



May 2, 2025

Submitted via regulations.gov

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

**Re: Docket No. FR–6519–I–01, Affirmatively Furthering Fair Housing Revisions
(RIN 2529–AB08)**

Dear Secretary Turner:

This letter is written on behalf of the National Housing Law Project (NHLP) in response to the interim final rule (IFR) “Affirmatively Furthering Fair Housing Revisions” issued by the Department of Housing and Urban Development (HUD) on March 3, 2025.

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for those groups protected by civil rights statutes, including the Fair Housing Act. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other housing justice advocates nationwide. NHLP worked to implement HUD’s 2015 Affirmatively Furthering Fair Housing regulation and submitted an amicus brief in *NFHA v. Carson*, No. 1:18-cv-01076 (D. D.C.), opposing the suspension of the 2015 AFFH rule. NHLP also worked with coalition partners to support legislation (Assembly Bill 686) in California that established an affirmatively furthering fair housing requirement under California state law.

NHLP writes in strong opposition to the adoption of HUD’s 2025 AFFH IFR. HUD’s introduction of this IFR violates the Administrative Procedures Act and is not a fair housing rule. It does not meet HUD’s statutory AFFH obligation and is wholly inconsistent with fair housing law. Instead, it prioritizes the Administration’s deregulatory agenda, and taken together with the Administration’s other actions – refusal to enforce the Equal Access Rule, attempts to defund fair housing enforcement organizations, revocation of guidance on serving people with limited English proficiency, HUD directives denying eligible immigrants access to federal housing programs, attempts to eliminate the use of disparate impact liability in civil rights litigation – it promotes discrimination against the very communities that the Fair Housing Act and other civil rights laws were enacted to protect. For the reasons described below, we strongly urge HUD to immediately withdraw the 2025 AFFH IFR and reinstate the 2021 Restoring Affirmatively Furthering Fair Housing Definitions and Certifications.

I. HUD's introduction of the 2025 AFFH IFR violates the Administrative Procedures Act.

Under the Administrative Procedures Act (APA) rulemaking procedures, HUD must follow a notice, comment, and publication process in promulgating regulations.¹ This means that before HUD publishes a final rule, it must first publish notice of the proposed rule in the Federal Register, provide stakeholders with an opportunity to participate in rulemaking, and consider relevant input before publishing the final rule. HUD failed to comply with this notice and comment requirements in publishing the new AFFH rule as an IFR, thereby violating the APA. As justification for the IFR, HUD claims that:

Thirty years of expansive back and forth rulemaking over vague statutory directives is the epitome of regulatory overreach. HUD's 2020 PCNC final rule, while taking into account a number of considerations, as detailed in the notice thereof and incorporated herein, fairly targeted and reined in this overreach. Less effort and money spent across thousands of state and local jurisdictions attempting to validate community planning theories can mean more affordable and better housing for Americans. This interim final rule follows the directive of, and is consistent with, Executive Order 14192 (Unleashing Prosperity Through Deregulation).

This interim final rule is narrowly focused to meet the urgent need to reset the tangle of rulemaking concerning AFFH, which promotes confusion and creates enormous costs that detract from the ability of thousands of state and local jurisdictions to provide decent, safe and affordable housing. It is relevant that in the past 30 years, no notable enforcement action by HUD has been based solely upon the failure of a local jurisdiction to meet AFFH obligations.²

However, this justification is conclusory and both historically and factually inaccurate, as several other commenters have noted. Importantly, it is legally insufficient to support dispensing with the notice and comment requirements under the APA and promulgating the 2025 AFFH rule as an IFR.³ HUD claims that the IFR "returns to the original understanding of what the statutory AFFH certification was prior to 1994 – a general commitment that grantees will take active steps to promote fair housing."⁴ However, as further explained by the comments submitted by the National Fair Housing Alliance and others, the historical record of the AFFH rule contradicts this assertion.

In 2015, HUD issued a regulation that created a new fair housing analysis framework, called the Assessment of Fair Housing, for program participants (state and local jurisdictions and public housing authorities) to better comply with the AFFH mandate. The 2015 rule required

¹ 5 U.S.C. §§ 551, 553; 24 CFR part 10.

² Affirmatively Furthering Fair Housing Revisions, 90 Fed. Reg. 11,020, 11021 (Mar. 3, 2025).

³ See *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 777 (9th Cir. 2018).

