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Office of the General Counsel
Rules Docket Clerk
US Department of Housing & Urban Development
451 Seventh Street, SW
Room 10276
Washington, DC 20410-0001

Submitted electronically via www.regulations.gov

RE: Docket No. FR-6123-A-01

Dear Office of General Counsel:

Thank you for considering our comments regarding the Affirmatively Furthering Fair Housing Rule. We strongly support the current (2015) rule, and urge HUD to keep it intact and restore its implementation without further delay. Implementation must include reviewing any AFHs submitted on or before January 4, 2018 and AIs completed after that date for compliance with the 2015 rule, and resuming work with jurisdictions whose AFHs were not initially accepted. The 2015 rule provides a valuable planning framework and data for local communities, provides accountability to ensure that jurisdictions take meaningful steps to overcome identified fair housing issues, and enables engagement by community groups.

Texas Appleseed (Appleseed) is a non-partisan, nonprofit, 501(c)(3) public interest justice center. We work to change unjust laws and policies that prevent Texans from realizing their full potential, including ensuring access to fair housing choice and equal opportunity.

The Texas Low Income Housing Information Service (TxLIHIS), a non-partisan, nonprofit corporation, has worked in Texas with community leaders in neighborhoods of people of color living with low-incomes to achieve affordable, fair housing and open communities for over 25 years. Citizen engagement, civil rights enforcement and fair housing are at the center of our work.

The 2015 rule represents an extremely important and long overdue effort by HUD to take meaningful steps to implement the affirmatively furthering fair housing provisions of the 1968 Fair Housing Act. The rule drafting process included several years of consultation with many different stakeholders, including program participants, fair housing organizations, and others. The rule went through the required public comment process, during which HUD received over

1,000 comments. (See Regulations.gov at https://www.regulations.gov/document?D=HUD-2013-0066-0001.) In addition to the public comment process, the 2015 rule was extensively vetted internally at HUD and was field-tested in 74 jurisdictions through the Sustainable Communities Initiative. HUD' process to draft and finalize the 2015 rule was careful, inclusive and deliberative. Rather than undertaking another rulemaking process, which would be a duplication of effort and an unwise and unnecessary use of HUD's resources, it should instead move ahead with effective implementation of the 2015 rule.

One of the critical aspects of the 2015 rule is its clearer definition of "affirmatively furthering fair housing." It states:

> Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development. (24 CFR §5.152)[1]

This definition clearly states that AFFH requires program participants to go beyond just making plans; they must take meaningful steps to implement those plans. Critically, it clarifies that Affirmatively Furthering Fair Housing requires both increasing housing choice in all areas for members of protected classes and remedying disinvestment in historically segregated and disinvested areas to create inclusive communities with equitable access to opportunity. The definition also clarifies the the AFFH obligation is not limited to the expenditure of federal funds, a point that is underscored in the section of the regulations that addresses certification requirements.

This clarified definition acknowledges that the impact of segregation has negative and far

[1] *See, also*, 24 CFR §5.150 ("A program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.")

reaching effects beyond housing choice. Where you are born and live in the United States is predictive of your entire future, from educational achievement to life expectancy.[2] As organizations who work on disaster recovery in a particularly disaster-prone state, we are concerned about the impact that segregated living patterns are having on access to disaster recovery resources and the ability of certain families to recover, as well as the long-term impact of disaster recovery programs on wealth inequality between White and Black, Hispanic, and Asian families. In the City of Houston, $87,000 of the in estimated increase in the White-Black wealth gap between 1999 and 2013 is attributable to natural hazards damage.

Segregation is not natural and it is not a choice. It was deliberately created and perpetuated by government policy at the federal, state, and local level, from refusing GI Bill home loans to Black GIs and requiring that the post-World War II suburbs created with government subsidies have restrictive racial covenants, to local exclusionary zoning and failure to provide communities of color with standard levels of infrastructure and public services.[3] Government created segregation, and it is responsible for dismantling it and alleviating its impacts on protected classes under the Fair Housing Act. The 2015 AFFH Rule is a critical tool to help governments and PHAs understand both the causes and impacts of segregation, select ways to remedy the inequities they created, and take meaningful steps to do so.

The reasons put forward by HUD for it's proposed rulemaking are inaccurate and were addressed in the extensive and deliberative rulemaking process for the 2015 rule.

Responses to Other Questions Posed in the ANPR

We will respond to each individual question below, however, we want to emphasize that all of HUD's questions are specifically answered by the 2015 rule, further underlining that HUD should reinstate and continue to implement the 2015 rule immediately.

