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Office of General Counsel
Regulations Division
U.S. Department of Housing and Urban Development 451 7th Street, SW
Washington, D.C. 20410

RE: Affirmatively Furthering Fair Housing Revisions, Interim Final Rule, FR-6519-I-01

Thank you for the opportunity to comment on the “Affirmatively Furthering Fair Housing Revisions” Interim Final Rule (2025 AFFH IFR). The undersigned are members of the Consortium for Constituents with Disabilities (CCD) Housing Task Force. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of a society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ discrimination and religious intolerance. The Housing Task Force works to ensure that all people with disabilities have safe, stable, accessible, affordable, and integrated housing that enables people to live in communities of their choosing, with full access to home and community-based services and supports.

We strongly oppose the 2025 AFFH IFR, which undermines the federal Fair Housing Act’s AFFH mandate. Courts have interpreted the AFFH mandate to require HUD and its grantees to play an active role in ending housing discrimination and segregation. This IFR, however, allows HUD grantees to fulfill their AFFH obligation by merely taking “any action...rationally related to promoting fair housing.” Given the ongoing lack of affordable and accessible housing, the history and ongoing risk of institutionalization for people with disabilities, and the prevalence of disability-based housing discrimination, we urge HUD to withdraw the 2025 AFFH IFR and reinstate the 2021 AFFH IFR.

People with Disabilities Continue to Face Fair Housing Barriers

The AFFH mandate and fair housing are critical for people with disabilities. People with disabilities and their families, particularly those with low incomes,¹ face a national shortage of accessible and affordable housing.² People with disabilities often have few financial resources, remain among the country’s lowest-income households, and far too frequently encounter

¹ See, e.g., Technical Assistance Collaborative, Inc. “Priced Out: The Housing Crisis for People with Disabilities” (2025) at <https://www.tacinc.org/resources/priced-out/>.

² See, e.g., U.S. Dept. Of Housing and Urban Development, “Worst Case Housing Needs: 2023 Report to Congress” (2023) at <https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs-2023.html>.

discrimination when trying to seek or maintain housing.³

Every year, disability discrimination is the basis for the majority of fair housing complaints across the country.⁴ The lack of sufficient safe, accessible, affordable housing is a significant barrier to integrated community living, making it difficult for people with disabilities to move from segregated facilities into the community. As a result, people with disabilities face a disproportionate risk of institutionalization and homelessness.⁵ It remains crucially important for HUD and its grantees to work towards inclusive housing in the community for people with disabilities, and to protect their rights under the federal Fair Housing Act (FHA).

Creating and sustaining communities that are free from discrimination with safe, accessible, affordable, and integrated housing requires proactive efforts.⁶ For people with disabilities, communities must address barriers arising from the interaction of poverty, inaccessibility, a lack of supportive services, and a disability policy system rooted in the outmoded model of segregating disabled people from the community mainstream.⁷ The 2025 AFFH IFR, however, fails to promote such efforts to overcome fair housing barriers for people with disabilities.

The 2025 AFFH IFR Undermines Fair Housing

The 2025 AFFH IFR is contrary to the spirit and intent of the FHA's AFFH mandate. The proposed rule would eliminate important obligations, definitions, and technical assistance that were established by the 2021 AFFH IFR after years of ineffective efforts to implement the mandate on AFFH. The AFFH mandate requires recipients of federal housing and community development dollars to work toward eliminating discriminatory practices and dismantling segregation.⁸ As HUD has stated, "[f]rom its inception, the Fair Housing Act...has not only prohibited discrimination in housing related activities and transactions but has also provided, through the duty to affirmatively further fair housing, for meaningful actions to be taken to

³ National Fair Housing Alliance, "2024 Fair Housing Trends Report" at <https://nationalfairhousing.org/resource/2024-fair-housing-trends-report>; U.S. Dept. of Housing and Urban Development, "Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing," (2017) at <https://www.huduser.gov/portal/publications/MentalDisabilities-FinalPaper.html>.

⁴ National Fair Housing Alliance, "2024 Fair Housing Trends Report" at <https://nationalfairhousing.org/resource/2024-fair-housing-trends-report>.

⁵ See, e.g., U.S. Dep't of Housing and Urban Development, "2024 Annual Homeless Assessment Report to Congress" at <https://www.huduser.gov/portal/sites/default/files/pdf/2024-AHAR-Part-1.pdf>

⁶ The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. 42 U.S.C. §3601 et seq.

