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Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

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Dear Mr. Samberg-Champion,

Thank you for the opportunity to submit comments regarding the Department of Housing and Urban Development (HUD)'s interim final rulemaking *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*.

The National Community Reinvestment Coalition (NCRC) consists of more than 600 community-based organizations, fighting for economic justice for almost 30 years. Our mission is to create opportunities for people and communities to build and maintain wealth. NCRC members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, fair housing, and civil rights groups, minority and women-owned business associations, and housing counselors from across the nation. In addition, NCRC and its members work to create wealth opportunities by eliminating discriminatory lending practices, which have historically contributed to economic inequality.

HUD's 2015 AFFH rule was a vital step in fighting segregation and in fulfilling the AFFH obligation for jurisdictions to take affirmative steps to integrate communities. In July 2020, without proper notice, HUD released a final rule titled *Preserving Community and Neighborhood Choice* (PCNC), which made significant changes to many sections of the 2015 Affirmatively Furthering Fair Housing (AFFH) final rule, thereby weakening the rule, and effectively eliminating its focus on fair housing.

NCRC applauds HUD for releasing its interim final rulemaking on AFFH, which restores many of the definitions and certifications from the 2015 rule. In the interim rule's preamble, HUD states that it has determined that the changes implemented by the PCNC rule were not consistent with statutory and case law precedence. Nor do these changes fulfill the obligation to affirmatively further fair housing as required under the Fair Housing Act (FHA)¹. NCRC agrees with HUD's determination. Furthermore, NCRC agrees that the implementation of this interim final rule is in line with administrative law, unlike the origination of the PCNC rule.

¹ US Department of Housing and Urban Development, *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*, 86 FR 30779, June 10, 2021, at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications> at 30784

The purpose of the AFFH section in the FHA is to integrate communities and resources to combat segregation. Segregation carries considerable costs for the individuals who lack housing choice, and for the communities in which they live. For example, the Urban Institute found that segregation is “associated with lower per capita income for blacks...lower levels of bachelor’s degree attainment for both blacks and whites.”² Segregation also creates a loss of wealth for Black homeowners; Brookings Institute found that a “\$156 billion cumulative loss from the devaluation of homes in Black neighborhoods—money that would otherwise be circulating in local economies.”³ In addition, communities with higher levels of Latino-white segregation are associated with lower life expectancies.⁴ These outcomes are unacceptable. The costs of failing to affirmatively further fair housing is far too high.

Our comments focus on both the interim final rule and additions we would like to see in any future fair housing planning process that HUD requires of jurisdictions, including: **Agreement with HUD for Restoring the Definition of AFFH; Restore the Definitions of Community Participation, Contributing Factor, and Fair Housing Issues at This Time; Agreement with HUD for Restoring the Certifications; Fair Housing Planning Process Recommendations; and Data Planning Tool Recommendations.**

I. Agreement with HUD for Restoring the Definition of AFFH.

NCRC agrees with HUD’s interpretation as stated in the interim final rule that the 2020 definition of AFFH “was not a reasonable interpretation of the statutory mandate⁵”. NCRC thanks HUD for restoring the 2015 final rule definition for AFFH. The restoration of this specific definition is crucial as it reinstalls the obligation on jurisdictions that receive HUD funding to take affirmative measures to not only combat discrimination but to “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity.”⁶

II. Restore the Definitions of Community Participation, Contributing Factor, and Fair Housing Issues at This Time.

NCRC looks forward to the inclusion of most of the remaining 2015 definitions that were not included in the interim final rule. Restoring the definition of community participation is especially important. A jurisdiction cannot certify that it is fulfilling its AFFH obligation without engaging with the public. Even though the interim final rule does not specify a specific fair housing planning process, the only way to truly understand the subtle effects of segregation and poverty in a specific jurisdiction is to engage with the public—failing to do so results in an inefficient planning process and should not be considered fulfillment of a grantee’s AFFH obligation.

² “Acs, Gregory, et al. *The Cost of Segregation National Trends and the Case of Chicago, 1990–2010*. Urban Institute, 29 Mar. 2017, www.urban.org/research/publication/cost-segregation/view/full_report.

³ Hadden Loh, Tracy, et al. “The Great Real Estate Reset Separate and Unequal: Persistent Residential Segregation Is Sustaining Racial and Economic Injustice in the U.S.” Brookings Institution, 16 Dec. 2020, www.brookings.edu/essay/trend-1-separate-and-unequal-neighborhoods-are-sustaining-racial-and-economic-injustice-in-the-us/.

⁴ Acs, Gregory, et al. *The Cost of Segregation National Trends and the Case of Chicago, 1990–2010*. Urban Institute, 29 Mar. 2017, www.urban.org/research/publication/cost-segregation/view/full_report.

⁵ US Department of Housing and Urban Development, *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*, 86 FR 30779, June 10, 2021, at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications> at 30783

⁶ US Department of Housing and Urban Development, *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*, 86 FR 30779, June 10, 2021, at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications> at 30789

In section 5.152(b)(1)(i) under AFFH Certification and Administration, the terms contributing factor and fair housing issues appear. Yet, their definitions are not restored in the definitions section. Restoration of these definitions is essential as these terms guide grantees and HUD.

