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Submitted via Regulations.gov

October 15, 2018

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

Re: Docket No. FR-6123-A-01

Notice: Affirmatively Furthering Fair Housing: Streamlining and Enhancements

Dear office of General Counsel:

I am writing on behalf of Citizens' Housing and Planning Association (CHAPA), a Massachusetts non-profit organization that advocates for affordable housing and equitable community development. Our mission is to encourage the production and preservation of housing that is affordable to low and moderate income households and to foster diverse and sustainable communities.

Below are our comments to the Department of Housing and Urban Development (HUD) in response to the Advanced Notice of Proposed Rulemaking (ANPR) to streamline the Affirmatively Furthering Fair Housing (AFFH) rule finalized on July 16, 2015.

CHAPA urges HUD to consider alternatives to a rulemaking that alters the existing AFFH regulation. We also encourage HUD to re-open the Government Assessment Tool and allow communities to continue work on their respective AFHs in order to renew the work of advancing fair housing in a collaborative and data-driven way.

The obligation to affirmatively further fair housing is an essential component to the Fair Housing Act and the carrying out the law's intent, which is to broadly and inclusively "advance equal opportunity in housing and achieve racial integration for the benefit of all people of the United States."¹ The 2015 AFFH rule established a framework for local jurisdictions to plan for and take affirmative steps to increase diverse housing

¹ H. Res. 1095, 110th Cong., 2d Sess., 154 Cong. Rec. H2280-01 (April 15, 2008). See also *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972).

opportunities for all members of protected classes, specifically race, ethnicity, families with children, and elders.

The rule was the culmination of a five year process involving mayors, housing and community development officials, and advocates, among many others.² The rule, for the first time, required community engagement and data analysis in developing an Assessment of Fair Housing (AFH), and required HUD field staff review and approval. The intent of the rule was to foster an active give-and-take with community members, local officials, and HUD in order to arrive at a data-informed plan that promotes fair housing and is appropriately tailored to the community.

Ultimately, this data would inform policy makers about a host of fair housing issues in their respective communities— affordable, safe and sanitary housing, access to public transportation, jobs, and schools, to name a few— and begin a dialogue about how to increase access to more housing options that are well connected to these opportunities and how to deliver resources to areas where residents of protected classes live but historically have been neglected.

As a Massachusetts based organization, CHAPA has a strong interest in seeing the AFFH rule remain intact. Our state has a history of exclusionary zoning in suburban communities that persists today, limiting housing options in areas that historically have access to opportunities like high performing schools, transportation, and other services. Moreover, exclusive zoning practices have caused housing supply to not keep up with population growth, which in turn has driven-up housing costs and limited housing options to all household types, especially households with low and moderate incomes.

At the same time, our cities, which have historically been the home of disproportionate numbers of the poor and of racial and ethnic minorities, are shouldering the overwhelming majority of new development. Cities like Boston, Cambridge, and Somerville are now trying to balance economic development while also preserving racially and economically diverse neighborhoods. The AFFH rule is critical to our advocacy efforts to increase access to housing options for residents to live in any community they choose and prevent displacement that could disproportionately burden people of color.³

The AFFH rule was working and the Assessment of Fair Housing process gave communities and policy makers powerful information to inform fair housing recommendations. HUD now wants to know if there are any “revisions to the current

² Memorandum from the National Low Income Housing Coalition, *Comprehensive Assessment of HUD's Streamlining AFFH ANPR* (August 16, 2018). Available at, http://nlihc.org/sites/default/files/images/Comprehensive_Assessment_HUD_AFFH_Streamlining_A_NPR.pdf.

³ See Vicki Been, *City NIMBYs*, 33 J. Land Use & Envtl. L. 217, 248 (2018). (“efforts to open exclusionary suburbs involved giving people who had been shut out of those neighborhoods the choice to move into them... But development in neighborhoods currently populated primarily by people excluded from other neighborhoods by racial and ethnic discrimination in the past (and in some places, still today) now threatens to impose burdens that the residents are not choosing to assume.”)

(AFFH) regulations that could help further the policies of the (Fair Housing Act)?”⁴ In our view, no changes should be made until there has been substantial experience by all affected jurisdictions with the 2015 AFFH rule. The 2015 AFFH rule was crafted with an approach that was conscientious, lengthy, and cautious. The existing rule balances data, local characteristics, and allows for AFH plans to be revised at HUD’s discretion. This is in stark contrast to the rushed change in policy of this administration.

