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Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

Re: Comments in Response to HUD's Proposed Rule on Affirmatively Furthering Fair Housing, Docket No. FR 6123-P-02

To Whom It May Concern:

The National Women's Law Center (the "Center") takes this opportunity to comment in opposition to the Department of Housing and Urban Development's (HUD) Affirmatively Furthering Fair Housing (AFFH) Proposed Rule. In sum, based on the reasons detailed herein, the proposed changes in the Proposed Rule would cause serious harm to low-income women and their families, their communities, and the nation.

The Center fights for gender justice – in the courts, in public policy, and in society – working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone – especially those who face multiple forms of discrimination. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

Because of the importance of safe and affordable housing to all facets of the lives of women, children, and families and because the 2015 AFFH Rule that HUD erroneously suspended is a critical tool in furthering fair housing opportunities for women, people of color, and other protected classes under the Fair Housing Act (FHA), the Center strongly opposes the changes in the Proposed Rule. More specifically, the Center will stress in this comment the following:

- Access to safe and affordable housing in integrated neighborhoods is vital to the well-being of women and girls. Housing impacts health, education, food security, employment, and access to public programs that help families with low incomes meet basic needs.
- The FHA's mandate to affirmatively further fair housing is vital to overcoming barriers to fair housing for women and families.

- The Proposed Rule would replace a genuine assessment of affirmatively furthering fair housing with a certification process that is not focused on furthering fair housing and lacks focused community engagement. The Proposed Rule also ignores the important role of PHAs in expanding housing opportunities for members of protected classes under the FHA.
- The Proposed Rule will fail to address the legacy of segregation and fails to address barriers to housing choice for women and families, particularly women of color, survivors of gender-based violence, women with children, women with disabilities, and LGBTQ women.
- The Proposed Rule contradicts HUD's statutory obligation, and HUD has failed to justify the proposed changes to the 2015 AFFH rule.

For all of these reasons, the Center strongly opposes the Proposed Rule and calls on HUD to withdraw it.

I. Access to safe and affordable housing in integrated neighborhoods is vital to the well-being of women and girls.

Access to safe and affordable housing is crucial to good health,¹ nutrition,² education,³ and stable employment.⁴ Where we live is at the very core of our daily lives.

A. Access to fair housing impacts health outcomes for women and families.

Safe and affordable housing is key to one's health and well-being.⁵ When women and families spend too much on housing, they have insufficient resources for other essential needs, including food, health insurance, and health care. Having to choose between housing and health is a devastating proposition. People with unaffordable housing costs are more likely to skip health care treatments and not fill a prescription as a result of

¹ OPPORTUNITY STARTS AT HOME, HEALTH CARE ADVOCATES ARE HOUSING ADVOCATES (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Health-Fact-Sheet.pdf>; CTR. FOR OUTCOMES RES. AND ED. AND ENTER. COMMUNITY PARTNERS, INC., HEALTH IN HOUSING: EXPLORING THE INTERSECTION BETWEEN HOUSING AND HEALTH CARE (Feb. 2016), <https://www.enterprisecommunity.org/download?fid=5703&nid=4247>; KATHRYN BAILEY ET AL., CHILDREN'S HEALTHWATCH, OVERCROWDING AND FREQUENT MOVES UNDERMINE CHILDREN'S HEALTH (2011), www.issuelab.org/resources/13900/13900.pdf.

² OPPORTUNITY STARTS AT HOME, ANTI-HUNGER ADVOCATES ARE HOUSING ADVOCATES (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/04/Hunger-Fact-Sheet.pdf>.

³ OPPORTUNITY STARTS AT HOME, EDUCATION ADVOCATES ARE HOUSING ADVOCATES (Dec. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Education-Fact-Sheet.pdf>.

⁴ OPPORTUNITY STARTS AT HOME, ECONOMIC MOBILITY ADVOCATES ARE HOUSING ADVOCATES (Nov. 2018), <https://www.opportunityhome.org/wp-content/uploads/2018/02/Economic-Mobility-Fact-Sheet.pdf>.

⁵ LAUREN TAYLOR, HOUSING AND HEALTH: AN OVERVIEW OF THE LITERATURE, HEALTH AFFAIRS, (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

cost.⁶ These tradeoffs are particularly harmful for women who are already more likely to delay needed medical care⁷ and prescriptions⁸ because they cannot afford it.⁹

Different forms of housing instability, including eviction, also elevate stress levels, depression, and hopelessness.¹⁰ Poor women of color, domestic violence survivors, and women with children face a higher risk of eviction. Women evicted or threatened with eviction from their homes are more likely to experience health problems, like depression, anxiety, and high blood pressure, than people with stable housing.¹¹ This exacerbates the heightened risk that women, particularly women of color, have of experiencing depression,¹² anxiety,¹³ and high blood pressure.¹⁴

Further, unstable housing is particularly harmful to children's health. Children experiencing housing instability have higher occurrences of mental health conditions, developmental delays, poor cognitive outcomes, depression in their youth, and poorer

⁶ NABILAH MAQBOOL ET AL., THE IMPACTS OF AFFORDABLE HOUSING ON HEALTH: A RESEARCH SUMMARY, CENTER FOR HOUSING POLICY (Apr. 2015), <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>.

⁷ See also MUNIRA Z. GUNJA ET AL., HOW THE AFFORDABLE CARE ACT HAS HELPED WOMEN GAIN INSURANCE AND IMPROVED THEIR ABILITY TO GET HEALTH CARE, COMMONWEALTH FUND (2017), <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and> (noting that even though health insurance coverage gains through the Affordable Care Act have reduced the share of women skipping or delaying care because of costs, in 2016, 38 percent of women age 19 through 64 still reported not getting the health care they needed because of costs).

⁸ PRESCRIPTION DRUGS, HEALTH POL'Y INST., <https://hpi.georgetown.edu/rxdrugs/> (last visited Mar. 16, 2020).

⁹ ENTERPRISE, RENTERS REPORT HOUSING COSTS SIGNIFICANTLY IMPACT THEIR HEALTH CARE (Apr. 3, 2019), https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care.

¹⁰ LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND URBAN INST. (JAN. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

¹¹ ALISON BOVELL & MEGAN SANDEL, THE HIDDEN HEALTH CRISIS OF EVICTION, CHILDREN'S HEALTH WATCH (Oct. 5, 2018), <http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/>.

¹² PAUL R. ALBERT, WHY IS DEPRESSION MORE PREVALENT IN WOMEN?, 40 J. PSYCHIATRY NEUROSCI. 219-221 (Jul. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4478054/> (noting the higher prevalence of major depression in women than in men). More women seek treatment for depression than men, though white, non-Hispanic women are more likely to receive treatment for depression than Latinx and Black women. NAT'L INSTS. OF HEALTH, OFFICE OF RES. ON WOMEN'S HEALTH, WOMEN OF COLOR HEALTH DATA BOOK 147 (Oct. 2014), <https://orwh.od.nih.gov/sites/orwh/files/docs/WoC-Databook-FINAL.pdf>.

¹³ CARMEN P. MCLEAN ET AL., GENDER DIFFERENCES IN ANXIETY DISORDERS: PREVALENCE, COURSE OF ILLNESS, COMORBIDITY AND BURDEN OF ILLNESS, 45 J. PSYCHIATRIC RES. 1027-1035 (2011); NAT'L INST. OF MENTAL HEALTH, ANY ANXIETY DISORDER, <https://www.nimh.nih.gov/health/statistics/any-anxiety-disorder.shtml> (last updated Nov. 2017); U.S. DEP'T OF HEALTH & HUMAN SERVS., OFFICE ON WOMEN'S HEALTH, ANXIETY DISORDER, <https://www.womenshealth.gov/mental-health/mental-health-conditions/anxiety-disorders> (last updated Jan. 30, 2019) (noting that more American Indian/Alaskan Native women have generalized anxiety disorder than women of other races and ethnicities).

¹⁴ NAT'L INSTS. OF HEALTH, OFFICE OF RES. ON WOMEN'S HEALTH, WOMEN OF COLOR HEALTH DATA BOOK 121 (Oct. 2014), <https://orwh.od.nih.gov/sites/orwh/files/docs/WoC-Databook-FINAL.pdf> (noting that Black women experience high blood pressure at a higher rate than Latinx or white, non-Hispanic women).

life outcomes as adults.¹⁵ The younger a child is and the longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.¹⁶ Even children born to women who experienced homelessness while pregnant are more likely to be hospitalized or suffer worse health, compared to their peers.¹⁷

When access to stable and affordable housing is limited, more women are forced to live in highly segregated and/or substandard housing. Housing segregation widens health disparities by determining access to schools, jobs, and health care.¹⁸ Researchers have found that the availability of resources—such as public transportation to one’s job,¹⁹ grocery stores with nutritious foods,²⁰ and safe spaces to exercise²¹—are all correlated with improved health outcomes. In contrast, living in an economically disadvantaged, racially isolated neighborhood correlates with a shorter life, higher levels of overall mortality, premature mortality, infant mortality preterm birth, and low birth weight.²²

Substandard housing conditions also pose a variety of health risks to women and girls. Water leaks, poor ventilation, dirty carpets, and pest infestation are associated with poor health outcomes, most notably those related to asthma.²³ In-home exposure to lead can irreversibly damage the brains and nervous systems of children.²⁴

¹⁵ HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS, URBAN INST. (Sept. 2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>; see also LINDA GIANNARELLI ET AL., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN’S DEFENSE FUND, URBAN INST. (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

¹⁶ MEGAN SANDEL ET AL., COMPOUNDING STRESS: THE TIMING AND DURATION EFFECTS OF HOMELESSNESS ON CHILDREN’S HEALTH, NAT’L HOUSING CONFERENCE & CTR. FOR HOUSING POL’Y, (June 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

¹⁷ HOUSING AND HEALTH: AN OVERVIEW OF THE LITERATURE, HEALTH AFFAIRS HEALTH POLICY BRIEF (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

¹⁸ CHIQUITA COLLINS & DAVID R. WILLIAMS, RACIAL RESIDENTIAL SEGREGATION: A FUNDAMENTAL CAUSE OF RACIAL DISPARITIES IN HEALTH, 116 PUB. HEALTH REPORTS 404-416 (Sept. - Oct. 2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf>.

