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March 16, 2020

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

ASAN Comments Re: HUD-2020-0011, RIN 2577-AA97, “Affirmatively Furthering Fair Housing”

The Autistic Self Advocacy Network (ASAN)¹ appreciates the opportunity to comment on the Department of Housing and Urban Development (HUD)’s proposed rule,² which would revise the means by which HUD evaluates its program participants’ obligations to affirmatively further fair housing (AFFH), as defined by the Fair Housing Act of 1968.³ ASAN has a significant investment in the development of housing policy which helps to ensure that everyone has equal opportunity when looking for somewhere to live, including people with disabilities. ASAN opposes the changes made in this proposed rule because they do not further fair housing at all. In fact, they make it much more likely that state and local governments will increase the *supply* of housing while doing nothing to make it actually *available* to the vulnerable classes of people protected by the Fair Housing Act.

Among other important changes, the proposed rule:

- (1) eliminates the comprehensive, fair evaluation of program participant efforts - the 2015 rule’s Assessment of Fair Housing (AHA) - in favor of an “AFFH certification” that focuses more on housing *supply* rather than on whether people in protected classes are treated fairly;
- (2) proposes to change or eliminate critically important definitions in the Fair Housing Act’s regulations which promote community living and help protect people with disabilities from isolation and segregation;

¹ The Autistic Self Advocacy Network (ASAN), a 501(c)(3), non-profit organization, is the nation’s leading self-advocacy organization by and for autistic people ourselves. For more information on ASAN, you can visit our website at: <http://www.autisticadvocacy.org>.

² Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2041, 2041-42 (proposed January 14, 2020) (to be codified at 24 C.F.R §§ 5, 91, 92, 570, 574, 576, 903, 905).

³ 42 U.S.C. 3608 (e)(5)(mandate as provided in the Fair Housing Act); 24 C.F.R. §§ 5.150- 5.168 (AFFH regulations).

- (3) creates a new, arbitrary ranking system for determining the degree to which housing jurisdictions met their AFFH obligations that in no way meaningfully evaluates their individual attempts to further fair housing and disadvantages the most vulnerable neighborhoods;
- (4) reduces community member engagement in their community's housing policies.

The effect of many if not most of these provisions would be to reduce access to good quality housing for people with disabilities, people of color, and other protected populations and therefore undermine the principles that the Fair Housing Act was built upon. ASAN outlines its opposition in further detail in the comments that follow.

ASAN opposes the proposed rule's change to the definition of "affirmatively furthering fair housing," which would eliminate language designed to further equal access to housing in favor of a framework focused on housing availability that entirely fails to address the systemic causes of housing disparities.

Affirmatively furthering fair housing (AFFH) in the present AFFH regulations is defined as "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."⁴ This definition correctly focuses on the "fair" and "equal" aspects of affirmatively furthering fair housing, understanding that a jurisdiction must take specific steps to invest in poor communities and reduce the barriers people of color and other protected classes face⁵ when seeking quality homes for their families. It also utilizes the word "integrated," recognizing that most of the protected classes face not just limited, low-quality housing options but segregation from the broader community. People with disabilities in particular face significant segregation from the community and the loss of control of our own lives through institutionalization or placement in group homes that restrict our rights.

⁴ 24 C.F.R. § 5.152.

⁵ According to the National Low Income Housing Coalition, Black households, Hispanic households, and American Indian or Alaska Native (AIAN) households are much more likely to be extremely low-income renters. This is due to numerous factors including disparities in educational attainment and wages. Black people also have lower upward mobility and employment rates. National Low Income Housing Coalition (NLIHC), *Memo to Members: Racial Disparities Among Extremely Low Income Renters* (April 15, 2019), <https://nlihc.org/resource/racial-disparities-among-extremely-low-income-renters>.

