

William E. Morris Institute for Justice

3707 North Seventh Street, Suite 300, Phoenix, Arizona 85014

Phone 602-252-3432

Fax 602-257-8138

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Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: HUD Docket No. FR-6250-P-01;
RIN 2529-AB05; Affirmatively
Furthering Fair Housing (AFFH)

Dear Regulations Division, Office of the General Counsel of HUD:

The William E. Morris Institute for Justice (“MIJ”) is a non-profit organization dedicated to protecting the most basic civil and human rights of low-income Arizonans. MIJ prioritizes advocacy on systemic issues that affect economically vulnerable Arizonans and other Arizonans in historically marginalized communities.

Ensuring fair and equal housing opportunities for Arizonans is important to MIJ and the people in the communities we serve. Through our federal, state, and local fair housing advocacy, we seek to establish new, or to protect existing, statutes, regulations, and rules that ensure fair housing opportunities and equal justice for all.

We appreciate the opportunity to comment on the Department of Housing and Urban Development’s (“HUD”) proposed rule, “Affirmatively Furthering Fair Housing,” which intends to give effect to the Affirmatively Furthering Fair Housing (“AFFH”) mandate of the Fair Housing Act, 42 U.S.C. §§ 3608(d), 3608(e)(5). Specifically, the AFFH proposed rule does the following:

1. Requires community engagement throughout various program participants’¹ fair housing planning processes;

¹ Throughout these comments, MIJ uses the term *program participant* as used in the AFFH proposed rule, to describe state and local government actors, housing authorities, and other actors subject to the AFFH mandate in their planning and program activities by virtue of their receipt of HUD funding.

2. Reincorporates language that recognizes a balanced approach to implementing the statutory Fair Housing Act obligation to affirmatively further fair housing;
3. Maintains the requirement for program participants to engage in fair housing analysis and to create a fair housing planning and action document – called the Equity Plan – while increasing regulatory focus on effective goal-setting;
4. Mandates integration of Equity Plans with other planning documents, such as Consolidated Plans;
5. Increases transparency, including HUD publication of Equity Plans, and requirements of annual progress reports;
6. Provides technical assistance for program participants;
7. Ensures compliance review and a procedure for HUD to challenge the validity of AFFH certifications; and
8. Creates a complaint process to ensure that program participants are complying with the AFFH obligations outlined in the Fair Housing Act and the AFFH proposed rule, following the action steps they outline in their AFFH Equity Plans, and otherwise not taking actions inconsistent with the AFFH mandate of the Fair Housing Act.

MIJ supports inclusion and implementation of the above-enumerated components of the AFFH proposed rule. The rule will ensure meaningful planning and actions by program participants, consistent with the plain language and purpose of the Fair Housing Act. MIJ believes that – with HUD’s discerning attention to enforcement of the statutory AFFH mandate – the AFFH proposed rule will help to effect necessary, proactive steps to address housing discrimination by government actors around the United States. Our comments on certain critical issues presented by the AFFH proposed rule are further detailed below.

General Background for Affirmatively Furthering Fair Housing Mandate

The Fair Housing Act, enacted over 55 years ago this month, begins with a declaration that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”² The Fair Housing Act

² 42 U.S.C. § 3601.

broadly prohibits 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, and provides broad relief to people affected by the discriminatory conduct the Act prohibits.³

In addition to prohibiting discrimination and ensuring broad relief is available to people affected by discriminatory conduct, the Fair Housing Act requires that HUD programs and activities be administered in a manner to affirmatively further the policies of the Fair Housing Act.⁴ Section 808(d) of the Fair Housing Act directs other Federal agencies “to administer their programs . . . relating to housing and urban development . . . in a manner affirmatively to further” the policies of the Fair Housing Act, and to “cooperate with the Secretary [of HUD]” in this effort.⁵

In the proposed rule, HUD articulates the original intent and historical legal framework for the AFFH mandate.⁶ In short, the AFFH mandate is proactive in nature, requiring action to address systemic housing discrimination and not merely reaction and response to complaints and reports from affected persons and communities. The proactive nature of the AFFH mandate is supported not only by the plain language of the Fair Housing Act and the stated purposes of Congress at the time of its enactment, but additionally by subsequent actions by Congress and the Federal Government, and courts charged with interpreting the AFFH mandate, over the last 55 years since its enactment.

