May 2, 2025

Secretary Scott Turner
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Re: Docket No. FR-6519-I-01; Affirmatively Furthering Fair Housing Revisions

Dear Secretary Turner,

Over the course of our collective history advocating alongside our clients, Housing Opportunities Made Equal of Virginia (HOME),[1] Legal Aid Justice Center (LAJC),[2] and Virginia Poverty Law Center (VPLC)[3] have documented the multitude of ways in which unjust policies foster segregation, funnel investment away from communities, and cause real harm to families. The inequitable systems these policies create, such as residential segregation, the dual credit market, restrictive zoning, and biased technologies, lock people out of opportunity and limit their chances for success in life. But we have also seen that when local governments take proactive steps to undo discriminatory policies and commit to equitable investments, they unlock the tools and resources their residents need to thrive. When localities commit to furthering fair housing, everyone in the community benefits.

The U.S. Department of Housing and Urban Development's (HUD) 2025 Interim Final Rule,[4] *Affirmatively Furthering Fair Housing Revisions* (2025 Rule), will unravel decades of progress. In rescinding the 2021 Interim Final Rule (2021 Rule), the administration utterly abandons the Fair Housing Act's Affirmatively Furthering Fair Housing (AFFH) mandate to ensure that all people–regardless of race, gender identity, ethnicity, family status, disability, or religion–have a range of choices about where to live, and that all neighborhoods are good places to live, regardless of who lives in the community.

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[1] Housing Opportunities Made Equal of Virginia ("HOME") is a 501(c)(3) non-profit, HUD-approved housing counseling agency serving Virginia with a mission to ensure equal access to housing for all people. We tackle systemically divisive housing practices through fair housing enforcement, research, advocacy, and policy work. And we aid first-time homebuyers and those under the threat of foreclosure, as well as Housing Choice Voucher Holders seeking to move to areas of opportunity. Through this multi-faceted approach, we aim to create vibrant, empowered, and inclusive communities where everyone has the freedom of housing choice.

[2] The Legal Aid Justice Center (LAJC) is a 501(c)(3) nonprofit that partners with communities and clients to fight for racial, social, and economic justice by dismantling systems that create and perpetuate poverty. LAJC's Housing and Consumer Justice Program (HCJP) combats barriers to safe and affordable housing, defends tenants' rights, and fights mass eviction.

[3] Virginia Poverty Law Center (VPLC) is a 501(c)3 nonprofit organization committed to breaking down systemic barriers that keep low-income Virginians in the cycle of poverty through advocacy, education, and litigation. Since 1978, we've advocated for legislation that benefits low-income Virginians and provided training to legal aid organizations throughout the Commonwealth in the following areas: housing, consumer rights, domestic and sexual violence, elder rights, family and child welfare, health insurance, and public benefits. We are the only statewide organization that provides training to local legal aid program staff, private attorneys, and low-income clients relating exclusively to the legal rights of low-income Virginians.

[4] HUD, Interim Final Rule, *Affirmatively Furthering Fair Housing Revisions*, 90 Fed. Reg. 11020 (March 3, 2025), https://www.federalregister.gov/documents/2025/03/03/2025-03360/affirmatively-furthering-fair-housing-revisions.

HOME, LAJC, VPLC, and the undersigned urge HUD to immediately withdraw the 2025 Rule and reinstate the 2021 Rule for the following reasons: (1) the rule fails to address the full scope of Congress' mandate to Affirmatively Further Fair Housing; (2) the rule improperly conflates "affordable" and "fair" housing; and (3) the rule lacks mechanisms for accountability and will erode public trust.

1. **The rule fails to address the full scope of Congress' mandate to Affirmatively Further Fair Housing.**

The administration's perfunctory approach to AFFH rulemaking seeks to rid federal agencies and HUD program participants of their statutory duty to create inclusive communities. When Congress enacted the Fair Housing Act of 1968 (FHA),[5] it did so with a dual purpose: to end discrimination in housing and to create integrated communities. The FHA requires HUD and jurisdictions or entities—be it federal, state, or local—utilize federal housing or community development funds, as well as operate all their housing and community development programs, in a non-discriminatory manner and take active steps to eliminate segregation.[6] In creating this duty to Affirmatively Further Fair Housing (AFFH), Congress recognized that redress of decades of government sponsored housing discrimination requires action backed by investment. It extended the obligation to AFFH as a condition to receipt of federal funds pursuant to the Housing and Community Development Act of 1974,[7] the Cranston-Gonzalez National Affordable Housing Act of 1990,[8] and the Quality Housing and Work Responsibility Act of 1998.[9]

The 2025 Rule, however, makes no mention of the duty to eliminate segregation, expand housing opportunities to members to protected classes, or create well-resourced communities. As courts have repeatedly held,[10] HUD's obligation to AFFH requires that "HUD do more than simply not discriminate itself"; rather, HUD must "use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[11] Each federal court of appeals that has construed the Fair Housing Act's AFFH requirement has recognized that the AFFH obligation requires a funding recipient to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them.