¹⁹ METTE AADAHL ET AL., THE ASSOCIATION BETWEEN ACCESS TO PUBLIC TRANSPORTATION AND SELF-REPORTED ACTIVE COMMUTING, INT. J. ENVIRON. RES. PUB. HEALTH (Dec. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276637/>.

²⁰ JUDITH BELL ET AL., ACCESS TO HEALTHY FOOD AND WHY IT MATTERS: A REVIEW OF THE RESEARCH, POLICYLINK (2013), http://thefoodtrust.org/uploads/media_items/access-to-healthy-food.original.pdf.

²¹ ROSEANN BONGIOVANNI ET AL., A WALK IN THE PARK: THE INFLUENCE OF URBAN PARKS AND COMMUNITY VIOLENCE ON PHYSICAL ACTIVITY IN CHELSEA, MA, INT. J. ENVIRON. RES. PUB. HEALTH (Jan. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730488/>.

²² Living in an economically disadvantaged, racially isolated neighborhood is predictive of a shorter life, particularly for Black residents. Researchers have found racial isolation to be associated with host of health risks for Black residents, including higher levels of overall mortality, premature mortality, infant mortality, along with a range of other poor health outcomes such as preterm birth, and low birth weight. MARIANA C. ARCAYA & ALINA SCHNAKE-MAH, HEALTH IN THE SEGREGATED CITY, N.Y.U. FURMAN CTR., (Oct. 2017), <https://furmancenter.org/research/iri/essay/health-in-the-segregated-city>.

²³ HOUSING AND HEALTH, EXPLORING THE SOCIAL DETERMINANTS OF HEALTH 2, ROBERT WOOD JOHNSON FOUND. (May 2011), https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2011/rwjf70451.

²⁴ WORLD HEALTH ORG., LEAD POISONING AND HEALTH (Aug. 23, 2019), <http://www.who.int/mediacentre/factsheets/fs379/en/>

Additionally, exposure to high or low temperatures can lead to adverse health events, including cardiovascular events.²⁵ Women and families with few financial resources are most likely to experience unhealthy housing and are typically least able to remedy them, contributing to disparities in health across socioeconomic groups.²⁶

B. Access to fair housing impacts educational outcomes for women and families.

Gender justice, access to fair housing opportunities, and educational equity are deeply intertwined. The 2015 Rule made the strongest effort in decades to reverse harmful patterns of segregation and discriminatory housing practices in communities across the country and should be fully implemented.

First, housing instability has negative impacts on education. Children who experience housing instability are more likely to have behavioral problems and struggle in school.²⁷ Being homeless is a traumatic experience that manifests in many ways in the classroom—including ways that are coded as disruptive and can trigger a punitive response from educators. As such, housing instability contributes to high suspension rates, school turnover, truancy, and expulsions.²⁸ Homelessness is associated with an 83 percent greater likelihood of a child being pushed out of school.²⁹ In addition, housing instability directly correlates to decreased academic achievement and retention.³⁰ Conversely, educational attainment is linked to positive health outcomes and longer lives.³¹ Access to housing, therefore, is critical to ensuring the future success and wellbeing of all students—including young women and girls—throughout the country.

²⁵ K. OBAYASHI ET AL., SHORT-TERM EFFECTS OF INSTRUCTION IN HOME HEATING ON INDOOR TEMPERATURE AND BLOOD PRESSURE IN ELDERLY PEOPLE: A RANDOMIZED CONTROLLED TRIAL, 33 J. HYPERTENS. 2338-2343 (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pubmed/26372318>; S. OETELT-PRIGIONE ET AL., GENDER IN CARDIOVASCULAR DISEASES: IMPACT ON CLINICAL MANIFESTATIONS, MANAGEMENT, AND OUTCOMES, 37 EUR. HEART J. 24–34 (Nov. 3, 2015), <https://www.acc.org/latest-in-cardiology/ten-points-to-remember/2015/11/19/23/53/gender-in-cardiovascular-diseases> (although rates of hypertension are lower among young women compared to young men, rates are higher in women and the elderly).

²⁶ P. BRAVEMAN ET AL., HOW DOES HOUSING AFFECT HEALTH?, ROBERT WOOD JOHNSON FOUND. (May 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>.

²⁷ ABIGAIL L. GAYLORD ET AL., HOUSING INSTABILITY IS LINKED TO ADVERSE CHILDHOOD BEHAVIOR, HOUSING MATTERS (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

²⁸ See MAI ABDUL RAHMAN, THE DEMOGRAPHIC PROFILE OF BLACK HOMELESS HIGH SCHOOL STUDENTS RESIDING IN THE DISTRICT OF COLUMBIA SHELTERS AND THE FACTORS THAT INFLUENCE THEIR EDUCATION 55 (Mar. 2014), available at <https://pqdtopen.proquest.com/doc/1620832476.html?FMT=AI> (citations omitted).

²⁹ ERIN S. INGRAM ET AL., CIVIC ENTERPRISES & HART RES. ASSOCS., HIDDEN IN PLAIN SIGHT: HOMELESS STUDENTS IN AMERICA'S PUBLIC SCHOOLS 24 (2016), https://www.americaspromise.org/sites/default/files/d8/2016-12/HiddeninPlainSightFullReportFINAL_0.pdf.

³⁰ See Rahman, *supra* note 28.

³¹ SUSAN EGERTER ET AL., EDUCATION AND HEALTH: AN EXAMINATION OF THE MANY WAYS IN WHICH EDUCATION CAN INFLUENCE HEALTH, INCLUDING HOW EDUCATIONAL ATTAINMENT AFFECTS HEALTH ACROSS GENERATIONS AND THE SOCIAL AND ECONOMIC ADVANTAGES IT REPRESENTS, ROBERT WOOD JOHNSON FOUND., (Apr. 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.

In addition, addressing segregation is a key fair housing issue. In *N.A.A.C.P. v. Secretary of HUD*, the court noted that the FHA’s legislative history “suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to *assist in ending discrimination and segregation*, to the point where the supply of genuinely open housing increases.”³² In order to assist in ending discrimination and segregation, HUD must first acknowledge the role that discriminatory policies and practices have historically played, and continue to play, in our nation’s communities.

The neighborhoods in which children live typically determine the schools they attend, and the more racially segregated our neighborhoods, the more racially segregated our schools. Segregated neighborhoods isolate communities of color in environments that are often poorly resourced and economically disadvantaged. These disparities are mirrored in our schools, resulting in disparate educational opportunity and outcomes for students of color.³³ Today, the schools that serve the highest concentrations of Black and Latinx children routinely have less experienced teachers, offer less challenging courses, and invest less in their physical space and facilities.³⁴ By providing fewer resources and opportunities for growth, these schools perpetuate generational poverty and disproportionately harm students of color.

In addition to school segregation, allowing for the continued concentration of poverty in communities limits the resources available to schools. Because of the decentralized nature of education funding, and the reliance on local property taxes, low-wealth communities are less able to provide sufficient funding for their schools, even when tax rates are high. Removing a critical tool for deconcentrating poverty would mean fewer schools have the resources they need.

In contrast, integration promises positive outcomes for all students. For example, research has shown that the academic achievement gap for Black children increases the more time they spend in segregated schools.³⁵ Meanwhile, the racial achievement gap fell dramatically during the 1970s and 1980s, the peak years of integration.³⁶ Notably, white children benefited too – test scores for both Black and white students often improved during this time of integration.³⁷

³² *N.A.A.C.P. v. Secretary of HUD*, 817 F.2d 149, 155 (1st Cir. 1987) (emphasis added).

³³ See, e.g., OPPORTUNITY STARTS AT HOME, RACIAL EQUITY ADVOCATES ARE HOUSING ADVOCATES <https://www.opportunityhome.org/resources/housing-discrimination-unfinished-business-civil-rights/> (last visited Mar. 16, 2020).

³⁴ Catherine E. Lhamon, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter: Educational Disparities (Oct. 1, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

³⁵ ERIC A. HANUSHEK & STEVEN G. RIVKIN, HARMING THE BEST: HOW SCHOOLS AFFECT THE BLACK–WHITE ACHIEVEMENT GAP, NAT’L BUREAU OF ECON. RES. (Aug. 2008), <https://www.nber.org/papers/w14211>.

³⁶ THE CENTURY FOUND., THE BENEFITS OF SOCIOECONOMICALLY AND RACIALLY INTEGRATED SCHOOLS AND CLASSROOMS (Apr. 29, 2019), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms>.

³⁷ See, e.g., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., TRENDS IN ACADEMIC PROGRESS 16 <https://nces.ed.gov/nationsreportcard/subject/publications/main2012/pdf/2013456.pdf>.

