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Re: Docket No. FR 6123-P-02, RIN 2577-AA97, Affirmatively Furthering Fair Housing Proposed Rule

To Whom It May Concern:

As housing and urban policy researchers, we have devoted our careers to studying federal housing assistance programs and their role in creating access to fair and affordable housing, lifting families out of poverty, and supporting equitable access to opportunity. We write to offer a public comment on the US Department of Housing and Urban Development's (HUD's) proposed rule on Affirmatively Furthering Fair Housing, published January 14, 2020.<sup>1</sup> We are employed by the Urban Institute—a nonprofit research and policy organization based in Washington, DC—but are presenting our own views in this submission.

## Introduction

The Fair Housing Act of 1968 prohibits discrimination in the provision of housing based on race, color, religion, sex, disability, familial status, or national origin.<sup>2</sup> The Act intends to prevent discrimination and reverse longstanding patterns of residential segregation and racially concentrated poverty. Congress included in the Fair Housing Act a requirement that the federal government administer all programs activities related to housing in a community development in a way that “affirmatively furthers fair housing” (AFFH).

HUD and federal courts have consistently interpreted the AFFH provision as requiring all federal agencies, state and local governments to use federal housing community development funds to reverse patterns of residential segregation and racially concentrated poverty.<sup>3</sup> Indeed, in its first opinion interpreting the Fair Housing Act, the Supreme Court quoted Senator Walter Mondale—one of the Act's sponsors—for the proposition that “the reach of the proposed law was to replace the ghettos ‘by truly integrated and balanced living patterns.’”<sup>4</sup> In its two most recent opinions interpreting the Fair Housing Act,

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<sup>1</sup> Docket No. FR 6123-P-02, RIN 2577-AA97, Affirmatively Furthering Fair Housing Proposed Rule, available at <https://www.govinfo.gov/content/pkg/FR-2020-01-14/pdf/2020-00234.pdf>.

<sup>2</sup> Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619.

<sup>3</sup> Elizabeth Julian, “*The Duty to Affirmatively Further Fair Housing: A Legal as Well as Policy Imperative*” (Cambridge, MA: Joint Center for Housing Studies of Harvard University, 2017).

<sup>4</sup> *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972).

the Supreme Court once again affirmed that “prevent[ing] segregated living patterns”<sup>5</sup> and creating “integrated, stable neighborhoods”<sup>6</sup> are among the interests that the Fair Housing Act protects.

The legislative record also makes it clear that Congress intended the Fair Housing Act to cover not only discrimination by private actors in housing markets, but also public policies and programs that perpetuate racial segregation and concentrated poverty. The Act was adopted only weeks after the assassination of Dr. Martin Luther King, Jr., and the record is replete with references to the Kerner Commission’s findings on how racial segregation and concentrated poverty lead to uneven access to opportunity and social unrest.<sup>7</sup> During debate on the Senate floor, Senator Edward Brooke, who sponsored the bill with Senator Mondale, cited extensive statistics on racial segregation and concentrated poverty. For example, Senator Brooke debunked the common myth that segregation was simply a byproduct of individual preferences and housing costs by pointing to a multicity study that found “white upper- and middle-income households are far more segregated from Negro upper- and middle-income housing than some white lower-income households.”<sup>8</sup>

The HUD AFFH rule adopted in 2015 was the federal government’s most rigorous attempt in nearly 50 years to fulfill the Fair Housing Act’s affirmatively furthering fair housing mandate. The 2015 rule gives jurisdictions the data and tools to map and assess housing segregation, areas of racially and ethnically concentrated poverty, concentrations of housing cost-burdened households, and concentrations of federally assisted housing—all disaggregated by protected groups, such as people of color and people with disabilities.<sup>9</sup>