⁷ National Council on Disability, "The State of Housing in America in the 21st Century: A Disability Perspective," at <https://www.ncd.gov/report/the-state-of-housing-in-america-in-the-21st-century-a-disability-perspective/>.

⁸ The Fair Housing Act declares that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. The Fair Housing Act prohibits, among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of "race, color, religion, sex, familial status, national origin, or [disability]." See 42 U.S.C. 3604 and 3605. Section 808(d) of the Fair Housing Act requires all executive branch departments and agencies administering housing and urban development programs and activities to administer these programs in a manner that affirmatively furthers fair housing. See 42 U.S.C. 3608. Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities to be administered in a manner affirmatively furthering the policies of the Fair Housing Act.

overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing.”⁹ However, for many years, HUD took no steps to fulfill its AFFH obligation.¹⁰ In 1994, HUD finally adopted the first AFFH regulations requiring grantees to conduct an analysis of impediments (AI) to fair housing choice. Yet the limited requirements of that rule were later found by the General Accountability Office (GAO)¹¹ and HUD itself to be ineffective.¹² In addition, municipalities and other HUD grantees conducting AIs often left out, or mentioned only in passing, the needs of people with disabilities. HUD’s 2021 AFFH IFR was a step towards remedying these issues, and the rule promoted the importance of fair housing planning that is inclusive of various populations, including the disability community.

The new certification process under the 2025 AFFH IFR, on the other hand, sets a bar so low that it does not address the purpose of the statutory AFFH mandate. The preamble states that “[g]ranttee AFFH certifications will be deemed sufficient provided they took any action during the relevant period rationally related to promoting fair housing, such as helping to eliminate housing discrimination.” Section 5.151 of this IFR further explains that promoting any attributes listed in § 5.150 will be deemed sufficient. Section 5.150 provides the following list of housing attributes: “affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws.” While the CCD Housing Task Force believes all people have the right to housing with these attributes, the Task Force disagrees that any actions to simply make housing affordable, safer, decent, or to ensure nondiscrimination – without more – meet the AFFH requirement. Indeed, HUD grantees could fulfill the IFR’s certification requirements without addressing fair housing for people with disabilities specifically, or even at all.

People with disabilities will be harmed by HUD’s retreat on AFFH. Every day a person with a disability lives in an institution instead of the community is a lost opportunity, lost human potential, and a needless cost to public systems. It is a lost opportunity for the state and local governments that would benefit from the cost savings achieved when people with disabilities move from expensive nursing facilities, psychiatric hospitals, and other institutions into the community. Most importantly, it is a lost opportunity for those people with disabilities who will remain institutionalized rather than members of their community of choice. We are concerned that this proposed rule impedes AFFH by enshrining patterns of residential segregation (including institutionalization) and concentrated poverty in America, as well as undermining the stated policy of the FHA to provide for fair housing throughout the U.S.¹³

⁹Affirmatively Furthering Fair Housing Final Rule (2015) at <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>.

¹⁰ See e.g., Nikole Hannah-Jones, “Living Apart: How the Government Betrayed a Landmark Civil Rights Law,” *ProPublica* at: <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law>.

¹¹ U.S. Government Accountability Office (GAO) “HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans,” at <https://www.gao.gov/products/gao-10-905>.

¹² See, e.g., U.S. Dep’t of Housing and Urban Development, Executive Summary, *Affirmatively Furthering Fair Housing*, Docket No. FR-5173-F-04, (July 16, 2015) at <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>.

¹³ 42 U.S.C. § 3601.

Conclusion

Finally, people with disabilities have intersectional identities. Any weakening of AFFH requirements that harms people who are part of the FHA's protected classes or underserved communities harms the rights of all. We are in solidarity with other people and groups who face discrimination and segregation in objecting to the 2025 AFFH IFR.

We urge HUD to withdraw this 2025 AFFH IFR and reinstate the 2021 AFFH IFR. Please contact the Housing Task Force co-chairs with any questions.

Sincerely,

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American Council of the Blind
The Arc of the United States
Autistic Women & Nonbinary Network
Disability Rights Education and Defense Fund
Muscular Dystrophy Association
National Consumer Law Center (on behalf of its low-income clients)
National Women's Law Center
SAGE
World Institute on Disability