C. Access to fair housing impacts nutrition for women and families.

When families with low incomes spend high portions of their income on their rent, they struggle to pay for nutritious food. Indeed, food insecurity increases with housing costs.³⁸ One study shows that low-income households with children that pay over half of their monthly income on rent spend considerably less on other basic necessities, including about \$200 less per month on food.³⁹ In 2017, about 14 percent of women living alone and over 30 percent of families with children headed by a single woman faced food insecurity.⁴⁰

In addition, historical residential segregation has restricted neighborhood access to healthy foods and inhibits a family's ability to engage in healthy eating behaviors. Data has shown that Black people in the United States consume 32 percent more fruits and vegetables with every supermarket found in their census tract.⁴¹ As with housing development, retail investment in neighborhoods is based on perceptions of income, race, and the reputation of a neighborhood, including the presence of crime. Referred to as "supermarket redlining," these perceptions deter grocery stores and supermarkets from operating in segregated neighborhoods with concentrated poverty,⁴² frequently leaving convenience stores as the only option for grocery shopping. In fact, one study found that predominantly Black census tracts have the fewest number of supermarkets, and the number of convenience stores is positively correlated with the increase of neighborhood poverty.⁴³ While large supermarkets tend to stock more healthy foods, convenience stores tend to stock more processed, high-fat foods. This negatively impacts nutrition for families in neighborhoods of color.

Residential segregation also increases the amount of fast food restaurants in an area. While fast food restaurants provide convenient, inexpensive meals for families with low incomes, their offerings often lack the nutrients required to fulfill the federal dietary

³⁸ JASON M. FLETCHER, TATIANA ANDREYEVA & SUSAN H. BUSCH, ASSESSING THE EFFECT OF INCREASING HOUSING COSTS ON FOOD INSECURITY (Sept. 9, 2009), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503043.

³⁹ JOINT CTR. FOR HOUSING STUDIES, HARVARD U., THE STATE OF THE NATION'S HOUSING 2018, at 30, 32 (2018), *available at* http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf.

⁴⁰ ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD INSECURITY IN THE UNITED STATES IN 2017, at 13 (Sept. 2018), *available at* <https://www.ers.usda.gov/webdocs/publications/90023/err-256.pdf?v=0>. The U.S. Department of Agriculture defines food insecurity as a "lack of consistent access to enough food for an active, healthy life." ECON. RES. SERV., U.S. DEP'T OF AGRIC., DEFINITIONS OF FOOD SECURITY (2018), *available at* <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx>.

⁴¹ KIMBERLY MORLAND, STEVE WING & ANA DIEZ ROUX, THE CONTEXTUAL EFFECT OF THE LOCAL FOOD ENVIRONMENT ON RESIDENTS' DIETS: THE ATHEROSCLEROSIS RISK IN COMMUNITIES STUDY, 92 AM. J. PUB. HEALTH 1761–1767 (2002), *available at* <https://doi.org/10.2105/ajph.92.11.1761>.

⁴² JESSICA CROWE, CONSTANCE LACY & YOLANDA COLUMBUS, BARRIERS TO FOOD SECURITY AND COMMUNITY STRESS IN AN URBAN FOOD DESERT, 2 URBAN SCI. 46 (2018), *available at* <http://dx.doi.org/10.3390/urbansci2020046>.

⁴³ KELLY M. BOWER ET AL., THE INTERSECTION OF NEIGHBORHOOD RACIAL SEGREGATION, POVERTY, AND URBANITY AND ITS IMPACT ON FOOD STORE AVAILABILITY IN THE UNITED STATES 58 PREVENTIVE MEDICINE 33–39 (2014), *available at* <https://doi.org/10.1016/j.ypmed.2013.10.010>.

guidance⁴⁴ and are heavily marketed toward young children and adolescents, especially those in Black and Latinx communities.⁴⁵ One study found that the percentage of Black residents in a neighborhood was a more powerful predictor of fast food restaurant density than household income.⁴⁶ Neighborhoods with 80 percent Black residents had 2.4 fast food restaurants per square mile compared to 1.5 restaurants per square mile in neighborhoods with 20 percent black residents.⁴⁷ Overall, for an average sized shopping area, predominantly Black neighborhoods were exposed to six more fast food restaurants than predominantly white neighborhoods.⁴⁸

Researchers have identified associations between neighborhoods, food options, and obesity. Living in a neighborhood that is more than 25 percent Black increases the odds of being obese for everyone in the neighborhood.⁴⁹ Among girls specifically, researchers found that living in a neighborhood with a higher density of food service retailers was correlated with an increased probability of progressing towards obesity in adolescence.⁵⁰ However, evidence suggests that an increase in access, availability, or consumption of healthy foods was associated with a significant decrease in BMI.⁵¹

D. Access to fair housing impacts women’s employment outcomes.

As an example, eviction and involuntary displacement due to unjust and discriminatory housing policies make it hard for workers to be present during scheduled work hours and may lead to job loss and prolonged unemployment.⁵² The eviction process is usually long, unpredictable, and arduous, and can span multiple weeks and require court appearances, necessitating multiple and unpredictable absences from work. Then there are additional barriers if someone is evicted. The search for a new safe and affordable home can already be a lengthy process, and tenants with an eviction record on their rental history often have a harder time finding a new landlord who will rent to them. Consequently, a previously evicted tenant’s housing opportunities are often

⁴⁴ SHARON I. KIRKPATRICK ET AL., FAST-FOOD MENU OFFERINGS VARY IN DIETARY QUALITY, BUT ARE CONSISTENTLY POOR, 17 PUB. HEALTH NUTRITION 924–931 (2014), *available at* <https://doi.org/10.1017/S1368980012005563>.

⁴⁵ WILLIE FRAZIER III ET AL., RUDD CTR. FOR FOOD POL’Y & OBESITY, INCREASING DISPARITIES IN UNHEALTHY FOOD ADVERTISING TARGETED TO HISPANIC AND BLACK YOUTH (Jan. 2019), <http://uconnruddcenter.org/files/Pdfs/TargetedMarketingReport2019.pdf>.

⁴⁶ JASON P. BLOCK, RICHARD A. SCRIBNER & KAREN B. DESALVO, FAST FOOD, RACE/ETHNICITY, AND INCOME: A GEOGRAPHIC ANALYSIS, 27 AM. J. OF PREVENTIVE MED. 211–217 (2004), *available at* [https://www.ajpmonline.org/article/S0749-3797\(04\)00139-4/fulltext](https://www.ajpmonline.org/article/S0749-3797(04)00139-4/fulltext).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ MELODY GOODMAN ET AL., HOW SEGREGATION MAKES US FAT: FOOD BEHAVIORS AND FOOD ENVIRONMENT AS MEDIATORS OF THE RELATIONSHIP BETWEEN RESIDENTIAL SEGREGATION AND INDIVIDUAL BODY MASS INDEX, FRONTIERS IN PUB. HEALTH (Mar. 29, 2018), <https://www.frontiersin.org/articles/10.3389/fpubh.2018.00092/full>.

⁵⁰ LINDSAY T. HOYT ET AL., NEIGHBORHOOD INFLUENCES ON GIRLS’ OBESITY RISK ACROSS THE TRANSITION TO ADOLESCENCE, 134 PEDIATRICS 942–949 (2014), *available at* <https://doi.org/10.1542/peds.2014-1286>.

⁵¹ *Id.*

⁵² MATTHEW DESMOND & CARL GERSHENSON, HOUSING AND EMPLOYMENT INSECURITY AMONG THE WORKING POOR, 63 SOCIAL PROBLEMS Desmond, Matthew, and Carl Gershenson. 2016. “Housing and Employment Insecurity among the Working Poor.” *Social Problems* 63: 46-67 (2016), *available at* <https://scholar.harvard.edu/mdesmond/publications/housing-and-employment-insecurity-among-working-poor>.

limited to inconvenient or even unsafe areas, and can result in workplace tardiness or absenteeism. This is especially true for poorly paid workers, who are less likely to have access to important supports, like paid leave or predictable or flexible work schedules.⁵³

Furthermore, poor credit caused by housing instability more broadly can make it harder for individuals to obtain or maintain a job. Predatory lending and other discriminatory housing policies and practices may result in tarnished credit or rental histories, which can create barriers for individuals seeking employment. Credit and background checks are increasingly common in employment and can effectively bar individuals from job opportunities. According to one report, 25 percent of unemployed respondents said that a potential employer requested a credit check on the job application.⁵⁴ Consequently, 10 percent of unemployed respondents were notified they would not be hired due to information in their credit report.⁵⁵ Thus, access to safe and stable housing is critical to advancing employment and economic security.

In addition, addressing residential segregation is a key worker justice issue. For example, one study found that Black people living “in moderately segregated metropolitan areas have much better employment levels” than those in highly segregated metropolitan areas.⁵⁶ The Brookings Institution analyzed the 10 largest Black-majority cities⁵⁷ and found that Black unemployment rates in 2017 ranged from 3.9 percent to 10.8 percent higher than white unemployment rates.⁵⁸ The Center analyzed 2018 unemployment data for some of the same cities and identified disparities by race and sex⁵⁹ in most places. Here are a few examples:

- **Disparities based on sex and race:** In Baltimore, the 2018 unemployment rate for white, non-Hispanic people was three percent.⁶⁰ White, non-Hispanic men fared better with a two percent unemployment rate, while white, non-Hispanic women had a 4.2 percent unemployment rate and Black women had a 7.7 percent unemployment rate.⁶¹ In Hampton, VA, the unemployment rate for white, non-

⁵³ *Id.*

⁵⁴ AMY TRAUB, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB, DEMOS (Feb. 3, 2014) <https://www.demos.org/research/discredited-how-employment-credit-checks-keep-qualified-workers-out-job#Conclusion:-Employment-credit-checks-illegitimately-obstruct-access-to-jobs>

⁵⁵ *Id.*

⁵⁶ KIMBERLY QUICK & RICHARD D. KAHLENBERG, THE CENTURY FOUND., ATTACKING THE BLACK-WHITE OPPORTUNITY GAP THAT COMES FROM RESIDENTIAL SEGREGATION, (June 25, 2019), <https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation/?session=1#easy-footnote-bottom-15>.

