NYU Furman Center

May 1, 2025

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

Re: Docket No. FR-65191-I-01, Affirmatively Furthering Fair Housing Revisions

To Whom It May Concern:

New York University's Furman Center for Real Estate and Urban Policy appreciates the opportunity to submit comments on the U.S. Department of Housing and Urban Development's (HUD) Interim Final Rule, "Affirmatively Furthering Fair Housing Revisions" (the "2025 Interim Final Rule").[1] The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy by providing academic and empirical research, promoting frank and productive discussions among stakeholders, and providing essential data and analysis to practitioners and policymakers.[2]

Under the Fair Housing Act and subsequent federal legislation, local jurisdictions that receive federal funding have a duty not just to prohibit discrimination in housing, but also to affirmatively further fair housing. Since the Fair Housing Act was enacted in 1968, racial integration has been slow and inconsistent, despite the law's requirement that HUD administer its programs "in a manner affirmatively to further" the law's purposes.[3] This statutory mandate is directly imposed on HUD, and HUD carries out the mandate by imposing requirements on the recipients of federal funds who are carrying out HUD's programs. Researchers who have studied HUD's efforts over the decades have concluded that HUD has failed to provide recipients of federal funding with sufficient tools to meet their statutory duty "affirmatively to further" fair housing, and to effectively enforce this obligation.[4]

[1] 90 FR 11020 (March 3, 2025).
[2] These comments do not represent the institutional views (if any) of NYU, NYU's School of Law, or NYU's Wagner Graduate School of Public Service.
[3] 42 U.S.C. §§ 3608(d), (e)(5) (2006).
[4] Justin Steil & Nicholas Kelly, *The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance*, 29.1 HOUS. POL'Y DEBATE 85 (2019); Justin Steil & Nicholas Kelly, Survival of the Fairest: Examining HUD Reviews of Assessments of Fair Housing, 29.5 HOUS. POL'Y DEBATE 736 (2019).

As the 2025 Interim Final Rule points out, recipients of federal funds from HUD are currently subject to an interim final rule issued on June 10, 2021 (the "2021 Interim Final Rule").[5] The scope of the 2021 Interim Final Rule was relatively narrow. The 2021 Interim Final Rule explicitly defines the AFFH mandate and reinstates the requirement for recipients of federal funds to certify that they have "taken meaningful actions" to "address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[6]

In order to help recipients make these certifications, HUD also said it would provide technical assistance to recipients who are undertaking Assessments of Fair Housing, an Analysis of Impediments or other kinds of fair housing planning. The 2021 Interim Final Rule stopped short of requiring that recipients of federal funds engage in a specific planning process, as HUD had in its final rule issued on July 16, 2015 (the "2015 Final Rule").[7]

We concur with and endorse the points made in Noah Kazis' comments.[8] He argues, and we agree, that the 2025 Interim Final Rule functionally repeals the AFFH mandate by changing the standard for determining whether grantees' certifications are sufficient. Under the 2025 Interim Final Rule, a certification "will be deemed sufficient provided they took *any* action during the relevant period *rationally related* to promoting fair housing, such as helping to eliminate housing discrimination," a standard which in effect nullifies the requirement.[9] The 2025 Interim Rule also repeals any planning requirements from the 2015 Final Rule and the "Analysis of Impediments" planning requirements first established in 1994. This is a significant step backwards. Any rule to affirmatively further fair housing must, as a matter of good policy, include *both* (1) a planning process that ensures recipients analyze and understand the fair housing disparities they face and (2) a certification process where recipients are judged objectively by HUD based on real, enforceable standards so HUD can know whether recipients have actually taken meaningful actions to address those disparities.

Our comments draw lessons from our research, showing the type of analysis and planning that is needed, the kinds of disparities that analysis would show, and why it is critical that HUD, as a matter of good policy, publish an AFFH rule that requires real action and planning processes so recipients and HUD will effectively meet statutory requirements.

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[5] 86 FR 30779 (June 10, 2021).
[6] *Id.*
[7] 80 FR 42272 (July 16, 2015).
[8] Kazis analyzes the likely effects of the 2025 Interim Final Rule on fair housing activity, summarizes a set of alternatives that have been proposed, and discusses the significant economic and social costs of the 2025 Interim Final Rule. https://www.regulations.gov/comment/HUD-2023-0009-0569
[9] 90 FR 11020 (March 3, 2025) (emphasis added).

