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Sent Via Email to Mark.Dodds@phila.gov

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Re: Comments on City's and PHA's Draft Philadelphia Assessment of Fair Housing 2022

Dear Ms. Long, Mr. Flood and Ms. Hersh:

The Public Interest Law Center¹ appreciates the opportunity to provide comments on the City of Philadelphia's and Philadelphia Housing Authority's Draft Assessment of Fair Housing 2022 ("the Plan"). Our recommendations focus on source of income discrimination—a persistent barrier to safe and affordable housing for low-income Philadelphians – and include steps the City and PHA should take to both incentivize landlords to accept housing vouchers and to enforce existing prohibitions against source of income discrimination.

The City's commitment to fair housing is laudable. Still, notwithstanding its implementation of numerous programs to further fair housing since the 2016 Plan, Philadelphia residents continue to be challenged by decreased affordability, high eviction rates, and poor housing conditions. In addition to programmatic initiatives, Philadelphia is not without laws to combat these trends, some of which are new like the recently passed Renters Access Act of 2021 that creates uniform screening criteria for renter applicants related to eviction and credit history. Others, like the source of income discrimination

¹ The Public Interest Law Center uses high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. The Law Center works to secure access to fundamental resources and services including employment, environmental justice, healthcare, voting, education, and housing. For more than 50 years, the Law Center has been using litigation, community education, advocacy, and organizing to stop housing discrimination against low-income people and to promote healthy, affordable housing for people in the neighborhoods of their choice.

protection, date back to the 1980's. Yet despite being on the books for over forty years, nearly 50% of the respondents cite source of income as the reason they were treated differently when looking for housing, the second highest response after race.² Not only did surveyed individuals routinely raise source of income discrimination, representatives from both fair housing organizations cited increased reports of source of income discrimination.³ This demonstrates that the objectives sought by fair housing laws are only realized with a parallel commitment to enforcement.

While discussion of source of income discrimination in the Plan is welcome, the Plan should identify specific activities and goals to address this problem. The Law Center urges the City and PHA to include the following strategies to reduce source of income discrimination in its Plan to further fair housing.

I. Philadelphia Housing Authority Policies and Programs

The Plan should include specific actions that PHA will undertake to increase payment standards to match rising rents and to encourage landlords to accept Housing Choice Vouchers (also known as "Section 8" vouchers). PHA has some discretion to set payment standards based on Small Area Fair Market Rents ("SAFMR"), the goal of which is to provide more housing options to HCV holders in "opportunity zones." Unfortunately, as the Plan acknowledges, the current SAFMR payment standards do not live up to their mission. The Plan's analysis shows that about half of HCV holders live in "distressed markets," and that whereas 43% of HCV households live in areas that are over 80% Black, only 1% of HCV households are located in areas that are over 80% White. It is no surprise that participants in the community outreach sessions linked the concentration of HCV holders in distressed neighborhoods to rising rents and source of income discrimination, and felt that the SAFMR caps on rent limited their choices to low-income, high-crime neighborhoods. The SAFMR also diminish HCV holders' ability to remain in their homes if the landlord lawfully raises the rent above the payment standard upon lease renewal.

While the presentation of these troubling figures is a useful illustration of the problem, the City and PHA must take actual steps to increase opportunities for affordable housing, especially since the implementation of SAFMR is a direct result of the 2016 Plan. Stating in Goal 5 that PHA will "continue efforts to expand housing choice vouchers" to high opportunity areas does not set metrics or standards for how this goal will be accomplished. One recommendation is for PHA to continue these efforts by

² This tracks an Urban Institute Study from 2018, which found that 67% of Philadelphia landlords refuse to rent to voucher holders. See Mary Cunningham, et al., A Pilot Study of Landlord Acceptance of Housing Choice Vouchers, Urban Institute (Sept. 2018) <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html>; see also Julia Teruso, "In Philly, two-thirds of landlords won't take affordable housing vouchers – even when the renter can afford the place," Phila. Inq., (Aug. 27, 2018) <https://www.inquirer.com/philly/news/housing-vouchers-section-8-affordable-urban-institute-study-20180827.html>.