III. Agreement with HUD for Restoring the Certifications.

NCRC thanks HUD for the restoration of certifications. This restoration is significant as many grantees are slated to receive significant funding under the American Rescue Plan and other federal funding. To allow these grantees to receive federal funding without a requirement for AFFH certification does not fulfill the mandate of the FHA and help reverse long-standing patterns of housing segregation that have helped perpetuate the racial wealth divide.

The inclusion of the language “taking no action that is materially inconsistent with the obligation to affirmatively further fair housing” in this section is a new and positive addition.

IV. Fair Housing Planning Process Recommendations.

In the interim final rule, HUD has stated that it plans on implementing a new fair housing planning procedure that jurisdictions must follow to comply with AFFH. NCRC looks forward to the implementation of a standardized planning process as the historically non-standardized Assessment of the Impediments of Fair Housing resulted in many jurisdictions falling short of their AFFH goals⁷. As HUD considers how to build on and improve the 2015 AFFH Rule NCRC highlights the following five recommendations⁸ for HUD to consider in **the creation of this new planning process**.

- i) *HUD should actively review grantees’ assessments. HUD should also ensure that it allows itself ample time to complete an effective review of the assessment.*

Strong and active regulatory review is one of the most critical components in ensuring grantee compliance. To truly achieve the objectives of the Fair Housing Act, there must be rigorous regulatory oversight and active approval of each fair housing planning tool. In addition, NCRC believes that HUD needs to ensure that it provides itself with an adequate amount of time to complete a substantive review of all assessments.

- ii) *HUD should require grantees to consider information resources beyond the data sets that HUD will provide in any fair housing plan process analysis. HUD should clarify to grantees that the data it provides represents a floor, not a ceiling.*

A genuine commitment to affirmatively furthering fair housing and the objectives of the Fair Housing Act requires the grantee to identify specific problems at the most local level. This commitment will require information beyond HUD’s proposed data sets. Allowing HUD’s proposed data sets to establish a floor of available information resources, rather than a ceiling, allows for the inclusion of information that may prove more probative of fair housing needs that have yet to be specifically identified. This will also

⁷Government Accountability Office. (2010). HOUSING AND COMMUNITY GRANTS HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans (GAO Publication No. 10-905). Washington, D.C.: U.S. Government Printing Office. <https://www.gao.gov/assets/gao-10-905.pdf>

⁸ NCRC plans on expanding on these recommendations in conjunction with our members and allies in the coming months.

encourage grantees to seek a much fuller and, therefore, more valuable picture of the fair housing needs in their communities.

iii) *Any fair housing planning process must require public participation.*

A grantee cannot understand the needs of the community if they do not engage with the community. Therefore, one of the positive requirements of the 2015 final rule was the requirement for community participation. Community participation needs to be incorporated into the generation of all assessments and plans. Community engagement is an important requirement that needs to be included in any future codified fair housing assessment process. It should be required upon grantees to maximize community participation at *every* stage of the assessment process.

iv) *HUD should require grantees to identify quantifiable and reasonable fair housing performance benchmarks with uniform metrics as part of their fair housing planning process.*

NCRC recommends that HUD requires grantees to identify quantifiable and reasonable performance benchmarks. These benchmarks must be attainable using uniform metrics to ensure that funding is allocated appropriately and consistent with stated fair housing goals in their fair housing planning process. HUD should require that jurisdictions undergo Assessments of Fair Housing as was required in the 2015 rule.

v) *A fair housing planning process should not allow grantees any safe harbors.*

NCRC opposes safe harbors because safe harbors do not require program participants to affirmatively further fair housing, thus exacerbating segregation, discrimination, and areas of extreme poverty. The determination of whether a jurisdiction meets its statutory obligation should depend upon the actions a program participant takes to affirmatively further fair housing.

V. Data Tool Recommendations – Restore and Changes.

a. *Any fair housing planning process needs to be data-driven; thus, the restoration of the assessment tool is an essential step in fulfilling this purpose. HUD needs to continuously update this tool.*

NCRC applauds HUD for developing the data tool and now updating it under this interim final rule so jurisdictions will have access to data for their upcoming certifications. NCRC encourages HUD to continue building out this technology to provide even more detailed mapping capabilities. With HUD's continued focus, improved technology will provide grantees with a complete picture of the factors that lead to housing discrimination. HUD must provide uniform national data, data and mapping tools, and structured questions in the Fair Housing Assessment Tool that local jurisdictions must use to comply with a future certification process. Using quality data is essential to a successful planning process. Data should be primarily quantitative, and it should be relevant, timely, and uniform; it should address poverty, segregation, and discrimination issues in housing, education, nutrition, environment, health, employment, and transportation. Jurisdictions should not be permitted to omit data from their plans selectively.

b. *HUD needs to make the data tool's interface more user intuitive.*

HUD needs to ensure that the data tool interface is intuitive to all potential users. Many users of the data tool do not have a specialty in mapping and thus require a more intuitive and more accessible interface. The easier the interface, the easier it is for the user to gather the information, and the more robust the planning process can be. For example, the current tool should be able to produce reports on each RECAP

area that is highlighted in a jurisdiction. Maps produced by the tool should be in an easily exported format to be downloaded, printed, and brought to public engagement meetings. HUD should spend some time looking at other mapping interfaces to understand better what is possible.

VI. Conclusion

NCRC appreciates the opportunity to comment on HUD's interim final rule *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*. For more information, please do not hesitate to contact me.

Sincerely,

Jesse Van Tol
CEO