending since 2017. Enhanced Vouchers are an important fair housing tool intended to prevent displacement of low-income tenants from opportunity and gentrifying communities, the majority of whom are families with children, persons with disabilities, and/or Black or Latino households. Enhanced Vouchers protect tenants who live in certain assisted properties, including when Project-Based Rental Assistance (“PBRA”) owners exit the program. A 2018 HUD report found that properties most at risk of owners exiting their PBRA

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contracts are properties in higher opportunity and/or gentrifying communities.¹² Thus, the use of an Enhanced Voucher is typically the only way for assisted families to continue to live in their community.

HUD must finalize the Enhanced Voucher regulations and ensure that they honor the statutory right of tenants with Enhanced Vouchers to remain in their original housing, which means that tenants will not be displaced from what are typically high opportunity and/or gentrifying communities. The failure to honor an Enhanced Voucher tenant's statutory right to remain creates a serious fair housing impediment and is not consistent with HUD's civil rights obligations. We therefore ask that HUD finalize this rule and ensure that owners accept Enhanced Vouchers and that tenants can only be evicted or their leases not renewed for a tenant's breach of the lease.

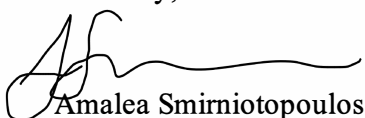
VIII. Simplify the Funding Mechanism for the Fair Housing Initiative Program's Private Enforcement Initiative (PEI)

HUD must convert FHIP's PEI Component from a competitive grant process to a fixed price award process. This conversion will simplify the funding mechanism for the PEI program to improve efficiencies in the PEI program; lessen demands on HUD's Fair Housing and Equal Opportunity staff; improve program oversight and monitoring; reduce the burden on and improve performance of fair housing organizations; provide more quality, consistent, and enhanced fair housing services in communities throughout the nation; improve services to people who have experienced discrimination, better prevent discrimination from occurring; and produce enhanced programmatic results.

IX. Conclusion

Thank you again for HUD's efforts to date to advance HUD's vital mission. If finalized and implemented, we believe that these rules and guidance will help HUD further address housing discrimination and create greater opportunities for all. If you have any questions, please contact Amalea Smirniotopoulos, Co-Chair of the Leadership Conference on Civil and Human Rights' the Fair Housing/Fair Lending Task Force, at amalea.smirniotopoulos@naacpldf.org.

Sincerely,



Amalea Smirniotopoulos
Co-Chair
Fair Housing and Lending Task Force



Nikitra Bailey
Co-Chair
Fair Housing and Lending Task Force

¹² 2021 Picture of Preservation: A joint report of the Public and Affordable Housing and Research Corporation and the National Low-Income Housing Coalition, (Oct. 2021) https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD_2021Report.pdf

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Center for Responsible Lending
Justice in Aging
The Leadership Conference on Civil and Human Rights
Lawyers' Committee for Civil Rights Under Law
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National Consumer Law Center (on behalf of its low-income clients)
National Disability Rights Network
National Fair Housing Alliance
National Housing Law Project
National Low Income Housing Coalition
PolicyLink
Poverty & Race Research Action Council
Prosperity Now
Southern Poverty Law Center Action Fund