To give full effect to the Fair Housing Act’s AFFH mandate through the new AFFH proposed rule, HUD must place special focus on [1] ensuring the effectiveness of the tools required and utilized in the AFFH proposed rule; and [2] maximizing pathways to accountability for program participants’ non-compliance with the AFFH mandate. The new Equity Plan model, the AFFH certification requirement, community engagement, and strong AFFH enforcement provisions are all necessary for the success of the AFFH proposed rule and, thus, the fulfillment of the statutory intent of the Fair Housing Act.

I. The Proposed Rule’s New Equity Plan Model and Analytical Framework Must Not Be a Box-Checking Exercise

One of the critical changes included in the proposed rule is program participants’ required use of a new analytical planning framework, called an Equity Plan. In the

³ 42 U.S.C. § 3601 *et seq.*

⁴ 42 U.S.C. § 3608(e)(5).

⁵ 42 U.S.C. § 3608(d).

⁶ See, e.g., <https://www.federalregister.gov/d/2023-00625/p-42>; <https://www.federalregister.gov/d/2023-00625/p-43>; <https://www.federalregister.gov/d/2023-00625/p-44>; <https://www.federalregister.gov/d/2023-00625/p-46>.

proposed rule, HUD acknowledges the shift from the previously used analytical frameworks and rubrics, while highlighting key distinctions:

The proposed rule still requires program participants to ground their analysis in HUD-provided data, local data, and local knowledge (including information obtained during the community engagement process), but does not require a program participant to provide a complete description of the data analyzed in response to each question. Instead, the written responses to the questions should describe the fair housing issues and their causes present in the program participant's geographic areas of analysis, and describe the key sources of information relied upon in fair housing issues and their causes sufficiently to ensure that responses are grounded in data and local knowledge.⁷

HUD also acknowledges past process problems it seeks to address in the proposed rule with the new Equity Plan framework, including program participants' use of prior analytical models to compile data analyses only not to follow through with meaningful planning actions to address inequities:

HUD's experience with the implementation of the 2015 AFFH Rule highlighted some areas for improvement, including ways in which the identification of fair housing issues could be streamlined. Furthermore, due to the complexity of the assessment required and the need to adhere to the specific format required, many program participants utilized outside contractors to complete their AFHs⁸, others misunderstood the questions asked, and some failed to identify fair housing issues or set meaningful goals to affirmatively further fair housing. *Many submissions merely recounted what the HUD-provided data showed, rather than providing an analysis of the actual fair housing issues program participants' communities were and are facing. In some instances, this resulted in goals that consisted of a program participant merely continuing with actions that would maintain existing conditions rather than advancing equity for members of protected class groups and underserved communities.*⁹

We appreciate HUD's candor regarding program participants' past approaches to meeting their AFFH obligations with data-laden narratives disconnected from real-world

⁷ <https://www.federalregister.gov/d/2023-00625/p-97>

⁸ The acronym AFH refers to Analysis of Fair Housing, the planning framework used in the 2015 AFFH rule.

⁹ <https://www.federalregister.gov/d/2023-00625/p-55>

problems in program participants' communities. We also appreciate HUD's intent to "streamline" program participants' critical analyses and planning actions in fulfilling their AFFH obligations, to ensure a greater likelihood of success through the refinements included in the new AFFH proposed rule. Distilling fair housing goal development down to a simpler framework should allow program participants to plainly state the problems they must address, rather than to obscure them in a mass of data in a complex rubric, resulting in mere problem admiration. We are mindful that HUD's objective is not to lessen the weight or impact of AFFH planning actions by ignoring complexity in the analysis of fair housing problems experienced by program participants but rather to ensure that participants' goal-setting is more meaningful and results in practical action steps to advance fair housing objectives.

We believe it will be critical for HUD to honor its above-stated objectives with critical evaluation and oversight of outcomes over time as the Equity Plan model is implemented around the country. The intended simplicity of the Equity Plan model will only be useful to HUD and communities affected by program participants' AFFH planning if it produces the AFFH outcomes intended by Congress in the Fair Housing Act, which have so far evaded communities across the United States in the 55 years since its passage.

Based on our observations in communities across Arizona, we believe that HUD must be explicit in directions to program participants developing Equity Plans that AFFH obligations include analyzing all aspects of their actions related to housing development planning, broadly defined. Without explicit directions, program participants continue analyzing housing development without consideration of critical fair housing issues affecting Arizona communities. The required AFFH housing development analysis should include both new developments and redevelopments of existing housing. The analysis should focus on fair housing effects of all community housing development actions and plans, including the impact of relocation and displacement of any existing residents as well as the meaningful accessibility and availability of newly developed or redeveloped housing to protected class groups.