Contrary to Congress’s clear intent, HUD recently proposed a new rule that ignores abundant evidence on persistent patterns of residential segregation and racially concentrated poverty and their devastating effects on people of color—and all Americans—today. In the proposed rule, HUD eviscerates the core goals of the Fair Housing Act to remove discrimination from housing markets and promote more integrated and balanced living patterns. HUD mentions residential segregation and racially concentrated poverty only in the context of *deleting* reference to these issues from the definition of affirmatively furthering fair housing in the 2015 rule. While HUD recognizes that “housing discrimination still takes place,” it goes on to equate discrimination with “economic factors brought on by the lack of affordable housing” and suggests that “increasing overall affordability will...help members of protected classes maximize their ability to live where they choose.”<sup>10</sup>

HUD’s proposed reinterpretation of AFFH and the purpose of the Fair Housing Act suggests the agency believes either that the Act is not intended to prohibit discrimination, reverse segregation, and reduce racially concentrated poverty or that these barriers no longer exist. To demonstrate these assumptions are misplaced, our comments synthesize the evidence on how housing discrimination, residential segregation, and racially concentrated poverty persist in the United States, describe how federal policies created or perpetuated these barriers, and document the impacts these barriers continue to have on people, places, and urban economies. We focus here on race and ethnicity, but much of this evidence applies to other

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<sup>5</sup> Texas Dept. of Housing Community Affairs v. Inclusive Communities Project, 576 U.S. \_\_ (2015).

<sup>6</sup> Bank of America Corp. v. City of Miami, 137 S. Ct. 1296 (2017).

<sup>7</sup> Inclusive Communities Project, 576 U.S. \_\_ (2015).

<sup>8</sup> 114 Cong. Rec. 2270-2284 (1968), available at [http://moses.law.umn.edu/mondale/pdf14/v.114\\_pt.2\\_2264-2284.pdf](http://moses.law.umn.edu/mondale/pdf14/v.114_pt.2_2264-2284.pdf)

<sup>9</sup> “Affirmatively Furthering Fair Housing; Final Rule,” published July 16, 2015, at 80 FR 42272, available at <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>; Solomon Greene and Erika Poethig, “Creating Places of Opportunity: HUD’s New Data- and Community-Driven Approach,” *Urban Wire* (blog), Urban Institute, July 7, 2015, <https://www.urban.org/urban-wire/creating-places-opportunity-huds-new-data-and-community-driven-approach>.

<sup>10</sup> In separate comments, our colleagues at the Urban Institute demonstrate how metrics of affordability and cost burdens that ignore race and ethnicity obscure the realities of ongoing discrimination and risk compounding residential segregation and racially concentrated poverty. See Claudia D. Solari, Martha M. Galvez, Katherine Thomas, and Solomon Greene, “HUD Omits Race from Fair Housing Proposal Public Comment on the Proposed Rule Change on Affirmatively Furthering Fair Housing,” submitted March 9, 2020, at <https://www.urban.org/research/publication/hud-omits-race-fair-housing-proposal>.

protected classes, including people with disabilities, women, families with children, foreign-born people, and religious minorities. We conclude by describing how the proposed AFFH rule would undermine congressional intent in passing the Fair Housing Act and suggest evidence-based principles to guide HUD's work enforcing the Fair Housing Act.

## Ongoing Housing Discrimination and Its Consequences

Until the middle of the 20th century, overt discrimination against racial and ethnic minorities in the sale and rental of housing was the norm, through private and public actors alike. In the early 20th century, communities used racial covenants to legally prohibit Black residents from owning or renting homes in white neighborhoods, and some cities explicitly zoned neighborhoods for specific racial groups.<sup>11</sup> Federal mortgage underwriting policies and redlining prevented minority borrowers from receiving home loans and furthered patterns of racial segregation and racially concentrated poverty.<sup>12</sup> And private landlords often denied housing to racial and ethnic minorities based solely on the color of their skin, without challenge from the government or enforcement agencies.<sup>13</sup>

In 1968, the Fair Housing Act prohibited racial discrimination in the rental, sale, or financing of housing and created new tools to combat discrimination. The protections against discrimination enshrined in the Act have curbed some of the worst abuses over the past 50 years, but discrimination in housing and lending markets persists.<sup>14</sup>