The Furman Center has conducted research over the last three decades on residential segregation and its connections to housing patterns, neighborhood conditions, mobility and opportunity.[10] Research has consistently found that higher levels of metropolitan area segregation are associated with lower levels of socio-economic mobility for all residents, as well as negative impacts on the life chances of Black and Hispanic children and young adults, including wide gaps between those children and other children in educational attainment, employment, and earnings, and negative health outcomes.[11] The Furman Center also has researched the relationship between various land use regulations that restrict supply and economic and racial segregation.[12]

The Furman Center has also examined the improving but ongoing racial segregation of New York City's schools, and how neighborhood migration patterns can be a driver of demographic trends in schools.[13] To meet the requirements of the FHA, any new Affirmatively Furthering Fair Housing (AFFH) rule should require reporting on these trends, which would guide municipalities to design interventions to reduce segregation in their neighborhoods and schools.

The Furman Center has also examined eviction filing rates in New York City and found significant disparities in an area's filing rates by race and income.[14] Again, effectively meeting the statutory mandate of AFFH requires that HUD publish a rule that would require reporting on these patterns, which would help municipalities plan for and

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[10] *See* e.g. Jorge De La Roca, Ingrid Gould Ellen & Katherine M. O'Regan, Race and Neighborhoods in the 21st Century: What Does Segregation Mean Today?, 47 REGIONAL SCI. & URB. ECON. 138 140 (2014);

[11] Raj Chetty et al., Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States, (Nat'l Bureau of Econ. Research, Working Paper No. 19843, 2014); David M. Cutler & Edward L. Glaeser, Are Ghettos Good or Bad?, 112 Quarterly J. Econ. 827 (1997); Jorge De la Roca, Ingrid Gould Ellen & Justin P. Steil, Does Segregation Matter for Latinos?, 40 J. HOUS. ECON 129 (2018); Ingrid Gould Ellen, Is Segregation Bad for Your Health? The Case of Low Birth Weight, BROOKINGS-WHARTON PAPERS ON URB. AFF. 203 (2000).

[12] Been, Vicki, Ingrid Gould Ellen, and Katherine O'Regan. "Supply Skepticism: Housing Supply and Affordability." Housing Policy Debate 29, no. 1 (2019): 11; Been, V., Ellen, I. G., & O'Regan, K. (2024). Supply Skepticism Revisited. Housing Policy Debate, 35(1), 96–113. https://doi.org/10.1080/10511482.2024. 2418044.

[13] Diana Cordovo-Cobo & Ingrid Gould Ellen, NYU FURMAN CENTER, 2018 Focus: The Diversity of New York City's Neighborhoods and Schools, in State of New York City's Housing & Neighborhoods – 2018 Report (2018), https://furmancenter.org/files/sotc/2018_SOC_Focus_Web_Copy_Final.pdf. "Black and Hispanic students are much more likely to share schools with each other than with any other racial/ethnic group. Roughly 9 in 10 Black students and 7 in 10 Hispanic students attend schools classified as Black-Hispanic, predominantly Black, or predominantly Hispanic. In contrast, roughly 7 in 10 white students and 8 in 10 Asian students attend schools with a significant share of students (20% or more) from a different racial/ethnic group…When the population of school zones and neighborhoods diversified, their elementary schools diversified as well, but school changes were far more muted."

[14] Ryan Brenner & Katherine M. O'Regan, NYU FURMAN CENTER, 2019 Focus: Eviction Filings, in State of New York City's Housing & Neighborhoods – 2019 Report (2019), https://furmancenter.org/stateofthecity/view/eviction-filings. "There were large differences in the race and ethnicity of residents of areas with high versus low filing rates. Strikingly, the share of the population that is Black in the areas with the highest filing rates (39.5%) was almost ten times the share in areas with the lowest filing rates (4.1%) and almost twice the share in the city as a whole (21.9%). Similarly, although less dramatic, the share of the population that is Hispanic in the highest filing areas (40.8%) was over twice the share in the lowest filing areas (19.4%)."

address these disparities, including by targeting rental assistance and other resources to specific neighborhoods to reduce disparities in eviction filings.