Nonetheless, the proposed rule would change the definition of AFFH to “advancing *fair housing choice* within the program participant’s control or influence.”⁶ The proposed rule defines “fair housing choice” as “individuals and families [to] have the opportunity and options to live where they choose, within their means, without unlawful discrimination related to race, color, religion, sex, familial status, national origin, or disability.”⁷ It states that fair housing choice involves three factors: protected choice (the absence of discrimination), actual choice (the availability of affordable housing options and access to information that enables housing choice) and quality choice (affordable housing is sanitary and accessible).⁸

This definition mistakenly equates the absence of unlawful discrimination against a protected class with fair housing opportunity. The classes protected under the Fair Housing Act do not experience housing disparities solely because of intentional racism or ableism. Rather, a combination of inequities in education, wealth and income, mandatory poverty due to the receipt of Supplemental Security Income (SSI), treatment by realtors, available credit, accessible transportation, zoning ordinances, direct national, state, and local past racist government action, and other products of a historical legacy of systemic discrimination contribute to current segregated housing patterns and affordable housing disparities.⁹ Prohibiting discrimination in the abstract without addressing these barriers will therefore not reduce housing disparities among the protected populations. Affordable, accessible housing options could come into existence that were nonetheless due to these housing disparities entirely inaccessible.

Additionally, the emphasis on “within the participant’s control or influence”¹⁰ is peculiar and potentially undermines the goals of the AFFH regulations. While it is true that regulations should not ask local housing agencies to do the impossible, they do not exist in a vacuum. What is not within a local government’s control could be within the control of the state government. In fact, a local government attempting to further fair housing would

⁶ 85 Fed. Reg. at 2044-45.

⁷ 85 Fed. Reg. at 2045.

⁸ *Id.*

⁹ Dayna Bowen Matthew, Edward Rodrigue, and Richard R. Reeves, *Time for justice: Tackling race inequalities in health and housing*, Brookings (October 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/>; Technical Assistance Collaborative, Consortium for Citizens with Disabilities (CCD) Housing Task Force, *Priced Out: The Housing Crisis for People with Disabilities 7-12* (2017) (describing how people with disabilities on SSI cannot afford the average rent anywhere in America); Danyelle Solomon, Connor Maxwell, and Abril Castro, *Systemic Inequality: Displacement, Exclusion, and Segregation: How America’s Housing System Undermines Wealth Building in Communities of Color*, Center for American Progress (August 7, 2019, 7:00am), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/> (describing the direct racist actions that have led to persistent racial and ethnic housing disparities in the United States).

¹⁰ 85 Fed. Reg. at 2045, 2053.

on many occasions *have to* collaborate with state government agencies in order to advance fair housing for people with disabilities. For example, program participants are obligated under the current AFFH rule¹¹ to consider the disability services a person needs in order to remain in the community — services which are administered and provided by state¹² rather than local agencies. Narrowing the scope of AFFH obligations to only activities under the program participant’s specific control effectively removes the requirement that participants collaborate with one another to comply and makes it much more difficult for them to meaningfully further community integration and access to housing for people with disabilities.

ASAN opposes the changes to the definition of “fair housing choice,” which omit references to integration and disability services for no apparent reason and emphasize housing choice “within [the] means” of protected individuals, to the detriment of people with disabilities.

The new definition of “fair housing choice” omits a segment of the definition which directly addresses deinstitutionalization and community integration for people with disabilities. The current definition includes an “enabled choice” component similar to the “actual choice” requirement of the proposed rule. The current component states that “[f]or persons with disabilities, fair housing choice and access to opportunity include access to accessible housing *and housing in the most integrated setting appropriate...* including disability-related services that an individual needs to live in such housing.”¹³ This clause is omitted from the proposed rule, even though the clause’s components express critical concerns when determining whether housing choices are fair for people with disabilities.¹⁴

Fairness in housing choice for people with disabilities - especially autistic people and others with intellectual and developmental disabilities - involves the ability to choose housing integrated into the broader community of people without disabilities, rather than being forced into disability-specific settings, group homes, and institutions.¹⁵ We require services and supports tailored to our needs in our homes in order to remain in the

¹¹ 24 C.F.R. § 5.152.

¹² See, e.g., *Delaware Division of Developmental Disabilities Services (DDDS)*, Delaware.gov, last accessed March 5, 2020, <https://dhss.delaware.gov/dhss/ddds/>; *Vermont Department of Disabilities, Aging, and Independent Living (DAIL)*, Vermont.gov, last accessed March 5, 2020, <https://dail.vermont.gov/>.