Nearly four decades of Urban Institute research—funded by HUD—documents the complex ways access to housing remains unequal. The Urban Institute has conducted multiple national, rigorous, paired-testing studies on racial and ethnic discrimination in the rental and sale of housing between 1977 and 2018,<sup>15</sup> all of which documented discriminatory treatment against Black and Latino home-seekers compared with white renters and buyers, such as real estate agents refusing to meet with home-seekers of color or telling them that no housing units were available.<sup>16</sup> The 2012 study found that Black, Latino, and Asian American households were told about 11.4 percent, 12.5 percent, and 9.8 percent fewer units, respectively, than equally qualified white renters.<sup>17</sup>

Racial discrimination against home-seekers continues to play out in new ways that can be harder to detect and use different platforms than the explicit redlining of the past. For example, racial discrimination now also takes place online, in advertisements to renters and buyers. In 2019, HUD announced charges against Facebook for discriminatory procedures related to online housing ads, with Secretary Carson

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<sup>11</sup> Solomon Greene, Margery Austin Turner, and Ruth Gourevitch, "[Racial Residential Segregation and Neighborhood Disparities](#)" (Washington, DC: US Partnership on Mobility from Poverty, 2017).

<sup>12</sup> Thomas Shapiro, Tatjana Meschede, and Sam Osoro, "[The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide](#)" (Waltham, MA: Institute on Assets and Social Policy, 2013).

<sup>13</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright, 2017).

<sup>14</sup> Solomon Greene and Martha M. Galvez, "How a Proposed Rule Would Make It Harder to Fight Housing Discrimination," *Urban Wire* (blog), Urban Institute, August 16, 2019, <https://www.urban.org/urban-wire/how-proposed-rule-would-make-it-harder-fight-housing-discrimination>.

<sup>15</sup> This research is collected on the Urban Institute's website at <https://www.urban.org/features/exposing-housing-discrimination>.

<sup>16</sup> Claudia L. Aranda, "Housing Discrimination in America: Lessons from the Last Decade of Paired-Testing Research," statement before the House of Representatives Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, February 27, 2019, <https://www.urban.org/research/publication/housing-discrimination-america-lessons-last-decade-paired-testing-research>.

<sup>17</sup> Margery Austin Turner, Rob Santos, Diane K. Levy, Doug Wissoker, Claudia Aranda, and Rob Pitingolo, *Housing Discrimination against Racial and Ethnic Minorities 2012* (Washington, DC: US Department of Housing and Urban Development, 2013). In these comments, we use Black to describe people of African descent and Latino to describe people of Latin American descent. We use these terms because they represent current best practices for inclusivity, but we acknowledge that these terms have limitations.

quoted as saying that “Using a computer to limit a person’s housing choices can be just as discriminatory as slamming a door in someone’s face.”<sup>18</sup> Discrimination against protected classes can also be explicit and direct, as documented in a 2009 study by the National Fair Housing Alliance. The Alliance audited apartment listings nationwide on Craigslist and other websites and found more than 7,500 discriminatory advertisements—most often with language targeting families with children—resulting in more than 1,000 administrative complaints.<sup>19</sup>

Discrimination raises costs and wastes time for home-seekers, and it can limit housing options. Racial discrimination can also contribute to segregation and limit people of colors’ access to high-opportunity neighborhoods, described in detail below.<sup>20</sup> As noted in Urban’s 2012 national study of discrimination by race and ethnicity, “even middle-class minority neighborhoods have lower house price appreciation, fewer neighborhood amenities, lower-performing schools, and higher crime than white neighborhoods with comparable income levels.”<sup>21</sup> Disparities in access to neighborhood and homeownership opportunities for people of color, and racial bias against communities of color, impact wealth-building opportunities. One 2018 study quantifying the economic value of racial discrimination and bias in the housing market found that owner-occupied homes in black neighborhoods are undervalued by an average of \$48,000 each, amounting to \$156 billion in cumulative losses nationally.<sup>22</sup>