To be taken seriously, HUD's criticism of program participants' past AFFH plans that perpetuated inequities by continuing actions that maintained the status quo must be reflected in more explicit direction for a robust AFFH regulatory regime going forward in the new Equity Plan model. For example, HUD should direct program participants to analyze [1] how redevelopment or loss of publicly supported housing is influenced or caused by local and state policies or practices with disparate, adverse effects on protected class groups; [2] how redevelopment may impede or advance disparities in housing quality, housing stability, and housing needs as experienced by protected class groups

and underserved communities; or [3] how redevelopment impacts residential segregation, racially or ethnically concentrated areas of poverty, and access to well-resourced geographical areas in communities by various protected class groups.

While we appreciate the attention in the AFFH proposed rule to addressing inequities in homeownership, we believe that HUD must also be explicit in directions to program participants developing Equity Plans regarding inequities experienced by tenants. Specifically, much like HUD did with its rulemaking associated with the 2022 Violence Against Women Act re-authorization, HUD should require program participants to identify their existing policies and ordinances that affect tenants and to report the impacts of such policies and ordinances on tenants.

HUD should require program participants to inventory their laws, rules, and policies and how they perpetuate or reduce disparities in housing conditions including, but not limited to, housing health and safety, housing quality, housing stability, and exposure to environmental hazards. For example, in Arizona, many HUD-program-participating municipalities formally endorse crime free housing programs and utilize public resources to train and to support landlords adopting crime free housing programs, in spite of HUD's Office of General Counsel Guidance on fair housing concerns with such programs.¹⁰ Key policy areas that should be required for AFFH inventory reporting include but are not limited to [1] program participants' operation or endorsement of "crime free" housing programs and so-called "anti-nuisance" laws and policies; [2] available data and statistics on evictions and displacement; [3] available data and statistics on access to legal counsel for landlords and tenants in eviction and other housing proceedings in court; [4] legal requirements for eviction, including good cause requirements for evictions and lease renewals, as well as prohibitions against retaliatory evictions; [5] tenants' practical ability to enforce habitability, health, and safety rights as an affirmative defense to eviction or otherwise in court proceedings; [6] the availability of housing health and safety inspection programs; and [7] housing applicant screening practices, including regulation of criminal background, immigration status, and source of income screening criteria.

Examples of policies and laws that may affect the balance of power between landlords and tenants in eviction court proceedings include the right to civil counsel/access to counsel for tenants; access to eviction diversion programs and resources, ideally mandatory and at the pre-filing stage; and stronger due process (procedural) protections for tenants, including meaningful notice and extended timelines to reduce the outcomes of displacement and homelessness often resulting from the legal

¹⁰ <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>

eviction process. Public housing authorities should also report whether they are complying with applicable federal, state, and local laws aimed at protecting current and prospective tenants, including fair chance housing laws that provide procedural and substantive protections to criminal-legal-system-involved individuals.

The list of topics that should be considered in a Housing Equity Plan will, of course, vary by jurisdiction and community. But, no matter where a Housing Equity Plan is developed, it should be meaningfully responsive to community needs and the effects of the status quo on protected class groups.

II. The AFFH Certification Requirement Must Be Robust

We support the proposed rule's continuation of an AFFH certification requirement, ensuring that program participants must affirmatively confirm their compliance with the AFFH mandate of the Fair Housing Act in connection with the receipt of HUD funding supporting their programming and activities. Specifically, 24 C.F.R. § 5.166(a) of the proposed rule states the following:

*Prior to the receipt of Federal financial assistance, **program participants must certify that they will affirmatively further fair housing, which means engaging in fair housing planning and taking meaningful actions** in accordance with the requirements of §§ 5.150 through 5.180 and 24 CFR 91.225, 91.325, 91.425, 570.487, 570.601, 903.7, and 903.15, **and take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.** [Emphasis added.]¹¹*

The proposed rule provides the following additional context about the certification requirement:

Under the proposed rule, program participants would continue to be required to submit certifications that they will affirmatively further fair housing in connection with documents such as their consolidated plan, annual action plan, or PHA Plan (or any plan incorporated therein), and it will continue to be HUD's responsibility to ensure that these certifications are accurate. Furthermore, HUD is committed to advancing equity for protected class groups and underserved communities, as well as assisting its program participants in doing the same. To truly honor Congress' intent,

¹¹ <https://www.federalregister.gov/d/2023-00625/p-827>

any regulation to implement the Fair Housing Act's AFFH mandate must help program participants move away from the status quo with respect to planning approaches and facilitate the development of innovative solutions to overcome decades, if not centuries, of housing-related inequality throughout American communities.¹²

We agree that the status quo is simply not acceptable in the jurisdictions of many HUD program participants, as housing inequities have persisted unabated for decades all over the United States, including during the 55 years since the enactment of the Fair Housing act. HUD should expect its program participants to verify their compliance with the AFFH mandate, a core part of the Fair Housing Act, and take all available actions to ensure that recipients of HUD funds are acting consistently with the language of the Act. HUD should consistently, persistently, and ubiquitously highlight the importance of the AFFH certification and the potential ramifications for non-compliance with the AFFH mandate at all stages of interactions with program participants. HUD should provide notice to program participants of HUD's intent to hold program participants strictly accountable to their certifications of compliance with the AFFH mandate. The intent to treat the AFFH certification seriously and strictly, without exception, should be evident in all HUD interactions with program participants, including in reviews of Equity Plans and associated planning documents, such as Consolidated Plans. Program participants should have no doubt about the primary significance of the AFFH mandate, their certifications of AFFH compliance, or the consequences they will face for non-compliance with either the AFFH mandate or the AFFH certification requirement.

III. Authentic and Deep Community Engagement is Essential

The AFFH proposed rule includes a new regulation, 24 C.F.R. § 5.158, establishing new community engagement requirements for program participants in developing their Equity Plans. The general intent of the obligations is set forth in the proposed rule at 24 C.F.R. § 5.158(a), which states the following:

To ensure that the Equity Plan is informed by meaningful input from the community, program participants must engage with the public during the development of the Equity Plan, including with respect to both the identification of fair housing issues (including inequities faced by members of protected class groups and underserved communities) and the setting of fair housing goals to remedy the identified fair housing issues. Community engagement includes program participants' consideration of the views and

¹² <https://www.federalregister.gov/d/2023-00625/p-73>

recommendations received from members of the community and other interested parties.¹³

In the AFFH proposed rule, HUD states the following about community engagement:

The proposed rule makes [the community engagement] process more inclusive and robust, for example by requiring program participants to consult with a broad range of community members, to hold meetings in diverse settings, ensure that individuals with disabilities and their advocates have equal access to those meetings, and partner with local community-based organizations and stakeholders to engage with protected class groups and underserved communities. The proposed rule empowers broader segments of the community by, for example, requiring program participants to engage with a broad cross-section of the community, which could include advocates, clergy, community organizations, local universities, resident advisory boards, healthcare professionals and other service providers, and fair housing groups. HUD will also make the data HUD provides to program participants publicly available, including maps and other information demonstrating the existence of fair housing issues such as segregated areas, to facilitate public engagement throughout the process.¹⁴

HUD specifically requested comments regarding how it can best ensure that community engagement is effective in informing the Equity Plan.¹⁵ The answer is simple: Require program participants to engage authentically, meaningfully, and consistently with historically marginalized protected class groups on fair housing issues *and* to implement protected class groups' input in their Equity Plans. Members of protected class groups have a wealth of data to share with program participants regarding the effects of longstanding, currently effective policies and practices, as well as emerging fair housing trends affecting them in their day-to-day lives. In Arizona, Poder in Action, local branches of the NAACP, Ability360, and Southwest Fair Housing Council are just a few community groups that program participants should consult with to inform their Equity Plans.