1. **What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement**

[2] *See,* Junia Howell and James R. Elliot, "Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States", Social Problems, 072018, 0, 1–20 (2018).

[3] See generally, Rothstein, *The Color of Law* (2017)

process?

The 2015 rule requires a much more robust community engagement process that should be reinstated. It directs program participants to give the public opportunities for involvement in the development of the AFH and in its incorporation into the Consolidated Plan or PHA plan, and to use communications designed to reach the broadest possible audience to inform the public of those opportunities. (See §5.158(a)). It also requires program participants to consult with a wide range of stakeholders, including not only fair housing groups, but also organizations that represent members of protected classes, and public and private agencies that provide assisted housing, health services, and social services. (See, for example, §91.100). One of the goals of the 2015 rule was to "[p]rovide an opportunity for the public, including individuals historically excluded because of characteristics protected by the Fair Housing Act, to provide input about fair housing issues, goals, priorities, and the most appropriate uses of HUD funds and other investments." (See 80 F.R. 42272, 42273, Thursday July 16, 2015) One of the legacies of segregation and discrimination is that persons in protected classes under the Fair Housing Act are often disenfranchised and deprived of political power; a robust and inclusive community participation process is critical to ensuring that these communities have a say in what happens in their communities, and in how resources are distributed.

The 2015 rule establishes a floor (with additional recommendations in guidance) that can be improved upon in practice, but has successfully increased participation. For example, there was an unprecedented level of community participation in the Hidalgo County AFH. Colonia residents, whose communities are legally defined by their lack of infrastructure like drainage and running water, organized a public meeting to bring their concerns about disinvestment and discrimination to the attention of the County and elected officials, attended by 100 people. Community organizing groups presented video testimony of residents, had a professor talk about the origins of racial segregation in the Rio Grande Valley, and residents presented data and a request for specific meaningful actions to address identified fair housing issues. In Denver, community engagement identified a discriminatory practice – charging Latinx renters an extra "per person" fee for each child – that decades of AIs had failed to uncover.

The issues under consideration in affirmatively furthering fair housing and the AFH do merit separate and additional public participation and consultation procedures beyond those already required of program participants in preparing their annual plans for housing and community development. These are separate planning processes, and while they must incorporate fair housing consideration and the provisions of the AFH into the final plans, have different goals and purposes. The content of the Consolidated Plan, for example, the local government's housing and homeless needs assessment, does not focus on discrimination against members of

protected classes under the Fair Housing Act: race, disability status, and familial status are considered along with many other factors, including ones that primarily relate to income or economic status. 24 C.F.R. § 91.205(b).[4] Other than consultation and certification requirements, federal regulations do not separately require a Consolidated Plan to address fair housing concerns, and HUD does not explicitly require jurisdictions to examine such concerns as part of the content of the Consolidated Plan process except in connection with the 2015 AFFH rule. Similarly, HUD regulations do not separately require the content of Annual Action Plans to address fair housing concerns (other than in reference to the AFH, as per the 2015 AFFH rule). The 2015 rule in fact requires the submission of an AFH well in advance of the Consolidated Plan so that the process of developing the Consolidated Plan and the Plan's substance reflect various components of the AFH. *See* 24 C.F.R. § 5.160(a)(1)(i); 80 Fed. Reg. at 42,287; *see also* 24 C.F.R. § 91.105(e)(1)(i) (requiring that Consolidated Plan hearings include presentation of "proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH"); 24 C.F.R. § 91.215(a)(5)(i) (CDBG participant must "[d]escribe how the priorities and specific objectives of the jurisdiction…will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH").

As HUD stated in the preamble to the Final AFFH Rule, the AFH and the Consolidated Plan are distinct documents with unique purposes, and part of two separate processes:

> [t]he AFH is a distinct document with data, analysis, and priority and goal setting that feeds into the consolidated plan . . . . **An analysis of barriers to fair housing choice has always been an analysis separate from the consolidated planning or PHA planning processes. The purpose of the separate analysis is to inform the broader scope in planning undertaken for the consolidated plan and PHA Plan.** . . . The disproportionate housing needs analysis required in the AFH is a broader analysis than must be done in connection with the consolidated plan since, for AFH purposes, the analysis must include groups with protected characteristics beyond race and ethnicity." (80 Fed. Reg. 42,272, 42,300) (emphasis added)