## Ongoing Residential Segregation and Its Consequences

Decades of discriminatory housing policies and current discriminatory practices have created highly segregated neighborhoods and cities that limit access to opportunities for people of color. Federal policy has been a significant factor in creating and perpetuating residential segregation throughout the country. Lenders, with support from the federal government, denied mortgages and other investments to people who live in mostly nonwhite neighborhoods, reinforcing segregation and disinvestment in those neighborhoods and contributing to the loss of wealth for Black families.<sup>23</sup> Federal infrastructure policies, such as the Federal Highway Act of 1956, reinforced residential segregation and excluded Black residents, immigrants, and lower-income households from accessing social and economic opportunities in their cities and regions.<sup>24</sup> The siting of affordable housing has also entrenched segregation, as HUD-funded public housing developments were built in low-income, primarily Black communities, further separating residents of color from more affluent, majority-white neighborhoods.<sup>25</sup>

Racial segregation has been generally declining over time but persists, especially in metropolitan areas with significant Black and Latino populations. White households overwhelmingly live in neighborhoods with fewer people of color, more economic opportunities, and more resources than the neighborhoods most Black and Latino households live in. Today a typical white person lives in a neighborhood that is 75 percent white and 8 percent Black, while a typical Black person lives in a neighborhood that is only 35 percent white

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<sup>18</sup> US Dep’t of Housing and Urban Development v. Facebook, HUD ALJ, FHEO No. 01-18-0323-8, filed March 28, 2019, available at [https://www.hud.gov/sites/dfiles/Main/documents/HUD\\_v\\_Facebook.pdf](https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf); Margery Austin Turner, Rob Santos, Diane K. Levy, Doug Wissoker, Claudia Aranda, and Rob Pitingolo, *Housing Discrimination against Racial and Ethnic Minorities 2012* (Washington, DC: US Department of Housing and Urban Development, 2013).

<sup>19</sup> National Fair Housing Alliance (NFHA), *For Rent: No Kids! How Internet Housing Advertisements Perpetuate Discrimination* (Washington, DC: NFHA, 2009).

<sup>20</sup> Greene, Turner, and Gourevitch, “Racial Residential Segregation and Neighborhood Disparities.”

<sup>21</sup> Turner et al., *Housing Discrimination against Racial and Ethnic Minorities 2012*.

<sup>22</sup> Andre Perry, Jonathan Rothwell, and David Harsh, “The Devaluation of Assets in Black Neighborhoods” (Washington, DC: Brookings Institution, 2018).

<sup>23</sup> Shapiro, Meschede, and Osoro, “The Roots of the Widening Racial Wealth Gap.”

<sup>24</sup> Thomas Sanchez, Rich Stolz, and Jacinta Ma, “Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities” (Cambridge, MA: The Civil Rights Project at Harvard University, 2003).

<sup>25</sup> Susan J. Popkin, “Public Housing and the Legacy of Segregation,” *Urban Wire* (blog), Urban Institute, August 18, 2013, <https://www.urban.org/urban-wire/public-housing-and-legacy-segregation>

and 45 percent Black. The average Latino person lives in a neighborhood that is 46 percent Latino and 35 percent white.<sup>26</sup>

Racial segregation contributes to and reinforces widening disparities in access to opportunity at the neighborhood level. Using HUD's AFFH data provided to support the 2015 rule, Urban Institute researchers found that white households tend to live in neighborhoods with stronger labor markets, better-performing schools, and few environmental hazards than Black, Latino, and Native American households. They also found metropolitan areas with higher levels of segregation have wider disparities in access to opportunity for Black and Latino residents than less-segregated regions.<sup>27</sup> These statistics echo the patterns cited by Senator Brooke more than 50 years ago when introducing the Fair Housing Act, reaffirming that robust enforcement of the Act is as important today as it was when passed.

