

MARCIA L. FUDGE
SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
451 7TH STREET, S.W.,
WASHINGTON, DC 20410

October 12, 2021

Dear Secretary Fudge,

The undersigned community, legal, and advocacy groups, urge you to include comprehensive provisions related to tenant protections in rental and lot rental manufactured housing in the planned Affirmatively Furthering Fair Housing Rule.

The Fair Housing Act requires covered entities to ensure equal access to housing and opportunity for all. However, racial, gender, and familial status inequities in evictions and lack of access to safe and affordable rental housing are rampant across the United States. The Fair Housing Act's Affirmatively Furthering Fair Housing ("AFFH") provision requires all covered entities to actively reduce these inequities. **We strongly urge HUD to provide clear requirements and guidelines to covered jurisdictions on how they should most effectively address these inequities in rental housing for protected classes.**

The Fair Housing Act clearly outlaws discrimination in housing-related transactions such as selling, renting, and financing on the basis of race, color, religion, sex, familial status, national origin, or disability. In addition, the Fair Housing Act requires HUD to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act. Such programs and activities include HUD's funding grants to cities, counties, states, and public housing authorities. For HUD to uphold its AFFH duty, it requires these funding recipients to AFFH as a condition of receiving those funds.

Current data on renters of protected classes make abundantly clear that to truly AFFH, jurisdictions must enact tenant protections that reduce disparities in evictions, displacement, and access to affordable rental housing.¹ People of color are much more likely to experience homelessness, to be renters, to have lower incomes, and to be rent-burdened. HUD's office of

¹ NLIHC—Racial disparities also exist among renters alone. Thirty-eight percent of AIAN renter households, 35% of black renter households, and 28% of Hispanic renter households have extremely low incomes, compared to 22% of white non-Hispanic renter households. Regardless of race, the majority of extremely low-income renters are severely housing cost-burdened: 71.5% of Hispanic, 70.9% of non-Hispanic black, and 69.6% of non-Hispanic white extremely low-income renters. Sixty-three percent of AIAN extremely low-income renters are severely housing cost-burdened, but poor housing conditions like low quality and overcrowding are also significant concerns in tribal areas (Pindus et al., 2017).

Policy Development and Research recently reported that, “African-American and Latinx renters (especially women), families with children, and renters in certain geographies are at greater risk for eviction.”² This includes women who are survivors of domestic violence who have sought emergency assistance. Women of color with children are more likely to be evicted than any other group.³ People with disabilities—especially people of color—are also more likely to be low-income renters. Further, Black renters face harsher eviction practices than whites.⁴ It is abundantly clear that protecting people in the rental market so that they can find, obtain, and keep their rental housing is one of the most urgent civil rights issues facing our country today. Jurisdictions need direction from HUD on how to address these inequities in rental housing for protected classes.

The forthcoming Affirmatively Furthering Fair Housing Proposed Rule gives HUD a unique opportunity to meet that need. The Rule should require covered entities and jurisdictions to 1) reduce the barriers to housing that disproportionately burden protected categories of people; 2) to implement policies that encourage the development and preservation of permanently deeply affordable housing; 3) ensure and enforce that all housing is safe and healthy and; 4) afford greater protections to tenants, during both their tenancy and the eviction process.

HUD should provide its grantees with various examples on how to meet these requirements by addressing the highest impact solutions. The examples below are best practices vetted by fair housing advocates across the country. Some of the recommendations below will require governmental action by the cities, states and jurisdictions that receive HUD funding, and that therefore have a mandate to affirmatively further fair housing. HUD’s inclusion of these best practices and regulations can encourage recipients of federal funding to work with their legislatures and across administrative departments to encourage their implementation or repeal where appropriate.