These judicially recognized AFFH principles cannot be reconciled with the 2025 Rule's far more limited definition of AFFH. The rule states that entitlement jurisdictions need only take steps "rationally related" to any of a large set of objectives, some of which are not intrinsically about furthering fair housing at all. Although the Supreme Court has never had occasion to consider the scope of the AFFH provision, it has consistently recognized and noted the Fair Housing Act's broad and remedial goals. It has observed that the Act is meant not just to bar discrete discriminatory acts, but to affirmatively counteract the nation's long history of racial segregation and discriminatory housing practices and policies. For instance, in confirming the unanimous view of the courts of appeals that the Act permits disparate-impact claims in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Court explained that "[m]uch progress remains to be made in our Nation's continuing struggle against racial

[5] Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619.
[6] 42 U.S.C. 3608(e)(5).
[7] Pub. L. No. 93-383, 88 Stat. 633-741 (1974).
[8] Pub. L. No. 101-625, 104 Stat. 4079-424 (1989).
[9] Pub. L. No. 105-276, 112 Stat. 2461-680 (1998).
[10] See e.g. Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970); Otero v. New York City Housing Auth., et al., 484 F.2d 1122 (2d Cir. 1973); NAACP, Boston Chapter v. HUD, 817 F.2d 149 (1st Cir. 1987).
[11] 817 F.2d 149, 155 (1st Cir. 1987).

isolation. . . . The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."[12] As the Supreme Court held in *Inclusive Communities Project,* the Act's broad remedial purposes cannot be accomplished simply by banning intentional discrimination.

The 2025 Rule improperly eliminates a key component of the FHA and undermine Congress's mandate to mitigate historic and systemic obstacles to achieving fair housing in this country. An effective AFFH rule would require entitlement jurisdictions to provide specificity about its' efforts to expand equal housing opportunity, not to merely reiterate their commitment to follow the law, as the 2025 Rule requires. Any AFFH rule HUD enacts must recognize AFFH as a distinct mandate in the Fair Housing Act that can only be fully realized through the proactive actions of the federal government and entitlement jurisdictions, not just enforcement of the law's anti-discrimination provisions.

2. The rule improperly conflates "affordable" and "fair" housing.

The 2025 Rule introduces a novel definition of fair housing that is inconsistent with the FHA, judicial precedent, and previous AFFH rulemaking. It asserts that fair housing is "housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws" and that "affirmatively further" means, "any action rationally related to promoting any attribute or attributes of fair housing."[13] HUD does not point to any examples or case law of what it means by "rationally related." Nor has HUD provided any clarity as to what constitutes an "attribute of fair housing." Does "attribute" include lending, zoning decisions, home appraisals, or the variety of other applications of the Fair Housing Act to private and government actions? The 2025 Rule is silent.

This conflation of "affordable" and "fair" housing perpetuates the misconception that most people of color and members of other protected classes are poor and that income is the key barrier that prevents them from being able to live in housing that suits their needs in the neighborhood of their choice. The logical remedy to a problem like this would be to create more housing that is affordable to people at lower income levels regardless of where it is located, an outcome which is clearly inconsistent with the Fair Housing Act's prohibition of segregation. Although income, or lack thereof, exacerbates the harmful effects of our history, it cannot be the central factor in our strategies to overcome them.

The Housing Choice Voucher (HCV) Program provides a helpful example to illustrate this point. The HCV program was designed, in part, to provide affordable housing choice for families in the private market, beyond the limited locations of unit based subsidized housing programs.[14] Indeed some findings have demonstrated benefits of the voucher program: moving to a lower-poverty neighborhood when young increases college attendance and job earnings.[15] Although the research shows that the program is

[12] 576 U.S. 519, 546-47 (2015).
[13] 24 C.F.R. § 5.150 (2025).
[14] The "Congressional findings and declaration of purpose" of the Housing and Community Development Act of 1974 include "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods." 42 U.S.C. 5301(c)(6).
[15] Raj Chetty, Nathaniel Hendren and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhood on Children: New Evidence from the Moving to Opportunity Experiment," The American Economic Review, April 2016, Vol. 106, No. 4 (April 2016), pp. 855-902.

successful at reducing housing instability, homelessness, and overcrowding,[16] numerous other studies have documented the concentration of vouchers in poorer neighborhoods.[17] HCVs are critical to helping families afford their housing, yet the failure to fully address key structural problems have prevented the program from fully delivering on its promise of housing choice and opportunity for all participating families. It is a problem HOME's clients experience first-hand.