⁵⁷ Defined as “cities with a population of 50% or more Black residents, including those who identify as mixed race or biracial.” ANDRE M. PERRY, BROOKINGS INST., BLACK WORKERS ARE BEING LEFT BEHIND BY FULL EMPLOYMENT, (June 26, 2019) <https://www.brookings.edu/blog/the-avenue/2019/06/26/black-workers-are-being-left-behind-by-full-employment/>.

⁵⁸ *Id.*

⁵⁹ Respondents self-identified their sex as either male or female in the 2018 American Community Survey. For more information, see the full questionnaire. U.S. CENSUS BUREAU, The American Community Survey, <https://www2.census.gov/programs-surveys/acs/methodology/questionnaires/2018/quest18.pdf>.

⁶⁰ NAT’L WOMEN’S LAW CTR. calculations using U.S. CENSUS BUREAU, 2018 AMERICAN COMMUNITY SURVEY USING STEVEN RUGGLES ET AL., IPUMS USA: Version 9.0 [dataset] (Minneapolis, 2019), available at <https://ipums.org/>.

⁶¹ *Id.*

Hispanic men was 1.2 percent but 5.1 percent for white, non-Hispanic women and 10.1 percent for Black women.⁶²

- **Disparities based on sex:** In Newark, NJ, the unemployment rate for white, non-Hispanic men was a 2.9 percent but 12.1 percent for white, non-Hispanic women and 11.3 percent for Black women.⁶³
- **Disparities based on race:** In New Orleans, white, non-Hispanic women had an unemployment rate of 3.4 percent while Black women had an unemployment rate of 7.7 percent.⁶⁴

Research also indicates that jobs in predominantly white communities that are inaccessible by public transportation can be hard for people of color with low incomes in segregated neighborhoods to access.⁶⁵ Moreover, the disparities in educational outcomes for students of color in segregated neighborhoods discussed above impact the ability for many people of color to access quality jobs.⁶⁶

E. Residential segregation makes it harder for women with low incomes to access public programs to meet basic needs for their families.

Women are more likely than men to experience economic insecurity because of deeply rooted discrimination in our economic system and society. Employers are less likely to hire women than men for high-wage jobs,⁶⁷ and employers' negative stereotypes about mothers and their ability and commitment to do higher-level work also contribute to mothers' overrepresentation in the low-wage workforce.⁶⁸ Women are also systemically (sometimes overtly and sometimes subtly) discouraged from higher-paying job tracks, such as in the Science, Technology, Engineering, and Mathematics (STEM) field.⁶⁹ "Women's work" is also devalued, in the most literal sense. Caregiving is just one example: paid child care providers are vastly underpaid for the valuable work they do caring for children and supporting their development,⁷⁰ and family caregiving responsibilities,⁷¹ of which mothers also bear a disproportionate share, are completely uncompensated. Studies have also revealed that large numbers of women moving into

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* New Orleans shows how different jurisdictions may face different barriers to opportunity for protected classes. The 2018 unemployment rate for white, non-Hispanic women was 3.4 percent compared to 4.0 percent for white, non-Hispanic men. *Id.*

⁶⁵ See, e.g., MARGERY AUSTIN TANNER & KARINA FORTUNY, URBAN INST., RESIDENTIAL SEGREGATION AND LOW-INCOME WORKING FAMILIES 5 (Feb. 2009), available at <https://www.urban.org/sites/default/files/publication/32941/411845-Residential-Segregation-and-Low-Income-Working-Families.PDF>.

⁶⁶ *Id.*

⁶⁷ NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO 2 (Sept. 2019), available at <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/> [hereinafter "THE WAGE GAP"].

⁶⁸ *Id.* at 3.

⁶⁹ *Id.* at 3.

⁷⁰ JULIE VOGTMAN, NAT'L WOMEN'S LAW CTR., UNDERVALUED: A BRIEF HISTORY OF WOMEN'S CARE WORK AND CHILD CARE POLICY IN THE UNITED STATES 2 (2017), available at https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/final_nwlc_Undervalued2017.pdf.

⁷¹ THE WAGE GAP, *supra* note 67, at 3.

a field typically lead to a decline in wages for that field.⁷² Women face significant wage gaps that amounts to thousands of dollars each year in lost income, and women of color face the compounded impact of gender and racial wage gaps.⁷³ Gender and racial discrimination, combined with policymakers' failure to increase the minimum wage, thus negatively impacts the economic security of women in the low-wage workforce.

As a result, public programs provide critical assistance to many women and families to help meet their basic needs. For example, in Fiscal Year (FY) 2018, SNAP served more than 39.7 million people in 19.7 million households on average each month,⁷⁴ including 17 million children.⁷⁵ Sixty-three percent of adult SNAP recipients are women.⁷⁶ The Special Supplemental Nutrition Program for Women and Children (WIC) provided nutritious food to nearly 6.9 million low-income pregnant women, new mothers, and young children on average each month in FY 2018.⁷⁷ The Temporary Assistance for Needy Families (TANF) provided assistance to more than 1 million families⁷⁸ and 1.8 million children.⁷⁹ HUD public housing and the Housing Choice Voucher programs helped 5.92 million women and girls (63 percent of all recipients) have a roof over their heads.⁸⁰

Unfortunately, residential segregation can make it hard for families with low incomes to access many of the programs that they need to meet their basic needs. While many programs have online applications, not all families with low incomes in segregated neighborhoods have internet access, and some people do not trust online applications.⁸¹ These families must make in-person visits to benefits offices, and sometimes multiple offices if they are applying for benefits serviced by different offices.⁸² If the benefits office is inaccessible by public transportation, families (especially women with caregiving responsibilities who cannot access child or

⁷² *Id.* at 3.

⁷³ *Id.* at 1.

⁷⁴ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERVS., CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2018, at xv, 25 (Nov. 2019), available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2018.pdf>.

⁷⁵ *Id.* at 25 (Table 3.5).

⁷⁶ *Id.* at 67.

⁷⁷ U.S. DEP'T OF AGRIC., Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Monthly Data – National Level, https://www.fns.usda.gov/sites/default/files/pd/37WIC_Monthly.pdf (data as of Mar. 8, 2019).

⁷⁸ U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, OFFICE OF FAMILY ASSISTANCE, TANF: Total Number of Families (Mar. 25, 2019), https://www.acf.hhs.gov/sites/default/files/ofa/2018tanf_totalfamilies_03252019_508.pdf.

⁷⁹ U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, OFFICE OF FAMILY ASSISTANCE, TANF: Total Number of Child Recipients (Mar. 25, 2019), https://www.acf.hhs.gov/sites/default/files/ofa/2018tanf_totalchildren_03252019_508.pdf.

⁸⁰ ALICIA MAZZARA, CTR. ON BUDGET AND POL'Y PRIORITIES, DEMOGRAPHIC DATA HIGHLIGHT POTENTIAL HARM OF NEW TRUMP PROPOSAL TO RESTRICT HOUSING ASSISTANCE (Jul. 1, 2019), <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

⁸¹ HEATHER HAHN, MICHAEL KATZ & JULIA B. ISAACS, URBAN INST., WHAT IS IT LIKE TO APPLY FOR SNAP AND OTHER WORK 8 (Aug. 2017), https://www.urban.org/sites/default/files/publication/92766/2001473_what_is_it_like_to_apply_for_snap_and_other_work_supports.pdf.

⁸² *Id.* at 4.

dependent care) may have a hard time applying for programs. This is compounded if the applicant needs to make multiple trips to the government office because they did not have all the documentation required for applications that can be 20 pages or longer.⁸³

In addition, interviews are often required after submitting an initial benefits application. While some local government agencies conduct interviews over the phone, some require in-person interviews.⁸⁴ Then, families who make it through the application process and start receiving benefits often face requirements to continue receiving benefits, including interviews, documentation, or requirements to secure and report a certain number of hours of work, which is hard for segregated neighborhoods with concomitant poor employment opportunities. Non-compliance with program requirements can result in ineligibility or sanctions, such as a reduction of benefits or complete loss of benefits. Black beneficiaries are more likely than the general public to receive sanctions, increasing the existing wealth and income gap that Black communities face.⁸⁵

II. The Affirmatively Furthering Fair Housing mandate is vital to overcoming barriers to fair housing for women and families.

Since its enactment in 1968, the FHA has imposed a duty on all federal agencies and their funding recipients to affirmatively further fair housing,⁸⁶ including working to undo segregated neighborhoods that federal housing policy had created through redlining and other government policies that perpetuated racially segregated neighborhoods. This duty to affirmatively further fair housing applies to all protected classes under the FHA: race, color, national origin, sex, disability status, familial status, and religion. Despite this legal obligation enshrined in law, decades passed without effective, meaningful guidance on how jurisdictions could meet this obligation through taking concrete steps to tackle segregation and address fair housing issues.

During the 27 year period after the FHA was enacted, HUD was sued several times for its failure to implement and enforce the AFFH provision of the FHA.⁸⁷ In 1995, HUD finalized the first AFFH regulation, which required jurisdictions to perform an Analysis of Impediments (AI) to fair housing, take actions to overcome the identified impediments, and document their analyses and actions taken. HUD did not provide much guidance or oversight of this AI process, and jurisdictions receiving HUD funds rarely took actions to

⁸³ *Id.* at 3.

