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Re: Reducing Regulatory Burden; Enforcing the Regulatory Reform
Agenda Under Executive Order 13777, Docket No. HUD-2017-
0029, 82 Fed. Reg. 22344

Dear Secretary Carson,

On behalf of Long Island Housing Services, Inc., I am writing to urge the Department of Housing and Urban Development (HUD) to preserve and maintain several key regulations that are critical for ensuring fair housing for all in the United States, and to fulfilling a core part of HUD's mission. All of these regulations are necessary for HUD to carry out its responsibilities under the federal Fair Housing Act, all have gone through extensive notice and comment as required under the Administrative Procedures Act, and all are necessary to ensure that residents in the heavily populated Nassau and Suffolk counties have access to housing free from illegal discrimination and that all of the neighborhoods and communities in Nassau and Suffolk counties are connected to the kinds of opportunities they need to flourish.

Long Island Housing Services (LIHS) is the only HUD-approved and HUD qualified Fair Housing Enforcement organization serving all of Nassau and Suffolk Counties. Unique in our multifaceted services and unparalleled in our commitment to fair housing advocacy and enforcement, LIHS is nationally recognized and is one of the earliest private, fair housing nonprofits established in the USA. Our mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education.

Our nation has a shared interest in ensuring that housing opportunities are available to every individual, regardless of their personal characteristics. This shared interest is not only ingrained in the values that our nation strives to achieve, but it is also embedded in the mission of the Department of Housing and Urban Development. Passed in 1968 in the aftermath of the assassination of Dr. Martin Luther King, Jr., the federal Fair Housing Act prohibits discrimination in housing and housing related services on the basis of race,



A 501 (c) (3),
not-for-profit,
Fair Housing
agency serving
Long Islanders
since 1969.

*Our mission is the elimination of unlawful housing discrimination
and promotion of decent and affordable housing through advocacy and education.*

color, national origin, sex, familial status, religion, or if one has a disability. The Fair Housing Act makes it the policy of the United States to support the development and maintenance of diverse, inclusive, neighborhoods where every person can tap the community assets necessary to lead a fruitful, fulfilling life of opportunity. It is HUD's central mission to fulfill the promises of the Fair Housing Act for every person in the United States. Our organization shares this central mission, and we write to urge you to ensure that any regulatory or deregulatory efforts that HUD pursues not put at risk the department's critical obligation to achieve the goals of the Fair Housing Act.

Achieving truly fair and equitable housing in all neighborhoods is one of the biggest challenges that our nation faces, and this certainly holds true in Nassau and Suffolk Counties. HUD has worked to promulgate helpful and important regulations that serve as useful and clarifying tools for victims of housing discrimination, communities, fair housing practitioners, and the housing industry. In these comments, we share our strong support for HUD's fair housing regulations and discuss why they are critically important to assisting victims of housing discrimination and the communities that we serve.

HUD Fair Housing Regulations

HUD's fair housing regulations reflect a careful assessment and commitment to its statutory responsibilities under the Fair Housing Act. Through the required and appropriate public comment periods and stakeholder engagements, HUD has carefully considered the costs, public benefits, regulatory burdens, and its own obligations to effectively implement the Fair Housing Act. We strongly urge HUD to preserve each of the regulations described below, and to continue to enforce them vigorously.

Affirmatively Furthering Fair Housing Rule

HUD has a statutory mandate under Sec. 808(d) of the federal Fair Housing Act to administer its programs in a manner that affirmatively furthers fair housing. This provision was built into the Fair Housing Act from the beginning (1968) and has been upheld by federal courts on numerous occasions. Given that mandate, if HUD fails to provide its grantees with clear guidance about how to fulfill their AFFH obligation, it leaves them exposed to greater litigation risk.

For many years, local officials sought greater clarity and guidance from HUD about what they should be doing to affirmatively further fair housing. HUD's previous approach to implementing the AFFH mandate – through the requirement that grantees periodically develop an Analysis of Impediments to Fair Housing Choice – was neither well-structured nor well-administered, as the U.S. Government Accountability Office (GAO) pointed out in its 2010 report on this subject.¹ The new approach addresses many of the criticisms that GAO highlighted, and provides HUD grantees with more structure, clearer guidance, and needed resources for identifying and addressing fair housing problems in their communities.

¹ "HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans," GAO-10-905, Sept. 14, 2010, available at <http://www.gao.gov/products/GAO-10-905>; see also AFFH Rule preamble at 80 Fed. Reg. 42,275.