Since its inception in 2014, HOME's Move to Opportunity Program has been responsible for moving families living in neighborhoods with an average poverty rate of thirty-two percent to an average poverty rate of eighteen percent. The program combines mobility counseling, tenant education, and landlord recruitment services to assist households with an HCV in finding housing of their choice. To date, HOME has provided counseling to over 2,220 HCV households and successfully placed 533 households into opportunity rich neighborhoods. Despite these successes, HOME's mobility counselors report several major barriers that severely limit voucher holders' housing choices: landlords who refuse to rent to voucher holders, exorbitant rental application fees, unfair tenant screening criteria, and geographic limitations as to where they are permitted to place their voucher. For voucher holders to have truly fair housing, we must take deliberate steps to overcome those barriers.

The Low-Income Housing Tax Credit (LIHTC), the single largest affordable housing program in the United States, similarly features incentives at odds with the goals of fair housing. This program awards a "basis boost" which increases the total basis eligible for a credit by 130% when building in a high-poverty Census tract.[18] Over 25% of all LIHTC properties receive such a bonus.[19] Unsurprisingly, these bonuses directly contribute to a greater concentration of affordable units in more racially segregated, lower-opportunity neighborhoods, effectively worsening racial segregation rather than ameliorating it.[20] The problem is exacerbated by exclusionary zoning laws that place strict limitations on the siting of multifamily housing. This, in turn, leads to a smaller affordable housing inventory in neighborhoods that offer greater opportunity, making it challenging to place HCV recipients in thriving, integrated communities. This programmatic conflict between LIHTC's affordable housing production and FHA's nondiscrimination mandate has been litigated at the Supreme Court, where the Court held that the goal

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[16] Michelle Wood, Jennifer Turnham, and Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate,* Vol. 19, No. 2, 2008; Gregory Mills *et al.,* "Effects of Housing Vouchers on Welfare Families," prepared for Department of Housing and Urban Development Office of Policy Development and Research, September 2006.

[17] *See, e.g* ., Alicia Mazzara and Brian Knudsen, "Where Families With Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas" (CBPP-PRRAC, January 2019), https://prrac.org/pdf/where_families_use_vouchers_2019.pdf; Alex F. Schwartz, Kirk McClure, and Lydia B. Taghavi, "Vouchers and Neighborhood Distress: The Unrealized Potential for Families with Housing Choice Vouchers to Reside in Neighborhoods with Low Levels of Distress," Cityscape Vol 18:3 (2016); Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, "Housing Choice Voucher Location Patterns a Decade Later," Housing Policy Debate Vol 25:2 (2015).

[18] 26 U.S.C. § 42 (d)(5)(B)(ii).

[19] Alex Schwartz, Housing Policy in the United States, 119 (4th ed. 2021).

[20] *See id* at 129-30. *See also*, Lance Freeman, *Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s*, Brookings Inst. (Mar. 2004), https://www.brookings.edu/wp-content/uploads/2016/06/20040405_Freeman.pdf; Robert Neuwirth, *Renovation or Ruin*, Shelterforce (Sep. 1, 2004), https://shelterforce.org/2004/09/01/renovation-or-ruin/; Shannon Van Zandt & Pratik Mhatre, *Growing Pains: Perpetuating Inequality Through the Production of Low-Income Housing in the Dallas/Fort Worth Metroplex*, 30 Urb. Geo. 490 (2013).

of producing affordable housing does not trump the requirement to deploy housing in in a way that does not worsen segregation.[21]

The careless deployment of the "fair" and "affordable", coupled with a general lack of acknowledgment of a key component of the FHA, undermines the intention of the AFFH requirement under the FHA and its mandate to mitigate historic and systemic obstacles to achieving fair housing in this country. The 2023 Proposed Final Rule would have ensured and mandated that HUD program participants make investments, take actions, and achieve outcomes that remedy the segregation, inequities, and discrimination that the Fair Housing Act was designed to redress. If this administration is unwilling to implement the 2023 Rule, it should instead adopt the definitions in the 2021 Rule that captures each mandate of the Fair Housing Act.