Not only must the disproportionate housing needs analysis in the AFH take into account all seven protected classes under the Fair Housing Act, many of the

[4] The conflation of protected class status with economic status is erroneous, and an ongoing misinterpretation of the Fair Housing Act and obligation to AFFH.

issues that must be analyzed as part of the AFH, such as access to proficient schools, employment opportunities, affordable, high-quality public transportation, and neighborhoods free from the disproportionate burdens of pollution and environmental hazards are entirely absent from the Consolidated Plan. 24 C.F.R. § 91.200-91.230. The AFH provided both an extensive process and new substantive content requirements that jurisdictions must engage in prior to the adoption of the Consolidated Plan and related housing plans. Again, these are separate processes with separate purposes, and the existing Consolidated Plan and other planning process cannot be substituted for the AFH process.

Public input on AFFH should, and in fact must be, included as part of the Consolidated Plan/PHA Plan community participation process. As noted above, the 2015 rule in fact requires incorporation of the AFH and fair housing issues into the Consolidated Plan. *See* 24 C.F.R. § 5.160(a)(1)(i); 80 Fed. Reg. at 42,287; *see also* 24 C.F.R. § 91.105(e)(1)(i); and 24 C.F.R. § 91.215(a)(5)(i). Resource allocation decisions, for example, must be consistent with a jurisdiction's statutory duty to AFFH, and affected communities may have fair housing related feedback on specific funding allocation proposals in addition to their input on the AFH.

2. **How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?**

Once again, the 2015 rule resolved these questions after extensive consultation comment on these precise issues. HUD's provision of uniform data removed a substantial burden from program participants, who had previously been required to carry the entire burden and cost of data collection and analysis. However, HUD was also clear that "[t]he data are not intended to be exhaustive but are intended to provide a baseline for program participants to use and HUD encourage program participants to supplement with local data and knowledge." (80 F.R. 42338) The rule reflects the need for both uniform baseline data and local data and knowledge that reflects the particular history and conditions of that particular jurisdiction. HUD has been clear that "the rule affords program participants the flexibility to supplement the HUD-provided data with relevant, statistically valid State and local data, qualitative analysis and explanation, and information received during the public participation and outreach process." (80 F.R. 42339)

The 2015 rule defines "local data" as "metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool." (24 C.F.R §5.152) The preamble to the 2015 rule is clear that this definition was included as a response to public comments and consultation. Once again, the balance between HUD-provided data, local data that did not impose a high cost on local jurisdictions, and other local knowledge and input was a part of a long and careful rule drafting process that included input from stakeholders including program participants.

Jurisdictions should not be permitted to rely solely on their own qualitative experiences.[5] Allowing government entities that have put in place policies and procedures that created and continue to perpetuate segregation (regardless of their current intent) to identify and assess those policies and procedures and recognize their effects based solely on the subjective experience of staff and elected officials is completely unrealistic and will allow jurisdictions to continue perpetuating segregation, concentrating poverty, and discriminating against protected classes. Our organizations have reviewed multiple Texas AIs conducted before the 2015 rule. Almost uniformly, jurisdictions did not use the appropriate data, failed to identify and analyze barriers to fair housing choice, and neither proposed nor took any meaningful action to overcome these barriers and AFFH. In order to assess a qualitative approach, HUD would have to obtain and analyze data, essentially conducting a second assessment of fair housing, and evaluate whether the jurisdiction's assessment was consistent with data. This would not be a more efficient use of HUD's resources.

The 2015 rule strikes an appropriate balance with respect to the use of data. It provides for the use of qualitative information, as well as a mechanism for members of the community to bring such information to the attention of the program participant. The uniform national data, along with the data and mapping tool, and the structured questions incorporated into the Assessment Tool, set a baseline for the information to be considered in the fair housing planning process, but the rule also encourages program participants to seek out and use relevant local data that can inform and enrich the fair housing planning process. This approach to data is flexible, offers valuable tools for program participants with limited capacity for data analysis, and ensures that the process is sufficiently rigorous and comprehensive.

[5] Again, HUD has been clear that qualitative analysis is part of the AFH process, but only as part of a larger analysis that includes data and community input. We note that the experience and local knowledge of protected classes is particularly important to obtain and include.

3. **How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERs), or utilize an alternative structure?**

Again, the 2015 rule resolved these questions base on multiple years of stakeholder input and a public comment process. HUD should implement the 2015 rule as written.