⁸⁴ See, e.g., SARAH BETANCOURT, AUDIT: TRANSPORTATION A BARRIER TO FOOD ASSISTANCE BENEFITS, COMMONWEALTH (Sep. 9, 2019), <https://commonwealthmagazine.org/transportation/audit-transportation-a-barrier-to-food-assistance-benefits/>; SHELLEY WATERS-BOOTS, FORD FOUND., SPECIAL FUND FOR POVERTY ALLEVIATION OF THE OPEN SOCIETY INST. & ANNIE E. CASEY FOUND., IMPROVING ACCESS TO PUBLIC BENEFITS: HELPING ELIGIBLE INDIVIDUALS AND FAMILIES GET THE INCOME SUPPORTS THEY NEED 5 (2009), available at https://www.impact.upenn.edu/wp-content/uploads/2016/2015/03/CHIPSeminar2010_ImprovingAccess_Ford-OSI-AECF.pdf.

⁸⁵ VICKI LENS, WORK SANCTIONS UNDER WELFARE REFORM: ARE THEY HELPING WOMEN ACHIEVE SELF-SUFFICIENCY?, 13 DUKE J. GENDER L. & POL'Y 255-284 (2006).

⁸⁶ 42 U.S.C. § 3608(e)(5).

⁸⁷ See, e.g., N.A.A.C.P., Boston Chapter v. Kemp, 721 F. Supp. 361 (D. Mass. 1989); Trafficante v. Metro. Life Ins. Co., 409 U.S. 205 (1972).

address the impediments. In 2013, the Government Accountability Office reported that it found the AI process to be ineffective,⁸⁸ as did HUD, recipients of HUD funding, and other stakeholders.

In response to the shared conclusion that the 1995 AFFH regulation was ineffective and requests from jurisdictions for better guidance, HUD engaged with numerous stakeholders and the public through field testing and rulemaking, leading to a new AFFH rule in 2015. Before the suspension of the 2015 Rule's implementation, the Assessment of Fair Housing (AFH) tools created for Local Governments and Public Housing Agencies (PHAs) provided guidance for communities to consider fair housing issues such as segregation, disparities in access to opportunity, and disproportionate housing needs. The tools listed contributing factors of disproportionate housing needs that impact women and girls, such as loss of affordable housing, which can have a disproportionate impact on households headed by women, and displacement and lack of housing support for survivors of domestic violence.⁸⁹

The 2015 AFFH rule was a critical step in addressing historic and ongoing discrimination; unfortunately, the current Proposed Rule would completely undermine this work by gutting the 2015 Rule and replacing it with one that ignores the legacy of segregation and practically eliminates any accountability for recipients of HUD funds such as local governments and PHAs.

III. The Proposed Rule would replace a genuine assessment of affirmatively furthering fair housing with a certification process that is not focused on furthering fair housing and lacks focused community engagement.

The Proposed Rule would eliminate the AFH, which intended to provide jurisdictions meaningful guidance about how to meet their AFFH obligations. The 2015 Rule requires jurisdictions to certify that they “will take meaningful actions to further the goals of the AFH...and that [they] will take no action that is materially inconsistent with the obligation to affirmatively further fair housing.”⁹⁰

In the Proposed Rule, HUD would replace the AFH with a certification process that is not focused on furthering fair housing for protected classes. The Proposed Rule's AFFH certification process would require jurisdictions to set a minimum of three goals and explain how meeting those goals “affirmatively furthers fair housing in that jurisdiction.”⁹¹

⁸⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, HOUSING AND COMMUNITY GRANTS: HUD NEEDS TO ENHANCE ITS REQUIREMENTS AND OVERSIGHT OF JURISDICTIONS' FAIR HOUSING PLANS (Sep. 2010), *available at* <https://www.gao.gov/new.items/d10905.pdf>.

⁸⁹ U.S. DEP'T OF HOUSING & URBAN DEV., Assessment of Fair Housing Tool for Local Governments (2017), *available at* <http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/background/Assessment-of-Fair-Housing-Tool-For-Local-Governments-2017-01.pdf> (currently not in use); U.S. DEP'T OF HOUSING & URBAN DEV., Assessment of Fair Housing Tool for Public Housing Agencies (2017), *available at* <http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/background/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies-2017-01.pdf> (currently not in use).

⁹⁰ 24 C.F.R. § 5.152 (2019).

⁹¹ Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2041, 2056 (proposed Jan. 14, 2020) (to be codified at 24 C.F.R. §91.225(a)(1)(i) (2019)).

Unfortunately, there are significant gaps in this proposed process that would harm women and families, as well as other protected classes under the FHA. This would significantly alter the definition of AFFH certification, and detrimentally impact the very people for whom fair housing must be furthered.

A. The Proposed Rule’s AFFH certification process includes an exemption that creates incentives for jurisdictions to avoid furthering fair housing for protected classes through a false supply-side, trickle-down theory of “affordable housing.”

The Proposed Rule provides an exception to the requirement for jurisdictions to include a brief description of how accomplishing each goal affirmatively furthers fair housing—jurisdictions can instead choose from a list of 16 conditions HUD misleadingly asserts are “inherent barriers to fair housing choice.”⁹²

Thirteen of the 16 conditions do not substantively deal with fair housing, and all but one of the 13 address supply-side conditions.⁹³ These supply-side so-called “barriers” in fact provide important environmental, labor, and tenant protections (such as rent control) that are particularly needed by members of the protected classes under the FHA. Eliminating these important protections in order to encourage the construction of more housing will not address obstacles to fair housing choice that women, families with children, people of color, people with disabilities, and other protected classes under the FHA face. Local laws and policies should instead be examined in their proper local context. For example, rent stabilization laws in a particular community may help prevent the displacement of communities of color, female-headed households, or persons with disabilities. Furthermore, increasing the housing supply might not even measurably impact the development of affordable housing, especially housing that is affordable to families with the lowest incomes (“deeply affordable housing”), nor will it address discriminatory practices. These “inherent barrier” designations appear to be intended to advance the administration’s overarching deregulatory agenda, rather than to increase affordable housing opportunities for members of protected classes.

In addition, the “inherent barriers” to fair housing choice enumerated in the proposed AFFH certification only explicitly mention one protected class—persons with disabilities—and only in one of the 16 goals; thus, this list does not directly connect disparities in access to housing opportunities with longstanding patterns of segregation and discrimination based on sex, familial status, or other protected classes. Moreover, the one item in the enumerated list for the Proposed Rule’s AFFH certification process that explores housing barriers faced by persons with disabilities (examining the supply of affordable and accessible housing for people with disabilities) only addresses people with physical disabilities, not people with mental or intellectual/developmental disabilities and pales in comparison to the robust Disability and Access Analysis in the AFH.

⁹² *Id.*

⁹³ Twelve of the conditions (A, B, D, E, G, I, J, K, L, N, O, P) deal with supply-side conditions. Condition H, “high rates of housing-related lead poisoning in housing,” is not an obstacle to fair housing but still should be addressed, though by addressing lead *hazards* and not just lead *poisoning*.

Given these flaws in the Proposed Rule’s AFFH certification process, jurisdictions could complete the AFFH certification by taking the easy way out and identifying three goals from the “inherent barriers” list that have no substantive connection to furthering fair housing for protected classes. Jurisdictions could submit their AFFH certification without addressing (or even mentioning) the impact of housing segregation or barriers to housing women, including survivors of gender-based violence, families with children, people of color, or other protected classes face.

Consequently, this Proposed Rule would allow jurisdictions receiving HUD funds to evade their duty under the FHA to affirmatively further fair housing for protected classes. The Proposed Rule would be worse than the ineffective AI process that existed from 1994 to 2015. The Center urges HUD to withdraw this proposed rule and instead fully implement the 2015 Rule.

B. The Proposed Rule creates an arbitrary ranking system that will not motivate communities to affirmatively further fair housing for protected classes under the FHA.

HUD also includes in the Proposed Rule a new “Jurisdiction Risk Analysis” system that would be used after the initial AFFH certification process to rank jurisdictions on a scale ranging from “outstanding” to failing and needing enhanced review. HUD claims this system would evaluate jurisdictions’ success with affirmatively furthering fair housing and “outstanding” performers could serve as a model for other jurisdictions. However, the system focuses on measuring the adequacy of the supply of affordable housing for the whole population in the jurisdiction instead of evaluating actual housing opportunity for women, people of color, families with children, people with disabilities, and other protected classes under the FHA. Consequently, jurisdictions could receive an “outstanding” ranking with high aggregate results even if there are disparities based on protected classes.

Strikingly, housing discrimination is an afterthought in this ranking system—only examined once a jurisdiction is initially ranked “outstanding.” Furthermore, this part of the ranking system only considers findings of civil rights violations in cases brought by HUD or the U.S. Department of Justice (DOJ). This fails to account for the overwhelming majority of HUD and DOJ cases (which are settled without a formal adjudicated decision), ongoing investigations by HUD and DOJ, and private fair housing enforcement, including lawsuits brought under the FHA by private parties (which comprise the majority of reported fair housing complaints).⁹⁴ These gaps in the very limited housing discrimination analysis provided under the Proposed Rule would result in undercounting housing discrimination in a given jurisdiction, so an “outstanding” jurisdiction could serve as a “model” for other jurisdictions despite the prevalence of housing discrimination.

⁹⁴ See NAT’L FAIR HOUSING ALLIANCE, DEFENDING AGAINST UNPRECEDENTED ATTACKS ON FAIR HOUSING: 2019 FAIR HOUSING TRENDS REPORT (Oct. 2019), *available at* <https://nationalfairhousing.org/2019-fair-housing-trends-report/>.