Segregation has various negative impacts on people of color, including on access to educational and economic opportunities.<sup>28</sup> High levels of residential segregation can lead to highly segregated schools, as most students attend the schools in the same neighborhood they live in. Neighborhood segregation explains about 76 percent of the variation in school segregation across cities.<sup>29</sup> Increased school segregation negatively impacts the educational and socioeconomic outcomes of students of color.<sup>30</sup>

Racial segregation also has broader socioeconomic impacts on communities, cities, and regions. School segregation and inequities in college readiness resulting from residential segregation are linked to lower educational attainment and lifetime earnings for people of color, decreasing overall economic prosperity for cities.<sup>31</sup> Urban Institute research has also demonstrated that more-segregated metropolitan areas tend to experience higher rates of homicide, lower earnings, and lower property values.<sup>32</sup>

## Ongoing Racially Concentrated Poverty and Its Consequences

Throughout the 20th century, federal policies spurred suburban growth and “white flight” while re-concentrating people of color in high-poverty, underresourced urban neighborhoods.<sup>33</sup> Since 2000, poor people have become increasingly concentrated in poor neighborhoods as opposed to more mixed-income areas, a trend that has accelerated since the Great Recession. A 2016 study by the Brookings Institution

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<sup>26</sup> John Logan and Brian Stults, “The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census” (Providence, RI: US2010 Project, 2011).

<sup>27</sup> Ruth Gourevitch, Solomon Green, and Rolf Pendall, “Place and Opportunity: Using Federal Fair Housing Data to Examine Opportunity across US Regions and Populations” (Washington, DC: Urban Institute, 2018).

<sup>28</sup> Nancy McArdle and Dolores Acevedo-Garcia, “Consequences of Segregation for Children’s Opportunity and Wellbeing” (Cambridge, MA: Harvard Joint Center for Housing Studies, 2017).

<sup>29</sup> Thomas Monarrez, “Segregated Neighborhoods, Segregated Schools?” Urban Institute, November 2018, <https://www.urban.org/features/segregated-neighborhoods-segregated-schools>

<sup>30</sup> David Card and Jesse Rothstein, “Racial Segregation and the Black-White Test Score Gap,” *Journal of Public Economics* 91, no. 11-12(December 2007): 2158-84; Eric Hanushek, John Kain, and Steven Rivikin, “New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement,” *Journal of Labor Economics* 27, no. 3 (July 2009): 349-83.

<sup>31</sup> Sean Reardon, Ericka Weathers, Erin Fahle, Heewon Jang, and Demetra Kalogrides, “Is Separate Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps” (Stanford, CA: Stanford Center for Education Policy Analysis, 2019); Raj Chetty, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez, “Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States,” *Quarterly Journal of Economics* 129, no. 4 (November 2014): 1553-1623; Richard Rothstein, “The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult” (Washington, DC: Economic Policy Institute, 2014).

<sup>32</sup> Gregory Acs, Rolf Pendall, Mark Treskon, and Amy Khare, *The Cost of Segregation* (Washington, DC: Urban Institute, 2017); Marisa Novara, Alden Loury, and Amy Khare, *The Cost of Segregation* (Chicago, IL: Metropolitan Planning Council, 2017).

<sup>33</sup> William Julius Wilson, “The Political and Economic Forces Shaping Concentrated Poverty,” *Political Science Quarterly* 123, no. 4 (2008-2009): 555-71; Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (Oxford: Oxford University Press, 1987).

found that both the number of extremely poor neighborhoods (those with at least 40 percent of residents living below the poverty line) and the share of poor people who live in them have spiked since the beginning of Great Recession.<sup>34</sup> Nationally, the number of extreme-poverty census tracts more than doubled between 2000 and 2010–14.

