

April 24, 2023

SUBMITTED VIA REGULATIONS.GOV

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: HUD's Proposed Rule on Affirmatively Furthering Fair Housing, Docket No. FR 6250-P-01

To Whom It May Concern:

More than 50 organizations (listed at the end of this comment) committed to gender justice submit this comment in support of strengthening the Department of Housing and Urban Development (HUD) Proposed Rule on Affirmatively Furthering Fair Housing, which was published in the Federal Register on February 9, 2023 (HUD Docket No. FR 6250-P-01) (Proposed Rule). We commend HUD for advancing this important regulation, which is a critical tool for creating more equitable and inclusive communities in which all residents, including women and LGBTQI+ people, have access to the resources and opportunities they need to live with dignity and flourish.

I. Fair access to safe, accessible, and affordable housing is vital to the well-being of women, girls, LGBTQI+ people, and survivors of gender-based violence.

Access to safe, accessible, and affordable housing is crucial to health, nutrition, education, stable employment, and access to quality child care.¹ Housing impacts every aspect of people's lives. Yet systemic racial and gender discrimination persist in housing.² Long before the pandemic, redlining, residential segregation, subprime mortgage lending targeting women of color, and decades of divestment in public housing and other forms of rental assistance threatened housing stability and equity for women, children, LGBTQI+ people, people of color, people with disabilities, and other communities across the country.³ The COVID-19 pandemic and resulting economic impacts exacerbated longstanding gender and racial inequities in housing. Throughout this pandemic, just as pre-COVID, Black women, Latinas,

¹ Sammi Aibinder, Andrea Flynn, Richelle Gernan, Sarah Hassmer & Rakeen Mabud, *The Roots of Discriminatory Housing Policy: Moving Toward Gender Justice in Our Economy*, NAT'L WOMEN'S L. CTR. (Aug. 2022), <https://nwlc.org/resource/the-roots-of-discriminatory-housing-policy-moving-towards-gender-justice-in-our-economy/> (hereinafter "*The Roots of Discriminatory Housing Policy*"); Nat'l Women's Law Ctr. and Nat'l Low Income Hous. Coal., *Gender and Racial Justice in Housing*, NAT'L WOMEN'S L. CTR. (Oct. 2021), <https://nwlc.org/resource/gender-and-racial-justice-in-housing-2/>.

² Nat'l Women's L. Ctr. & Nat'l Low Income Hous. Coal., *Gender & Racial Justice in Housing*, NAT'L WOMEN'S L. CTR. (May 2021), <https://nwlc.org/resources/gender-and-racial-justice-in-housing/> (hereinafter "*Justice in Housing*").

³ *The Roots of Discriminatory Housing Policy*, *supra* note 1, at 4-5.

and women with disabilities continue to face higher unemployment rates⁴ and lost employment wages,⁵ jeopardizing their and their families' ability to meet basic needs like housing. Asian, Black, and Latina women also are more likely to be behind on their rent or mortgage payments,⁶ increasing housing instability and heightening the threat of eviction and foreclosure. Data from the summer of 2021 also shows that LGBT adults were more likely than non-LGBT adults to have difficulty paying for typical household expenses and have less confidence that they can make their next rent or mortgage payment on time.⁷ During the same time period, sexual and gender minority adults of color were more likely than both their white and non-LGBT comparators to be behind on rent and to fear imminent eviction.⁸

Since its enactment in 1968, the Fair Housing Act (FHA) has imposed a duty on all federal agencies and their funding recipients to affirmatively further fair housing,⁹ including working to undo segregated neighborhoods that federal housing policy 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 Fair Housing Act: race, color, national origin, sex, disability status, familial status, and religion. HUD has rightly recognized that FHA prohibits all forms of sex discrimination, including sex-based harassment,¹⁰ discrimination against LGBTQI+ individuals;¹¹ pregnancy discrimination;¹² and discrimination targeting survivors of domestic, sexual, and intimate partner violence.¹³

⁴ *COVID-19 Job Day Reports*, NAT'L WOMEN'S L. CTR. (Sept. 4, 2020), <https://nwlc.org/resource/2020-jobs-day-reports/>.

⁵ *NWLC Analysis of U.S. Census Bureau COVID-19 Household Pulse Surveys*, NAT'L WOMEN'S LAW CTR. (Jan. 22, 2021), <https://nwlc.org/resources/nwlc-analysis-of-u-s-census-bureau-covid-19-household-pulse-surveys/> (providing gender and racial/ethnicity analysis of lost employment wages).

⁶ *Id.*

⁷ Thom File & Joey Marshall, *LGBT Community Harder Hit by Economic Impact of Recession*, U.S. CENSUS BUREAU (Aug. 11, 2021), <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html>. The U.S. Census Household Pulse Survey asks questions about a person's sex assigned at birth, current gender identity, and sexual orientation. People whose sex at birth is the same as their current gender identity and who select "Straight" on the sexual orientation question are counted as "non-LGBT." People whose sex assigned at birth is not the same as their current identity, who indicate they are transgender, and/or who indicate they are gay, lesbian, or bisexual are counted as "LGBT." Survey respondents self-identified their gender as "male," "female," "transgender," or "none of the above." Hopefully future surveys will capture data about "queer," "nonbinary," or "intersex" status to provide a more holistic data set about LGBTQI+ people.