¹³ 24 C.F.R. §5.152.

¹⁴ 85 Fed. Reg. at 2053.

¹⁵ See Autistic Self Advocacy Network, “The Best Outcome We’ve Had”: Key Themes from A Self-Advocate Summit on Community Living 6, 13, 14 (2019); *Housing*, The Arc, last accessed March 5, 2020, <https://thearc.org/position-statements/housing/> (position statement of The Arc); *Position Statements*, Autistic Self Advocacy Network, last accessed March 5, 2020, <https://autisticadvocacy.org/about-asan/position-statements/> (“Housing and Community Living” position statement).

community,¹⁶ and under Title II of the Americans with Disabilities Act we have the right to receive them in the most integrated setting appropriate.¹⁷ The removal of language directly pertaining to these rights as they relate to fair housing serves no purpose and limits AFFH compliance's effectiveness as a tool for integrating people with disabilities into the broader community.

The proposed rule's definition additionally states that individuals shall "have the opportunity and options to live where they choose," but only "*within their means* [emphasis added]."¹⁸ In reality, many people with disabilities are too poor to afford quality accessible housing or sometimes any housing at all. According to the National Council on Disability, more than twice the number of people with disabilities live in poverty compared to people without disabilities.¹⁹ People with disabilities are more likely to have difficulty covering expenses, are less likely to have emergency funds and savings accounts, and experience more financial stress.²⁰ People with disabilities using Supplemental Security Income (SSI) to make ends meet cannot afford even the national average rent for a modest studio apartment, as it amounts to 99% of their monthly SSI payment.²¹ Some of us are able to utilize government-funded housing vouchers²² to meet our needs, but these programs themselves are under threat from proposed cuts, such as those found in HUD's FY2021 budget.²³ Ensuring that affordable housing is geographically distributed, rather than clustered into high-poverty areas, is an essential component of affirmatively furthering fair housing. ASAN therefore opposes this provision and requests a revision that better accounts for the housing crisis many people in our community are facing.

¹⁶ See *About Community Living*, Administration for Community Living, last updated April 23, 2019, <https://acl.gov/about-community-living>; *Long Term Supports and Services*, The Arc, last accessed March 5, 2019, <https://thearc.org/position-statements/long-term-supports-services/>.

¹⁷ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

¹⁸ 85 Fed. Reg. at 2053.

¹⁹ National Council on Disability, *National Disability Policy: A Progress Report 21* (2017), available at: https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

²⁰ Nanette Goodman, Bonnie O'Day, Michael Morris, National Disability Institute (NDI), FINRA Investor Education Foundation, *Financial Capability of Adults with Disabilities: Findings from the National Financial Capability Study 3-4* (2017), available at: <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf>.

²¹ Technical Assistance Collaborative, Consortium for Citizens with Disabilities (CCD) Housing Task Force, *Priced Out: The Housing Crisis for People with Disabilities 7-12* (2017).

²² *National Disability Policy: A Progress Report* at 40-41.

²³ Department of Housing and Urban Development (HUD), *HUD's Fiscal Year 2021 Budget in Brief* at 11 (2020), available at: https://www.hud.gov/sites/dfiles/CFO/documents/BudgetinBrief_2020-02_06_Online.pdf. Note that the cuts are to Tenant-Based Rental Assistance programs (such as the Housing Choice Voucher program) rather than to Section 811 housing specifically for people with disabilities. Nonetheless, people with disabilities do use the programs where HUD proposed cuts.

ASAN strongly opposes the removal of *entire sections* of the current regulations that define terms critical to the advancement of fair housing choice for both people with disabilities and other groups protected by the Fair Housing Act.