Concentration into high-poverty neighborhoods is particularly common for people of color. Across the US, one in four Black households and one in six Latino households live in high-poverty neighborhoods, compared to just one in thirteen white households.<sup>35</sup> In the largest 100 metropolitan areas, people of color made up 71 percent of residents in high-poverty neighborhoods but only 33 percent of residents in low-poverty neighborhoods.<sup>36</sup>

Inequitable capital flows to communities of color help widen disparities between neighborhoods based on racial composition and poverty concentration. In most cities, high-poverty neighborhoods receive significantly less market investment than low-poverty neighborhoods. Recent Urban Institute research found that majority-white neighborhoods receive 4.6 times as much market investment per household as majority-Black neighborhoods and 2.6 times as much investment as majority-Latino neighborhoods.<sup>37</sup>

A growing body of research demonstrates that growing up in a high-poverty neighborhood has significant negative impacts on later life outcomes.<sup>38</sup> Moving to a low-poverty neighborhood as a young child improves college attendance and future earnings compared with children who stay in high-poverty neighborhoods.<sup>39</sup> People living in racially and ethnically concentrated areas of poverty also face disparities in access to opportunities, including lowered labor market engagement and exposure to worse-performing schools.<sup>40</sup> High-poverty neighborhoods also often lack high-quality schools or health services, are exposed to more crime and violence, and can limit peer groups and access to social capital to support economic mobility.<sup>41</sup>

As with segregation generally, racially concentrated poverty can negatively impact neighborhoods, cities, and regions. High levels of concentrated poverty, segregation, and income inequality diminish upward mobility prospects for both low-income residents and those living in the city or region as a whole.<sup>42</sup> As racially concentrated poverty increases in suburban areas, a lack of necessary infrastructure to support low-income communities may exacerbate the challenges and strain existing resources.<sup>43</sup>

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<sup>34</sup> Elizabeth Kneebone and Natalie Holmes, “U.S. Concentrated Poverty in the Wake of the Great Recession” (Washington, DC: Brookings Institution, 2016).

<sup>35</sup> Paul A. Jargowsky, “Architecture of Segregation” (New York, NY: Century Foundation, 2015).

<sup>36</sup> G. Thomas Kingsley and Rob Pitingolo, *Concentrated Poverty and Regional Equity* (Washington, DC: Urban Institute, 2013).

<sup>37</sup> Brett Theodos, Eric Hangen, Brady Meixell, Prasanna Rajasekaran, *Neighborhood Disparities in Investment Flows in Chicago* (Washington, DC: Urban Institute, 2019).

<sup>38</sup> Margery Austin Turner, Solomon Greene, Anthony Iton, and Ruth Gourevitch, *Opportunity Neighborhoods: Building the Foundation for Economic Mobility in America's Metros* (Washington, DC: US Partnership on Mobility from Poverty, 2018); Margery Austin Turner and Ruth Gourevitch, *How Neighborhoods Affect the Social and Economic Mobility of Their Residents* (Washington, DC: US Partnership on Mobility from Poverty, 2017); Solomon Greene, “Can You Tackle Poverty without Taking on Place,” *Urban Wire* (blog), Urban Institute, June 27, 2016, <https://www.urban.org/urban-wire/can-you-tackle-poverty-without-taking-place>; Robert Sampson, Jeffrey Morenoff, and Thomas Gannon-Rowley, “Assessing ‘Neighborhood Effects’: Social Processes and New Directions in Research,” *Annual Review of Sociology* 28, no. 1 (August 2002): 443-78.

<sup>39</sup> Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment* (Cambridge, MA: Harvard University, 2015).

<sup>40</sup> Gourevitch et al., “Place and Opportunity: Using Federal Fair Housing Data to Examine Opportunity across US Regions and Populations”

<sup>41</sup> Turner and Gourevitch, *How Neighborhoods Affect the Social and Economic Mobility of Their Residents*.

<sup>42</sup> Chetty et al., “Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States.