⁸ Bianca D.M. Wilson, Kathryn O'Neill & Luis A. Vasquez, *LGBT Renters and Eviction Risk*, UCLA SCH. OF L. WILLIAMS INST. (Aug. 2021), <https://williamsinstitute.law.ucla.edu/publications/lgbt-renters-and-eviction-risk/>.

⁹ 42 U.S.C. § 3608(e)(5) (2022).

¹⁰ 7 C.F.R. § 1901.203 (2022); HUD issued regulations providing formalized standards for analyzing FHA claims under the legal theories of quid pro quo and hostile environment harassment. 24 C.F.R. § 100 (2022).

¹¹ Jeanine M. Worden, *Implementation of Executive Order 13988 on the Enforcement of the Fair Housing*, U.S. DEP'T HOUS. & URB. DEV. (Feb. 11, 2021), https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

¹² *See, e.g.*, News Release, HUD, *HUD Acts Against Pregnancy Discrimination in Home Mortgages: Actions Involve Settlement with Compensation for Victims, and Enforcement Action* (June 1, 2011), <https://archives.hud.gov/news/2011/pr11-108.cfm> (HUD argued that pregnancy discrimination can fall under sex discrimination as well as familial status) (hereinafter "HUD Acts Against Pregnancy Discrimination"); Conciliation Agreement, Citizens Bank, N.A./Citizens Bank of Pa., FHEO No. 03-15-0471-8 (2016), https://www.hud.gov/sites/documents/CA_FHEOCASE03-15-0471-8.PDF.

¹³ *See, e.g., Butler v. Sundo Capital, LLC*, 559 F.Supp.3d 452, 457 (W.D. Pa., 2021) (holding that a tenant, a survivor of domestic violence and stalking by her ex-husband, was a member of a protected class for purposes of the Fair Housing Act). Survivors of domestic, sexual, and intimate partner violence may file a sex discrimination claim in violation of the FHA when "unwelcome conduct" is "severe or pervasive" to constitute a "hostile environment," familiar to survivors. 24 § 100.600(a)(2)(i)(C).

Despite this legal obligation enshrined in statute, there was a clear lack of effective, meaningful guidance on how jurisdictions could meet this obligation through taking concrete steps to tackle segregation and address fair housing issues until 2015, when HUD implemented the AFFH Rule. Before the 2018 suspension of the AFFH Rule’s implementation, the Assessment of Fair Housing (AFH) tools for Local Governments and Public Housing Agencies (PHA) 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 and sexual assault.¹⁴

Unfortunately, HUD suspended implementation of the 2015 Rule in 2018, and in 2020 HUD promulgated a Final Rule titled “Preserving Community and Neighborhood Choice” that repealed the 2015 Rule.¹⁵ In 2021, HUD’s Interim Final Rule, “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,” restored several definitions from the 2015 Rule. This Proposed Rule contains important provisions to advance fair housing but could use some improvement.

II. Discrimination limits access to safe, affordable, and accessible housing for many women, survivors, LGBTQI+ people, and their families, particularly those facing multiple forms of discrimination.

Every year, more than 4 million instances of discrimination occur, impacting people’s ability to access affordable and accessible housing, whether through renting or owning a home.¹⁶ Not all of this discrimination is intentional—policies and practices that have discriminatory effects make it harder for women and LGBTQI+ people in general, and particularly at the intersection of race, disability, survivor, and familial status, to obtain or maintain housing.

Women already face a higher risk of economic insecurity throughout their lives, which makes it difficult for them to afford safe housing. The 2022 National Housing Wage, which represents the amount that a worker should be paid to afford rent without being cost-burdened, was \$25.82 per hour for a modest

¹⁴ *Assessment of Fair Housing Tool for Local Governments*, U.S. DEP’T OF HOUS. & URBAN DEV. (2017) <http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/background/Assessment-of-Fair-Housing-Tool-For-Local-Governments-2017-01.pdf> (this tool is currently not mandatory); *Assessment of Fair Housing Tool for Public Housing Agencies*, U.S. DEP’T OF HOUS. & URBAN DEV (2017) (currently not in use), <http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/background/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies-2017-01.pdf> (this tool is currently not mandatory).

¹⁵ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8524 (proposed Feb. 9, 2023) (to be codified at 24 C.F.R. 5).

