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Regulations Division

Office of General Counsel

Department of Housing and Urban Development

451 7th Street SW, Room 10276

Washington, DC 20410-0500

Re: Docket No. FR-6250-P-01; Affirmatively Furthering Fair Housing

To Whom it May Concern:

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. We appreciate the opportunity to comment on the Affirmatively Furthering Fair Housing (AFFH) Proposed Rule issued by the Department of Housing and Urban Development (HUD). CHAPA's mission is to encourage the production and preservation of housing that is affordable to low and moderate income families and individuals and to foster diverse and sustainable communities through planning and community development.

Everyone has the right to choose where they want to live, free from discrimination, in a home that is safe, healthy, accessible, and affordable.

Over CHAPA's more than fifty five year history, founded in the civil rights movement, we have borne witness to the causes and effects of exclusionary housing policies. CHAPA works to embed fair housing into all our programmatic efforts to further our mission, eliminate housing discrimination, and promote open and welcoming communities throughout the Commonwealth. This is crucial to ensure equity and access to opportunities and to build the future we want to see.

The vision of the Fair Housing Act of 1968, which included the mandate to AFFH, has been in effect for 55 years but has never been fully realized. Implementation of the AFFH Rule outlines the actions and outcomes necessary to address these inequitable systems. We cannot make fair housing a reality without the framework this Rule provides. Unfair systems must be replaced with systems that benefit everyone, and by doing so, we can foster thriving communities.

“AFFH mandate is implemented and that it drives the change that Congress intended in 1968—the undoing of vestiges of segregation, unequal treatment, and inequitable access to opportunity that the Federal government itself helped create—and helps combat the unequal access to housing and related opportunities because of race, color, national origin,

religion, sex, familial status, and disability that persists in our society today”.¹

CHAPA is excited to see the attention and thoughtfulness paid to enhancing the 2015 AFFH Rule, including an emphasis on process, enforcement and transparency, and community engagement requirements. We see the success of this Rule resting on a confluence of factors including federal leadership, adequate resources to achieve goals, and a scalable and achievable framework to address structural inequities, barriers to opportunity, and disinvestment.

Federal Leadership

Federal leadership is critical to ensure long term commitment and full implementation of the Rule. Federal Agencies and its Grantees must proactively address the perpetuation of discrimination, and work to redress the historical impacts of discriminatory policies and practices that denied many the opportunity to flourish. The leadership of President Biden, HUD Secretary Marcia Fudge and others have been pivotal in shaping this work, as will any future Administration. The obligation to comply with this mandate applies to all executive agencies and departments, and this obligation must be clear and enforced. Additionally, HUD leadership is critical to ensure that federal agencies administer their programs under these obligations. A detailed plan should be developed to support coordination that will be evidenced by how HUD carries out and reviews Equity Plans and handles complaints.

Measurable Achievable

The 2015 Rule lacked the level of resources necessary to make it scalable for different sized Grantees. Allowing for a regional approach for analysis and collaboration to consider issues beyond their borders would allow smaller communities to identify and implement collective solutions and would lessen fragmentation of communities that can and should work together.

For the AFFH to be successful, jurisdictions must be able to set measurable and achievable goals, but in the past this has proven to be a challenge for many. Achievable goals must run parallel with resources and subsequent monitoring should be clear for Grantees of various sizes and capacities. Taking steps to ensure the framework necessary to relieve the burden for smaller Grantees who may have access to fewer resources, data and technical assistance is key. For example, the number of community meetings Grantees are required to hold might vary based on the capacity and size of the grantee. The provided format is flexible for different types of jurisdictions.

It is crucial for Grantees to do an analysis of factors that affect their ability to achieve the duty to further fair housing. Within the seven goal categories of the Equity Plans that are prioritized, the analysis of contributing factors, which was part of the 2015 mandate, is missing under this version of the Proposed Rule. As defined, Contributing Factors “means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues as provided in § 5.154” 24 C.F.R. § 5.152 2015 AFFH Rule. Formerly, the contributing factors were identified and prioritized to help address the potential issues of capacity and available resources. Jurisdictions identifying measurable barriers to “segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, disproportionate housing needs, and fair housing issues related to publicly supported housing, disability and

¹ Page 32 AFFH Proposed Rule

access, and fair housing enforcement, outreach capacity, and resources”² is critical. Goals and action steps of an Equity Plan should be proportionate to the resources to carry them out. It would be our recommendation to include a similar analysis measure in the Proposed Rule going forward as well.

Community engagement

Community engagement (§5.158) emphasis within the Equity Plan in addition to the Consolidated Plan and Public Housing Authority Plan is vital to ensure accountability measures and adequate public participation. Increasing the role of impacted communities in the public planning process and requiring an active obligation to provide strategic ways for public participation is key to obtaining equitable and inclusive outcomes in each of these provisions.

