July 12, 2021

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

Re: Docket No. FR-6249-I-01, “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications”
Via electronic submission through www.regulations.gov

To the Office of General Counsel:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to comment in response to HUD’s Interim Final Rule for Restoring Affirmatively Furthering Fair Housing Definitions and Certifications.1 AARP supports HUD’s decision to take steps to restore meaningful implementation of the Fair Housing Act’s Affirmatively Furthering Fair Housing (AFFH) requirement by reinstating certain definitions and certifications from the 2015 Rule, helping to ensure that HUD grantees will again regularly certify compliance to a standard that requires meaningful action to combat residential segregation and eliminate unequal access to housing-related opportunities.

Fair housing is vitally important to older adults. Housing opportunity is a key driver of wealth for Americans and can significantly improve retirement security.2 Additionally, housing constitutes the largest expenditure for adults age 55 and older.3 As people age, their income generally decreases, but housing costs such as property taxes, maintenance and utilities increase. This results in increasing housing cost burdens as people age, making housing unaffordable for over 13 million people age 50+. Racial and ethnic minorities and renters are particularly

1 86 Fed. Reg. 30779 (June 10, 2021)
impacted, as they are less likely to have high levels of net worth. Members of protected classes may also face barriers to housing opportunity based on their race, color, national origin, sex, or disability that exacerbate their vulnerability as they age.

The final interim rule restores a definition of AFFH that is grounded in both the Fair Housing Act (FHA) itself and in case law. The well-founded definitions will provide needed clarity to jurisdictions and recipients who need to fulfill AFFH obligations and certify that they are doing so. In particular, the rule addresses and resolves several concerns that AARP raised in our prior comments to HUD’s January 14, 2021, AFFH proposed rule primarily addressing reporting requirements.

Consistent with our prior comments, AARP appreciates HUD’s emphasis of the goal of integration and the avoidance of the harm of segregation in the overall definition of affirmatively furthering fair housing and its foundation in well analyzed case law. AARP agrees that a key role of the FHA is to eliminate broad patterns of housing segregation. The Supreme Court has recognized the continuing role the FHA plays in moving us to a more integrated society. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmtyts. Project, Inc.*, 576 U.S. 519, 546–47 (2015).

Likewise, the rule’s clear language defining the segregation and integration of people with disabilities in the context of AFFH is essential. AARP appreciates that the AFFH definition includes not only an inquiry into whether institutional settings are sited in residential neighborhoods but instead requires a review of spatial and functional segregation. This will more likely lead to full integration of people with disabilities and make better communities for aging in place. AARP also appreciates that the definition of disability clarifies that AFFH must include protected classes where discrimination is based on having a particular disability, as well as having a disability in general. As the population as a whole ages, jurisdictions will need to consider AFFH for those with common age-related disabilities, such as vision, hearing, and other sensory impairments, as well as mobility impairments.

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5 85 Fed. Reg. 2041
6 86 Fed. Reg. at 30790-91
7 Id. at 30791.
Finally, in regard to people with disabilities, AARP acknowledges that while housing for special populations, such as housing for elderly, in and of itself would not constitute segregation, AARP suggests that HUD clarify that a jurisdiction must consider its housing plan as a whole in its AFFH planning and certification to ensure that as it moves forward the goal of full integration for people with disabilities will always be furthered.

Lastly, AARP commends HUD for restoring the range and wealth of excellent guidance materials it had previously offered to jurisdictions, including free and accessible data and mapping tools, as well as offers of technical assistance.

Thank you for the opportunity to provide comments on this vital issue. If you have any questions or comments, please feel free to contact Debra Alvarez in our Government Affairs Department at (202) 434-3814 or dalvarez@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

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8 Id.
9 Id. At 30789