**AFFH SAMPLE COMMENT LETTER**

[Note to advocates: In the draft below, except for references to your organization’s name, etc. the text in brackets, italics, and arial font is there for your background – it can (and should) be deleted from your actual comment letter.]

Regulations Division

Office of General Counsel

Department of Housing and Urban Development

451 7th Street SW

Room 10276

Washington, DC 20410-0500

Via regulations.gov [<https://www.regulations.gov/commenton/HUD-2023-0009-0001>]

[*Date*]

Re: Docket No. FR–6250–P–01, Affirmatively Furthering Fair Housing

[*Short paragraph describing your organization*]

[*Your organization*] supports the proposed regulations to implement the obligation to affirmatively further fair housing (AFFH) from “Title VIII of the Civil Rights Act of 1968,” also known as the “Fair Housing Act.” We consider the proposed rule an improvement of the 2015 AFFH rule. It is imperative that HUD issue effective regulations to finally implement the Fair Housing Act’s requirement to ensure that all federal agencies administer their programs relating to housing and community development in a manner that affirmatively furthers fair housing.

[*Very brief description of your organization and perhaps why AFFH matters to your organization’s work*.]

[*Your organization*] applauds the many proposed regulatory provisions. We highlight six for particular attention:

* **Enhanced community engagement provisions.** We are very pleased that the proposed rule requires program participants [*that is the name in the rule for state and local governments as well as public housing agencies*] to hold at least three public “meetings” during the development of a fair housing Equity Plan, plus two more public meetings each year to obtain public input regarding a program participant’s progress toward meeting its fair housing goals from the previous year. We appreciate use of “meetings” instead of “hearings” because meetings, being less formal and more flexible than official hearings, should enable greater participation by people the Fair Housing Act intends to serve, the “protected classes.” [*The FHA protected classes are race, color, national origin, sex, disability, familial status (in other words households with children), and religion*.] As urged by advocates, these meetings must be held at “various accessible locations and at different times to ensure” protected class groups, and in particular “underserved communities,” have greater opportunities for input. The introduction of “underserved communities” is welcome because it helps to refine segments of people in the protected classes who often most encounter fair housing obstacles, such as people experiencing homelessness, people with criminal records, survivors of domestic violence, and people in the LGBTQI+ community.
* **Greater public transparency.** We endorse requiring HUD to post on a HUD-maintained website, submitted Equity Plans, Annual Progress Evaluations, and relevant communications between HUD and program participants. We are pleased that once an Equity Plan is submitted to HUD for review, the public would be able to directly provide HUD information concerning whether an Equity Plan was developed in compliance with the community engagement provisions and other AFFH rule requirements.
* **Public complaint process.** We are very pleased that the rule would enable the public to directly submit complaints to HUD regarding allegations that a program participant is failing to comply with the AFFH regulations and that HUD would be obliged to process complaints and open a compliance review if warranted.
* **A stronger link between Equity Plan goals and Consolidated Plans and PHA Plans.** More directly requiring an Equity Plan’s fair housing goals to be incorporated in ConPlans and PHA Plans will better ensure that a program participant’s programs, activities, and services, along with HUD and other federal, state, and local funds used to implement them, are consistent with the obligation to affirmatively furthering fair housing.
* **An annual evaluation of progress toward achieving fair housing goals.** Requiring at least two annual meetings to obtain public input regarding a program participant’s performance toward achieving its fair housing goals can foster any necessary corrections in the upcoming year.
* **Clarification and emphasis on the need for a balanced approach to AFFH.** It is important that a program participant use a combination of place-based and mobility strategies and actions, such as preserving existing affordable housing in racially or ethnically concentrated areas of poverty, while also initiating policies that remove barriers (such as zoning ordinances) preventing people from obtaining affordable housing in well-resourced neighborhoods.

Even though [*Your organization*] is generally pleased with the proposed rule, we have concerns and suggestions we urge HUD to seriously consider that will strengthen a final rule.