The rule was developed with considerable public input. Before developing the rule, HUD conducted a listening tour across the country, in large and small communities, to get input from local officials and other stakeholders about their ideas and concerns. The rule itself went through a public notice and comment period, during which more than 1,000 public comments were submitted to HUD through the Regulations.gov website.² The Assessment Tools for entitlement jurisdictions and public housing authorities that accompany the rule each went through a two-part comment process, as required under the Paperwork Reduction Act. HUD was also careful to ensure that strong local control mechanisms were set in place with the AFFH rule. The AFFH regulation provides for robust community input, which means that the plans developed reflect local priorities and respond to each community's unique circumstances.

HUD is providing its grantees with training, technical support, and a substantial amount of very valuable data about their communities, along with a powerful data and mapping tool to aid in understanding and analyzing the data. These resources are invaluable, especially for smaller communities with limited in-house data analysis and mapping capacity. This tool and the accompanying data are also available to the public, which is another important benefit of the rule.

The fair housing plans developed under this rule will help jurisdictions use their federal housing and community development resources more strategically, thereby strengthening social and cultural ties and boosting economic prosperity. For all of these reasons, we believe it is critical for HUD to preserve the Affirmatively Furthering Fair Housing regulation, continue to support its grantees in complying with the rule, and finalize the remaining rule components that are needed for its full implementation.

Discriminatory Effects Rule (Disparate Impact)

The Fair Housing Act prohibits both intentional and facially neutral but unjustified policies or practices that have a disparate impact on access to housing choice. HUD's final Disparate Impact Rule³ was intended to provide a unified framework to be used in proving liability. And as recently as 2015, the Supreme Court affirmed the continued viability and importance of disparate impact claims under the Fair Housing Act⁴ and reinforced the existing jurisprudence that HUD considered when drafting its regulation.⁵ For decades, HUD has also applied the disparate impact standard in its administrative enforcement of the Fair Housing Act.⁶ The rule provides clarity and consistency under a single standard of liability for housing industry professionals when faced with disparate impact claims and gives the public a greater understanding of their rights.

² See <https://www.regulations.gov/document?D=HUD-2013-0066-0001>.

³ 78 Fed. Reg. 11460 (Feb. 15, 2013).

⁴ *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

⁵ *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, 78 Fed. Reg. 11460, 11461-63 (Feb. 15, 2013).

⁶ See discussion at 78 Fed. Reg. 11461-63.

The discriminatory effects standard has consistently been interpreted to cover, and is necessary to address, a range of both land use and other practices.⁷

The Disparate Impact Rule is an important tool in overcoming discrimination in our area. One recent case involving disparate impact on the residents of Nassau County based on the well-known, but still largely uncorrected, problem of local residency preferences in LIHS; FHJC v Nassau County Industrial Development Agency. This case of race, disability and age discrimination initially filed in federal court in 2014 related to violations of the Fair Housing Act by the Village of Great Neck Plaza and the Nassau County Industrial Development Agency. Testing was conducted. The claims related to discriminatory residency preferences for affordable rental units in a new complex enabled through the Village Code. The preferences had the effect of perpetuating racial segregation as well as excluding applicants on the basis of disability and age. A settlement agreement was reached which required the Village to retain its Affordable Housing Law and amend its Village Code to further incentivize the creation of affordable housing, to eliminate all age and residency restrictions [which perpetuated racial segregation] previously in place and to create replacement affordable units for those lost units where equitable opportunity was lost. The Village was also required to provide fair housing training to specified employees and officials. Prior to authorizing/providing financial assistance, Nassau County Industrial Development Agency (NCIDA) had failed to analyze The Village's preferences and thereby allowed continued segregation.

A second matter that depended on the Disparate Impact Rule received national attention. In LIHS and Kneer v. German-American Settlement League, Inc. (GASL), the allegation was received by LIHS on 3/1/2015 from a family residing in a private community in Yaphank, New York. The Kneer family informed LIHS that they were unable to sell their home due to restrictions in the community's Constitution and Bylaws. After thorough research, LIHS learned that the community, the GASL, had been engaged in efforts to limit those who can live in the community since its creation in the 1930s. The property has been owned by the GASL since 1937; prior to that it was owned by the German-American Bund, an American organization supporting Nazism. During that time period the property served as a camp where rallies and marches were held in support of Nazism and where pictures of Hitler and swastikas were displayed. The GASL Constitution and Bylaws continued to place restrictions on membership on the basis of race and national origin. A federal complaint was filed on 10/19/2015; a settlement agreement was signed and was approved by Judge Azrack on 1/13/2016. The settlement agreement provides for the GASL to amend its by-laws to include a non-discrimination provision, allow advertising of homes for sale in the community, and to remove the requirement that prospective home buyers are sponsored by current GASL residents, as well as remove any vestiges of Nazi or Hitler era that were yet maintained. The GASL's Board of Directors was also required to undergo Fair Housing training and provide notice of the revisions to the GASL's by-laws to the Long Island Board of Realtors, the Town of Brookhaven, and