¹⁶ Lindsey Augustine, Cathy Cloud, Sharrill Frost-Brown, Madeline McBride, Samuel Tope-Ojo, Morgan Williams & Maureen Yap, *Fair Housing Trends Report*, NAT’L FAIR HOUS. ALLIANCE (July 2021), <https://nationalfairhousing.org/resource/2021-fair-housing-trends-report/>. 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: FY 2006 Annual Report on Fair Housing*, 7-8 (Mar. 29, 2007), https://www.hud.gov/sites/documents/DOC_14775.pdf.

two-bedroom rental home.¹⁷ Yet, before the COVID-19 pandemic, women were overrepresented in the 40 lowest paying jobs, typically paying only \$12 per hour or less.¹⁸ Consequently, low-paid women have often needed rental assistance to afford a home. In fact, women head 75 percent of households served by HUD rental assistance programs.¹⁹

In addition, women of color—especially Black and Latina women—face greater risks of eviction,²⁰ homelessness,²¹ and housing discrimination.²² Landlords and real estate agents recommend and show fewer available apartments and homes to Black, Latinx, and Asian American and Pacific Islander (AAPI) individuals and families, compared to equally qualified white individuals and families.²³ Black and Latinx residents are less likely to live in safe and adequate housing than white, non-Hispanic people.²⁴ In 2020, Latinx people were nearly six times more likely than white people to live in high-poverty neighborhoods. Black people were nearly five times more likely and Native people nearly six times more likely than white people to live in high-poverty neighborhoods.²⁵ As a result, more women of color end up experiencing homelessness in comparison to their white, non-Hispanic counterparts.²⁶

LGBTQI+ individuals also face significant challenges in accessing safe and stable housing. For example, in 2019, LGBT households were more than twice as likely to receive housing assistance than

¹⁷ Andrew Aurand, Matthew Clarke, Dan Emmaunual, Emma Foley, Ikra Rafi & Diane Yentel, *Out of Reach: The Low Cost of Housing*, NAT'L LOW INCOME HOUS. COAL. (2022), <https://nlihc.org/oor>.

¹⁸ Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, NAT'L WOMEN'S L. CTR. (Apr. 2020), <https://nwlc.org/resources/when-hard-work-is-not-enough-women-in-low-paid-jobs/>.

¹⁹ *Justice in Housing*, *supra* note 2, at 4.

²⁰ Catherine Lizette Gonzalez, *STUDY: Women of Color Living in Poverty Face Highest Risk of Eviction*, COLORLINES (Apr. 9, 2018), <https://www.colorlines.com/articles/study-women-color-living-poverty-face-highest-risk-eviction>; Matthew Desmond, *How Housing Matters: Poor Black Women are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), https://www.macfound.org/media/files/HHM_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

²¹ *Racial Disparities in Homelessness in the United States*, NAT'L ALLIANCE TO END HOMELESSNESS (June 6, 2018), <https://endhomelessness.org/resource/racial-disparities-homelessness-united-states/>.

²² Laura Harvey, *Why Equal Housing for Women Will Continue to be a 'Tough Road'*, MSNBC (Aug. 1, 2019), <https://www.nbcnews.com/know-your-value/feature/why-equal-housing-women-will-continue-be-tough-road-ncna1038266>; Augustine, Cloud, Frost-Brown, McBride, Tope-Ojo, Williams & Yap, *supra* note 16.

²³ Margery Austin Turner, Rob Santos, Diane K. Levy, Doug Wissoker, Claudia Aranda, Rob Pitingolo, The Urban Inst., *Housing Discrimination Against Racial and Ethnic Minorities*, U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEV. & RES. (2012), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf.

²⁴ *Id.*

²⁵ *Neighborhood Poverty: All Neighborhoods Should Be Communities of Opportunity*, NATIONAL EQUITY ATLAS (2020), https://nationalequityatlas.org/indicators/Neighborhood_poverty.

²⁶ Agnes Constante, *Advocates Worry Housing Issues May Lead to an Asian-American Census Undercount*, NBC NEWS (Aug. 12, 2018), <https://www.nbcnews.com/news/asian-america/advocates-worry-housing-issues-may-lead-asian-american-census-undercount-n900381>.

cisgender, straight households (6.0 percent to 2.6 percent).²⁷ In addition, LGBTQI+ individuals—including LGBTQI+ youth—disproportionately experience homelessness and housing insecurity, facing discrimination in both homeless shelters and rental markets.²⁸ Transgender and nonbinary/genderqueer individuals are particularly likely to face barriers finding another shelter if they are denied service at a homeless shelter.²⁹ Housing insecurity and homelessness, in turn, subject LGBTQI+ individuals experiencing homelessness to future violence.³⁰ Research shows that LGBTQI+ people experience housing discrimination, including from seeking rental housing and mortgage loans to emergency shelter.³¹

Moreover, many people with disabilities face obstacles to accessible and affordable housing. A staggering 54 percent of reported complaints of housing discrimination to HUD in 2021 involved discrimination on the basis of disability.³² In addition, people with disabilities may have an especially

²⁷ Spencer Watson, Oliver McNeil & Bruce Broisman, *The Economic Well-Being of LGBT Adults in 2019*, CTR. FOR LGBTQ ECON. ADVANCEMENT & RES., 12 (2019), <https://lgbtq-economics.org/wp-content/uploads/2021/06/The-Economic-Well-Being-of-LGBT-Adults-in-2019-Final-1.pdf>. The report analyzed data from the 2019 Survey of Household Economics and Decisionmaking, which respondents were asked whether they identified their sexual orientation as “bisexual,” “gay or lesbian,” “straight, that is, not gay,” or “something else,” and were asked whether they identified their gender identity as “cisgender,” “transgender,” or something “other” than those options. Hopefully future surveys will capture data specifically about “queer,” “nonbinary,” or “intersex” status to provide a more holistic data set about LGBTQI+ people. *Id.* at 3.