* **Community Engagement**

[*The following, and other font like this, is background for advocates:* *The proposed rule calls for three stages in developing a program participant’s Equity Plan: identifying fair housing issues, prioritizing fair housing issues, and setting fair housing goals. The rule also calls for community engagement to inform those three stages. However, there is no direction tying a specific public engagement process to a given stage; the rule merely requires at least three public meetings during the development of an Equity Plan. Without further direction, a program participant could simply have three meetings to identify fair housing issues. Although the public can offer new information to HUD while it is reviewing an Equity Plan, the scope of information HUD will consider is limited. The public ought to be able to review and comment on a draft Equity Plan before it is sent to HUD for review.*]

We urge HUD to add specific language requiring at least four stages of community engagement meetings prior to and during the development of an Equity Plan: (1) identifying fair housing issues, (2) establishing which fair housing issues to prioritize, (3) establishing fair housing goals, and (4) commenting on a draft Equity Plan before its submission to HUD.

[*The proposed rule would allow a program participant to combine the community engagement provisions of the AFFH rule with the citizen participation provisions of the Consolidated Plan (ConPlan) regulations and the resident and public participation provisions of the PHA Plan regulations. However, there is an irreconcilable incompatibility between the improved AFFH community engagement provisions and the far more limited ConPlan and PHA Plan rules*.]

[*Your organization*] strongly urges HUD to eliminate all provisions allowing AFFH community engagement to be combined with ConPlan and PHA Plan participation. The AFFH community engagement requirements must be separate from and in addition to the ConPlan and the PHA Plan public participation provisions.

[*Your organization*] suggests that the regulation include as an acceptable meeting format, hybrid meetings that provide virtual engagement as long as there is concurrent in-person engagement. This may enable more protected class and underserved community people to engage, those with childcare or eldercare responsibilities, with a disability that makes attending in-person meetings difficult, and those who lack affordable or reliable transportation.

* **Greater Public Transparency**

The rule should require program participants to post on their own website, draft Equity Plans, submitted Equity Plans, Annual Progress Evaluations, and key communications between HUD and a program participant.

* **Annual Progress Evaluation**

The rule should enable the public to raise progress concerns directly with HUD. Communications between HUD and a program participant regarding a reviewed Annual Progress Evaluation should be posted on HUD’s website.

* **Timeframe for Required Revision of Equity Plan after Presidentially Declared Disaster**

[This item might only be of interest to those that have experienced major disasters or who are likely to experience a major disaster – just about everyone these days. *The proposed rule requires an Equity Plan to be revised if a “material change” occurs due to a Presidentially declared disaster. As proposed, the deadline to submit a revision would automatically be extended to two years after the date of the disaster declaration*.]

We urge the final rule to require a program participant to submit a revised Equity Plan as soon as possible after a Stafford Act Declaration is made. It is crucial to have a revised Equity Plan ready to go in order to ensure AFFH principles are applied to planning associated with disaster-related funding.

* **Definitions**

**“Affordable Housing Opportunities”**

[*A major problem with the proposed rule is that it does not define “affordable” while using the word “affordable” housing not only in the definition but throughout the proposed rule*.]

[*Your organization*] urges HUD to define “affordable” housing as housing that requires a household to spend no more than 30% of their adjusted income on housing expenses (rent or mortgage) and utilities – the Brooke Rule.

[*Housing also qualifies if it is affordable to “low- and moderate-income households,” but “low- and moderate-income” is not sufficient*.]

Instead of simply using “low- and moderate-income” we suggest, “Is affordable to households at a range of income levels: ‘extremely low-income’ (less than 30% AMI or the federal poverty level), ‘very low-income’ (less than 50% AMI and greater than 30% AMI), and ‘low-income’/‘moderate-income’ (less than 80% AMI and greater than 50% AMI).”

[*The definition also requires “affordable housing” to be housing that meets “basic habitability requirements.” This does not provide sufficient direction*.]

Instead of using “basic habitability requirements,” we suggest “Housing that meets Housing Quality Standards (HQS) regulations for the Housing Choice Voucher program and the NSPIRE regulations for other HUD programs (or any future modifications or substitutions for those programs), and state or local habitability requirements for housing not assisted with a federal program. Basic habitability standards for HUD-assisted housing also includes full compliance with all lead-based, carbon monoxide, radon, and environmental quality hazard regulations.

If you have any questions about our comments, please contact *Person’s name, title, email address, and phone number.*