Moreover, HUD proposes giving high-ranking jurisdictions preference points for Notices of Funding Availability, a generally insignificant incentive that will not likely motivate jurisdictions to try to attain AFFH compliance. The ranking system also provides no consequences to communities that ignore fair housing issues.

This arbitrary ranking system is inconsistent with HUD's duty of affirmatively furthering fair housing under the FHA. Consequently, the Center urges HUD to withdraw this proposed rule and instead implement the 2015 Rule.

C. The Proposed Rule eliminates important opportunities for community engagement specifically on fair housing issues.

The Center strongly opposes HUD's proposed elimination of a separate community engagement process that specifically focuses on furthering fair housing. The 2015 Rule required jurisdictions to provide significant community engagement opportunities, including at least one public hearing and a written comment period, as jurisdictions drafted their AFH. This community engagement requirement required consultation with diverse participants, including "community-based and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws."⁹⁵ This was a separate public participation process from the public participation in a jurisdiction's Consolidated Plan process, which is designed to assess more general affordable housing and community development needs for HUD funding.

HUD claims that the public participation already required in the Consolidated Plan process is sufficient for addressing AFFH-related concerns and issues. However, the Consolidated Plan's public participation process is designed to obtain input regarding housing and community development needs and assess which needs among the many have the highest priority in the five-year Consolidated Plan cycle.⁹⁶ Identifying and assessing fair housing issues, priorities, and goals entail different concepts and may require different stakeholders.

The 2015 Rule reasonably designed the AFFH public participation process to be separate and precede the decision making associated with the Consolidated Plan and its Annual Action Plan system. This separate public participation process emphasizes local public engagement on important fair housing issues such as segregation, disparities in access to opportunity, and disproportionate housing needs. Strong community participation ensures that program participants' resulting analysis and goals reflect the input of local stakeholders, including residents who are members of protected classes. As HUD itself states in the *AFFH Rule Guidebook*, "Community participation can have many benefits, including cost-effectiveness, instilling ownership and support of fair housing planning in the broader community, and building trust and relationships throughout the community."⁹⁷ However, those benefits are essentially ignored by HUD in its Proposed Rule, which merely said, "There could be some loss of information from

⁹⁵ 24 C.F.R. § 91.100(a)(1) (2019).

⁹⁶ U.S. DEP'T OF HOUS. & URBAN DEV., Consolidated Plan <https://www.hudexchange.info/programs/consolidated-plan/> (last visited Mar. 13, 2020).

⁹⁷ U.S. DEP'T OF HOUS. & URBAN DEV., AFFH RULE GUIDEBOOK 23 (Dec. 31, 2015), available at <https://files.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.

these reduced outreach requirements, but it is difficult to provide an estimate of the value of that information.”⁹⁸

Community participation that focuses on fair housing issues must remain distinct from community participation requirements in other planning processes. Otherwise, jurisdictions and PHAs will likely fail to adequately analyze and adjust policies and practices that create or perpetuate discriminatory housing practices. The Center supports the 2015 Rule’s approach to community engagement because important issues regarding housing discrimination must receive due consideration.

D. The Proposed Rule ignores the important role of PHAs in expanding housing opportunities for members of protected classes under the FHA.

PHAs play a critical role in providing housing opportunities to members of protected classes. The 2015 Rule rightly requires PHAs to conduct a fair housing assessment to determine the extent to which their policies and practices were consistent with the PHA’s overall AFFH obligation. Furthermore, the 2015 Rule requires that PHAs devise goals to address identified fair housing issues and contributing factors. Under the Proposed Rule, however, PHAs are not required to undertake a meaningful fair housing analysis to be submitted to HUD, nor are they required to devise goals and strategies to combat segregation and housing discrimination.

The Proposed Rule disregards how PHA policies and practices impact the ability of PHA program participants to access and maintain housing opportunities – including members of protected classes. Housing authorities set voucher payment standards, evaluate reasonable accommodation requests, adopt admissions preferences, serve limited English proficient individuals and families, and serve survivors of domestic and sexual violence – among many other functions. Such decisions and policies, and how the public housing and the Housing Choice Voucher programs are administered, directly affect participating families, including members of protected classes. HUD’s Proposed Rule simply discounts the importance of these PHA policies. HUD should withdraw this Proposed Rule and instead implement the 2015 Rule so PHAs are required to devise concrete goals for furthering fair housing for members of protected classes.

IV. The Proposed Rule will fail to address the legacy of segregation and fails to address barriers to housing choice for women and families.

As described above, the Proposed Rule’s AFFH certification process and new Jurisdiction Risk Analysis are not designed to address the legacy of segregation, which the federal government and jurisdictions had a role in perpetuating. Nor do they address barriers to housing choice for women and families.

⁹⁸ U.S. DEP’T OF HOUS. & URBAN DEV., PROPOSED REGULATORY IMPACT ANALYSIS, AFFIRMATIVELY FURTHERING FAIR HOUSING 11, FR-6123-P-02 (Jan. 15, 2020).

A. The Proposed Rule will fail to address historic and ongoing patterns of segregation and barriers to fair housing for women of color and their families.

The Center strongly opposes HUD's Proposed Rule on the grounds that it eliminates any discussion or analysis acknowledging the continuing role that residential segregation plays within communities across the country. In fact, the word "segregation" only appears in the Proposed Rule's preamble description of the 2015 AFFH Rule.

As stated earlier, students of color have reduced educational outcomes in segregated schools, a result of segregated neighborhoods, compared to integrated schools. Segregated neighborhoods also lead to health disparities for women and girls of color.

Several jurisdictions that completed the AFH uncovered patterns of residential segregation through the data provided under the 2015 Rule. Because the Proposed Rule eliminates the AFH process and removes the emphasis on jurisdictions analyzing data about the spatial distribution of residents by race and addressing the residual effects of government-sponsored segregated neighborhoods in the new AFFH certification process, this Proposed Rule fails to further a central purpose of the FHA—taking actions to correct the injustices that led to segregated neighborhoods.

Furthermore, the "Jurisdictional Risk Analysis" ranking system does not use metrics by race. Researchers from the Urban Institute analyzed HUD AFFH data for 100 jurisdictions in an attempt to compare the aggregate housing affordability metric used in the proposed ranking system with disaggregated metrics based on race, finding that removing race removed evidence of racial inequities.⁹⁹ The ranking system also does not take private enforcement against racial discrimination in housing, nor pending investigations or settlements with HUD or DOJ, into account. Under the Proposed Rule, communities that receive HUD funding would not be required to take any action at all to address discrimination faced by people of color to meet the requirements of the rule. This adds to the inadequacy of the Proposed Rule in holding jurisdictions accountable for furthering fair housing for people of color.

Because the Proposed Rule fails to further fair housing for women of color and their families, HUD should withdraw the Proposed Rule and implement the 2015 Rule.

B. The Proposed Rule will undermine access to safe and stable housing for survivors of gender-based violence.

Domestic violence is a primary cause of homelessness for women and children in the United States.¹⁰⁰ Over 90 percent of homeless women report having experienced

⁹⁹ Claudia D. Solari et al., Comment Letter on Proposed Rule on Affirmatively Furthering Fair Housing (Mar. 9, 2020), *available at* https://www.urban.org/sites/default/files/publication/101807/public20comment20on20the20u.s.20departm20ent20of20housing20and20urban20developments28099s20proposed20rule20on20affirmatively20furtherin20g20fair20housing_1.pdf

¹⁰⁰ See AM. CIVIL LIBERTIES UNION WOMEN'S RIGHTS PROJECT, DOMESTIC VIOLENCE AND HOMELESSNESS (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. CONFERENCE OF MAYORS, A

domestic abuse or sexual violence in their lives, while over 50 percent of women experiencing homelessness report that domestic violence was the immediate cause of their homelessness.¹⁰¹ Access to housing is absolutely critical for survivors—lack of safe and affordable housing options is regularly reported as a primary barrier to escaping abuse.¹⁰² The harmful effects of housing instability are compounded for women of color, as Native American women and women of color more generally face both increased barriers to housing and disproportionate rates of violence.¹⁰³ Homelessness can also be a precursor to additional violence, because a survivor is at the greatest risk of violence when separating from an abusive partner.¹⁰⁴

HUD has repeatedly recognized housing discrimination against domestic violence survivors as a significant fair housing issue,¹⁰⁵ as women account for over 80 percent of domestic violence survivors.¹⁰⁶ Housing discrimination against domestic violence survivors also implicates other protected classes. The rate of violence against women with disabilities, for example, is three times higher than the rate of violence against women without disabilities.¹⁰⁷ Additionally, LGBTQ+ individuals experience high rates of domestic violence, while 71 percent of survivors reported that they were denied shelter because of barriers related to gender identity.¹⁰⁸

Advocates utilized the AFH process in HUD's 2015 AFFH Rule to identify policies and practices that displace or otherwise result in the lack of housing support for survivors of

STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 25-CITY SURVEY (Dec. 2014), *available at* <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

¹⁰¹ MONICA McLAUGHLIN & DEBBIE FOX, NAT'L NETWORK TO END DOMESTIC VIOLENCE, HOUSING NEEDS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING (2019), *available at* https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

¹⁰² See CHARLENE K. BAKER ET AL., DOMESTIC VIOLENCE, HOUSING INSTABILITY, AND HOMELESSNESS: A REVIEW OF HOUSING POLICIES AND PROGRAM PRACTICES FOR MEETING THE NEEDS OF SURVIVORS, 15 AGGRESSION & VIOLENT BEHAVIOR 430–39 (2010), *available at* https://b.3cdn.net/naeh/416990124d53c2f67d_72m6b5uib.pdf.