<sup>43</sup> Elizabeth Kneebone and Natalie Holmes, “U.S. Concentrated Poverty in the Wake of the Great Recession”

## Role of AFFH in Overcoming These Barriers and Creating Fair Access to Housing and Opportunity

As the evidence cited above suggests, progress toward achieving the goals of the Fair Housing Act has been halting and incomplete. Discrimination in housing markets remains all too common, and patterns of residential segregation and racially concentrated poverty persist. Slow progress has held us back as country. By limiting many people of color to underresourced, unhealthy neighborhoods and excluding households from the neighborhoods of their choice, we widen gaps in access to opportunity and upward mobility for families while stunting regional economic growth.<sup>44</sup> These realities undermine the basic American principles that neither our race nor the zip code we grow up in should determine our destinies.<sup>45</sup>

HUD took a major step forward when it adopted the 2015 rule, which provided a clear definition of AFFH, guidance to local jurisdictions on how to comply with the AFFH requirement, a standard template for completing fair housing assessments, and open data and mapping tools to assist in communities in identifying barriers to fair housing.<sup>46</sup> The 2015 rule was designed to address longstanding and well-documented gaps in enforcement of the Fair Housing Act's AFFH requirement that allowed the patterns and trends to described above to persist.<sup>47</sup>

The 2015 rule explicitly identified “disparities in housing needs and access to opportunity,” “segregated living patterns,” and “racially and ethnically concentrated areas of poverty” as barriers that the AFFH requirement is intended to address; it also provided detailed data to describe these concepts.<sup>48</sup> Communities were encouraged to supplement HUD's data with local knowledge and public engagement, to ensure that the problems, solutions, and goals identified in housing assessments responded to local needs and contexts.

HUD suspended implementation the 2015 rule in January 2018 after receiving only 49 submissions (from the more than 1,200 entitlement jurisdictions subject to the rule), so evidence on its effectiveness is thin.<sup>49</sup> However, early research conducted by scholars at MIT and NYU suggests that the 2015 rule helped

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<sup>44</sup> Acs et al., *The Cost of Segregation*; Chetty et al., “Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States”

<sup>45</sup> David T. Ellwood and Nisha G. Patel, *Restoring the American Dream: What Would It Take to Dramatically Increase Mobility from Poverty?* (Washington, DC: US Partnership on Mobility from Poverty, 2018); Turner et al., *Opportunity Neighborhoods: Building the Foundation for Economic Mobility in America's Metros*; Greene and Poethig, “Creating Places of Opportunity.”

<sup>46</sup> Greene and Poethig, “Creating Places of Opportunity.”

<sup>47</sup> Vicki Been and Katherine O'Regan, “The Potential Costs to Public Engagement of HUD's Assessment of Fair Housing Delay,” submitted March 6, 2018, at

[https://furmancenter.org/files/NYUFurmanCenter\\_CommentsAFHDelay\\_6MAR2018.pdf](https://furmancenter.org/files/NYUFurmanCenter_CommentsAFHDelay_6MAR2018.pdf); Libby Perl, “The Fair Housing Act: HUD Oversight, Programs, and Activities” (Washington, DC: Congressional Research Service, 2018); Raphael Bostic and Arthur Acolin, “The Potential for HUD's Affirmatively Furthering Fair Housing Rule to Meaningfully Increase Inclusion” (Cambridge, MA: Harvard Joint Center for Housing Studies, 2017); Nicole Hannah-Jones, “Living Apart: How the Government Betrayed a Landmark Civil Rights Law,” *Segregation Now*, *ProPublica*, June 25, 2015; U.S. Government Accountability Office, *HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans*, GAO-10-905 (Washington, DC, 2010), <https://www.gao.gov/new.items/d10905.pdf>

<sup>48</sup> “Affirmatively Furthering Fair Housing; Final Rule,” published July 16, 2015, at 80 FR 42272, available at <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>

<sup>49</sup> “Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants,” published January 5, 2018, at 83 FR 683, available at <https://www.federalregister.gov/documents/2018/01/05/2018-00106/affirmatively-furthering-fair-housing-extension-of-deadline-for-submission-of-assessment-of-fair>

increase community participation in fair housing planning and identified more concrete and actionable goals to remove barriers to fair housing and create more integrated and balanced living patterns.<sup>50</sup>