The proposed rule omits sections 5.151-5.154 in their entirety, eliminating the “Definitions” section of the regulations in favor of including definitions as an abbreviated part of a new “Obligation to Affirmatively Further Fair Housing” section.²⁴ This section eliminates the definitions for “integration,” “segregation,” and almost all references to disability aside from a brief mention in the definition of “fair housing choice.”²⁵ The proposed section would also omit the definitions for “significant disparities in access to opportunity,” “fair housing issue” (which specifies that it “includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty...” and other important concerns related to fair housing), “racially or ethnically concentrated area of poverty,” and many other relevant terms.²⁶

It is incredibly difficult to see what the point of removing these definitions (without including them in the proposed rule’s new sections) would be other than to reduce HUD’s capacity for holding state and local housing agencies accountable for their failure to reduce housing disparities faced by the groups protected by the Fair Housing Act. The removal of “integration” and “segregation” is particularly troubling because both terms include a reference to program participants’ obligations to help people with disabilities find housing in the “most integrated setting appropriate to the individual’s needs,” consistent with *Olmstead*.²⁷ They are also critical terms for enforcing the civil rights of people of color. The new sections created by the proposed rule instead mention affordable, accessible housing for people with disabilities *without reference* to community living and our integration into the broader community.²⁸ They do not mention the systemic racism and segregation experienced by people of color *at all*.²⁹ The AFFH rule is weaker for the absence of these definitions and does not give state and local governments sufficient direction on what constitutes fair housing or housing discrimination.

²⁴ 85 Fed. Reg. at 2053.

²⁵ 85 Fed. Reg. at 2053 (proposed § 5.150); 24 C.F.R. §5.152 (current definitions section).

²⁶ *Id.*

²⁷ 24 C.F.R. §5.152; *Olmstead v. L.C.*, 527 U.S. 581 (1999).

²⁸ 85 Fed. Reg at 2053, 2056.

²⁹ 85 Fed. Reg at 2053-2059.

ASAN opposes the replacement of the comprehensive and flexible Assessment of Fair Housing (AFH) process with an “AFFH certification” that would likely increase the general supply of housing without doing anything to ensure that housing is equally available to all.

The current Assessment of Fair Housing (AFH) process was created after a long, comprehensive development process, which began with HUD’s meetings in 2009 with a broad number of stakeholders and ended with the publication of the 2015 final rule.³⁰ HUD also collected over 1,000 public comments on the 2013 proposed rule version of the 2015 rule.³¹

The assessment requires program participants to look at how their AFFH-related goals and priorities address integration, segregation, racially and ethnically concentrated areas of poverty, disparities in access to opportunity among protected classes and other important aspects of access to fair housing.³² The AFH then requires program participants to identify which major fair housing-related issues are present in the data gathered in the AFH, identify which factors contribute to these issues, and set goals and strategies for overcoming the impact of these factors on fair housing in the jurisdiction.³³ The AFH Assessment Tool for Public Housing Agencies for example, which Public Housing Agencies (PHAs) use when producing their mandatory assessment, includes a broad range of disability-specific questions.³⁴ These questions address effective communication, the availability of accessible housing, efforts that the PHA has undertaken to deinstitutionalize people with disabilities and comply with *Olmstead*, and even how transportation and physical access impact the opportunities available to people with disabilities in the region.³⁵ The standard assessment tool also contains many disability-specific questions.³⁶ In short, the current AFH process is clear, thorough, and requires program participants to take actions that will further fair housing.

³⁰ National Low Income Housing Coalition, Preliminary Overview of Final Affirmatively Furthering Fair Housing Rule (July 13, 2015), *retrieved from*: <https://nlihc.org/sites/default/files/Preliminary-Overview-Final-AFFH-Rule.pdf>; Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272 (July 16, 2015) (codified at 24 C.F.R §§ 5, 91, 92, 570, 574, 576, 903).

³¹ 80 Fed. Reg. at 42276-277.

³² 24 C.F.R. § 5.154 (d).

³³ 24 C.F.R. § 5.154 (d)(4).

³⁴ Department of Housing and Urban Development (HUD), OMB Control No. 2529-0055, Assessment of Fair Housing Tool for Public Housing Agencies (PHAs), 7-8 (2017), *retrieved from*: <https://files.hudexchange.info/resources/documents/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies-2017-01.pdf>.