Because authentic, deep, and consistent community engagement on fair housing issues is essential, we are concerned about the broad flexibilities the AFFH proposed rule

¹³ <https://www.federalregister.gov/d/2023-00625/p-722>

¹⁴ <https://www.federalregister.gov/d/2023-00625/p-23>

¹⁵ *Id.*

provides to program participants to fulfill their community engagement obligations. For example, the proposed rule, at 24 C.F.R. § 5.158(a)(8)(i), states the following:

The consolidated plan program participant may, if practical, combine the requirements of this section with its applicable citizen participation plan requirements, adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401). However, the community engagement for purposes of developing an Equity Plan *must allow for sufficient opportunity for the community to have the in-depth discussions about fair housing issues required by this section*. Therefore, to the extent the citizen participation plan does not provide for this opportunity, program participants must undertake separate engagement activities. [Emphasis added.]¹⁶

We are concerned that program participants will justify combining public participation requirements of the new Equity Plan processes and their existing Consolidated Plan activities, without sufficiently and authentically engaging with the community – specifically, historically marginalized protected class groups – on fair housing issues. HUD should provide more specific guidance on what constitutes “sufficient opportunity for the community to have the in-depth discussions about fair housing issues” required by the AFFH proposed rule. HUD should also incorporate more safeguards by requiring program participants who combine public participation requirements between and among other activities to identify, to delineate, to explain, and to justify how their combined processes ensure adequate focus and attention to community input on fair housing issues.

IV. Strong Enforcement Provisions Are a Necessary Addition to the Proposed Rule

Civil rights advocacy and litigation exposes discrimination in our society, but bringing a civil rights complaint or lawsuit has not been a historically easy experience for people affected by housing discrimination. This is especially true in cases alleging systemic discrimination by government actors in their conduct of government business and planning actions related to housing development, zoning and land use regulations, and allocation of financial resources. Arizona has three excellent legal services organizations that, together, provide direct legal representation to families and individuals facing housing discrimination, but they are under-resourced and not able to provide full representation to everyone who contacts them for help, much less all those who likely need help. Southwest Fair Housing Council provides fair housing advocacy support for

¹⁶ <https://www.federalregister.gov/d/2023-00625/p-730>

individuals as well, but – again – the organization is under-resourced relative to Arizona’s statewide community needs.

Bringing forward allegations of AFFH violations necessarily puts an individual up against a system of byzantine laws, regulations, municipal and housing authority planning processes, and HUD’s own designated fair housing enforcement mechanisms. Yet, complaints from affected individuals, groups, and organizations are an excellent source of information indicating that a municipality’s or housing authority’s fair housing plan may not be working how Congress intended in enacting the Fair Housing Act or how HUD is required to implement the Act in its administration and oversight of programs and funding.

In the AFFH proposed rule, HUD proposes adding a complaint and enforcement mechanism to ensure that program participants comply with their duty to affirmatively further fair housing. Specifically, the proposed rule provides a new regulation, 24 C.F.R. § 5.170(a), stating, “Complaints may be submitted by an individual, association, or other organization that alleges that a program participant has failed to comply with this subpart, noncompliance with the program participant's commitments made under this subpart, or that the program participant has taken action that is materially inconsistent with the obligation to affirmatively further fair housing, as defined in § 5.152.”¹⁷

This proposed rule, at §§ 5.170¹⁸ through 5.174,¹⁹ permits the filing of complaints with a Responsible Civil Rights Official,²⁰ and for HUD to open a compliance review in response to a complaint or on its own initiative, about a program participant's failure to comply with the requirements of the proposed rule; a program participant’s failure to comply with an Equity Plan commitment; or any action that is materially inconsistent with the obligation to affirmatively further fair housing as defined in this proposed rule.²¹

In the proposed rule, HUD elaborates about its addition of the complaint process as a new enforcement tool:

While the proposed rule continues to focus on planning and goal setting, HUD is proposing to add a complaint and enforcement mechanism to help ensure that program participants comply with their duty to affirmatively further fair housing. This proposed rule would set out how HUD will

¹⁷ <https://www.federalregister.gov/d/2023-00625/p-843>

¹⁸ *Id.*

¹⁹ <https://www.federalregister.gov/d/2023-00625/p-873>

²⁰ <https://www.federalregister.gov/d/2023-00625/p-844>

²¹ <https://www.federalregister.gov/d/2023-00625/p-109>

investigate complaints and conduct compliance reviews and the available mechanisms for HUD to enforce compliance when a program participant is found in noncompliance and voluntary resolution cannot be obtained. HUD has modeled these procedures after existing regulations that implement Federal civil rights laws, particularly those that apply to recipients of Federal financial assistance such as title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973, and therefore are familiar to program participants, all of whom are recipients of Federal financial assistance from HUD.²²

To ensure the success of the AFFH complaint process, HUD must make available and offer clear, fully accessible complaint mechanisms, including directions written in plain language, on how complainants may file AFFH-grounded discrimination complaints. Given the nature of the AFFH mandate, the process should not require complainants to parse out how program participants specifically perceived them or responded to differing aspects of their lives and housing experiences. Rather, the process should acknowledge that complainants – be they individual members of the community, groups, or organizations – will often have experienced second order effects of a program participant’s violation of the AFFH mandate.