⁴ Affirmatively Furthering Fair Housing Revisions, 90 Fed. Reg. at 11021.

these entities to complete a robust analysis of fair housing in their communities in order to receive HUD funds. However, in August 2020, HUD rescinded the rule and replaced it with a final rule that removed the requirement for any fair housing planning process or document from HUD regulations. In 2021, HUD issued an IFR, Restoring Affirmatively Furthering Fair Housing Definitions and Certifications. The 2021 IFR provided program participants with a substantive definition of AFFH, reinstated the requirement that program participants affirmatively certify compliance with their AFFH obligation and provided program participants with technical assistance from HUD with making progress on their AFFH obligation. As such, the 2025 IFR constitutes a departure from and is inconsistent with the regulation in existence at the time that the 2025 IFR was issued.⁵ Through the 2025 IFR, HUD has illegally rescinded the 2021 IFR.

II. The 2025 AFFH IFR is inconsistent with HUD’s statutory AFFH obligation.

The 2025 AFFH IFR is inconsistent with HUD’s statutory AFFH obligation and is inconsistent with fair housing law. The IFR:

- 1) **Imposes a new definition of AFFH that is inconsistent with the Fair Housing Act and that conflates affordable housing with fair housing.**⁶ The new definitions of “fair housing” and “affirmatively further” eliminate any discussion or analysis acknowledging the continuing role that residential segregation plays within communities across the country. In fact, the word “segregation” does not appear anywhere in the IFR. Pretending that segregation is not a key part of defining what it means to affirmatively further fair housing is wholly inconsistent with the AFFH statute. The new definition of fair housing also conflates housing that is free from discrimination with the expansion of affordable housing and/or providing safe, decent housing. The provision of safe and decent housing is the floor for what is required of housing providers in this country. While expansion of affordable housing is an important goal, especially as the U.S. faces a severe affordable housing shortage, increasing the supply of housing does not by itself make housing available to protected classes. The 2025 IFR allows jurisdictions to meet their AFFH obligations by developing affordable housing exclusively in high poverty, low opportunity areas, or by providing grants for landlords to improve rental housing quality exclusively in white neighborhoods. The 2025 IFR also allows program participants to avoid a balanced approach to fair housing that prioritizes both the expansion of affordable housing and homeownership opportunities, and actions that improve existing housing conditions, stabilize existing affordable housing, and help members of protected classes avoid involuntary displacement.
- 2) **Permits a bare bones certification of a program participant’s compliance with its AFFH obligation and lacks a complaint process for challenging a program**

⁵ See *Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 100 (1995).

⁶ Affirmatively Furthering Fair Housing Revisions, 90 Fed. Reg. at 11,023 (codified at 24 C.F.R. § 5.150).

participant's AFFH certification.⁷ This rule will allow program participants to certify their compliance with AFFH if they prioritize expanding affordable housing, even if they do nothing to address ongoing, persistent disparities that impact protected households already in housing. Examples of such disparities include increased exposure to toxic and industrial pollution; lead-based paint, mold or other substandard housing conditions due to a failure to hold owners accountable for poor conditions; the effects of aggressive screening, crime-free programs and nuisance property ordinances; the risk of displacement (due to local eminent domain, condemnation, gentrification, conditions, etc.); and the discriminatory use of evictions against protected communities. Simply building new affordable housing does not ensure members of protected classes will have fair and equitable access to that housing. This myopic focus on building new housing also ignores the different levels of resources among communities. Investments in new affordable housing in well-resourced communities should be balanced with investments that benefit communities with existing supplies of affordable housing, and address disparities in under-resourced communities. These disparities might include higher levels of unsafe and hazardous conditions, increased risk of flooding (especially in disaster prone areas), and increased proximity to environmental toxins and heavy industry. New affordable housing must be built in well-resourced communities and affirmatively marketed to protected classes. It must also be designed to meet the needs of all and not exclude members of protected classes based on their immigration status, race, color, ethnicity, sex, sexual orientation, gender identity, marital status, familial status, disability, or religion. Under the IFR, however, none of these needs will be met because the IFR relies solely on the program participant's certifications and lacks any meaningful way – short of litigation – for communities to address the participants failure to address these issues.

- 3) **Removes the requirement that program participants engage in fair housing planning processes or produce a fair housing planning document.**⁸ As part of the AFFH certification, HUD regulations previously required that program participants take actions, such as conducting an analysis of impediments to fair housing choice, taking actions to overcome the identified impediments, and keeping records demonstrating the analysis and the actions taken to address the identified impediments. However, the new rule contains no such requirement. At a minimum, HUD should ensure that meaningful fair housing analysis, informed by data and community participation, as well as the goal-setting resulting from that analysis, continues. The lack of a fair housing planning requirement will likely lead to program participants failing to examine whether their

⁷ Affirmatively Furthering Fair Housing Revisions, 90 Fed. Reg. at 11,023 (codified at 24 C.F.R. § 5.151).

