March 16, 2020

Submitted via Regulations.gov

The Honorable Benjamin S. Carson, Sr.
Secretary of Housing and Urban Development
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

Re: HUD’s Affirmatively Furthering Fair Housing Notice of Proposed Rulemaking, HUD-2020-0011, RIN 2577-AA97

Dear Secretary Carson,

Thank you for the opportunity to comment on the “Affirmatively Furthering Fair Housing” Notice of Proposed Rulemaking from the U.S. Department of Housing and Urban Development (HUD). On behalf of the Disability Rights Education and Defense Fund (DREDF), we strongly urge HUD to withdraw the proposed rule and fully implement the current rule, which was developed over several years with considerable input from a wide variety of stakeholders.

DREDF is a unique alliance of adults with disabilities and parents of children with disabilities. We seek to advance the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development in the areas of: employment, housing, access to government services and benefits, transportation, architectural access, public accommodations, and education. Based in Berkeley, California, our vision is a just world where all people, with and without disabilities, live full and independent lives free of discrimination.

People with disabilities and their families face a national shortage of accessible and affordable housing, particularly people with disabilities at the lowest income levels. People with disabilities often have few financial resources and remain among the country’s poorest, and far too often, encounter multiple forms of discrimination when seeking housing. The lack of sufficient safe, accessible, affordable housing is a continuing and significant barrier to integrated community living, making it difficult for people with disabilities to move from segregated facilities into the community, putting many people with disabilities at risk of unnecessary institutionalization or homelessness. It remains extremely important to expand opportunities for people with disabilities to live in inclusive housing in the community, and to protect the rights guaranteed under the Fair Housing Act.

Locally, California residents with disabilities and their families face eight of the ten highest rental cost metropolitan counties in the country. The San Francisco Bay Area is experiencing an unprecedented lack of affordable, accessible housing, putting people with disabilities, and all those who would be impacted by the proposed rule, at greater risk for homelessness. In addition, one-third of DREDF’s work aims to protect and advance the rights of students with
disabilities. In order for students to fully engage in, and receive the benefits of, an education, they must also be provided safe, secure, accessible and affordable housing with their families.

The proposed rule will harm fair housing for people with disabilities. First, as stated in the 2015 Final Rule,

For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual’s needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 (emphasis added, citation omitted).

Further,

For persons with disabilities, segregation includes a condition in which the housing or services are not provided in the most integrated setting appropriate to an individual’s needs in accordance with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act (emphasis added, citation omitted).

In the proposed rule, both of these concepts and the definitions of integration and segregation for people with disabilities have been removed. They would no longer be required considerations in fair housing planning. These concepts are integral to achieving the goals of Olmstead, and are an essential part of affirmatively furthering fair housing, promoting fair housing choice, and fostering inclusive communities that are free from discrimination. Without them, people with disabilities who are stuck in institutions due to a lack of housing would be left out of fair housing plans.

Second, disability discrimination complaints are the most common type of complaint filed with HUD and fair housing agencies. Despite the fact that the number of disability discrimination complaints have continued to rise in recent years, under the proposed rule, none of the agencies or communities that receive HUD funding would be required to take any action at all to address discrimination faced by people with disabilities to meet the requirements of the rule. Jurisdictions would be required to pick a minimum of three “goals” towards fair housing choice or obstacles to fair housing choice, but the proposed rule does not require covered entities to address all of the groups who are protected under the Fair Housing Act, or even to address the most significant barriers to fair housing. A jurisdiction could fully comply with the new certification requirements of the proposed rule without addressing fair housing for people with disabilities at all – ever.

The 2015 Rule came into being after the General Accounting Office (GAO) found that HUD’s prior process to implement the “affirmatively furthering fair housing” requirement, which relied
on an Analysis of Impediments (AI), was ineffective. Specifically, the GAO found that “HUD’s limited regulatory requirements and oversight” contributed to many HUD program participants placing a “low priority on ensuring that their AIs serve as effective planning tools.” In its recommendations, GAO emphasized that HUD could assist program participants by providing more effective guidance, technical assistance, and the data necessary to prepare fair housing plans. The proposed rule not only undoes progress in the development of fair housing plans achieved by the 2015 Rule, but provides for even less guidance and oversight than under the AI process. This proposed rule represents a huge step back in fair housing compliance.

DREDF urges HUD to uphold its commitment to Affirmatively Furthering Fair Housing for people with disabilities and other covered classes, and to withdraw this proposed rule in its entirety and reinstate the 2015 AFFH Rule. Thank you for the opportunity to comment. For more information about DREDF’s opposition to the proposed changes please contact Sydney Pickern at spickern@dredf.org.

Sincerely yours,

Susan Henderson
Executive Director

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