REMOVING BARRIERS TO SECURING RENTAL HOUSING

A. Ban Crime-Free Housing Ordinances and Programs: Many municipalities have enacted so-called “crime-free” housing ordinances and programs, supposedly to reduce crime in their neighborhoods. In practice, the ordinances and programs exclude anyone who has come into contact with the criminal legal system. Unfortunately, the criminal legal system disproportionately harms Black and Latinx individuals. Furthermore, such ordinances and programs also negatively impact people who experience disabilities. These ordinances and programs typically require or encourage landlords to perform extensive background checks

² PD&R “Evidence Matters” September 2021 <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight1.html>

³ https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf

⁴ https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_covid_impact_landlords_survey_de_la_campa_2021.pdf

on tenants and to evict those who come into contact with law enforcement—often even if the interaction does not result in a conviction. Given both the disproportionate harm wrought by our criminal system on people of color, combined with longstanding prejudices and conceptions of what “criminals” look like, these ordinances and programs have the effect of excluding people of color and giving landlords and local officials a carte blanche to over-police their tenants.

- B. Ban Nuisance Abatement Ordinances:** “Nuisance abatement ordinances” are closely related to the “crime-free” ordinances in Part I. Over 2000 cities and towns across the country have enacted nuisance abatement ordinances. They allegedly aim to reduce “nuisance behavior” at rental properties by requiring or encouraging eviction of tenants who engage in such behavior. However, the metrics and definitions for “nuisances,” disproportionately harm renters of protected classes. For example, calls for emergency services, regardless of the underlying reason, often count as “nuisances.” Thus, many renters who are women, LGBTQ+, or have disabilities are discouraged from using emergency services, even when faced with domestic violence or mental health crises. Scholars have deemed these and “crime-free” ordinances the newest iteration of Jim Crow segregation laws, because of their discriminatory impact on tenants of color.⁵ Jurisdictions should look at repeal of their Nuisance Abatement Ordinances and ensure that policies are not perpetuating segregation, given their disproportionate impact on people of color.
- C. Limit Eviction Filing Reporting:** Members of protected classes are disproportionately likely to have an eviction on their record. Prior evictions or eviction filings add barriers for them to obtain housing in the future, as property owners tend to reject applicants with prior evictions. This happens even in the cases of no-fault evictions, tenants who had won their eviction suit, where the eviction action was withdrawn, instances where survivors of domestic violence are evicted due to the actions of a person causing them harm, or for tenants who were minors at the time of the prior eviction. The AFFH Rule should include limitations on the aggregation and publishing of eviction records and limit what records are publicly available, including time bars.
- D. Prohibit Source-of-Income Discrimination:** States and municipalities across the country have enacted prohibitions on discriminations based on “source-of-income,” which prevent housing providers from discriminating against tenants who pay rent with governmental assistance. These prohibitions have helped improve access to rental housing in high resource areas for protected classes. Such protections are needed even more urgently to

⁵ Archer, Deborah. “The New Housing Segregation: The Jim Crow Effects of Crime-Free Ordinances,” 118 Mich. L. Rev. 173 (2019).

protect renters who are relying on emergency rental assistance programs to stay housed during and after the COVID-19 pandemic.

Often, source-of-income discrimination is a pretext for discrimination against other protected categories who are disproportionately likely to need vouchers. Even after tenants undergo the lengthy wait to obtain a voucher, many landlords refuse to accept vouchers, particularly in areas of high opportunity. Voucher holders, who are disproportionately people of color, women, and persons with disabilities are then forced to use their vouchers in historically underinvested, low-income and segregated neighborhoods. This further entrenches racial segregation and barriers to opportunity based on protected characteristics.

Widespread adoption of prohibitions on source-of-income based discrimination is crucial to combatting discrimination in its modern, more covert forms. Landlords should not be able to replicate century's old discriminatory tactics under the guise of source of income. Indeed, the American Bar Association has also adopted a resolution that "urges federal, state, local, tribal, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income." (American Bar Association, Resolution 119A (Aug. 2017).)

- E. Provide Voucher Recipients with Mobility Counseling:** Jurisdictions and housing authorities should provide mobility and anti-displacement counseling to help voucher-holders access rental housing in higher resource areas. Properties that accept vouchers are disproportionately concentrated in low income neighborhoods of color, which further perpetuates racial and economic segregation and barriers to opportunity based on protected characteristics. Mobility counselors should offer one-on-one assistance with the apartment search and on interacting with landlords, especially the reluctant landlords in resource-rich areas.