²⁸ Lindsay Mahowald, Matthew Brady & Caroline Medina, *Discrimination and Experiences Among LGBTQ People in the US: 2020 Survey Results*, CTR. FOR AM. PROGRESS (Apr. 2021), <https://www.americanprogress.org/issues/lgbtq-rights/news/2021/04/21/498521/discrimination-experiences-among-lgbtq-people-us-2020-survey-results/>; Samantha Friedman, Angela Reynolds, Susan Scovill, Florence R. Brassier, Ron Campbell & McKenzie Ballou, *An Estimate of Housing Discrimination Against Same-Sex Couples*, U.S. DEP’T OF HOUS. & URBAN DEV. (Apr. 2013), http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf; Caitlin Rooney, Laura E. Durso & Sharita Gruberg, *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*, CTR. FOR AM. PROGRESS (Jan. 7, 2016), <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>; Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma’ayan Anafi, *The Report of the 2015 U.S. Transgender Survey*, THE NAT’L CTR. FOR TRANSGENDER EQUAL. (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; John Acker, Tim Aubry & John Sylbestre, *A Review of the Literature on LGBTQ Adults Who Experience Homelessness*, 66 J. HOMOSEXUALITY 297 (2018), <https://doi.org/10.1080/00918369.2017.1413277>; Maya Brennan, Ally Livingston & Veronica Gaitán, *Five Facts about Housing Access for LGBT People*, HOUSING MATTERS (June 13, 2018), <https://howhousingmatters.org/articles/five-facts-housing-access-lgbt-people/>; Soon Kyu Choi, Bianca D.M. Wilson, Jama Shelton & Gary J. Gates, *Serving Our Youth*, UCLA SCH. OF L. WILLIAMS INST. (June 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.

²⁹ Mahowald, Brady & Medina, *supra* note 28.

³⁰ Les B. Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly A. Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RES. 329 (Nov. 2004) <https://www.ncbi.nlm.nih.gov/pubmed/15765273>.

³¹ Adam P. Romero, Shoshana K. Goldberg & Luis A. Vasquez, *LGBT People and Housing Affordability, Discrimination, and Homelessness*, THE WILLIAMS INST. (Apr. 2020), <https://escholarship.org/uc/item/3cb5b8zj/>.

³² Lindsay Augustine, Scott Chang, Cathy Cloud, Darlene English, Sherrill Frost-Brown, Nana-Yaw Owusu & Morgan Williams, *2022 Fair Housing Trends Report*, NAT’L FAIR HOUS. ALLIANCE, 4 (2022), <https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-Fair-Housing-Trends-Report.pdf>.

difficult time meeting housing costs: the average monthly payment for Supplemental Security Income (SSI) recipients in January 2022 was only \$603,³³ which is insufficient to cover rent and other basic necessities in any market.³⁴ Further, many people with disabilities face employment discrimination that makes disabled people more likely to work part-time and need housing assistance, such as vouchers, to afford their rent.

Further, domestic violence is a primary cause of homelessness for women and children in the United States,³⁵ and HUD has repeatedly recognized housing discrimination against domestic violence survivors as a significant fair housing issue.³⁶ Women account for over 80 percent of domestic violence survivors.³⁷ Over 90 percent of unhoused women share that they experienced domestic abuse or sexual violence in their lives, and over 50 percent say that domestic violence caused their homelessness.³⁸ Housing access is critical for survivors of domestic violence, as lack of safe and affordable housing options is regularly reported as a primary barrier to escaping abuse.³⁹ Homelessness can also be a precursor to additional violence, because a survivor of domestic violence is at the greatest risk of violence when separating from an abusive partner.⁴⁰

In addition, sexual assault is frequently identified as a significant factor in homelessness and housing insecurity, particularly for women, LGBTQI+ people, and communities of color. While both domestic violence and sexual assault are critical gender justice issues to address, it is important to differentiate between the two. In their lifetime, 26.8 percent of women have experienced a completed or attempted rape in their lifetime, and almost half of women have experienced other forms of unwanted sexual

³³ *Annual Report of the Supplemental Security Income Program*, SOC. SEC. ADMIN. (July 8, 2022), <https://www.ssa.gov/oact/ssir/SSI22/ssi2022.pdf>.

³⁴ Aurand, Emmanuel, Rafi, Threet & Yentel, *supra* note 17 at 2.

³⁵ See ACLU Women's Rts. Project, *Domestic Violence and Homelessness*, ACLU (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey*, U.S. CONFERENCE OF MAYORS (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

³⁶ See, e.g., Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Dep't of Hous. & Urban Dev. To FHEO Office Directors & FHEO Regional Directors (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> (hereinafter "HUD Memo to FHEO Office & Regional Directors").