Jurisdictions should be required to provide a detailed report of the analysis performed (as they are under the 2015 rule). Without this report, there is no context in which either the public or HUD can evaluate the chosen goals. Jurisdictions with high levels of racial segregation and inaccessible public facilities, for example, cannot propose (as they have often done in the past) goals like "build more affordable housing" and "declare April is Fair Housing Month" and be in compliance with the statutory or regulatory obligation to AFFH. We saw this in HUD's return of the Hidalgo County AFH for revision in December 2016 for vague and insufficient goals that were not connected to contributing factors, and a lack of metrics and milestones for achieving those goals. (December 12, 2017 Letter from Krista Mills, Deputy Assistance Secretary)

Participants are already required to report on their actions to AFFH annually in the AFH and in the CAPER. Annual reporting is required to hold jurisdictions accountable for making progress towards their goals.

4. **Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to**

address? How might a jurisdiction accurately determine itself to be free of material obstacles?

While the rule provides clarity and direction, it does not take a "one size fits all" approach. Based on an analysis of data and community input, jurisdictions then identify their most pressing fair housing problems, set their own goals and priorities, and design their own strategies for achieving those goals. Nowhere does the rule state that program participants must address any particular fair housing issue (although HUD's list of Contributing Factors is helpful guidance), set any particular goal or number of goals, or take any particular action to overcome barriers to fair housing choice. The rule combines the structure, including the AFH Tool that program participants need to analyze fair housing issues effectively, with the flexibility that is also needed to accommodate a diversity of local conditions. It also encourages regional collaboration and collaboration with PHAs. HUD should implement the 2015 rule as written.

The 2015 rule requires that a Regional AFH include both individual goals for the participating jurisdictions and regional goals agreed upon by the collaborators, it in no way holds one jurisdiction responsible for the actions of another. Regional collaborations are however, critical to understanding how conditions in individual jurisdictions fit into larger, regional, patterns. Housing markets are regional in nature, and the effects of segregation and discrimination do not stop at the city limits or county line. Regional collaboration is necessary to address common patterns in Texas; all white cities surrounded by communities of color (e.g. Vidor) and majority-minority cities surrounded by all-White suburbs (e.g. Port Arthur). Regional collaboration is also important for PHAs, who may be regionally fragmented.

Given that It has taken over a century of concerted government action and a massive investment of public resources to create the current level of segregation and its far-reaching and negative effects, we would regard any determination by a jurisdiction that it was free of material obligations with disbelief, and as a jurisdiction that clearly needed further investigation and enforcement action.

5. **How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?**

The 2015 rule gives jurisdictions tremendous deference and flexibility. While it requires jurisdictions to set goals to overcome the contributing factors they identify, as well as metrics and milestones by which to measure progress toward achieving those goals, it does not dictate what those goals should be, how many goals must be identified, or what metrics and milestones must be used. Nonetheless, even this modest framework is essential for ensuring

that jurisdictions actually take concrete steps to address fair housing problems, and for holding them accountable for implementing those steps. Too often, as confirmed by both the GAO and HUD's own research, jurisdictions' AIs lacked any such concrete plans or accountability measures.

6. **How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?**

The 2015 rule sets out review standards for an AFH at 24 C.F.R. § 5.162 and HUD provided further specific guidance for program participants on how it would apply these standards on July 6, 2016 (Guidance on HUD's Review of Assessments of Fair Housing) HUD should implement the 2015 rule and continue to use these standards to evaluate AFHs.

HUD deliberatively constructed a schedule that permits it to carefully review, provide feedback, and potentially to initially reject AFHs—and then work with jurisdictions to improve them—as part of the routine process rather than as an extraordinary event (or "failure") that seriously endangers federal funding. HUD considered and rejected a proposal that a funding recipient submit an AFH at the same time as its proposed Consolidated Plan, in order to ensure that, prior to submission of the Consolidated Plan, "the affected communities would have already had the opportunity to review and comment on the AFH, HUD will have the opportunity to identify any deficiencies in the AFH, and the program participant will have the opportunity to correct any deficiencies, prior to incorporation of the AFH into the consolidated plan or PHA Plan, such that funding to program participants will not be delayed." 80 Fed. Reg. at 42,311. IN other words, the 2015 rule provides a process by which jurisdictions can come into compliance before they put their federal funding at risk. Jurisdictions with unacceptable efforts that cannot support a truthful AFFH certification are legally ineligible for federal housing and community funds. Without the review and revision process set out in the 2015 rule, HUD has no alternative but to deny these jurisdictions federal funding.