Furman Center research also found that new construction of income-restricted units targeted to low-income households were more likely to be built in neighborhoods with higher Black and Hispanic population shares and higher poverty rates, rather than being built in more racially diverse or higher-income neighborhoods.[15] In general, new development was concentrated in a set of neighborhoods zoned for higher density or that were recently upzoned, and new construction was less common in neighborhoods with historic designations.[16] Any rule to affirmatively further fair housing should, as a matter of policy, require that municipalities examine these patterns, including by assessing where new affordable housing construction paid for in part with federal resources is typically sited. Then, municipalities would be able to plan and design a process where selection of other sites in higher opportunity neighborhoods is prioritized for new construction. Municipalities could also plan for amendments to the zoning resolution, historic district designations, or other regulatory regimes to ensure they are opening up sites that might advance fair housing.

The Furman Center has also found that the citywide homeownership rate of Black New Yorkers (27.6%) still falls well short of that of non-Hispanic white New Yorkers (43.3%).[17] HUD's rulemaking to affirmatively further fair housing should require that municipalities assess disparities in the homeownership rate and plan how it will spend federal and other resources to close this gap, including by encouraging more construction and homeownership opportunities for disadvantaged demographic groups.

The Center has also researched how federal housing resources are used across New York City's neighborhoods. For example, the share of housing choice voucher household heads that are non-white is much higher compared to renters overall (in New York City 70 percent of HCV household heads are non-white).[18] Our report on the use of Housing Choice Vouchers in New York City found that vouchers are then primarily used in a limited number of neighborhoods with higher poverty rates, more unemployment,

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[15] Hayley Raetz, Matt Murphy & Ingrid Gould Ellen, NYU FURMAN CENTER, 2021 Focus: the Geography of New Housing Developments, in State of New York City's Housing & Neighborhoods – 2021 Report (2021), https://furmancenter.org/stateofthecity/view/the-geography-of-new-housing. "There was considerable variation across housing types in terms of neighborhood attributes. Market-rate units were generally built in more advantaged neighborhoods (with higher than average white population shares, college graduation rates, building sales price, rents, and household incomes) than new units overall. By contrast, income-restricted units targeted to low-income households were built in SBAs that had higher poverty rates, lower family incomes and median rents, and higher Black and Hispanic population shares on average compared to new units overall."

[16] *Id.*

[17] Vicki Been, Hayley Raetz, Matthew Murphy & Ryan Brenner, NYU FURMAN CENTER, 2022 Focus: Low-Density Neighborhoods, in State of New York City's Housing & Neighborhoods – 2022 Report (2022), https://furmancenter.org/stateofthecity/view/new-york-citys-low-density-neighborhoods.

[18] Katherine M. O'Regan, Hayley Raetz, Jiaqi Dong, Elizabeth Lochhead, Kristen Tauber, Matthew Murphy, NYU FURMAN CENTER, 2023 Focus: The Use of Housing Choice Vouchers in New York City, in State of New York City's Housing & Neighborhoods – 2023 Report (2023), https://furmancenter.org/stateofthecity/view/the-use-of-housing-choice-vouchers-in-new-york-city.

higher crime rates, and lower median income than the neighborhoods of renters overall.[19]

Likewise, public housing, as we have shown in our research, predominantly serves very low-income individuals and is largely occupied by households headed by Black and Hispanic individuals.[20] We have also written about the significant capital and rehabilitation needs of New York City's public housing portfolio, and the City's strategies for addressing deteriorating physical conditions at these properties.[21] AFFH should require reporting on these metrics and should require that municipalities plan for the use of federal funding in coordination with City housing dollars to address disparities in housing quality between public housing suffering from disinvestment and other types of housing with more consistent investment and higher quality units. This would ensure municipalities are promoting fair housing when they use federal funds, including by investing in the rehabilitation of public housing, improving voucher utilization rates, and helping voucher holders move to higher opportunity neighborhoods.

The Furman Center has also researched how property tax exemptions, authorized by New York State, promote market rate and affordable housing development in New York City. Changes to the property tax incentive programs over time have affected new units' affordability levels, the overall volume of units delivered[22] and the distribution of affordable units across neighborhoods.[23] The design of the property tax exemption program also impacted the size of the units delivered. For example, we found that "half of rent-regulated studios advertised on Housing Connect under Affordable New York were targeted to low-, very low-, or extremely low-income households" but "only a quarter of advertised two-bedroom units were affordable for those households."[24] In other words, as a result of the program's design, the City produced fewer units for families with children targeted to lower-income renters and instead delivered more