The Proposed Rule alludes to engaging with members of the community, however, unlike in the 2015 Rule, it does not name and specify potential stakeholders, advocates, and community-based organizations. Rather, it provides a broader definition of “underserved communities” that we believe needs more specificity and direction to ensure engagement with the most critical partners. Grantees must engage with those closest to the need in order to ensure they are addressing those needs in an efficient and effective way. HUD should require Grantees to participate in engagement that is developed with and by impacted people who have an intimate connection to a range of community needs can help get at the root of the issues and thereby identify and elevate appropriate remedies.

In addition, consistent with existing civil rights obligations and the goals of the Rule, community engagement should require removal of as many potential barriers for participation as possible, such as language translation and interpretation, partnering with local community groups, surveys, virtual meetings, childcare, eldercare, and focus groups with particularly impacted populations.

Balanced approach

The emphasis on a comprehensive and balanced approach to this obligation is significant in its ultimate implementation of the mandate. The Rule should clearly define what it means to have a balance in approach for jurisdictions, using both place-based and mobility options to achieve equitable access to community assets.

Housing and where you live is the entry point for so many other opportunities in people’s lives. This Rule improves on the additional resources, makes explicit who has access to those assets, and directs Grantees to take meaningful actions to reach measurable goals. The intersectionality of Fair Housing should be emphasized in the Rule. A balanced binary approach that both focuses on the preservation of historically underfunded communities facing pressures of displacement, and the intentional steps required to redress inequities in historically exclusionary communities will create the range of solutions we need and enhance support for the Rule by avoiding the perceived conflict between the two goals that was intoned by advocates and opponents alike in 2015.

Enforcement and Accountability

² 24 C.F.R. § 5.154(d)(3), HUD AFFH Rule 2015

Enforcement is crucial to both address impediments identified and to hold Grantees accountable for effective implementation. We are pleased to see a framework within the complaint and compliance process establishing more transparent investigations and seeking voluntary compliance. Where appropriate, it is crucial to retain alternative enforcement options such as discontinuation of funding, referral to the Department of Justice, and debarment where jurisdictions stand to lose funding not only from HUD but also other federal agencies.

When the rule goes into effect, HUD should go beyond requiring that plans be maintained on its website. HUD should also require Plans and Annual Progress Evaluations to be accessible on grantee websites as well and should be provided in multiple languages, including HUD compliance processes, to ensure transparency and accountability. It should be emphasized that local advocates can play a role in holding Grantees accountable, as well as providing input throughout the various stages of development, compliance and implementation.

In order to ensure a meaningful impact, we have several suggestions to enhance the enforcement process. A provision should be included to require HUD to review the Plans and affirmatively assert any issues with the Plans and provide potential remedies to improve them. A HUD reviewer should enforce that concrete steps are taken to ensure there is a meaningful commitment to undue impacts. Moreover, the enforcement language regarding monitoring to track success should be strengthened to include resources available to Grantees, and dates when plans are due should be posted in a centralized location.

Those most impacted by disinvestment should be integral to conversations about what it will take to rectify and shape policy and programming going forward, as well as play a key role in making sure jurisdictions meet their goals. The accountability component within the Equity Plan to provide comments through a complaint process under §5.170 provides the public with the ability to submit complaints to HUD in cases where a grantee has failed to comply with commitments and obligations under the Rule. The disparities we see today are the result of past decisions that have had a real impact on people's lives. The voices of those groups and individuals in the community who are closest to the need is crucial to incentivize meaningful impact. In addition, providing a definition of community engagement is crucial to ensure that jurisdictions participate in this process fully and can then be held accountable to that provision. We would value seeing more targeted requirements to stakeholders including tenants, tenant unions/groups, independent living centers, fair housing advocates, interfaith organizations, and others with deep local connections.

Equity Plan

CHAPA is glad to see the Equity Plans outlined in this rule streamlining the former Assessment of Fair Housing with a remaining emphasis on fair housing analysis, goals, and strategies. It is critical that HUD continues to provide accurate data for cities and towns, but there should be room for additional local data to be included in the equity planning process as well. This version reiterates the 2015 Rule's step by step process to receive feedback from HUD that is technically-based, however, the added emphasis and requirement to directly address identified barriers and impediments is of utmost importance.

We appreciate §5.152 including an expanded definition of AFFH which extends to *“take actions, make investments and achieve outcomes that remedy the segregation, inequities and*

discrimination the Fair Housing Act was designed to redress.” This is critical for Grantees to recognize that developing an Equity Plan alone is not enough, but real steps towards redress must also be taken. While we are glad to see this expanded definition, it is important to define fair housing and AFFH more comprehensively within the Rule. Furthermore, several times in the Rule, “opportunity area” is referenced, but there is no definition for the term provided for Grantees. In order for this iteration to achieve equity, it is necessary that comprehensive definitions are available for all Grantees. In an effort to avoid misunderstandings of fair housing, it is critical to emphasize its broader implications and connections linking it to social, economic, health, and educational needs of communities at every appropriate opportunity.