## HUD Should Restore and Enforce AFFH Using Evidence-Based Principles

HUD now proposes to remove racial segregation and concentrated poverty from its definition of affirmatively furthering fair housing. As our colleagues discuss in a separate comment, HUD would also remove data on segregation and racial disparities in housing outcomes from its proposed metrics to rank jurisdictions based on their housing performance.<sup>51</sup> If adopted, these changes would flout Congress's clear intent in adopting the Fair Housing Act and imposing a requirement to affirmatively further fair housing, and they would likely help perpetuate the patterns of racial segregation and concentrated poverty we describe above.

Instead of ignoring housing discrimination, segregation, and racially concentrated poverty, we encourage HUD to adopt regulations that pursue evidence-based remedies to reverse these patterns and support local and regional progress toward fair housing goals. The recent volume of papers published in the book, *A Shared Future: Fostering Inclusion and an Era of Inequality*, is a good starting point.<sup>52</sup>

In addition, as part of the US Partnership for Mobility from Poverty, researchers from the Urban Institute—along with Anthony Iton, senior vice president for healthy communities at the California Endowment—reviewed evaluations of fair housing and housing choice programs, including those resulting from federal enforcement actions, philanthropy-led initiatives, and voluntary state and local programs. We also consulted with diverse national experts, local civic leaders, and other stakeholders involved in fair housing efforts nationally. We developed a set of recommendations to help ensure every family is “able to live in a neighborhood that supports its well-being and boosts its children’s chances to thrive and succeed.” Our report, *Opportunity Neighborhoods: Building the Foundation for Economic Mobility in America’s Metros*, identified six key principles for successful efforts, which we briefly summarize here:<sup>53</sup>

1. **Adopt a regional approach.** Regional collaboration is needed to close gaps in capacity, encourage collaboration across jurisdictional boundaries, and help overcome residents’ barriers to opportunity.
2. **Be place conscious.** In most regions, a mix of programs and policies will be needed to address the differing needs of historically distressed, revitalizing, and opportunity-rich communities.
3. **Support resident empowerment.** Residents of neighborhoods suffering from disinvestment and distress must play a leading role in designing solutions.
4. **Partner with and strengthen effective organizations.** Policies, programs, and investments should strengthen the institutional capacities of local organizations.
5. **Use data to evaluate and refine strategy.** Policies, programs and investments should support evidence-based decisionmaking, and continuous learning.

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<sup>50</sup> Been and O’Regan, “The Potential Costs to Public Engagement of HUD’s Assessment of Fair Housing Delay”; Justin Steil and Nicholas Kelly, “[The Fairest of Them All: Analyzing Affirmatively Further Fair Housing Compliance](#)” (Philadelphia, PA: Future of the Housing Policy in the US Conference, 2017).

<sup>51</sup> Solari et al., “[HUD Omits Race from Fair Housing Proposal Public Comment on the Proposed Rule Change on Affirmatively Furthering Fair Housing.](#)”

<sup>52</sup> Herbert et al. eds., *A Shared Future: Fostering Inclusion and an Era of Inequality* (Joint Center for Housing Studies of Harvard University, 2018),

<sup>53</sup> Turner et al., *Opportunity Neighborhoods: Building the Foundation for Economic Mobility in America’s Metros*

6. **Confront racism.** Planning and implementation strategies to create and expand neighborhoods of opportunity must explicitly confront and overcome racism and its pervasive influences.

In sum, we encourage HUD to abandon the proposed AFFH approach and adopt these principles in any future AFFH enforcement efforts. Revising the existing rule will require intense engagement with practitioners, researchers, advocates and communities to ensure AFFH continues to evolve in ways that advance Congress's clear intent, and incorporate the best available evidence to create integrated, stable neighborhoods that provide equal opportunities for all.

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