

March 6, 2018

Office of General Counsel, Regulations Division
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, D.C. 20410-0001

Re: Docket No. FR-5173-N-15 Comments on Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants Agency/Docket Number: Docket No. FR-5173-N-15, Document Number: 2018-00106 (Docket ID: HUD-2018-0001)

Dear Office of General Counsel:

The undersigned civil rights, equity-focused, affordable housing and other organizations submit the following comments in response to the above-referenced Federal Register Notice regarding the “Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants”.

On January 5, 2018, the Department of Housing and Urban Development (HUD) published the above referenced notice effectively suspending implementation of the Affirmatively Furthering Fair Housing (AFFH) rule until 2025. By taking this step, HUD is abrogating its duty to carry out the mission Congress assigned it 50 years ago through the Fair Housing Act. The AFFH regulation —designed with considerable public input and piloted extensively — was adopted in 2015 and is a critical and long overdue step in carrying out Congress’ intent that HUD should administer its programs in a manner that is non-discriminatory and works to break down the barriers and undo the harm caused by racial discrimination. It provides jurisdictions with a roadmap and tools for compliance and includes measures for accountability. Without any public input or warning, HUD has decided to effectively suspend the regulation, thereby leaving local jurisdictions confused, giving local residents less voice in important decisions about their communities, and reinstating an approach to fair housing that the Government Accountability Office found to be ineffective and poorly administered. We believe this action constitutes a grave miscarriage of justice and strongly urge HUD to reverse its actions and immediately reinstate the implementation of the AFFH rule.

Historic, discriminatory land use and housing related policies, inequitable community development practices, racial bias in mortgage lending and rental housing, and a multitude of other racially biased policies and practices have fostered pervasive negative impacts on a significant portion of America’s population. These policies and

practices, once legal, denied access to homeownership, housing, good jobs, quality education and other key quality of life amenities. They have resulted in neglected neighborhoods of concentrated poverty riddled with poor housing stock, toxic environmental conditions, underfunded schools, poorly maintained parks, dilapidated infrastructure and other problems. Between 2000 and 2013, the number of people living in these neighborhoods of concentrated poverty nearly doubled, rising from 7.2 million to 13.8 millionⁱ. Today, over 14 million people – including over 4 million children – live in communities of concentrated poverty. In the U.S. there are over 4000 of these neighborhoodsⁱⁱ.

The Promise and Objective of the Affirmatively Furthering Fair Housing (AFFH) Rule

The AFFH rule provides a structured process to change the trajectory of growing poverty and inequality. The AFFH rule and the Assessment of Fair Housing (AFH) planning process the rule creates help HUD grantees weave together housing, health, transportation, education, environmental and economic development approaches that support the transformation of areas of concentrated poverty into thriving communities. The AFH process also is designed in a way that recognizes the connection between housing and the ability of individuals and families to access opportunities. Furthermore, the AFFH rule fosters the design of approaches that promote access to housing that is affordable in communities with high performing schools, clean air, and reliable transportation choices and access to workforce opportunities and good jobs.

The AFFH rule supports local leaders' success in meeting their long-standing requirement to Affirmatively Further Fair Housing, set forth in the Fair Housing Act of 1968, by providing them with resources in the form of guidance, a data and mapping tool, and technical assistance to support their planning success. The locally-driven AFH process helps communities overcome persistent and growing challenges related to disparities in opportunity, fair housing choice and racially concentrated poverty.

For many years, local officials sought greater clarity and guidance from HUD about what they should be doing to affirmatively further fair housing. HUD's previous approach to implementing the AFFH mandate – through the requirement that grantees periodically develop an Analysis of Impediments to Fair Housing Choice – was neither well-structured nor well-administered, as the U.S. Government Accountability Office (GAO) pointed out in its 2010 report on this subject. The AFFH approach was designed to specifically address many of the criticisms that the GAO highlighted, and provides HUD grantees with more structure, clearer guidance, and needed resources for identifying and addressing fair housing problems in their communities.