³⁷ Callie Marie Rennison, *Bureau of Justice Statistics Crime Data Brief: Intimate Partner Violence, 1993-2001*, U.S. DEP'T OF JUSTICE, OFF. OF JUST. PROGRAMS (Feb. 2003), <https://bjs.ojp.gov/content/pub/pdf/ipv01.pdf>.

³⁸ Monica McLaughlin & Debbie Fox, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking*, NAT'L LOW INCOME HOUS. COAL. (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

³⁹ See Charlene K. Baker, Kris A. Billhardt, Jose Warren, Chiquita Rollins & Nancy E. Glass, *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 (2010), https://b3cdn.net/naeh/416990124d53c2f67d_72m6b5uib.pdf.

⁴⁰ See *id.* at 431.

contact.⁴¹ Many sexual assaults occur at or near the victim's home.⁴² Survivors of sexual assault have difficulty leaving their homes often due to the barriers in place to find secure and affordable housing. A study estimated that the average cost of a rape is \$122,461 per victim,⁴³ which does not include the cost of finding housing.⁴⁴

Almost eight percent of women who have experienced intimate partner violence⁴⁵ and over seven percent of women who are survivors of rape have needed housing services.⁴⁶ Of this, 50 percent of the women who needed housing services did not get them.⁴⁷ Providing survivors with access to safe and affordable housing that is free from discrimination is critical to preventing sexual violence. The key word is "safe" as women trying to leave dangerous situations often still face violence in shelters and apartments. In a recent study of 100 low-income women that were participating in a Section 8 voucher program or were living in public housing, 16 percent of them experienced sexual harassment from their landlord.⁴⁸ Housing discrimination against survivors also implicates other protected classes. Women of color, disabled women, and migrant women face both increased barriers to housing and disproportionate rates of violence.⁴⁹ According to the Sexual Assault Victim Advocacy Center, 80% of women and girls crossing into the United States over the southern border were sexually assaulted.⁵⁰ Additionally, LGBTQI+ 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.⁵¹ More generally,

⁴¹ Kathleen C. Basile, Sharon G. Smith, Marcie-jo Kresnow, Srijana Khatiwada, & Ruth W. Leemis, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*, CTR FOR DISEASE CONTROL (June 2022), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf>.

⁴² Michael Planty, Lynn Langton, Christopher Krebs, Marcus Berzofsky & Hope Smiley-McDonald, *Special Report: Female Victims of Sexual Violence, 1994-2010*, U.S. DEP'T OF JUST. (March 2013), <https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf>.

⁴³ Cora Peterson, Sarah DeGue, Curtis Florence & Colby N. Lokey, *Lifetime Economic Burden of Rape Among U.S. Adults*, 52(6) AM. J. PREV. MED. 691-701(2017) <https://www.ajpmonline.org/action/showPdf?pii=S0749-3797%2816%2930615-8>.

⁴⁴ *Id.*

⁴⁵ Ashley S. D'Inverno, Sharon G. Smith, Xinjian Zhang, & Jieru Chen, *The Impact of Intimate Partner Violence: A 2015 NISVS Research-in-Brief*, CTR. FOR DISEASE CONTROL (August 2019), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvs-impactbrief-508.pdf>

⁴⁶ Kathleen C. Basile, Sharon G. Smith, Jieru Chen, & Marissa Zwald, *Chronic Diseases, Health Conditions, and Other Impacts Associated With Rape Victimization of U.S. Women*, 36 J. OF INTERPERSONAL VIOLENCE 23-24 (Jan. 23, 2020), <https://doi.org/10.1177%2F0886260519900335>.

⁴⁷ Matthew Joseph Breiding, Jieru Chen & Michele C. Black, *Intimate Partner Violence in the United States-2010*, CTR. FOR DISEASE CONTROL (Feb. 2014), https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf.

⁴⁸ <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=4338&context=mlr>.

⁴⁹ See McLaughlin & Fox, *supra* note 38, at 1; see also Carolyn M. West & Kalimah Johnson, *Sexual Violence in the Lives of African American Women*, NAT'L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN (Mar. 2013),

https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf; Sharon G. Smith, Jieru Chen, Kathleen C. Basile, Leah K. Gilbert, Melissa T. Merrick, Nimesh Patel, Margie Walling & Anurag Jain, *National Intimate Partner and Sexual Violence Survey (NISVS)*, CDC, NAT'L CTR. FOR INJURY PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>; ACLU Women's Rts. Project, Hum. Rts. Inst., Colum. L. Sch. & Hum. Rts. Clinic at U. of Miami Sch. of L., *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide* (Aug. 2014), https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

⁵⁰ *Three Ways Sexual Violence Impacts Immigrants in the United States*, SEXUAL ASSAULT VICTIM ADVOCATE CTR. (July 31, 2018), <https://docs.google.com/document/d/11TvbPs0FeRZi85Z5PUgFxiHXpuGGQ6ST/edit>

⁵¹ Emily Waters, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015*, NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS (2016), http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf.

women and LGBTQI+ individuals who identify with more than one of the characteristics described above, or other, may face multiple forms of discrimination.