⁷ See, e.g., *Inclusive Communities*, 135 S. Ct. 2507. *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), aff'd in part per curiam, 488 U.S. 15 (1988)(zoning ordinance confining multifamily housing to a narrow urban renewal area); *Smith v. Town of Clarkton, N.C.*, 682 F. 2d 1055, 1065-66 (4th Cir. 1982)(town's withdrawal from a multi-municipality housing authority effectively blocking construction of public housing units); *Dews v. Town of Sunnyvale, Tex.*, 109 F. Supp. 2d 526 (N.D. Tex. 2000)(exclusionary zoning).

Suffolk County's Human Rights Commission. The settlement agreement provided monetary relief for the victims and provisions for LIHS to monitor for compliance with the Settlement Agreement and provides for legal fees and costs.

Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act⁸ (Harassment Rule)

HUD's Harassment Rule formalizes standards to be used in investigations and adjudications involving allegations of harassment based on the Fair Housing Act's protected classes. The final Rule is rooted in HUD's authority to interpret and administer the Fair Housing Act.⁹ In particular, Sections 3604(b) and 3617 of the Act expressly protect an individual's right to be free from discrimination with respect to her housing and the use and enjoyment of her housing.¹⁰ Yet discriminatory harassment in housing continues to occur across the nation. In 2016 alone, private nonprofit fair housing organizations reported a total of 640 complaints of discriminatory harassment, up from 591 in 2015 and 379 in 2014.¹¹ HUD's harassment rule is and will remain critically important to helping housing providers attend to their obligations under the law and assist tenants in identifying illegal behavior.

The Harassment Rule is another important tool in overcoming discrimination in our area. A pending federal District Court complaint LIHS, et al. v. Village of Mastic Beach and Timothy Brojer filed 2/9/2015 that LIHS pursued involves Village officials and a Code Enforcement Inspector harassing resident landlords and tenants, targeting low income African American renters receiving government subsidy assistance. LIHS received complaints of uneven code enforcement, resulting in illegal and unconstitutional evictions. Our investigation of the Village of Mastic Beach progressed with interviews of African American residents who had been targeted by Code Enforcement, as well as residents and some Village officials. We met with the former Mayor of the Village, former employees in the Code Enforcement and Building Departments, residents and public advocates who were opposed to the actions of the Village. Through these interviews we were able to learn about and verify harassment techniques imposed by the Village Code Enforcement and sanctioned by the Village; investigation led to litigation involving four landlords and four families who were affected.

Violence Against Women Reauthorization of 2013: Implementation in HUD Housing Programs¹² (VAWA)

HUD's VAWA implementation rule implements statutory changes made in the 2013 reauthorization of the Violence Against Women Act, improving access to safe housing for survivors of domestic violence, dating violence, sexual assault, and stalking. The rule prohibits decisions to terminate housing assistance or initiate eviction that are made on the basis of a tenant's status as a survivor of domestic violence, dating violence, stalking, or sexual assault.

⁸ 81 Fed. Reg. 63054 (Sept. 14, 2016).

⁹ See 80 Fed. Reg. 63720, 63721 (Oct. 21, 2015) (citing 42 U.S.C. § 3608(a)).

¹⁰ See 42 U.S.C. §§ 3604(b) and 3617.

¹¹ "The Case for Fair Housing: 2017 Housing Trends Report." National Fair Housing Alliance, n.d. Web. Page 82.

¹² 81 Fed. Reg. 80724 (Nov. 16, 2016).

HUD's rule also expands protections of VAWA to applicants and tenants beyond those in HUD's public housing and Section 8 programs. The rule also strengthens the confidentiality rights of victims of domestic violence, dating violence, sexual assault, and stalking in HUD-covered programs, and helps to minimize the likelihood that covered persons under VAWA will lose their housing by setting forth emergency transfer mechanisms for victims of violence.