Key aspects of the AFFH Rule:

- Equips local communities for decision making by providing local officials with a data and mapping and other analytical tools informed by data from the Census Bureau, other federal agencies and best practice. This data equips HUD grantees to better

analyze patterns, trends and conditions. Grantees are encouraged to gather additional local data and knowledge to ensure that the full local context and conditions inform the analysis.

- Fosters rich community participation, ensuring that the experiences and perspectives of community members inform the assessment process.
- Guides jurisdictions on how to better align federal funding—Community Development Block Grants, HOME funds, public housing financing, other HUD funds and other federal, state and local resources—to address the housing and economic inclusion challenges identified in the assessments of fair housing.
- Promotes a more effective relationship between federal investments and housing choice and access to opportunity needs, by incorporating the strategies developed during the AFH process into the Consolidated or Public Housing Authority Plans.
- Supports and facilitates locally designed solutions - Local governments develop solutions to fair housing choice and barriers to opportunity through an integrated planning approach that helps HUD grantees leverage expertise and resources through collaboration with a broad range of stakeholders (e.g. developers, banks, universities, advocacy groups, nonprofits and health providers, and other units of government).
- Promotes Jobs and Workforce Development –The AFFH rule helps jurisdictions plan housing that is affordable and located near transit that connects to job centers, in opportunity rich communities; and that focuses revitalization efforts in distressed communities in a manner that co-locates housing that is affordable with community and economic development, workforce development and job placement services.
- Shaped through Extensive Piloting – The AFFH rule was piloted by 74 HUD grantees through the Fair Housing and Equity Assessment (FHEA). To test the effectiveness, the FHEA modeled many components of the AFFH including: guidance, data, mapping, stakeholder collaboration and consultation, and robust community participation

The fair housing plans developed under this rule help jurisdictions use their federal housing and community development resources more strategically, thereby strengthening social and cultural ties and boosting economic prosperity.

Early Implementation of AFFH Rule showed signs of success:

The AFFH rule, established in 2015, was still in its nascent stages when HUD decided to suspend its implementation. This decision to suspend implementation of the AFFH rule was made despite the fact that there were early signs of success as the inaugural cohort of communities began to utilize the new process. The early signs of success demonstrate the strength and promise of the AFFH rule.

The inaugural cohort of communities utilizing the AFFH process had submission dates beginning in 2016. These initial groups had just six months to conduct their Assessments of Fair Housing (AFHs) yet with some support and technical assistance, several of the communities submitted exemplary AFHs. The cities of New Orleans and Philadelphia are both referenced as models by HUD and other stakeholder groups when discussing the benefits and promise of the AFFH Rule. Both jurisdictions conducted joint processes in partnership with their local Public Housing Authorities (PHAs). Both processes included formal partnerships with community partners. These jurisdiction/PHA/community partnerships yielded rich community participation and the development of goals and strategies designed to specifically address the identified challenges and barriers. The goals and strategies also built upon recent planning processes in both cities.

In addition to New Orleans and Philadelphia, the first regional AFH was also conducted in 2016 by five communities in the Kansas City region. The regional process undertaken in Kansas City resulted in broad stakeholder input with twenty-three public meetings conducted.

Subsequently, in 2017, the Cities of Seattle and Winston-Salem successfully completed AFH's, and we know that there were several other cities engaged in robust AFH processes, poised to submit or awaiting feedback from HUD's review of their AFHs when the notice "extending" the AFH submission deadline was announced. To name a few: Harris County, Omaha, the City of Los Angeles, and the County of Los Angeles.

The early successes of the 2016 and 2017 program participants, and the recognized need for guidance and tools on how to meet the requirement to Affirmatively Further Fair Housing, have inspired many jurisdictions which were scheduled to submit their AFH in the coming months and/or years. Several of these communities still plan to utilize the AFH process in place of the old AI process, to meet their upcoming obligations despite HUD's suspension of the AFFH rule. Those jurisdictions include, but are not limited to: Minneapolis/St. Paul (regional), Baltimore (regional), Cook County/Chicago/Evanston (joint), Portland/Multnomah County (joint), North Texas/Dallas (regional), Harris County/Pasadena, Omaha/Council Bluffs (regional), Austin, Denver

Cited deficiencies in Technical Assistance unsupported by the facts:

HUD cites deficiencies in the technical assistance tool and technical assistance delivery as a key reason for the "extension" of the AFFH. HUD relied upon this unfounded assertion in its rush to suspend the implementation of AFFH. The implication that the technical assistance provided to HUD grantees on AFFH was somehow deficient is not fully supported by the facts. Furthermore, it takes time to adjust to any new regulation, and the experience of the last two years of AFFH implementation demonstrates that program participants have in fact been successful.