EXPANDING THE SUPPLY OF AFFORDABLE HOUSING

- A. Prioritize Permanent Affordable Housing:** In order to truly meet the need for deeply affordable housing, governments at all levels must prioritize the support for building, acquiring and maintaining community and publicly owned housing that is deed restricted for permanent affordability. There are several ways to encourage or require this prioritization:
 - a. Jurisdictions should ensure that public funds, development incentives, and streamlining are preferenced for long-term deed restricted and community/publicly owned deeply affordable housing.

- b. Federal, state, and local programs must prohibit predatory acquisition by private equity and corporate landlords, which is often predicated on rent hikes and tenant displacement to turn a profit. Instead, publicly supported entities like FHA, Fannie Mae, and Freddie Mac and state development agencies should prioritize, incentivize and support acquisition of Real Estate Owned and distressed properties by qualified non-profit and community buyers.
- c. Jurisdictions should implement and support Tenant and/or Community Opportunity to Purchase provisions that provide right of first refusal to tenants, thereby enabling and encouraging the sale of privately held rental property to tenant and community ownership and creating more permanently affordable, community controlled housing stock.
- d. Jurisdictions should use all means to avoid the loss of existing term-limited affordable housing stock to market rate conversion. This includes measures such as tracking properties at highest risk of conversion and ensuring owners of affordable housing communicate with local governments and tenants about plans and intentions for the property. This would allow for local jurisdictions to secure potential buyers and acquisition funds to ensure there is minimal loss of affordable housing. Additionally, continuing HUD, state, and local support of public housing tenants associations and unions to organize in buildings at highest risk of sale or near sale (5-10 years of deadline)

B. Eliminate Exclusionary Zoning: Gentrification and continued exclusion from primarily white, wealthy communities high in education, employment and health opportunity for low-income people of color is exacerbating re-segregation in low-opportunity, disinvested communities to the point where in many communities, the level of racial segregation actually exceeds levels found in the Civil Rights era. Zoning reforms that follow [equity principles](#)⁶ can be a part of the solution to enabling all to have reachable access to communities with high opportunity.

MAINTAINING HEALTHY AND AFFORDABLE HOUSING

A. Standardize and Enforce Universal Habitability Requirements: The shortage of quality affordable housing forces many tenants to accept uninhabitable and dangerous conditions, despite state and common law habitability requirements. Low-income tenants with no other housing options and undocumented tenants fearful of retaliation are most at risk, as the alternative can be homelessness or deportation. Some property owners allow conditions to

⁶ June 23 2021 Letter to President Biden, Secretary Fudge and Congressional Leadership from over 150 organizations supporting equitable zoning reform principles <https://www.allianceforhousingjustice.org/post/zoning-equity>

deteriorate in hopes of pushing out existing tenants, renovating those units, and leasing to higher-income tenants.

HUD should require more robust enforcement of habitability standards through all programs. We echo the recommendations put forward to improve enforcement and standard setting submitted by advocates in their June 2021 letter, *Advancing Health, Environmental, and Housing Justice Together*.⁷ HUD should also make clear that, given the obvious connection between conditions and displacement of low-income tenants, a failure to require private landlords to maintain properties may render the jurisdictions in violation of their AFFH duties.

- B. Encourage and Facilitate Tenants’ Right to Organize:** There is a severe power imbalance between landlords and tenants. When tenants have a protected right to organize, they have more power to enforce their rights free from retaliation and harassment. HUD recognizes the importance of this right, as it has already provided guidance⁸ and support for tenants organizing in federally funded properties. Require landlords to enable and provide support for tenant organizing and governance. HUD should encourage covered entities to protect tenants’ right to organize without retaliation as an important means of affirmatively furthering fair housing.
- C. Implement Rent Control and Rent Stabilization:** Many landlords displace tenants of protected classes by significantly raising their rents. Rent increases far outstrip wage increases all across the country. While tens of millions of tenants are being charged more than half of their income on rent, rents are rising three times the rate of base inflation. Key to stabilizing neighborhoods and families is stabilizing monthly housing costs through rent stabilization and rent control and jurisdictions should be encouraged to enact and implement these policies.

Rising rents disproportionately lead to displacement of communities of color. “Communities of color were particularly vulnerable to the impact of rapid rent increases in the Bay Area between 2000 and 2015. A 30% tract-level increase in median rent (inflation-adjusted) was associated with a 28% decrease in low-income households of color. There was no significant relationship between rent increases and losses of low-income White households.”