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[19] *Id.*
[20] *Id.*
[21] NYU FURMAN CENTER, NYCHA's Road Ahead (2019), https://furmancenter.org/files/NYCHAs_Road_Ahead_Final.pdf.
[22] Hayley Raetz & Matthew Murphy, NYU FURMAN CENTER, The Role of 421-a during a Decade of Market Rate and Affordable Housing Development (2022). "While the advent of ANY drove a shift in advertised income-restricted units towards higher household AMIs over the past five years, the program changes also led to an increase in the number of 421-a units in properties required to include any income-restricted units."
[23] *Id.* "The program changes also led to an increase in the number of 421-a units in properties required to include any income-restricted units…"; Vicki Been, Mark Willis, Matthew Murphy & Nikki Miller, NYU FURMAN CENTER, Principles to Guide an Improved Tax Exemption to Secure New Rental Housing: Fostering Affordability and Equitable Development in New York City (2024). https://furmancenter.org/thestoop/entry/five-principles-for-a-new-421-a-property-tax-exemption "The most recent version of the tax exemption did indeed help make the siting of affordable housing more equitable. Of the income-restricted housing units built with 421-a over the decade between 2010 and 2020, those provided with 421-a but no other government subsidies were more likely to be in higher-median-income, lower-poverty neighborhoods than were the income-restricted homes using 421-a that also received other subsidies."
[24] *Id.*

studios targeted to this population even though family status is a protected class under the FHA.[25]

Similarly, the Center has documented that the design of the City's property tax system means that New Yorkers in neighborhoods with more Black residents as a share of population are disproportionately burdened with higher effective property tax rates compared to their white counterparts.[26] An AFFH rule that includes an assessment process, and a certification process, would help ensure municipalities and State legislators are studying the impacts of the design of a property tax exemption program on these and other fair housing metrics so they can then plan for and make adjustments to the program's design to promote fair housing.

Finally, the NYU Furman Center has an intensive body of research on the impact of New York City's zoning choices on fair housing principles. For example, in writing about New York City's "City of Yes for Housing Opportunity" zoning text amendment, we emphasized the importance of equitable growth, including by making it easier to build affordable and market-rate housing evenly across all neighborhoods, which will help slow rent growth by loosening the market across a range of price levels and address inequality.[27] Planning documents and analysis performed as a result of an AFFH rule would provide the legal and policy foundation for this type of overhaul of a recipient's zoning resolution.

This body of research and practical experience confirms what we know to be true – housing segregation and patterns of inequality across neighborhoods remain critical problems. Our research shows segregation and neighborhood inequality in the City's schools, eviction filing rates, voucher utilization rates, where new units (including affordable units) are built, investments in public housing, disparities, and homeownership rates. Our research also shows policymakers are faced with choices when crafting property tax exemptions and zoning text amendments that will significantly impact fair housing metrics.

A rule that compels policymakers receiving federal funds to report on and actively plan to address these disparities is critical if we want to make progress in reducing the legacy of discrimination. This legacy of discrimination was forcefully acknowledged by Justice Kennedy and the U.S. Supreme Court in 2015 when they said "[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation" and "the Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."[28]

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[25] The Role of 421-a during a Decade of Market Rate and Affordable Housing Development, at 21.
[26] Matthew Murphy and Ryan Brenner, Racial Inequities in New York City's Property Tax System, The Stoop (Jan. 8, 2024). https://furmancenter.org/thestoop/entry/racial-inequities-in-new-york-citys-property-tax-system
[27] Matthew Murphy, Mark Willis & Hayley Raetz, NYU FURMAN CENTER, Testimony: City of Yes for Housing Opportunity from the NYU Furman Center at 5. https://furmancenter.org/files/10.22.24_Matthew_Murphy_COYHO_Testimony.docx_(2).pdf
[28] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 576 U.S. 519, 546-47 (2015)

In conclusion, after decades of ineffective enforcement of the Fair Housing Act's mandates, the effects of segregation remain widespread in American cities, at an enormous social cost. HUD's efforts to fulfill its obligation to affirmatively further fair housing over four decades have continuously fallen short. The 2021 Interim Final Rule to affirmatively further fair housing and the 2015 Final Rule provided a framework so HUD could hold recipients of funding accountable if they do not take meaningful actions towards meeting the agency's own statutory mandate. HUD should work to improve on and expand this approach. HUD's 2025 Interim Final Rule would weaken the obligation on recipients of federal funds to the point of effectively eliminating the AFFH obligation, resulting in a continuing legacy problem at tremendous cost. We urge HUD to reconsider.

Sincerely,

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