In sum, discrimination in housing and inequitable access to community assets remain significant barriers to safe, affordable, accessible, and equitable housing options for many women, LGBTQI+ people, and their families.

III. The Proposed Rule contains important provisions to advance fair housing but would benefit from additional improvements.

Overall, the undersigned organizations strongly support the Proposed Rule, which reinstates fundamental principles and requirements to affirmatively further fair housing and makes important improvements. The Proposed Rule's framework provides actions that are essential for implementing the purpose and plain text of the FHA as enacted by Congress. The history of landmark civil rights statutes such as the FHA makes clear that fulfilling their historic promise requires not only reactive enforcement in response to individual civil rights complaints but proactive, sustained efforts to address structural inequities and expand equitable housing options. This must include active strategies to reverse generational patterns of segregation, inequitable public investment, and concentrated poverty.

To ensure fair housing choice for women, pregnant people, families, survivors, and LGBTQI+ people, communities must also proactively address structural inequities and community needs such as:

- Inadequate fair housing protections or compliance efforts to address all forms of sex-based discrimination (including, but not limited to, compliance with the FHA, Violence Against Women Act, and Equal Credit Opportunity Act) and discrimination based on other protected classes such as race/ethnicity, familial status, and disability;
- Inequitable access to community assets such as child and adult dependent care, schools, health care, and supports for survivors of domestic, sexual, and intimate partner violence;
- Local law, policies, or practices that promote discrimination or have discriminatory effects, such as documentation requirements that tend to exclude transgender people, or housing program or law enforcement practices that tend to promote evictions (e.g., nuisance ordinances and crime-free programs) or limit housing options of survivors; and
- Absence of policies or procedures to address harassment in housing programs.

The Proposed Rule has some significant improvements over the 2015 Rule, and HUD should preserve these improvements in the Final Rule. In particular:

- We support the strengthened definition of AFFH. The heart of the AFFH mandate is that it is not enough to eliminate discrimination from the housing market and our housing and community development programs, although that is necessary. To overcome the harms caused by decades of housing discrimination,⁵² we must take affirmative actions to eliminate the fair housing barriers that disadvantaged members of protected classes experience and ensure they have equitable access to our communities' important assets and resources. The Proposed Rule adds an important

⁵² *The Roots of Discriminatory Housing Policy*, *supra* note 1, at 4-5.

focus on actions, investments, and outcomes, which emphasizes the importance of creating *and* executing plans in order to fulfill AFFH obligations.

- We support the Proposed Rule’s more expansive definitions of fair housing issues and fair housing choice.
- We support the Proposed Rule’s stronger emphasis on fair housing goals.
- We support the Proposed Rule’s improved community engagement provisions. The Proposed Rule will require program participants to proactively engage the public in identifying fair housing issues and helping set fair housing goals to remedy the identified fair housing issues.
- We support the Proposed Rule’s strengthened transparency provisions, including HUD posting draft Equity Plans and accepting public comments for HUD’s review.
- We support the Proposed Rule’s accountability provisions, including requiring annual evaluations of progress on fair housing goals, establishing a process to file AFFH-related complaints, and creating an express enforcement mechanism that allows remedies to be tailored to local circumstances.
- We support the Proposed Rule’s direct incorporation of fair housing goals, strategies, actions, and expected funding allocations into local Consolidated plans and Annual Action Plans and into Five-Year and Annual PHA Plans. This requirement, along with accountability provisions, should ensure that the plans that guide a program participant’s allocation of housing and community development resources will reflect and be in alignment with the goals of the Equity Plan.
- We support the Proposed Rule’s dual emphasis on both place-based and mobility strategies, *i.e.*, strategies that improve community assets and conditions while preserving existing affordable housing opportunities and strategies that remove barriers to finding housing in better-resourced communities.

However, HUD should make some changes, as described below, to improve the effectiveness of the Final Rule. Also, HUD should make clear that this rulemaking does not represent the full scope of its own AFFH obligation—this rulemaking implements the AFFH obligation with respect to certain specified programs and activities. HUD needs policy to ensure that it incorporates AFFH into all of its policies, programs and activities.

- **Revise the definition of “*Community assets*” in § 5.152** to list “child and adult dependent care services” as an example.
- **Revise the definitions of “*Fair housing choice*,” “*Protected characteristic*,” and “*Segregation*” in § 5.152, as well as §§ 92.351(a)(1), 93.350(b)(1), and 570.206(c),** to read in pertinent part: “sex (including pregnancy, sexual orientation, gender identity, and nonconformance with gender stereotypes, and sex characteristics).”
 - The addition of “sex characteristics” is consistent with Executive Order 14075 of June 15, 2022 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals), and with rules and guidance regarding sex discrimination from other agencies, including DOJ, ED, and HHS.⁵³

⁵³ See, e.g., *Nondiscrimination in Health Programs and Activities*, 87 Fed. Reg. 47824 (proposed Aug. 4, 2022) (to be codified at 42 C.F.R. 438); *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal*