³⁵ *Id.*

³⁶ Department of Housing and Urban Development (HUD), Assessment of Fair Housing Tool 9-10, <https://files.hudexchange.info/resources/documents/Assessment-of-Fair-Housing-Tool.pdf>.

Nonetheless, HUD proposes to discard this comprehensive assessment in favor of a truncated “AFFH certification” process that fails to consider any factors that are truly related to fairness or housing disparities.³⁷ Under the new proposed rule, each program participant would be required to certify that they will commit to addressing three “goals” or “barriers” to fair housing choice.³⁸ The jurisdiction must provide nothing more than a short explanation of how the goal furthers “fair housing choice” in order to include a goal.³⁹ While the jurisdictions are free to choose unique goals at their leisure, the proposed rule also provides a specific list of goals that HUD considers “obstacle[s] to fair housing choice.”⁴⁰ If a jurisdiction picks a goal off this list, the jurisdiction does not have to explain how addressing this goal furthers fair housing at all.⁴¹ It seems extraordinarily likely that many program participants will choose goals only from this list so that they do not have to provide any additional explanations clarifying their specific situation. This will allow many program participants to “phone in” the AFFH certification process while doing very little to properly address their jurisdiction’s unique situation, in blatant contradiction to HUD’s stated goal of ensuring that AFFH compliance methods can be adapted to the specific needs of each town, city, and neighborhood.⁴²

HUD’s proposed list of presumptive barriers to fair housing choice is also itself problematic. Of the fourteen obstacles listed by HUD, only one of the obstacles *even mentions the existence of* a protected class — specifically, people with disabilities.⁴³ This obstacle addresses the accessibility, affordability, and safety of available housing stock in a jurisdiction, but does not mention our community integration or the availability of economic and social opportunity in the area.⁴⁴ Since this is only *one* option that is available among fourteen, a jurisdiction could theoretically comply with the AFFH certification process without addressing housing disparities related to disability - or any other protected class - at all.

The remaining thirteen obstacles address the quality of housing stock, its availability and affordability, and what it often refers to as “burdensome” regulations of energy and the environment — the maintenance of which are critical to housing’s future

³⁷ 85 Fed. Reg. at 2043-2045.

³⁸ 85 Fed. Reg at 2045.

³⁹ 85 Fed. Reg at 2058.

⁴⁰ *Id.*

⁴¹ 85 Fed. Reg at 2046, 2058. The proposed rule also states that altering zoning regulations in the area is considered a valid goal for the certification by HUD, but it does not indicate that this specific goal would waive the need for a brief description of how the goal furthers fair housing choice.

⁴² 85 Fed. Reg at 2043, 2044.

⁴³ *Id* at 2044.

⁴⁴ *Id.*

sustainability in an area.⁴⁵ At best, choosing three of these obstacles as part of the AFFH certification process without taking any further action will add additional housing stock without furthering fair housing. At worst, choosing certain obstacles will actively reduce the quality of the environment around available housing stock or make newly developed stock *less* affordable. ASAN condemns this gutting of the responsibilities program participants have towards vulnerable Americans and urges HUD to rescind its plans for the new AFFH certification developed in this proposed rule.

ASAN opposes the creation of a new system for ranking jurisdictions on their compliance with AFFH. The standards by which jurisdictions are ranked mostly do not further fair housing and disadvantage poorer jurisdictions with fewer development resources.

The proposed rule's new ranking system would classify program participants as "outstanding AFFH performers," "low-ranking jurisdictions," and neither of these depending on how well the jurisdiction scores compared to jurisdictions with similar populations and housing markets, with respect to whether the jurisdiction has an "adequate supply of affordable and available quality housing for rent and for sale to support fair housing choice."⁴⁶ Outstanding AFFH performers are eligible for benefits and advantages and low-ranking jurisdictions may have their AFFH certification questioned.⁴⁷ Jurisdictions that have had an adjudicated civil rights complaint brought by HUD or the DOJ in the past five years and were found to have violated the Fair Housing Act cannot be found to be outstanding AFFH performers.⁴⁸

This ranking system is problematic. It primarily addresses *how many* affordable housing units are available in a jurisdiction and not whether there is an equal opportunity for everyone to buy them. The data HUD lists as relevant, for example, includes mostly things such as vacancy rates, median home value and contract rent, and the degree to which the premises are substandard or unsanitary.⁴⁹ While the non-exhaustive list does include one data point that is likely to relate to housing disparities — the availability of housing that accepts housing choice vouchers as part of the payment — this is insufficient for fully determining whether a jurisdiction is taking steps to further fair housing.⁵⁰ The analysis does not appear to address housing disparities unrelated to housing stock or its

⁴⁵ *Id.*

⁴⁶ 85 Fed. Reg. at 2053-2054.