⁸ *Cf.* Affirmatively Furthering Fair Housing, 80 Fed. Reg. at 42,355 (formerly codified at 24 C.F.R. § 5.154).

policies and practices are consistent with the obligation to affirmatively further fair housing.⁹

- 4) **Eliminates the requirement for robust community engagement in identifying fair housing issues.**¹⁰ The Assessment of Fair Housing (AFH) process created by the 2015 AFFH Rule emphasized 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 and have direct experience with fair housing challenges.
- 5) **Lacks guidance for jurisdictions, program participants or public housing authorities regarding their AFFH obligation and does not require them to examine or address the legacy of housing segregation in communities.**¹¹ Prior rules provided HUD program participants with much-needed technical assistance, guidance and direction. It is HUD's responsibility to ensure that program participants conduct meaningful fair housing analysis, informed by data and community participation, and set goals based on that analysis. This omission ignores the critical role that federal housing programs play in expanding housing opportunities and addressing historic segregation. For example, households utilizing Housing Choice Vouchers (HCV) are often concentrated in high-poverty, low-opportunity, and minority-concentrated neighborhoods.¹² HUD, in prior rules, provided support and suggestions to PHAs about how they can administer vouchers in a way that affirmatively furthers fair housing and therefore deconcentrate families out of racial and ethnic areas of concentrated poverty. HUD regulations and advocates have identified PHA policies that affirmatively further fair housing may include marketing efforts, tenant selection criteria, mobility counseling, affordable rental registries, landlord outreach, assistance with moving expenses, and coordination with agencies that serve people with disabilities.¹³ This type of technical assistance is critical so that PHAs can meet their AFFH obligations by ensuring key features of the HCV program, mobility and neighborhood choice, will be realized.

⁹ See generally U.S. Gov't Accountability Off., GAO-10-905, Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans (2010), <https://www.gao.gov/assets/gao-10-905.pdf>. The GAO report found that the Analysis of Impediments (AIs) varied greatly in quality and depth of analysis, with many grantees producing documents that reflected an insufficient commitment to fair housing. Documents submitted to GAO included, for example, a "four-page description of the community itself, and it did not identify impediments to fair housing," and "a two-page e-mail that identified one impediment to fair housing choice, and in follow up conversations [sic] an official from this grantee, confirmed that the document constituted its AI."

¹⁰ Cf. Affirmatively Furthering Fair Housing, 80 Fed. Reg. at 42,355-42,357 (formerly codified at 24 C.F.R. §§ 5.152, 5.154, 5.156 & 5.158) (community participation definition and requirements).

¹¹ Cf. Affirmatively Furthering Fair Housing, 80 Fed. Reg. at 42,355 (formerly codified at 24 C.F.R. § 5.154).

¹² Alicia Mazzara and Brian Knudsen, *Where Families With Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/1-3-19hous.pdf>.

¹³ 24 C.F.R. § 903.15(c)(2)(ii).

- 6) **Lacks any mechanism for meaningful monitoring and enforcement actions by HUD of entities that receive federal housing dollars and fail to fulfill their AFFH obligation.**¹⁴ The IFR doesn't provide for compliance reviews or a procedure for HUD to challenge the validity of AFFH certifications, and it lacks a public complaint process to ensure that program participants are meeting their AFFH obligations. HUD plays a critical role, especially in enforcing federal civil rights laws for which it has primary or sole jurisdiction. As the 2021 IFR recognized, HUD risks violating its own statutory obligation to affirmatively further fair housing by accepting certifications from its program participants based on its improper definitions of "affirmatively furthering" and "fair housing."¹⁵

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For the reasons explained above, we strongly urge HUD to immediately withdraw the 2025 AFFH IFR and reinstate the 2021 Restoring Affirmatively Furthering Fair Housing Definitions and Certifications.

Sincerely,

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¹⁴ Cf. Affirmatively Furthering Fair Housing, 88 Fed. Reg. at 8575 (compliance procedures).

¹⁵ HUD, Restoring Affirmatively Furthering Fair Housing Definitions and Certifications," 86 Fed. Reg. 30,779, 30,784 (June 10, 2021).