¹⁰³ See McLaughlin & Fox, *supra* note 101, at 1; see also CAROLYN M. WEST & KALIMAH JOHNSON, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN (Mar. 2013), *available at* https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf; SHARON G. SMITH, ET AL., CTNS. FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT (Apr. 2017), *available at* <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

¹⁰⁴ See BAKER ET AL., *supra* note 102, at 431.

¹⁰⁵ See, e.g., U.S. DEP'T OF HOUS. & URBAN DEV., ASSESSING CLAIMS OF HOUSING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE UNDER THE FAIR HOUSING ACT (FHA) AND THE VIOLENCE AGAINST WOMEN ACT (VAWA) (Feb. 9, 2011), *available at* <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>.

¹⁰⁶ U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 (Feb. 2003), *available at* <https://www.bjs.gov/content/pub/pdf/ipv01.pdf>.

¹⁰⁷ AM. CIVIL LIBERTIES UNION ET AL., DOMESTIC VIOLENCE & SEXUAL ASSAULT IN THE UNITED STATES: A HUMAN RIGHTS BASED APPROACH & PRACTICE GUIDE (Aug. 2014), *available at* https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

¹⁰⁸ NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE IN 2015 (2016), *available at* http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf.

domestic violence, sexual assault, and stalking.¹⁰⁹ For example, survivors of domestic violence face a heightened risk of eviction due to municipal ordinances that penalize tenants from seeking police or emergency assistance—often known as “crime-free” or nuisance ordinances. Such laws may disproportionately impact survivors of domestic violence in violation of the FHA. As noted above, under the AFH from the 2015 Rule, jurisdictions must examine such policies and their disparate impact on members of protected classes, including women. Elimination of nuisance and crime-free ordinances can be a strategy of affirmatively furthering fair housing.¹¹⁰ Under the Proposed Rule, however, jurisdictions and PHAs will be able to complete their AFFH certifications without even considering policies that discriminate against survivors.

Moreover, the framework provided by the 2015 Rule has provided the space for jurisdictions to recognize and discuss barriers to community resources (including safe, stable housing) for domestic violence survivors and their families.¹¹¹

Because the Proposed Rule eliminates the AFH and fails to provide a framework for jurisdictions to take actions to remove barriers to fair housing for survivors of gender-based violence, the Proposed Rule takes away the framework and accountability for jurisdictions to affirmatively work to reduce these barriers. As a result, the Center urges HUD to withdraw the Proposed Rule and instead implement the 2015 rule, which is actually designed to affirmatively further fair housing for survivors.

C. The Proposed Rule will fail to protect housing access for women with children.

The effects of HUD’s Proposed Rule will be particularly severe for women with children, who face additional barriers due to unjust housing policies and practices that disproportionately harm families with children. The consequences will be even more severe for children of color.

The legacy of segregated neighborhoods has perpetuated concentrated poverty¹¹² patterns in urban areas. Children of color experience higher rates of poverty and

¹⁰⁹ See, e.g., City of Ithaca, NY, Goal Summary: Assessment of Fair Housing 2017, at 9 <http://www.cityofithaca.org/DocumentCenter/View/7134/Ithaca-Assessment-of-Fair-Housing-AFH-Goal-Summary-Table-32918?bidId=> (last visited Mar. 16, 2020).

¹¹⁰ U.S. DEP’T OF HOUS. & URBAN DEV., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, at 13 (Sept. 13, 2016), *available at* <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

¹¹¹ See, e.g., City of Baton Rouge and Parish of East Baton Rouge Draft Assessment of Fair Housing, Public Draft, at 160-61 (Feb. 5, 2020) (identifying displacement and lack of housing support for survivors as significant contributing factor for disproportionate housing needs for women, and noting the lack of housing for survivors of sexual assault but the availability of other resources such as supportive services for sexual assault survivors), *available at* <https://www.brla.gov/DocumentCenter/View/8730/Fair-Housing-Assessment-Draft-2-5-20>; City of Philadelphia and the Philadelphia Housing Authority, Assessment of Fair Housing, at 300-01 (Dec. 23, 2016), *available at* <http://fairhousingrights.org/wp-content/uploads/2017/12/afh-2016-for-web.pdf> (outlining large demand for services, including emergency shelter, for survivors).

¹¹² Census tracts with overall poverty rates of 30 percent or more.

extreme poverty than white children.¹¹³ Black, Latinx, and American-Indian children are more likely to live in housing-cost burdened households than white, non-Hispanic children.¹¹⁴

As discussed above, residential segregation and housing instability impacts children's health, education, and future employment outcomes. Researchers have found wide variation in child opportunity across metro areas but an even greater variation within the same metro area.¹¹⁵ Across the 100 largest metropolitan areas, "[i]n very low-opportunity neighborhoods, 32% of families have incomes below the federal poverty line, while in very high-opportunity neighborhoods only 4% of families are under the poverty line—a poverty gap of 28 points."¹¹⁶ Black and Latinx children are more likely than white children to live in very-low opportunity neighborhoods.¹¹⁷ Low opportunity neighborhoods face high levels of disinvestment because of segregation and failed AFFH enforcement before the 2015 rule, emphasizing the need for jurisdictions to take affirmative actions to address segregation and other barriers to fair housing for children through the 2015 Rule's AFH process. This Proposed Rule eliminates the vital tools from the 2015 Rule and would perpetuate the historical failures to provide equitable opportunities for all our children. This is a harsh disservice to the future of the nation—our children.

In addition, barriers to fair housing are compounded for survivors of domestic and sexual violence who have children. In fact, more than half of female domestic violence survivors live in households with children under the age of 10. Access to safe and affordable housing options is critical to prevent homelessness for survivors and their children as they try to escape abusive relationships. As discussed above, the Proposed

¹¹³ KIDS COUNT DATA CENTER, ANNIE E. CASEY FOUND., Children in poverty by race and ethnicity in the United States, <https://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-and-ethnicity?loc=1&loct=1#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/324,323> (accessed Feb. 3, 2020); KIDS COUNT DATA CENTER, ANNIE E. CASEY FOUND., Children in extreme poverty (50 percent poverty) by race and ethnicity in the United States, <https://datacenter.kidscount.org/data/tables/8783-children-in-extreme-poverty-50-percent-poverty-by-race-and-ethnicity?loc=1&loct=1#detailed/1/any/false/37,871,870,573,869,36,133,35,16/4038,4040,4039,2638,2597,4758,1353/17619,17620> (accessed Feb. 3, 2020) (extreme poverty is defined as the share of people who live in families with incomes less than 50 percent of the federal poverty level).

¹¹⁴ KIDS COUNT DATA CENTER, ANNIE E. CASEY FOUND., Children living in households with a high housing cost burden by race and ethnicity in the United States, <https://datacenter.kidscount.org/data/tables/7678-children-living-in-households-with-a-high-housing-cost-burden-by-race?loc=1&loct=1#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/14832,14833> (accessed Feb. 3, 2020) (households with a high housing cost burden are those where more than 30 percent of monthly household pretax income is spent on housing-related expenses such as rent, mortgage payments, taxes and insurance).

¹¹⁵ DOLORES ACEVEDO-GARCIA ET AL., THE GEOGRAPHY OF CHILD OPPORTUNITY: WHY NEIGHBORHOODS MATTER FOR EQUITY – FIRST FINDINGS FROM THE CHILD OPPORTUNITY INDEX 2.0, DIVERSITYDATAKIDS.ORG & BRANDEIS 3 (Jan. 2020), available at http://www.diversitydatakids.org/sites/default/files/file/ddk_the-geography-of-child-opportunity_2020v2_0.pdf (finding that 91 percent of the disparity in neighborhood opportunity occurs within the same metro area and only nine percent between metros).

¹¹⁶ *Id.* at 31.

¹¹⁷ *Id.* at 38.

Rule removes the AFH and fails to provide a framework for jurisdictions to otherwise address barriers to fair housing for survivors, as well as families with children.

Furthermore, jurisdictions receiving HUD funding that are under investigation by HUD or are being sued for housing discrimination based on familial status could meet the requirements of the Proposed Rule without taking any action to address this form of discrimination. Public and private enforcement, including settlements, must be considered in any AFFH assessment.

Because the Proposed Rule fails to affirmatively further fair housing for women with children, the Center urges HUD to withdraw the Proposed Rule and instead implement the 2015 rule.

D. The Proposed Rule will fail to protect housing access for women with disabilities and their families.

People with disabilities and their families, particularly people with disabilities with very low incomes, face a national shortage of accessible and affordable housing. People with disabilities often have few financial resources and remain among the country's poorest, and far too often, encounter discrimination when seeking housing. The lack of sufficient safe, accessible, affordable housing is a continuing and significant barrier to integrated community living, making it difficult for people with disabilities to move from segregated facilities into the community, and putting many people with disabilities at risk of unnecessary institutionalization or homelessness. It remains extremely important to expand opportunities for people with disabilities to live in inclusive housing in the community, and to protect the rights guaranteed under the FHA.

The 2015 Rule recognized the importance of addressing the varied needs of people with disabilities, leading to an entire Disability and Access Analysis section of the AFH. This section includes important analysis of geographic patterns of people with disabilities generally and then if that varies for different types of disabilities (e.g., high concentrations of people with intellectual disabilities in an area instead of integration across communities), of affordability and accessibility to people with different types of disabilities as accessibility needs differ across disabilities, the extent publicly supported housing is accessible, disparities in access to opportunity, and disproportionate housing needs. Unfortunately, the Proposed Rule could harm fair housing for people with disabilities by eliminating this comprehensive assessment.

