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

Re: FR-6249-C-02 Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, Docket No. FR-6249-I-01 or HUD-2021-0031

Submitted via the Federal eRulemaking Portal at https://www.regulations.gov/.

Dear Secretary Fudge:

The Center for Law and Social Policy (CLASP) is a national, nonpartisan, nonprofit organization that advocates for policies that advance economic and racial justice for people with low incomes. Founded more than 50 years ago, CLASP works to develop legislation and regulations that have the potential to eliminate poverty, tear down barriers arising from systemic racism, and create pathways to economic security—if the implementation is guided by impacted communities.

CLASP submits this comment in firm support of the Biden Administration and the Department of Housing and Urban Development's (HUD) decision to withdraw the Trump-era Preserving Community and Neighborhood Choice (PCNC) rule and effectively restore all definitions associated with affirmatively furthering fair housing (AFFH) that were codified in the Fair Housing Act of 1968 and subsequent court decisions. If kept, the PCNC rule would have further entrenched inequities in access by making it more difficult for jurisdictions to identify and address harmful patterns of residential segregation, discriminatory housing practices, and community disinvestment.

However, to further strengthen and realize the definition of what it means for a government, public housing authority (PHA), or agency to affirmatively further fair housing (AFFH), protected classes who are directly impacted by actions taken to satisfy the AFFH obligation must be involved in the design and implementation of an Assessment of Fair Housing (AFH), Analysis of Impediments (AI), or any other voluntary fair housing planning process. The 2015 AFFH rule proved that HUD recognized the value of community participation, local data, and local knowledge in developing an honest assessment of fair housing. CLASP believes changes that emphasize the importance of community participation would also help HUD comply with E.O. 13985 where the Biden Administration committed the Federal Government to pursuing a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality".

Along with HUD stating its support and willingness to assist in forming community partnerships with members of protected classes, we ask HUD to consider changing the following definition (§ 5.151) to increase the likelihood of administrators partnering with impacted communities:

- § 5.151 *Meaningful actions* means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing

fair housing choice or decreasing disparities in access to opportunities, **as affirmed or approved, through community participation, by members of the protected classes who would be directly impacted**.[1]

If this language or a version of it is introduced, it would be necessary for the Administration and HUD to offer suggestions for how program administrators might form community partnerships and seek "affirmation" or "approval"—terms that may also need to be defined.

In addition, we ask HUD to broaden its technical assistance to include program participants' efforts to establish and sustain partnerships with members of protected classes who would be directly impacted. To encourage program participants to form these partnerships, HUD must value both qualitative data and historical analyses as highly as quantitative data. We therefore ask the Administration and HUD to amend § 5.152 AFFH Certification and Administration as follows:

- § 5.152(b)(1)(iii) Engaging in other means of fair housing planning that meaningfully supports this certification **such as establishing a community advisory board comprised of members of the protected classes who are eligible or served by the participants' program to guide decision-making or conducting historical analyses to better understand how local policies contributed to segregation, inhibited fair housing choice, or compounded other significant disparities in access to opportunity.**

- § 5.152(d)(1)(ii) *Local data.* The term "local data" refers to metrics, statistics, and other quantified, **qualitative, or historical** information, relevant to the program participants' geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost**,** and may be used to conduct fair housing planning.**[2]**

CLASP understands that HUD will collect additional stakeholder input in the coming months that will lead to a second rule establishing a comprehensive framework to guide program participants in achieving fair housing outcomes. This forthcoming rule is critical to rectifying the Federal Government's contribution to residential segregation in jurisdictions across the United States, actualizing the true intent of the Fair Housing Act, and finally promoting fair housing choice. We look forward to partnering with HUD and the people who are directly impacted to co-create a housing system that promotes fair housing choice and fosters inclusive communities.

Thank you for the opportunity to submit comments. Feel free to contact Jessi Russell at jrussell@clasp.org if you have any questions or need any further information.

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[1] For the purposes of the 2015 AFFH rule, "community participation" meant "a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes." 24 C.F.R. § 5.152. Our proposed change more narrowly defines "members of the community" as people with protected characteristics or who are part of a protected class that would be directly impacted by the participant's program(s). It would also require—or rather encourage—program participants to seek "approval" or "affirmation" from members of the community.

[2] CLASP recognizes that the term "local knowledge" was defined in the 2015 AFFH rule to recognize non-quantitative forms of knowledge and includes "information to be provided by the program participant that relates to the program participant's geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool." 24 C.F.R. § 5.152. While this inclusion both balances the burden placed on program participants to compile nonexistent or hard-to-access data and elevates qualitative data and local histories, it creates an artificial separation between numerical data that can be quantified and interviews, oral histories, or other expressions of personal experiences, which are often the only pathways to effective community participation. Restoring the definition of "local knowledge" is necessary, but HUD should also encourage program participants to integrate community participation or analyzing non-quantitative forms of knowledge into all stages of the assessment process, especially data analyses.