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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

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RE: Docket No. HUD-2020-0011
Affirmatively Furthering Fair Housing

Vitalyst Health Foundation appreciates the opportunity to comment on the Proposed Rulemaking regarding Affirmatively Furthering Fair Housing (AFFH) and for providing the forum for people to use their voices and contribute their perspectives on issues like equitable access to housing.

Vitalyst Health Foundation is an Arizona-based independent, non-partisan public foundation with a mission to connect, support and inform efforts to improve the health of individuals and communities in Arizona. Over our 22-year history, Vitalyst has invested more than \$100 million in Arizona and has dedicated itself to supporting key health initiatives ranging from statewide health policy to local development of community food hubs and gardens. Our success is based around five overarching goals: (1) increasing access to affordable, quality care and insurance coverage; (2) working with leaders to promote healthy communities; (3) building capacity within community-based organizations; (4) promoting health, health care innovations and collaborations; and (5) increasing civic participation for inclusive decision-making.

Research continues to show that affordable quality housing results in positive health outcomes for the individual and the community. We have emphasized the important link between housing and health through our [Elements of a Healthy Community framework](#). These outcomes are numerous, and include: better economic opportunities and outcomes, fostering community safety with neighborhood pride and responsibility, connecting a family to care, transportation, food, and educational opportunities, protection from exposure to contaminants, neurotoxins, and other such dangers, and can result in decreased mental health problems. People benefitting from these positive health outcomes are better able to contribute economically, scientifically, and socially to their communities.

We also recognize that inequitable and unfair housing policies contribute to disparate housing effects which ultimately jeopardize health outcomes for both individuals and communities. These effects include, but are not limited to: exposure to natural hazards; barriers to wealth accumulation and the ability to afford basic necessities of life; safety issues; and limited options to quality jobs, education, healthcare, and transportation. These all threaten the health of people and, in turn, decrease their ability to contribute to their communities.



Historically, disparate housing effects have greatly harmed those already marginalized in society, including people of color. AFFH was created to battle segregation and other exclusionary climates. As the Supreme Court said in 2015,

“Much progress remains to be made in our Nation’s continuing struggle against racial isolation...The FHA must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white-separate and unequal.’...The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”¹

Thus, AFFH must continue to fight for those harmed by disparate housing effects to ensure healthy outcomes for individuals and communities – particularly for those who are marginalized already, such as communities of color.

Due to the tight connection between health and housing, we have thoroughly examined the proposed AFFH rule and have presented a **summary of our concerns in the bullets below.**

- Disparate housing barriers, such as a lack of access to healthy food or transportation, and racial bias in hiring practices, may now be argued as not being inside the control or influence of the housing jurisdiction.
- Using the new barrier list, housing may be developed with far fewer protections for personal safety and the environment in favor of increased affordability. This poses a threat to community health.
- Neighborhood and community groups who bring complaints against bad actors and the jurisdiction would not count under the new pass/fail system unless HUD or the DOJ file their own complaint.
- The new listed barriers fail to include provisions related to informing people about their housing rights.

We offer the following recommendations and comments to further improve upon the proposed rule.

1) Ensure the Definition of AFFH Includes a Responsibility to Address Systemic Barriers

The new rule changes the definition of AFFH, proposing that its main purpose is “advancing fair housing choice within the program participant’s control or influence.”

This misses a large piece of the housing puzzle and could be used by jurisdictions to avoid efforts to resolve housing barriers in the community. Outside of “affordability,” other factors can make housing exclusionary. For example, lack of public transportation systems, poor school options, or a lack of healthy food retailers can all block access to safe housing. With the proposed rule, those intersecting systems could now be considered “outside the program participant’s control or influence,” yet still be detrimental to a family’s ability to obtain housing.

1. Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc, Opinion of the Court delivered by Justice Kennedy, pg.24.
https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

In their *2015-2019 Analysis of Impediments to Fair Housing Choice*, the City of Phoenix found that Phoenix residents face a number of challenges to being healthy, beyond a lack of affordable housing options.² Some of these relate to the built environment, such as lack of transit or access to parks and recreation facilities. Some problems were symptomatic of biased systems, such as an overrepresentation of mortgage loans being denied to minority applicants, as well as a lack of outreach about housing rights. Many of these barriers are not directly impacted by an increase in affordable housing, but they are certainly connected.

Without an appropriate definition of AFFH, and without requirements for jurisdictions to dig deeper to see these related issues, the intersections between housing and other related factors will likely be overlooked by jurisdictions. By including a definition that recognizes these intersections, and by giving jurisdictions the right tools, AFFH can aid municipalities in more effectively focusing their resources toward issues (housing and beyond) that are affecting residents on a daily basis.

2) Reconsider the Downside Risk of Removing Existing Regulations

The proposed rule identifies sixteen regulatory categories as the main barriers to developing safe and plentiful housing. We believe the following categories, which may be considered unduly burdensome per the proposed rule, include important regulations, and we urge the administration to reconsider the negative consequences that may arise from providing too much flexibility in these areas.

- Design standards related to construction or rehabilitation of low-to- mid price housing
- Administrative procedures related to approval of affordable housing development
- Labor requirements
- Restrictions on the long-term creation of rental housing, such as certain types of rent control
- Building and rehabilitation codes
- Energy and water efficiency mandates
- Wetland or environmental regulations

The proposed rule lists these as potentially “cumbersome, unduly burdensome, arbitrary, excessive, and unnecessary” barriers; however, this is not objectively defined and could include protections necessary for health. If regulations are eased to reduce housing costs, additional affordable housing may become available, but these options would be far less safe. Streamlining regulation processes is a worthwhile effort, but care must be taken not to strip them of their purpose.

3) Complaints Filed by Non-Governmental Entities Should Count Toward a Jurisdiction’s Pass/Fail System

The proposed rule creates a pass/fail system for jurisdictions, determined by the number of times the Housing and Urban Development (HUD) or the Department of Justice (DOJ) file an adversely adjudicated fair housing complaint against them. The proposed rule clarifies that this pass/fail system would be limited to determinations following adjudications, and would not include complaints brought by neighborhoods, community organizations or other non-governmental entities.

In effect, this new system would allow a jurisdiction to ‘pass’, regardless of the extent of complaints from neighborhood and community groups filed against it, so long as neither HUD nor the DOJ file a complaint. These community organizations and individuals are often the most-informed entities on issues related to

2 https://www.phoenix.gov/nsd/site/Documents/nsd_rp_aitfh.pdf

the needs of residents. As evidence, the National Fair Housing Alliance reports that 75% of all complaints in 2018 were brought by nonprofits, while the other 25% were brought by local and state agencies and the federal government.³ This new pass/fail system could weaken the ability of neighborhood and community organizations to advocate for change in jurisdictions by creating additional barriers to civic engagement. These communities need to retain their ability to raise awareness of problems with safe housing access when they see it and pursue remediation from jurisdictions in violation.

Thank you again for this opportunity to provide comments on the proposed rule changes. Vitalyst Health Foundation is available to provide further information as needed.

Sincerely,



Suzanne Pfister
President and CEO
Vitalyst Health Foundation

³ Abbreviated Summary and Assessment HUD's Proposed AFFH Rule, Ed Gramlich, NLIHC, January 9, 2020. https://1c6e3796-283f-4165-8985-42201064a931.filesusr.com/ugd/e9d741_9a83d1aae39d4ab286b74c237c63de1c.pdf