3. The rule lacks mechanisms for accountability and will erode public trust.

Critically, the 2025 rule lacks any accountability measures or opportunity for community input. It eliminates the structured framework that provided clear guidance, accountability, and support for jurisdictions working to advance housing equity under prior AFFH rules. When localities are granted federal taxpayer funds for housing and community development projects, it's only fair to expect they will take steps to protect fair housing and expand opportunity for all. And yet, the 2025 Rule fails to hold recipients of federal funding accountable to that promise, nor does it give them the tools and information to do so. AFFH must be centered around the hopes and needs of the people our public entities are supposed to serve; this rule leaves communities out of the process entirely.

The removal of that support framework is also contrary to law. The FHA requires HUD to "cooperate with and provide technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices."[22] For decades, courts have affirmed that for funding recipients to satisfy their AFFH obligations they must, at a minimum, ensure that they make decisions informed by preexisting racial and socioeconomic residential segregation. HUD is obligated to "utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties" under the Fair Housing Act.[23] HUD grantees must likewise gather and consider relevant information such as racial and socioeconomic segregation in housing to inform decisions that will foster integration and not further perpetuate segregation. A data-driven approach to AFFH is thus necessary to satisfy Congress's mandate. Without a robust and structured AFFH planning process, communities may struggle to effectively align federal funding with fair housing goals, weakening efforts to dismantle historical patterns of segregation and economic exclusion.

Previous iterations of the AFFH rule have supported integrated assessment and planning approaches that more closely examine and address patterns of disinvestment and barriers to opportunity. Communities were tasked both to identify the obstacles to fair housing in their community and to develop data-driven goals and milestones for removing these barriers. These obligations operated together: a community first expanded its own knowledge of its housing market, demographics, and patterns of life, which in turn illuminated the strategies for eliminating barriers to equal access that

[21] Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 576 U.S. 519, 546-47 (2015).
[22] 42 U.S.C. 3608(e)(3).
[23] Shannon v. HUD, 436 F.2d 809, 821 (3d Cir. 1970).

would be best suited to that community. It also serves as a useful benchmark for entitlement jurisdictions as they update their comprehensive plans and set goals for future development.

HOME has extensive experience working in partnership with entitlement jurisdictions at the local and regional level to identify and analyze barriers to fair housing. Those data-driven fair planning processes have proved essential to help align investments in transportation, education, housing, infrastructure, public health, and economic development to foster access to opportunity for those currently being left out. In this way, the previous iterations of the AFFH rule armed localities with more data and directed the generation of a professional process. This in turn created a sense of real public accountability, not just from HUD oversight, but from these localities' constituents.

This federal administration has asserted that it seeks to empower localities through this new interim rule—the 2015 Final Rule and the 2023 Proposed Rule did just that. They equipped local governments with critical data, they offered freedom to tailor solutions to local needs, and they expanded the role of democratic accountability between local officials and their constituents. The 2025 AFFH IHR will rob local constituencies of any role in this process. It will take local response to segregation out of the public square and convert it instead into a box for a bureaucrat to check each year. This directly undermines this administration's own stated goals of local empowerment, as well as the purpose of the FHA to transform segregated communities.

Conclusion: We need an AFFH Rule that is good for communities.

HOME, LAJC, VPLC, and the undersigned urge HUD to revoke the 2025 Rule and implement the 2023 Proposed Final Rule. Doing so would restore essential definitions and certifications that have been through notice-and-comment scrutiny and that are grounded in legal precedent to its regulations implementing the Fair Housing Act's requirement to AFFH. It would also reinstate the much-needed process by which HUD will provide technical assistance and other support to funding recipients who are engaged in fair housing planning to support their certifications.

AFFH should be more than just a check mark – it should open the door for more people to live in healthy, viable, well-resourced neighborhoods with living wage jobs, clean air for our children to breathe, safe water in our homes, schools that provide our children with a great education, and adequate affordable and accessible housing. Fair and equitable housing opportunities can transform our society and create new promises for future generations. We can build a world in which your zip code does not determine your outcome in life. We can foster a society in which every neighborhood is full of the opportunities and resources that people need to live successful lives.

Sincerely,

Housing Opportunities Made Equal of Virginia
Legal Aid Justice Center
Virginia Poverty Law Center