We disagree with HUD’s view that the rule is unworkable based on the fact that 37 percent of the 49 Assessments of Fair Housing were not accepted on initial submission.⁵ In fact, the rule anticipated a learning curve and provides a process for HUD to identify problems with the assessments and allow jurisdictions to fix them.

This point is highlighted in an amicus brief submitted by a coalition of state attorneys general to the D.C. Federal District Court in June. The attorneys general argue that HUD was incorrect in its conclusion that the Rule was unworkable because, “by its very design, the AFFH rule assumes that some submissions will be initially rejected because the process is supposed to be interactive where HUD works with communities.”⁶ Consistent with this design, many of the denied applications were later *accepted* after collaborative revision.⁷ We agree with the attorneys general that this initial denial rate is evidence of a well-functioning rule.

HUD asks, “what type of community participation and consultation should program participants undertake in fulfilling (AFFH) obligations?” Before the AFFH rule, jurisdictions operated under the Assessment of Impediments (AI) protocol. Under AI, no public input is required. Moreover, a report from the Government Accountability Office questioned whether AI is an effective tool to identify and address impediments to fair housing.⁸ In contrast, the 2015 AFFH rule introduced meaningful public engagement and consultation with fair housing organizations and community advocates for the first time. This public engagement process was working well in Massachusetts and citizens would be well-served if HUD would continue to ensure discussion of fair housing issues in communities.

For example, the City of Boston’s AFFH Community Coalition worked closely with city officials to organize over 14 meetings across the city.⁹ About 500 residents participated and provided feedback.¹⁰ This coalition also worked with the Boston Housing Authority

⁴ Affirmatively Furthering Fair Housing: Streamlining and Enhancements, 83 Fed. Reg. 159 (August 16, 2018).

⁵ *id.* at 5.

⁶ Brief of the States of Maryland, California, Massachusetts, Virginia, and Washington; The District of Columbia; and the Cities of Austin; New Orleans; Oakland; Portland; Seattle; and Toledo as *Amici Curiae*, available at http://www.marylandattorneygeneral.gov/news%20documents/NFLA_Amicus_Brief.pdf.

⁷ Letter from Diane Yentel, President and CEO, National Low Income Housing Coalition, page 2, (Mar. 6, 2018) available at, <https://www.regulations.gov/document?D=HUD-2018-0001-0034>.

⁸ U.S. Gov’t Accountability Office, GAO-10-905, *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ fair Housing Plans* (2010).

⁹ Letter from Kathy Brown, Boston Tenant Corporation (Mar. 8, 2018), available at <https://www.regulations.gov/document?D=HUD-2018-0001-0039>.

¹⁰ *id.*

(BHA) to send a survey to housing authority tenants, receiving over 2,500 responses.¹¹ In addition to the BHA survey, the AFFH coalition conducted its own survey of 500 Boston residents. The city and the coalition were working towards a final draft when HUD suspended the process. Like many efforts to address complex issues like fair housing there will be a learning curve as communities adapt to new requirements. However, when HUD published three notices in May 2018, the Government Assessment Tool was quickly taken off-line, the rule was effectively suspended indefinitely, and important work that was underway in communities was immediately brought to a halt.

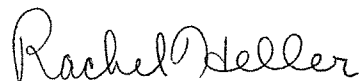
While our priority is for HUD to fully support and commit to the current AFFH rule, HUD should also be aware that many communities in Massachusetts have already taken the stance that they will not abandon the standards set by the AFH and its assessment tool. Therefore, we urge HUD to consider alternatives to a rulemaking that substantially alters the existing AFFH regulation. Instead, we hope HUD will re-issue the assessment tool and allow communities to continue work on their respective AFHs.

Some alternative actions to a substantial alteration to the AFFH regulation include: post all accepted AFHs in one place on HUD's website, along with contact information; fund an intermediary to provide technical assistance to localities; provide online development training tools to assist localities in understanding the tool; facilitate partnerships with local community groups and regional planning agencies in developing AFHs; and issue guidance on best practices based on successful submissions.

This type of work is happening in Massachusetts and can be instructive. For instance, in Greater Boston, the Metropolitan Area Planning Council (MAPC) assisted two HOME Consortia develop regional AFHs. Both assessments were approved by HUD as part of the AFFH process. Both plans now are being actively implemented, including development of fair housing seminars and trainings for public and private sector developers. This is an example of the type of third party collaboration and technical assistance that HUD could promote.

Thank you for the opportunity to comment and for your consideration.

Sincerely,



Rachel Heller
Chief Executive Officer

¹¹ id.