- HUD has long recognized that pregnancy discrimination in housing occurs, and may constitute both sex discrimination and familial status discrimination under the Fair Housing Act.⁵⁴
- **Revise § 5.154(c)(3)(vii)** to either track, or simply incorporate by reference, the definition of “*Protected characteristics*” in § 5.152.
- **Revise the definition of “*Underserved communities*” in § 5.152** to (1) make clear that communities may not choose to focus only on certain groups that are not “protected class” groups (e.g., looking only at rural communities while not looking specifically at BIPOC or disability populations in particular), (2) change “LGBTQ+” to read “LGBTQI+,”⁵⁵ and (3) add sexual assault survivors, people with disabilities, older adults, and immigrant communities as additional examples.
- **Revise § 5.154(g)(3)(vi)**, regarding fair housing goals for equitable opportunities, along the lines of the following: “may include amending local laws to include additional, more explicitly enumerated, or more expansive protections for certain underserved populations, such as LGBTQI+ persons or survivors of domestic violence or sexual assault.” This clarification would help advance HUD’s purpose of encouraging efforts to strengthen and clarify local laws, while avoiding the misperception that existing laws, including federal law, do not contain important protections for these populations.
- **Revise § 5.154(d)(7)(iii)** to read in pertinent part: “existing zoning and land use policies or ordinances, the presence or lack of source of income anti-discrimination laws, eviction policies and practices, criminal or civil penalties or enforcement patterns related to behaviors associated with homelessness or poverty, and other State and local policies or practices.” This is consistent with proposed § 5.154(g)(3)(vi), which references nuisance and “crime free” ordinances as examples of fair housing barriers, and with the administration’s criminal justice reform and Housing First priorities.⁵⁶

The Proposed Rule requires program participants to develop an “Equity Plan” to overcome local fair housing issues by conducting an analysis that identifies fair housing issues in their geographic area of analysis. That analysis must also identify the circumstances and factors that cause, increase, contribute to, maintain, or perpetuate those fair housing issues. The analysis must be informed by community engagement, HUD-provided data, and local data and local knowledge. After engaging the community, program participants must prioritize the identified fair housing issues in order to set one or more fair housing goals to overcome those prioritized fair housing issues. Program participants submit Equity Plans to HUD for review. If HUD accepts the Equity Plan, a program participant must incorporate the

Financial Assistance, 87 Fed. Reg. 41390 (proposed July 12, 2022) (to be codified at 34 C.F.R. 106); Kristen Clarke, CRD, U.S. DOJ, *Interpretation of Bostock v. Clayton County Regarding the Nondiscrimination Provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act* (Mar. 10, 2022), <https://www.justice.gov/crt/page/file/1481776/download>; CRD, U.S. DOJ, *Title IX Legal Manual, Title IX Cover Addendum post-Bostock, Editor’s Note* (Aug. 12, 2021), <https://www.justice.gov/crt/title-ix#Bostock>.

⁵⁴ HUD Acts Against Pregnancy Discrimination, *supra* note 12; 42 U.S.C. § 3602(k)(2); 24 C.F.R. § 100.20 (2022).

⁵⁵ See Exec. Order No. 14075, 87 Fed. Reg. 37189 (June 15, 2022).

⁵⁶ See, e.g., Exec. Order No. 14074, 87 Fed. Reg. 32945 (May 31, 2022); Press Release, HUD Public Affairs, HUD Announces \$2.8 Billion to Help People Experiencing Homelessness (Aug. 1, 2022), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_140.

Equity Plan’s fair housing goals, strategies, and actions necessary to implement the goals into its Consolidated Plan (ConPlan), Annual Action Plans of the ConPlan, or public housing agency (PHA) PHA Plan. Program participants submit an Annual Program Evaluation to HUD describing progress toward achieving each fair housing goal. Under the Proposed Rule, this cycle will happen at least every five years.

To strengthen the Equity Plan and community engagement process, we recommend HUD incorporate these changes in the Final Rule:

- **Consider adding local fair housing outreach and enforcement capacity as a fair housing goal category.** The proposed fair housing goal categories—the areas for which program participants are expected to identify fair housing issues and set goals—include one category that addresses the legal and policy framework relating to the provision of affordable housing in well-resourced areas, and a second that addresses discrimination or violations of civil rights laws and ordinances relating to access to housing and community assets for members of protected classes under the FHA. We recommend keeping these important areas for analysis and adding an equally important component of the fair housing infrastructure in our communities: the local fair housing outreach and enforcement capacity. Outreach and education help ensure that community residents and housing providers understand their fair housing rights and responsibilities, and that public officials understand the fair housing implications of the decisions they make on matters relating to housing and community development. Enforcement capacity is necessary to ensure that residents’ fair housing rights are protected, and when those rights are violated, that the affected people are made whole and corrective measures are put in place. Without this infrastructure, fair housing outreach, oversight, and enforcement may be weak. As part of their Equity Plan process, program participants should be required to assess the condition of the fair housing outreach and enforcement infrastructure in their communities, and then encouraged to provide support for these organizations where they exist and help to establish them where they do not.
- **Clarify the requirements of the community engagement process.** The Proposed Rule sends a message about the importance of seeking and considering input from a diverse group of local stakeholders throughout the Equity Plan process but lacks the clarity and specificity needed to ensure that the community engagement process functions in the way HUD appears to intend.
 - **HUD should include more details in the Final Rule about who program participants should engage with**—including people who are and have been directly impacted by fair housing issues, as well as grassroots and fair housing and tenant rights groups that represent members of protected classes and organizations that provide housing, health, child and adult dependent care services, social services, services for survivors of gender-based violence, and other services to members of protected classes.
 - **The Final Rule and accompanying guidance should make it clear that community engagement may take many different forms**, ranging from formal public hearings to smaller, more focused discussions with targeted groups, virtual meetings that are accessible and allow stakeholders to participate from their homes and surveys or other means of collecting feedback on particular issues. These activities may be most successful when program participants work with community-based groups who serve as trusted advisors to various segments of the community and with fair housing groups who can help translate the AFFH mandate in ways that are accessible and meaningful to local