⁴⁷ 85 Fed. Reg. at 2054.

⁴⁸ 85 Fed. Reg. at 2047.

⁴⁹ 85 Fed. Reg. at 2053.

⁵⁰ *Id.*

quality, such as social and economic opportunity in an area.⁵¹ It is entirely possible for affordable, accessible housing to *exist* that is nonetheless unavailable to people of color, women, or people with disabilities due to housing discrimination, time and resources available to these groups, and social and economic opportunity in the local area. There is also no longer a requirement that housing accessible to people with disabilities be integrated into the broader community.

The ranking system's approach with respect to out-of-compliance jurisdictions is also too limited to catch all failures to affirmatively further fair housing. While the proposed rule does exclude jurisdictions that have had an adjudicated complaint brought before HUD and DOJ in the past five years with a negative outcome, this would not exclude jurisdictions with still-outstanding civil rights complaints and those with complaints against them that were settled without resolving the underlying concerns.⁵² While some settlements may entirely resolve or greatly mitigate the violation involved, this is not true of all settlements. Jurisdictions with a high number of settled complaints would be more accurately evaluated on a case-by-case basis. Additionally, many complaints are simply never forwarded to federal, state, or local government agencies. They are instead investigated by private nonprofit fair housing organizations who provide services at the local level.⁵³ Nonetheless, jurisdictions with a plethora of such cases would, according to the proposed rule, not be excluded.

Additionally, the qualities on which the jurisdictions are to be ranked, by prioritizing jurisdictions with a plethora of high-quality affordable housing stock,⁵⁴ make it more difficult for lower-income jurisdictions with fewer resources to acquire an "outstanding AFFH performer" ranking. There appears to be no alternative means - such as a jurisdiction's efforts to reduce housing disparities for a protected class - to acquire an outstanding ranking, although the list of data used to determine a jurisdiction's ranking in the proposed rule is non-exhaustive. If high-ranking jurisdictions are eligible for increased aid from HUD, the ranking system may only serve to widen the gap between rich and poor cities and towns.

⁵¹ *Id.*

⁵² 85 Fed. Reg. at 2047.

⁵³ Nat'l Fair Housing Alliance, *Defending Against Unprecedented Attacks on Fair Housing: 2019 Fair Housing Trends Report 9* (2019), <https://nationalfairhousing.org/wp-content/uploads/2019/10/2019-Trends-Report.pdf>.

⁵⁴ *Id.*

ASAN opposes the reduction of the number and quality of community participation requirements in the proposed rule.

The 2015 AFFH rule required that the public be involved specifically in the development of the Assessment of Fair Housing and the incorporation of the Assessment of Fair Housing (AFH) into the consolidated housing plan, the Public Housing Authority (PHA) plan, and any other documents where AFFH is a required component.⁵⁵ The AFH had to be developed with the input of the public and published on the Internet as well as in “government offices, libraries, and other public places.”⁵⁶ Program participants were required to hold one public hearing specifically pertaining to affirmatively furthering fair housing before the assessment was published.⁵⁷ They were also required to offer the public an opportunity to comment on the AFH.⁵⁸

The proposed rule would remove AFFH-specific public participation requirements. Instead, program participants would only be required to adhere to the public and citizen participation requirements with respect to the broader consolidated plan, and the AFFH requirements would be incorporated within it.⁵⁹ Consolidated plans are broad documents used by jurisdictions to assess their affordable housing needs and their development goals, especially concerning their consistency with the federal block grant programs the jurisdiction participates in.⁶⁰ While AFFH should undoubtedly be incorporated into a jurisdiction’s overall housing and development goals, eliminating the separate public participation process required for AFFH issues may reduce the jurisdiction’s overall effectiveness at addressing them. Fair housing issues are likely to get deprioritized relative to other issues facing the public if the public is reviewing the rest of the Consolidated Plan at the same hearings. ASAN recommends that HUD instead keep the AFFH public participation requirements separate to ensure that these pressing issues receive a fair hearing and that jurisdictions learn strategies that are effective for that area directly from their fellow citizens.