⁷ NAACP Legal Defense and Education Fund, National Housing Law Project, National Alliance of HUD Tenants, Shriver Center, Earthjustice, “ADVANCING HEALTH, ENVIRONMENTAL, AND HOUSING JUSTICE TOGETHER: RECOMMENDATIONS FOR THE U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, June 30, 2021.

⁸ 24 CFR Part 245 “Tenant Participation in Multifamily Housing Final Rule To Organize” https://d3n8a8pro7vhm.cloudfront.net/saveourhomesusa/pages/241/attachments/original/1508355249/Federal_Register_HUD_30_copies_2-2_stapled.pdf?1508355249

“Where comprehensive rent control and stabilization have been in effect, renters have experienced more stability and more affordable rent without any depressive impact on production. Rent stabilization and rent control policies must be enacted hand in hand with good cause/just cause eviction protections.”⁹

PREVENTING UNFAIR EVICTIONS AND DISPLACEMENT

A. Adopt Just/Good Cause Eviction Protections: Shelter is a basic human need and safe, healthy, and affordable housing has been proven time and time again to be the key to health, educational and economic achievement. Yet for many tenants their ability to remain in their homes is subject to the whims of their landlord who can evict them with no reason throwing their lives and well-being into chaos. Just cause, or good cause eviction protections prohibit landlords from evicting tenants without a just cause, such as nonpayment of rent. Policies should include damages for tenants when their landlords are found in violation.

Just cause protections must be paired with rent control and rent stabilization policies to ensure that landlords do not evict existing tenants to charge higher rents from new tenants.

B. Adopt Right to Counsel Programs: The power imbalance between landlords and tenants is particularly stark in eviction proceedings where ~90% of landlords have an attorney while only ~10% of tenants have the same. Jurisdictions should provide low-income tenants with the right to counsel or access to counsel during eviction proceedings. Ensuring tenants have an attorney is one of the most effective ways of curbing evictions for protected classes. For example, in just the first 6 months of San Francisco’s right to counsel program, two-thirds of tenants who received free legal representation were able to stay in their homes, with the highest success rate—80%—for Black households. Right to counsel can help empower tenants to assert these rights and ultimately prevail in eviction proceedings.

C. Create State and/or Local Rental Housing Registries: Rental housing registries will help jurisdictions understand the scope of the eviction crisis and enable tenants and local authorities to hold landlords accountable for substandard housing and abusive practices. The need for such a registry has become glaringly and tragically apparent as local and state governments struggle to distribute billions of dollars in COVID-related rental assistance.

Jurisdictions should implement simple databases of properties, managers, and owners. All registries should be designed to ensure the burden of registration is on the landlord, ensure that any fees are not excessive and should primarily be intended to pay for the cost of administering the jurisdiction’s oversight of rental properties rather than to either raise

⁹ Urban Displacement, California Housing Partnership, February 2019, “Rising Housing Costs and Re-Segregation in the San Francisco Bay Area”

general revenue or disincentivize renting. Rental registry records should not be used to facilitate discriminatory policing, and any code enforcement facilitated through the registry should be focused on bringing properties into habitable condition without condemning them and causing displacement.

The AFFH Rule can be a powerful tool to create a more just housing system. The affirmative mandate requires covered jurisdictions to take proactive steps and adopt policies and programs to address housing disparities for protected classes. The rampant disparities in rental housing thus demands stronger and compulsory tenant protection policies in every corner of the country.

We would welcome an opportunity to answer any questions you may have. Please contact Liz Ryan Murray (LRyanMurray@PublicAdvocates.org).

Sincerely,

ACTION CENTER ON RACE AND THE ECONOMY
ALLIANCE FOR HOUSING JUSTICE
CENTER FOR POPULAR DEMOCRACY
HOMES FOR ALL SOUTH
HOUSING JUSTICE FOR ALL NY
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
LIBERATION IN A GENERATION
MANUFACTURED HOUSING ACTION
NATIONAL HOUSING LAW PROJECT
PEOPLE'S ACTION
POLICYLINK
POVERTY & RACE RESEARCH ACTION COUNCIL
POWERSWITCH ACTION
PUBLIC ADVOCATES
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