To avoid further misunderstanding in the Equity Plans, it is vital to emphasize that HUD’s acceptance of Plans does not mean that Grantees have fulfilled their goals or obligations. Making this distinction in the Rule is crucial to ensure that both Grantees and the public are clear on whether plans are accepted versus approved. In Massachusetts, communities that submit Housing Production Plans (HPP) after undergoing a robust community engagement process, data analysis of key attributing factors, and building on other local and regional plans. The goal of the HPP is to assess the community’s housing needs and develop a plan for implementation. Once the process is completed and the community accepts it by a formal vote, the HPP is then submitted to the State who must also accept it. However, the State will only approve and provide certification for the HPP once specific implementation goals are met. In this way municipalities are held to the standard of making real progress on the HPPs. We would suggest a similar detailed process, and distinction between acceptance and approval, under the Equity Plan process.

Similar to the HPP process, we are glad to see Equity Plans are required to link to other plans. Fair housing strategies and meaningful actions must also be incorporated into §5.156 Consolidated Plans, Public Housing Authority plans, annual action plans, and other plans and be required in conjunction with other federal programs. This is crucial to accountability of program participants to take those goals and build them into other broader work throughout the jurisdiction. HUD can be an active partner by looking for ways to connect local Equity Plans to efforts that HUD itself is carrying out.

City of Boston’s AFFH Zoning Ordinance

As a result of the leadership of now Massachusetts State Senator Lydia Edwards, the City of Boston, under Mayor Michelle Wu, passed the first of its kind AFFH Zoning Ordinance³ in January 2021 which requires a proactive process to hold developer’s accountable to assessing how their proposed project may affect fair housing, develop strategies to combat displacement, create housing for all, and develop remedy interventions for past harms.

The goal of this effort is to embed AFFH requirements that would ensure equity in the zoning code to appropriately address the history and present conditions of housing discrimination. This Proposed Rule has a similar effect where it includes community engagement within the Equity

³ City of Boston Zoning AFFH Ordinance Boston Planning and Development Agency, BPDA - Affirmatively Furthering Fair Housing Zoning Amendment, Informational presentation (Dec. 17, 2020) <https://www.bostonplans.org/getattachment/fod60db9-d91e-4e46-bd98-82446011f9fo> Article 80 Guidance <https://www.bostonplans.org/getattachment/7716dd5f-5053-464c-86bc-26c4dd1de28b>

Plan process to ensure that housing production is developed through the lens of those who are most impacted.

This local Boston strategy requires implementation of remedies to address any potential displacement. The crucial role of the Community Advisory Committee in implementation and advocacy will result in the success of addressing disparities and the use of the AFFH as a tool to advance housing justice. Combining zoning code with fair housing is a crucial part of this engagement and was developed through community participation of over 500 Boston residents, 35 community based organizations, and surveys of over 2500 individuals. Those voices directly helped shape the policies that are both measurable and achievable. 14 overarching goals and over 100 potential implementation strategies were developed through the public process to proactively accomplish fair housing goals and further assign action steps to city departments.

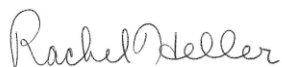
Boston's example is an excellent framework on how we should engage with community stakeholders to provide a seat at the table and develop strategies to use zoning as a tool to proactively address community concerns, and as a model for implementation. The Final AFFH Rule should incorporate similar local mechanisms.

Conclusion

HUD's reinstatement of and revisions to the 2015 AFFH Rule added important refinements and are a step in the right direction to ensuring implementation of a Final Rule as Congress initially intended. It is critical to ensure a framework for AFFH in our communities to address inequities in a way that will have a meaningful impact. We urge HUD to continue to work with critical partners as was done in developing this mandate.

Thank you for the opportunity to comment on the AFFH Proposed Rule. We are in general support and hope for your consideration of some of the key changes suggested above. We believe these suggestions will elevate and improve upon the Final Rule. Additional guidance coupled with resources and training to support this work are critical to the success of the Rule. We look forward to this and future Administration's leadership and oversight to ensure that the future of fair housing we want to see is within our grasp.

Sincerely,



Rachel Heller
Chief Executive Officer
Citizens' Housing and Planning Association

SUPPORTING ORGANIZATIONS:
Adlib Inc. Center for Independent Living
Alternatives for Community and Environment
Boston Center for Independent Living
Boston Tenant Coalition
Cape Organization for Rights of the Disabled

Disability Policy Consortium
Harborlight Homes
Jewish Alliance for Law and Social Action
Massachusetts Law Reform Institute
SouthCoast Fair Housing
Stavros Center for Independent Living