HUD has considerable resources to devote to technical assistance. In fact, Congress appropriated funds specifically for this purpose, but HUD has failed to deploy those resources in a timely and effective manner. In several instances where program participants did request technical assistance, HUD has been slow to respond. This is entirely within HUD's control to correct. HUD could, and should, have taken immediate steps to address these issues, while keeping AFFH in effect.

The roll out of the AFFH rule contemplated a learning curve for HUD and its grantees and incorporated several provisions to accommodate that learning curve. Provisions such as a staggered submission schedule, the option for program participants to collaborate with other grantees in a way that would promote resource sharing, and the creation of a process for smaller program participants to meaningfully engage with larger, lead program participants were included in the rule specifically to provide the needed time, experience, flexibility and resources to allow communities to sufficiently assess their challenges and design effective strategies to address them. HUD's abrupt truncation of the implementation process has not provided the time or opportunity to genuinely assess the effectiveness of these provisions.

Furthermore, the AFFH rule itself contemplates that not that every AFH will be accepted when it's submitted, but that there will be some back and forth between program participants and HUD before AFHs are accepted. That is why the AFFH includes specific provisions about HUD providing written feedback and instructions regarding what might need to be changed, the availability of TA, and a 45-day period for grantees to make revisions and resubmit non-accepted AFHs.

No attempts were made to "fix" any claimed deficiencies with the AFFH rule before moving to a cloaked process to suspend its implementation. Most new processes need tweaking and adjustments. No attempts were made to draw upon the vast and willing expertise of stakeholders, who have supported and informed the development and piloting of the AFFH rule to help address any perceived challenges, while keeping the Assessment of Fair Housing requirement intact.

HUD's lack of transparency and public input in the decision to suspend the AFFH Rule:

The AFFH Rule was developed with considerable public input. Before developing the rule, HUD conducted a listening tour across the country, in large and small communities, to get input from local officials and other stakeholders about their ideas and concerns. The rule itself went through a public notice and comment period, during which more than 1,000 public comments were submitted to HUD through the Regulations.gov website. The Assessment Tools for entitlement jurisdictions and public housing authorities that accompany the rule each went through a two-part comment process, as required under the Paperwork Reduction Act. Additionally, the rule was informed through a pilot process in seventy-four regions of various geographies, economic markets and sizes, across the nation. The AFFH regulation provides for

robust community input, which means that the plans developed reflect local priorities and respond to each community's unique circumstances.

In contrast, HUD failed to seek any public input into its decision to suspend the AFFH rule, and by its own admission, did not query any external stakeholders. Rather, HUD unilaterally, with no advance notice, and without providing any factual basis for its action, published the above-referenced notice, effectively suspending the implementation of the rule.

In closing, we urge HUD to take immediate steps to revoke the "extension" of the due dates for Assessments of Fair Housing under the Affirmatively Furthering Fair Housing Rule and resume full implementation of the rule. We believe the effective suspension of the rule is a tremendous injustice for protected classes, an abrogation of HUD's duties under the Fair Housing Act and a huge step backwards for this country.

Sincerely,

ACCE Institute

Access 4 All, Spokane

Access to Independence, Inc.

Access Living of Metropolitan Chicago

Active Living by Design

America Walks

Autistic Self Advocacy Network

Black Family Development, Inc.

