Secretary Ben Carson
451 7th Street SW, Room 10276
Department of Housing and Urban Development
Washington, DC 20410-0500
Submitted electronically through www.regulations.gov


Dear Secretary Carson:

Public Advocates submits the following comments in response to HUD’s Federal Register notice regarding the regulatory reform agenda articulated in Executive Order 13777. We write to express our observations about the importance of HUD’s promulgated fair housing regulations and the many benefits they convey. We strongly urge HUD not to take any steps towards weakening or repealing these crucial civil rights protections.

Public Advocates is a civil rights law firm and advocacy organization. Since our founding in 1970, we have fought for equal treatment of low-income communities and communities of color in the San Francisco Bay Area and throughout California—including equal housing opportunity. We work hand in hand with community groups to demand equitable investments in neighborhoods of color, challenge barriers to affordable housing, strengthen tenants’ rights, seek improved transit service, and ensure compliance with federal and California law regarding fair housing planning. The comments below are based on our decades of experience fighting for civil rights connected with housing and transit, including our current work building on the duty to affirmatively further fair housing.

The fair housing protections set out in HUD’s regulations are more important than ever as the Bay Area and many other urban areas around the country are confronting rising housing costs and the corresponding displacement of residents of color. In San Francisco, in Oakland, and throughout Silicon Valley, we are witnessing a devastating process of re-segregation that is pushing people of color and other protected classes under the Fair Housing Act to underserved, low-income
communities that are far from transit and economic opportunity. HUD’s fair housing regulations should be maintained because they play a critical role in preserving and opening up fair housing opportunity in these adverse conditions. Below, we detail some of the many benefits of the Affirmatively Further Fair Housing Rule and the Discriminatory Effects Rule, and we ask that you take these benefits into account in any consideration of the value of these regulations.

Public Advocates also fully joins in the comments submitted by the Poverty & Race Research Action Council on behalf of a coalition of civil rights organizations, and we urge you to take seriously the concerns expressed in those comments about the legality and the underlying premise of Executive Order 13777.

1. Affirmatively Furthering Fair Housing

The Affirmatively Furthering Fair Housing Rule (or “AFFH Rule”) conveys many benefits and should be preserved. Those benefits include the following:

The Affirmatively Furthering Fair Housing Rule promotes public accountability. As you know, both HUD and the state and local governments and public housing authorities (PHAs) that receive funding from HUD are required by statute to affirmatively further fair housing.⁷ Prior to the promulgation of the AFFH Rule in 2015, few local governments took their AFFH duties seriously.⁸ By setting out a more structured process for the Assessment of Fair Housing, including community participation opportunities, a published draft and comment period, and submission to HUD, the AFFH Rule has significantly improved the transparency of the process, increasing the ability of average citizens to ensure that their governments are complying with the law.

The Affirmatively Furthering Fair Housing Rule empowers residents and community groups connected with protected classes under fair housing law by creating important opportunities for community input and participation. We know all too well that the interests and needs of people of color, immigrants, families with children, and individuals with disabilities are often overlooked in local government planning processes. The failure to include them results in policies that at best fail to serve their needs, and that frequently create additional obstacles to securing housing and access to opportunity for some of the most vulnerable members of our society.

Through our participation in the ongoing Assessment of Fair Housing in San Mateo County, we have found that the process mandated by the AFFH Rule creates valuable opportunities for members of protected classes to have their voices heard on issues that affect their daily lives, whether that be extreme rent burden and evictions, inadequate access to public transit, inadequate investment in neighborhoods of color, loss of fair housing choice, or the absence of housing opportunity in areas of opportunity. We are confident that the robust community participation we have witnessed (and helped to facilitate) in that process will result in an insightful Assessment of Fair Housing. And, in light of the brutal housing crisis affecting renters

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and people of color in the region, a strong AFH will be much needed tool for local governments in the region to take meaningful actions to protect and expand fair housing opportunity.

The concept of “balance” in the Affirmatively Furthering Fair Housing Rule accurately captures the diverse set of fair housing issues confronting people of color and other protected groups. Public Advocates works across a range of geographies, from gentrifying major cities like San Francisco, to concentrated neighborhoods of color like East Oakland, wealthy suburban areas and working class suburban areas. We fight to ensure access to opportunity for low-income people and people of color in each of these settings—and we know that improving services, investments, and housing conditions in communities of color is just as crucial a fair housing measure as is opening up affordable housing opportunity in wealthy, exclusionary communities or stemming displacement from areas that are currently integrated. The AFFH Rule appropriately captures this balance, and provides targeted, data-driven methods to help advocates, local governments, and PHAs identify strategies that will materially improve the lives of members of protected classes across a wide range of geographies and housing markets.

The Affirmatively Furthering Fair Housing Rule promotes inter-agency collaboration to address interlocking barriers to opportunity related to housing and urban development. Public Advocates has a long record of leadership in civil rights work related to transit, housing, and education. We know that patterns of segregation and disinvestment tie each of these three issue areas together. All too often, in our experience, local government agencies fail to appreciate the connections or implement policies that are designed to address the layered and complex relationship between these diverse issue areas. The Assessment of Fair Housing creates an important opportunity for interagency dialogue that we believe can result in better policies designed to more meaningfully address disparities in access to quality transit, housing, and education.

2. Discriminatory Effects

The Discriminatory Effects Rule is similarly beneficial and should be maintained as it is without any exceptions or carve-outs for special interests.

The Discriminatory Effects Rule creates an opportunity for uniformity and clarity with regard to the implementation of the disproportionate impact theory of fair housing violations. As other commenters have pointed out, the Discriminatory Effects Rule is consistent with the statutory language and binding case law interpreting the Fair Housing Act to encompass claims based on the disproportionate impact that a practice or policy may create for members of protected classes. Thus, the real impact of the rule is not to impose discriminatory effects liability, which exists independent of the rule, but to create certainty and clarity around the law. This much needed clarity both strengthens protections for equal housing opportunity and reduces the risk of litigation for companies and local governments that are seeking to comply with their fair housing obligations.

The Discriminatory Effects Rule is the basis for valuable guidance regarding persons with criminal records and persons with limited English proficiency. The clarity and uniformity offered by the Discriminatory Effects Rule has permitted HUD to play a vital role in providing

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guidance to housing providers on how to ensure compliance with civil rights law, including the important and very useful guidance on criminal records and persons with limited English proficiency. Repealing or paring back the rule would undermine this important administrative function.

Finally, it is important to remember that the Discriminatory Effects rule only restricts practices or policies that lack a legitimate non-discriminatory justification, or which could be replaced by a less discriminatory alternative. These analytical safeguards limit any burden on businesses, housing providers, and governments.

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In conclusion, we thank HUD for its work to strengthen, streamline, and clarify fair housing law through its valuable regulations, and we urge you to preserve those regulations and reject any efforts to weaken or repeal them.

Sincerely,

s/ Anne Bellows

Anne Bellows
Attorney & Equal Justice Works Fellow