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity¹³

HUD's Equal Access Rule clarifies that discrimination on the basis of someone's actual or perceived sexual orientation, gender identity, and gender expression that is based on gender nonconformity is prohibited in HUD programs, including HUD-assisted or HUD-insured housing. Housing providers regularly refuse to rent to LGBTQ people because they believe that person acts differently from their notion of how a person of a particular sex should act. In 2016, private nonprofit fair housing centers reported 150 complaints based on sexual orientation, and 44 complaints based on gender identity.

In addition to the protected classes defined in the Fair Housing Act, the New York State and the Suffolk County Human Rights Law also prohibits discrimination based on sexual orientation.

Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs¹⁴

This rule clarifies the application of the Equal Access Rule to the treatment of transgender and gender nonconforming people in temporary, emergency shelters and other buildings and facilities used for shelter that have shared sleeping or bathing facilities. LGBTQ people, and especially transgender and gender nonconforming people, are significantly more likely to experience homelessness and housing instability than the general population. In fact, 40% of young people experiencing homelessness identify as LGBTQ or gender nonconforming.¹⁵ Given the disproportionately high rate of need, it is critical for shelter providers to understand their legal obligations in serving transgender and gender nonconforming people. This rule "benefit[s] clients...by assuring that all clients receive equal access and will benefit the CPD-funded facilities by making compliance with HUD's equal access requirements easier."¹⁶ Given these benefits, we strongly urge HUD to preserve the Equal Access rule and enforce it vigorously.

¹³ 77 Fed. Reg. 5661 (Feb. 2, 2012).

¹⁴ 81 Fed. Reg. 64763 (Sept. 21, 2016).

¹⁵ "Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or At The Risk of Becoming Homeless." Williams Institute, n.d. Web. Page 4.

¹⁶ *Id.*

Federal Housing Administration

Finally, we want to express our strong support for HUD's current foreclosure alternatives program for FHA-insured loans, which enables HUD to avoid unnecessary payment of insurance claims and thus protects the mortgage insurance fund (Fund) and communities. Taxpayers are harmed by payment of unnecessary claims and they benefit significantly from fewer foreclosures that destabilize neighborhoods. The insurance program facilitates the funding for approximately half of all home purchases made by African American and Latino households. Under the National Housing Act, Congress made clear that HUD's administration of the Fund must promote sustainable homeownership and protect the financial solvency of the Fund. HUD's continued long-term commitment to mandatory loss mitigation, as spelled out in its regulations, is essential to the ability of the agency to meet both goals.

In addition, we strongly support the preservation and strengthening of crucial FHA loss mitigation regulations as well as recommend modifications to specific regulations and program policies. We offer the following recommendations for HUD to avoid costs associated with unnecessary claims and to stabilize homeownership and communities.

- HUD's decades-long, modest loss mitigation procedural requirements should be preserved because they avoid unnecessary payment of insurance claims by ensuring that lenders evaluate all borrowers for all foreclosure prevention options. 24 CFR §203.501; 24 CFR §203.357; 24 CFR §203.370; 24 CFR §203.414; 24 CFR §203.512; 24 CFR §203.471; 24 CFR §203.614; 24 CFR §203.616.
- HUD's significantly improved menu of FHA loss mitigation foreclosure alternatives should be maintained because it promotes payment relief for FHA's unique borrower profile while limiting unnecessary insurance claims. 24 CFR §203.616; Mortgagee Letter 2016-14, see section HUD's Loss Mitigation Option Priority Waterfall.
- To ensure that HUD does not pay unnecessary claims, HUD should revise its program for selling loans through the Distressed Asset Stabilization Program (DASP) by requiring pre-auction notice to borrowers and by enhancing its pre-claim screening. The current procedure to provide post-sale notice to homeowners frustrates the goals of the loss mitigation regulations referenced above.
- In order to reduce claims to the Fund, HUD should amend the regulation that requires HUD to pay claims even in cases of lender's non-compliance with loss mitigation regulations. 24 CFR §203.500.
- HUD must preserve its reverse mortgage rules protecting surviving spouses and ensure loss mitigation options are available and enforced for borrowers who fall behind on property taxes and homeowner's insurance. 24 CFR §206.55; Mortgagee Letter 2015-11; Mortgagee Letter 2016-07.

Thank you for the opportunity to comment. Please feel free to reach out to LIHS' Executive Director, Michelle Santantonio, at 631-567-5111 ext. 316 or by email to Michelle@LIFairHousing.org should you have any questions.

Sincerely,



Michelle Santantonio
Executive Director