stakeholders. HUD should offer guidance about best practices for such efforts, which may include providing child care and meals at community meetings, chartering buses to pick up residents from walkable locations, small grants to local organizations to enable them to participate and to recognize the value of their time and expertise, and advertising in the preferred language of target communities. Program participants should also engage community members outside of community meeting contexts. It is critical for program participants to go where people are and not just rely on impacted people coming to a community meeting. In addition, some stakeholders, such as LGBTQI+ people, survivors of gender-based violence, immigrants, and people with limited English proficiency, may need a safe space for sharing their views that they may not be comfortable sharing in large public settings. Further, the rule should state directly the requirement to ensure that program participants take the necessary steps to enable full participation in the equity planning process by people with disabilities, including people who are Deaf or hard-of-hearing, and those with limited English proficiency. It should avoid relying on references to other statutes, such as Title VI and the ADA, to communicate those requirements, although it may be helpful to refer to those statutes and any accompanying guidance for more detail.

- **The Final Rule should provide greater clarity about when and how often program participants should engage with the community.** Program participants should be required to engage with the community prior to the development of the Equity Plan, during the identification of fair housing issues, in the decisions about which issues should be priorities, in the identification of strategies and meaningful actions to be incorporated into the plan, and on the draft Equity Plan itself. The Proposed Rule requires program participants to hold three public meetings during the development of their Equity Plans, and two public meetings in other years, but HUD should consider increasing these minimum requirements based on the size of the program participant.
- **The Final Rule should specify that community stakeholders should be involved in setting priorities,** not just identifying fair housing issues and establishing goals, strategies and meaningful actions.
- **The Final Rule should require program participants to give the public a set amount of time to comment on a draft Equity Plan before the program participant submits the Equity Plan to HUD.** Requiring this comment period will minimize the number of times stakeholders must take their concerns about a draft Equity Plan directly to HUD as part of the public comment process after HUD publishes submitted Equity Plans.
- **HUD should require program participants to post on their own websites their draft and final Equity Plans and their annual progress evaluations.** HUD publishing Equity Plans should not be a substitute for program participants themselves providing access to those documents for the benefit of local stakeholders.

IV. Conclusion

2023 is the 55th anniversary of the FHA's passage. We cannot wait any longer for effective implementation, oversight, and enforcement of the FHA's AFFH mandate. For reasons above, we urge HUD to swiftly implement these recommendations and promulgate a Final Rule.

Sincerely,

AIDS Alabama
American Atheists
American Friends Service Committee
Build Up California
CA LGBTQ Health and Human Services Network
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
CenterLink: The Community of LGBTQ Centers
Child Care Law Center
Church World Service
Coalition on Human Needs
Community Change
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
DC Coalition Against Domestic Violence
Delaware Coalition Against Domestic Violence
Equality California
Evangelical Lutheran Church in America
Human Rights Campaign
Illinois Accountability Initiative
interACT: Advocates for Intersex Youth
Iowa Coalition Against Domestic Violence
Just Solutions
Justice for Migrant Women
Justice in Aging
Lambda Legal
LGBT Tech
Low Income Investment Fund
Maine Coalition to End Domestic Violence
Maryland Network Against Domestic Violence
Michigan Coalition to End Domestic and Sexual Violence
Movement Advancement Project
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Consumer Law Center (on behalf of its low income clients)
National Disability Rights Network
National Domestic Violence Hotline
National Housing Law Project
National Low Income Housing Coalition
National Network to End Domestic Violence
National Partnership for Women & Families

National Women's Law Center
Nebraska Coalition to End Sexual and Domestic Violence
North Carolina Coalition Against Domestic Violence
Oasis Legal Services
Paralyzed Veterans of America
Public Advocacy for Kids (PAK)
Revolving Door Project
Rhode Island Coalition Against Domestic Violence
Silver State Equality-Nevada
Tahirih Justice Center
Utah Domestic Violence Coalition
Violence Free Minnesota
Washington State Coalition Against Domestic Violence
Women's Law Project
YWCA USA
ZeroV (formerly Kentucky Coalition Against Domestic Violence)