Black Parallel School Board

Boston Tenant Coalition

California Food and Justice Coalition

California Housing Partnership

California Reinvestment Coalition

CSUN (California State University Northridge)

CarsonWatch

Center for Community Progress

Center for Global Policy Solutions

Center for Responsible Lending

CenterLink: The Community of LGBT Centers

Charles Hamilton Houston Institute for Race and Justice

City of Portland Bureau of Planning and Sustainability

City of Seattle Office of & Planning and Community Development

City of San Jose Department of Housing

CNY Fair Housing

Community Development Advocates of Detroit

Community Wealth Building Network

Creative Interventions

DC Center for Independent Living

Delta Sigma Theta Sorority, Inc.

Department of Urban & Environmental Policy & Planning, Tufts University

Disability Rights Education & Defense Fund

East LA Community Corporation

Einzig Communications

Fair Housing Center of Greater Boston

Fairfax Renaissance Development Corporation

Family Equality Council

Fathers, Families and Healthy Communities

Harvard T.H. Chan School of Public Health
Hayward Promise Neighborhood
Health Resources in Action
Heartland Alliance
Hello Housing
Herd on the Hill
Home HeadQuarters
Homesight
Housing Choice Partners
Housing Justice Center
Human Rights Campaign
IndependenceFirst
Kaleidoscope Pathways
Kessler Institute KC
Kinsey & Hand
Lambda Legal
Leadership Conference on Civil and Human Rights
LISC NYC
Local Initiatives Support Corporation
Local Progress
Los Angeles LGBT Center
Louisiana Public Health Institute
Massachusetts Association of Community Development Corporations

Massachusetts Public Health Organization

Massachusetts Smart Growth Alliance

Metropolitan Area Planning Council

Metropolitan Planning Council

Michigan State University College of Law Housing Law Clinic (Fair Housing Project)

Millett & Associates

Minnesota Housing Partnership

MZ Strategies, LLC

NAACP

NAACP Legal Defense and Educational Fund, Inc.

National Collaborative for Health Equity

National Center for Lesbian Rights

National Center for Transgender Equality

National Coalition for Asian Pacific American Community Development (CAPACD)

National Consumer Law Center (on behalf of its low-income clients)

National Community Reinvestment Coalition

National Council on Independent Living

National Disability Rights Network

National Education Association

National Equality Action Team (NEAT)

National Fair Housing Alliance

National Housing Law Project

National Housing Trust

National LGBTQ Task Force

National Law Center on Homelessness & Poverty

National Low Income Housing Coalition

Natural Resources Defense Council

Neighborhoods First Fund

NETWORK Lobby for Catholic Social Justice

Northside Achievement Zone

PFLAG National

Pembroke Philanthropy Advisors

Philadelphia Association of Community Development Corporations

PICO CA

PolicyLink

Poverty and Social Reform Institute

Prevention Institute

Public Advocates

Race Forward

Ravensong Associates

Rivkin Associates, Inc.

SFMade

Sacramento Housing Alliance

Saint Louis University

Sant La Haitian Neighborhood Center

Scott Consulting Partners

Silicon Valley Independent Living Center

Sisters Nurturing Sisters

Sisters of Mercy South Central Community

Smart Growth America

Soluciones Onda Latina

South Florida Community Development Coalition

Sunflower Alliance

The Akron Leadership Foundation

The Food Trust

The Urban League of Portland

Three Pyramids, Inc.

Toulumne Me-Wuk Tribal TANF

TRUST South LA

United Way Worldwide

UC Berkeley (University of California, Berkeley)

UC Berkeley School of Public Health, Department of City & Regional Planning

University of Maryland

University of Michigan

University of Michigan-Dearborn

Urban Innovation 21

Urban Land Conservancy

UWPHI (University of Wisconsin Population Health Institute)

V-Day & One Billion Rising

VanicaCummings

VOTE (Voice of the Experienced)

Walden Consulting and Associates

Weissburg Investment Corp.

Will County, Community Development Division

WordPlay LLC

YWCA San Francisco & Marin

ⁱ <http://www.theatlantic.com/business/archive/2015/08/more-americans-are-living-in-slums/400832/>

ⁱⁱ ACS 2010-2013, HUD PD&R data analysis, conveyed from 2009 to 2013