⁵⁵ 24 C.F.R. § 5.158.

⁵⁶ *Id.*

⁵⁷ 85 Fed. Reg. at 2042.

⁵⁸ 24 C.F.R. § 91.105.

⁵⁹ 85 Fed. Reg. at 2042, 2043.

⁶⁰ *Consolidated Plan*, HUD Exchange (last accessed March 9, 2020), <https://www.hudexchange.info/programs/consolidated-plan/>.

ASAN opposes the exchange of the clear-cut method in the current rule of determining the AFFH obligations required of Public Housing Agencies (PHAs) for a certification process that makes it harder for PHAs to determine what they must do to AFFH.

PHAs provide critical support to low-income people, including people with disabilities, through their Public Housing and Housing Choice Voucher programs, among others.⁶¹ Nonetheless the proposed rule eliminates language that describes how PHAs are supposed to determine how to meet their fair housing obligations. Under the current AFFH regulations, PHAs are required to examine their own programs, locate any barriers to fair housing, and address those barriers themselves where it is reasonable to do so.⁶² PHAs are supposed to include all of this information in the AFH. PHAs are required to create either their own, individual Assessment of Fair Housing (AFH) or to join with the local or state governments or other PHAs to create the AFH.⁶³ PHAs are obligated to affirmatively further fair housing in and of themselves in a similar manner to all other program participants, and the steps that they take may even include the provision of supportive services to people with disabilities if that is deemed necessary by the PHA.⁶⁴

The proposed rule by contrast, only requires each PHA to participate in the development of the consolidated plan and certify that it has *consulted* with the local jurisdiction on AFFH and “would AFFH in its programs and in areas under its direct control.”⁶⁵ While the proposed rule does in theory still obligate PHAs to affirmatively further fair housing and take specific steps in order to do so, it is now not clear how the PHA is supposed to determine what steps it will take without evaluating what barriers there are to fair housing for the constituencies in the regions the PHA serves.⁶⁶ ASAN recommends, as it does with the Assessment of Fair Housing, that HUD avoid further confusion by rescinding the proposed rule and implementing the 2015 final rule instead.

We conclude that the proposed rule does nothing to reduce the housing disparities faced by people with disabilities, people of color, women, and other protected classes. Instead, it virtually eliminates the requirement that jurisdictions directly address these disparities. It removes language that is critical for ensuring people with disabilities have

⁶¹ Maggie McCarty, Congressional Research Service, *Introduction to Public Housing 10* (2014), <https://fas.org/sgp/crs/misc/R41654.pdf>; *Public Housing*, HUD.gov (last accessed March 16, 2020), https://www.hud.gov/program_offices/public_indian_housing/programs/ph.

⁶² Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272, 42275 (July 16, 2015) (codified at 24 C.F.R. § 5, 91, 92, 570, 574, 576, 903).

⁶³ 24 C.F.R. § 903.15(a).

⁶⁴ 24 C.F.R. § 903.15(d).

⁶⁵ 85 Fed. Reg. at 2050.

⁶⁶ 85 Fed. Reg. at 2060-61.

access to affordable housing in the community instead of in segregated group homes and institutions. It instead focuses exclusively on a jurisdiction's supply of affordable housing rather than whether that housing is available to America's poorest citizens. ASAN therefore urges HUD to rescind this proposed rule and continue implementation of the 2015 AFFH rule. For more information on the Autistic Self Advocacy Network and the positions we take in these comments, please contact Sam Crane, our Director of Legal and Public Policy, at scrane@autisticadvocacy.org.