In addition, as stated in the 2015 Rule, "For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 (emphasis added, citation omitted)."¹¹⁸ Further, "For persons with disabilities, segregation includes a condition in which the housing or services are not in the most integrated setting

¹¹⁸ 24 C.F.R. § 5.152 (2019).

appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act (emphasis added, citation omitted)."¹¹⁹ These concepts are integral to achieving the goals of the Supreme Court's decision in *Olmstead*¹²⁰ – to integrate people with disabilities into their communities – and are an essential part of affirmatively furthering fair housing, promoting fair housing choice, and fostering inclusive communities that are free from discrimination. Under the Proposed Rule, however, these key concepts would no longer be required considerations in fair housing planning. As a result, jurisdictions will likely leave out people with disabilities who live in institutions due to a lack of housing options from the jurisdiction's fair housing plans.

Moreover, as discussed above, the Proposed Rule only requires jurisdictions to choose three goals for the purposes of its AFFH certification process, and only one of the 16 "inherent barriers" that exempts jurisdictions from explaining how their goals affirmatively further fair housing mentions people with disabilities. In addition to the tenant, labor, and environmental protections mentioned above, the "inherent barriers" include design standards and building and rehabilitation codes and review procedures. Consequently, jurisdictions could easily select three goals that would not address barriers to housing for people with disabilities or spend federal dollars in ways that may further perpetuate segregation or even make it harder for people with disabilities to access housing that is accessible for their particular disability.

Lastly, disability discrimination complaints are the most common type of complaint filed with HUD and fair housing agencies, and the number of complaints has continued to rise in recent years. Because of the previously described gaps in the proposed "Jurisdictional Risk Analysis," a jurisdiction that HUD is currently investigating for disability discrimination or a jurisdiction that engaged in an ongoing case with a private fair housing organization could fully comply with the new AFFH requirements without taking any action to address disability discrimination.

E. The Proposed Rule will fail to protect housing access for LGBTQ women and their families.

The 2015 Rule is a critical tool in mitigating the instances of discrimination that LGBTQ women and their families face when accessing housing, and changes to this as written in the Proposed Rule would threaten their health and safety. Each year, there are over 4 million instances of housing discrimination,¹²¹ the majority of which go unreported and unaddressed. People living at the intersections of multiple marginalized identities, such as LGBTQ people of color¹²² and LGBTQ people with disabilities, are even more likely

¹¹⁹ *Id.*

¹²⁰ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

¹²¹ NAT'L FAIR HOUSING ALLIANCE, THE CASE FOR FAIR HOUSING: 2017 FAIR HOUSING TRENDS REPORT 77 (2017), available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/TRENDS-REPORT-4-19-17-FINAL-2.pdf>. For a discussion about why the number of complaints filed is drastically lower than the number of individuals who believe they experienced discrimination, see U.S. DEP'T OF HOUS. & URBAN DEV., THE STATE OF FAIR HOUSING: FY2006 ANNUAL REPORT ON FAIR HOUSING 7-8 (Mar. 29, 2007), available at https://www.hud.gov/sites/documents/DOC_14775.PDF.

¹²² S.E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 180 (2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS->

to face discrimination in access to housing. In 2015, approximately one in four transgender people in the United States experienced some form of housing discrimination because of their gender identity.¹²³ Research conducted by HUD revealed that same-sex couples are treated less favorably than heterosexual couples in the online rental housing market.¹²⁴

In recent years, there has been an increase in the number of hate crimes committed against people based on their race, national origin, religion and other factors.¹²⁵ And for years, the FBI has observed that hate crimes are more likely to occur at a person's residence,¹²⁶ raising fair housing implications.

The Proposed Rule eliminates the vital tools from the 2015 Rule, including the separate community engagement that fosters engagement from the LGBTQ community and fair housing organizations. Consequently, the Proposed Rule would likely perpetuate the historical failures to provide equitable housing opportunities for LGBTQ women and their families.

V. The Proposed Rule contradicts HUD's statutory obligation and is unjustified.

A. The Proposed Rule contradicts HUD's statutory obligation under the FHA to affirmatively further fair housing.

Section 808(e)(5) of the FHA requires that HUD programs and activities be administered in a manner affirmatively furthering the policies of the FHA.¹²⁷ The Senate sponsor of the FHA, Senator Walter Mondale, noted that the intent of the FHA was to replace segregated neighborhoods with "truly integrated and balanced living patterns."¹²⁸ HUD has even previously stated, "From its inception, the Fair Housing Act...has...provided, through the duty to affirmatively further fair housing (AFFH), for meaningful actions to be taken to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing."¹²⁹

As noted above, the Proposed Rule conflates increasing the supply of affordable housing with fair housing and ignores the role segregation has in perpetuating barriers to fair housing. The Fair Housing Act is not a general affordable housing statute—it is a

Full-Report-Dec17.pdf (finding that 49 percent of Black transgender and gender non-binary survey respondents experienced housing discrimination in the preceding year).

¹²³ *Id.* at 13.

¹²⁴ U.S. DEP'T OF HOUSING & URBAN DEV., OFFICE OF POL'Y DEV. AND RES., AN ESTIMATE OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES: AN EXECUTIVE SUMMARY 1 (2013), *available at* https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_exec_summ_v2.pdf.

¹²⁵ ADEEL HASSAN, HATE-CRIME VIOLENCE HITS 16-YEAR HIGH, F.B.I. REPORTS, N.Y. TIMES (Nov. 12, 2019), <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi-report.html>.

¹²⁶ U.S. DEP'T OF JUSTICE, 2018 Hate Crime Statistics, <https://www.justice.gov/hatecrimes/hate-crime-statistics> (accessed March 13, 2020).

¹²⁷ 42 U.S.C. § 3608(e)(5).

¹²⁸ *Trafficante*, 409 U.S. at 211.

¹²⁹ *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42272, 42272 (finalized July 16, 2015).

fair housing statute with explicit focus on seven protected classes. Furthermore, the pre-approved list of “barriers” in the Proposed Rule provides a shortcut for jurisdictions to avoid analyzing their fair housing issues. If finalized and implemented, this would be the first time in more than 30 years that jurisdictions would not need to conduct a fair housing analysis. Consequently, this Proposed Rule fails to fulfill HUD’s statutory obligation under the FHA.

B. HUD has failed to adequately consider the harms that would likely result from the Proposed Rule.

Under the Administrative Procedures Act (APA) and binding Supreme Court precedent on agency regulation, one of the minimum requirements of rulemaking is that an agency gives a “reasoned explanation” justifying its proposed rule and assessing its impacts.¹³⁰ The agency “must examine the relevant data and articulate a satisfactory explanation for its action,”¹³¹ including by “paying attention to the advantages *and* the disadvantages of agency decisions.”¹³² HUD has failed to meet this minimum standard.

In the Proposed Rule, HUD failed to justify its significant reversal of the fair housing analysis requirement. HUD also failed to justify the harm that resulted from the agency’s decision to suspend implementation of the AFH process. Further, HUD failed to explain why the Proposed Rule would only consider a narrow subset of housing complaints, a drastic departure from HUD’s Fiscal Year 2017 Notice of Funding Availability (NOFA).¹³³ HUD overemphasized comments from the Advanced Notice of Proposed Rulemaking (ANPRM) opposing the 2015 Rule and failed to give due recognition to the majority (far more than “many”¹³⁴) of public comments from the ANPRM that supported the 2015 Rule. In addition, HUD failed to assess the benefit of local organizations representing protected classes and fair housing organizations participating in identifying and addressing fair housing issues, merely providing an estimate of the cost (“burden”) for jurisdictions to fulfill the 2015 Rule’s fair housing community engagement requirement. HUD failed to address the harsh disadvantages that would result from its failure to meet the affirmatively further fair housing statutory mandate, including the harm that women and families would experience. The harms the Center described above only scratch the surface—HUD should have produced analysis about the impact on women and other protected classes so the public could provide more comprehensive comments.

VI. The Center strongly opposes the Proposed Rule and urges HUD to withdraw it and implement the 2015 Rule.

¹³⁰ Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125 (2016).

¹³¹ *Id.* (quoting Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43 (1983)).

¹³² Michigan v. EPA, 135 S. Ct. 2699, 2707 (2015) (emphasis in original).

¹³³ U.S. DEP’T OF HOUSING & URBAN DEV., GENERAL SECTION TO HUD’S FISCAL YEAR 2017 NOTICE[S] OF FUNDING AVAILABILITY FOR DISCRETIONARY PROGRAMS, FR-6100-N-01 (2017) (rendering jurisdictions ineligible for HUD funding based on outstanding, not just adjudicated, cases, including cases brought by a local fair housing agency).

¹³⁴ Affirmatively Furthering Fair Housing, 85 Fed. Reg. at 2041.

HUD's Proposed Rule would undermine fair housing responsibilities and require no analysis of disparities in housing for women, families with children, and other members of protected classes.

Women of all backgrounds should feel protected under the FHA. HUD's Proposed Rule directly contradicts HUD's statutory duty to affirmatively further fair housing and prevent discrimination against women and other protected classes. The Center urges HUD to immediately withdraw the Proposed Rule and instead advance housing policies that proactively address segregation and promote housing access for all by implementing the 2015 rule.

Thank you for the opportunity to submit comments on the Proposed Rule. Please do not hesitate to contact Sarah Hassmer at shassmer@nwlc.org to provide further information.

Sincerely,



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