HUD should affirmatively acknowledge that AFFH complaint procedures must be accessible, straightforward, and user-friendly. It is likely that many people who will utilize the new AFFH complaint procedures will be navigating the process on their own, without legal counsel or the assistance of an advocate. For this reason, HUD should ensure that information about the procedures and process is both easy to find and navigate, and includes resource materials such as Frequently Asked Questions, process diagrams, and materials presented in alternative formats. Videos with instructions in American Sign Language (“ASL”) should also be embedded into the website where other process and procedure information for complaints is posted.

In addition to making the complaint process accessible, HUD must also make the complaint process meaningful. Inasmuch as the AFFH proposed rule demands meaningfulness from program participants obligated to comply with the AFFH mandate, HUD must demand meaningfulness from the procedures it ultimately administers.

First, HUD should include more regulatory detail and instruction regarding the processing of AFFH complaints in the proposed complaint procedure, including more aggressive complaint management timelines to ensure prompt reviews. In the vast

²² <https://www.federalregister.gov/d/2023-00625/p-109>

majority of cases, HUD is, or will be, in possession of the key data, fair housing plans, and other documents and information necessary to conduct complaint reviews in a timely matter, responsive to any AFFH allegations raised in a complaint. Assuming that a program participant is in compliance with the proposed rules' Equity Plan and related documentary measures, HUD should be able to review complaint issues relatively quickly and to establish necessary investigative steps to determine whether the allegations rise to the level of non-compliance with the AFFH mandate.

Relatedly, HUD should ensure that Responsible Civil Rights Officials reviewing complaints apply standards that further the intent of the AFFH mandate. The explicitly authorized bases for a complaint in the proposed rules include "that a program participant has failed to comply with this subpart, noncompliance with the program participant's commitments made under this subpart, or that the program participant has taken action that is materially inconsistent with the obligation to affirmatively further fair housing, as defined in § 5.152."²³

While these categories of potential AFFH violations appear broad and all-encompassing, also included in the proposed rules is a provision stating, "HUD also does not intend the complaint process to be a forum to challenge program participants' day-to-day activities that have little nexus to the AFFH obligation."²⁴ HUD should clarify that program participants' AFFH obligations are inextricably intertwined with their day-to-day activities, and particularly day-to-day activities implementing the components of their program plans. HUD should not minimize the applicability of the AFFH mandate in program participants' day-to-day activities, such as program administration activities, zoning and land use regulation activities, housing development actions and reviews, and other categories of activities where program participants' AFFH duties may apply. As we observed earlier in these comments, HUD has acknowledged that, in many jurisdictions, the status quo is not acceptable. And the status quo is re-affirmed by program participants' day-to-day activities.

Finally, HUD should develop and publish a rubric outlining appropriate remedies for AFFH violations and enforce the rubric strictly to further the goals of the Fair Housing Act. Now is not the time for half-measures. Program participants have been on notice for decades of their AFFH obligations at this point. Giving effect to the Fair Housing Act's AFFH mandate in 2023 must be an exercise in accountability. While we appreciate the proposed rule's explicit expansion of pathways to enforcing the AFFH mandate, we urge HUD to develop and to implement a transparent approach to strict and

²³ <https://www.federalregister.gov/d/2023-00625/p-843>

²⁴ <https://www.federalregister.gov/d/2023-00625/p-112>

timely accountability to ensure that program participants do not continue to benefit from HUD funding while ignoring or paying lip service to their AFFH obligations.

Conclusion

Fair housing is a right, not a privilege. The Fair Housing Act's mandate to affirmatively further fair housing is an important, historically under-utilized legal tool that HUD should use to ensure that fair housing rights are fully realized by people across the United States. The AFFH proposed rule includes many promising components that MIJ supports to advance Congress' intent in the language of the Fair Housing Act.

Thank you for your consideration of MIJ's comments on the proposed rule. Please do not hesitate to reach out if you have any questions or if we can provide any additional information.

Sincerely,

/s/ Drew P. Schaffer

Drew P. Schaffer
Executive Director
William E. Morris Institute for Justice