HUD does, however, have additional options when PHAs are failing to AFFH. In particular, HUD can place such PHAs under receivership to ensure that the PHA is complying with its obligation to AFFH, and protecting the rights and housing of current tenant families.

7. **Should the rule specify certain levels of effort on specific actions that will be deemed**

to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., "safe harbors"), and if so, what should they be?

Again, this question was deliberately and thoughtfully considered in the 2015 rulemaking process.

> HUD believes that the final rule achieves the appropriate balance of interests by requiring program participants to submit AFHs to HUD for review and acceptance rather than requiring AFHs to be approved by HUD. Program participants have asked for flexibility in determining their goals, priorities, strategies, and actions to affirmatively further fair housing at the local level, and the rule provides this flexibility. However, HUD believes it would be inappropriate to create the perception of a safe harbor or limit a private right of action under the Fair Housing Act based on an ''approval'' of an AFH.
> (80 F.R. 42315)

We agree that this is the correct balance and that the 2015 rule should be implemented as written. Given the wide variations in program participants in terms of size, local conditions, priorities and resources, it is difficult to see how HUD could determine the range of activities or level of effort that would be appropriate for each. Further, even if it were possible to say that a particular jurisdiction had fulfilled its AFFH obligations at a particular moment in time, local circumstances are dynamic and change over time. This means that jurisdictions must continually assess the extent to which fair housing problems may exist, the nature of those problems and the solutions needed to address them. Just as the need for other forms of planning and the implementation of those plans must be on-going, so the obligation to affirmatively further fair housing, which is rooted in statute, must be on-going, as well. A "one size fits all" standard would strip program participants of their ability to set goals appropriate to addressing the issues in their individualized AFHs.

8. **Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist program participants in meeting their AFFH obligations?**

Keeping the 2015 AFFH Rule intact and immediately continuing its implementation would further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, and otherwise assist program participants in meeting their AFFH obligations.

Conclusion

HUD's ANPR suggests that it may believe that increasing the supply of affordable housing alone is all that is necessary for fair housing compliance. Simply increasing the production of affordable housing (while necessary, as the supply is only adequate for only one in four households who qualify for assisted housing) has no effect on segregation, discrimination, and access to opportunity. The production of affordable housing must be accompanied by deliberate strategies to ensure balance and housing choice in areas outside of racial/ethnic concentrations of poverty (RECAPs), and to ensure that areas of concentrated poverty receive the infrastructure and other investment they need to increase their residents' access to opportunity. Westchester County, for example, asserted in a federal False Claims Act case alleging that it had not truthfully certified that it was affirmatively furthering fair housing, that discrimination was an income problem, and not a race problem. The Court forcefully rejected this argument:

> Given [the} statutory and regulatory framework, Westchester's argument that it had no duty to consider race or race discrimination when identifying impediments to fair housing choice must fail. **At a minimum, when a grantee certifies that the grant will be "conducted and administered" in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and certifies that it "will affirmatively further fair housing," the grantee must consider the existence and impact of race discrimination on housing opportunities and choice in its jurisdiction.** In identifying impediments to fair housing choice, it must consider impediments erected by race discrimination, and if such impediments exist, it must take appropriate action to overcome the effects of those impediments. (emphasis added)[6]

The statutory obligation imposed by the Fair Housing Act and regulatory framework are clear that HUD and its program participants must address impediments to free housing choice for all protected classes at all income levels. An AFH (or AI) that does not do so cannot support an AFFH certification.

For these and other reasons, the AFH process laid out in the 2015 AFFH regulation is far better than the AI system as a means for HUD to ensure that its program participants are fulfilling their AFFH obligations and taking meaningful steps, designed by the program participants and tailored to local conditions, to address the fair housing problems identified by local

[6] *UNITED STATES OF AMERICAN ex rel. ANTI- DISCRIMINATION CENTER OF METRO NEW YORK, INC., v. WESTCHESTER COUNTY, NEW YORK*, 495 F.Supp.2d 375 (S.D.N.Y 2007) at 28

stakeholders. It would be a mistake either to rely on AIs for this purpose, or to go back to the drawing board and try to create an entirely new regulation. HUD acted on an extensive record when instituting the AFFH regulation, including prior case law on the scope of its mandate under the Fair Housing Act and an extensive administrative record. To disregard this record and retreat from the regulation is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act.

Sincerely,

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