³ Footnote 6 on page 26 states that one group is planning to file a source of income discrimination complaint with the "City's Fair Housing Commission." Any such complaint is filed with the Philadelphia Commission on Human Relations (the "Commission"), not the Fair Housing Commission.

taking all available means to increase the SAFMR standards. PHA states that federal regulations limit raising payment standards to those “reasonable” compared to other assisted units. Certainly there are limits to what rents PHA may pay, but public housing agencies have [new avenues at their disposal](#) to seek increases in payment standards.⁴ PHA should take full advantage of these methods.

The Plan notes that PHA’s Housing Opportunity Program provides support to HCV recipients looking for housing. This begs the question, in what ways and how can the program do more. The Plan should delve the inner workings of the Housing Opportunity Program so that PHA can make informed decisions about ways to strengthen or change the program. For example, how many households sought and received assistance from the program? What does this assistance look like, i.e., how many assisted households have actually secured a new lease in an opportunity area? How many vacant units exist on the Program’s referral list at any given time, and in comparison to those seeking a referral? Without these and other data points, PHA will not be able to evaluate the Program’s efficacy and match it to targeted activities and goals. And to the extent the Housing Opportunity Program is not effective, it should step aside for other innovative solutions.

Finally, it is well known that encouraging landlord participation is a vital piece of the tenant-based voucher puzzle. The PHA landlord monetary incentives and creating an online portal for landlords to track their Housing Assistance Payments contracts are a good start. But other PHA policies, such as the mandatory three hour information session for landlords, limiting security deposit assistance to just emergency housing vouchers, and crucially – the time and communication around housing quality inspections – should be identified and explored for improvements. The Plan presents a prime opportunity for PHA to evaluate its tenant-based voucher model, over which it has wide discretion, and set specific target goals to increase landlord participation.

II. Fair Housing Enforcement

Given the blatant and rampant violations of Philadelphia’s source of income protection, the lack of enforcement of this vital tenant protection is unacceptable.⁵ Yet the Plan gives short shrift to this problem with a vague goal to expand fair housing enforcement with “support efforts to identify and reduce source of income discrimination.” Goal 6 at pg. 37. The City can and must do more.

The Plan hints but does not say outright that source of income discrimination complaints require administrative exhaustion at the Commission. To that end, the Commission plays a key role in efforts to enforce the law and reduce source of income discrimination. The Law Center’s recent experience representing individuals in source of income complaints at the Commission provides insight into the kinds of targeted steps the City can take to counteract this form of discrimination. First, there is a general lack of transparency around the process and expected outcome after a complaint is filed with the

⁴ HUD acknowledges that formulas for calculating payment standards lag behind rapidly rising rents, and has proposed a [new rule](#) to address just this problem.

⁵ The Plan incorrectly states on page 35 that landlord refusal to accept renters with vouchers is a practice that is illegal in Pennsylvania. The Fair Practices Ordinance source of income protection applies only in Philadelphia.

Commission. Of special concern is that the Commission does not publicize any of its settlement agreements, even when they further the purpose of the Fair Practices Ordinance and the Fair Housing Act.⁶ Second, the Fair Practices Ordinance provides the Commission with 100 days to investigate complaints or notify individuals of the reasons for the delay. But for three complaints filed in August 2019, the Commission took between eleven months and two years to complete its investigations.⁷ And third, the Commission has not taken a wide-reaching public stance on source of income discrimination.

The Commission is in a unique position to put teeth into this often-ignored provision of the Fair Practices Ordinance. In the Plan, the City should commit to increasing the Commission's capacity so that it can fully embrace its mission as the City's civil rights enforcer. The Plan is right to suggest promoting fair housing through education and compliance testing, and the Commission should be at the forefront of these initiatives, as well as others such as an advertisement campaign, trainings and outreach to housing providers. The Commission's website and materials should be user-friendly for unrepresented complainants and provide defined and achievable expectations of the complaint process.

Thank you for your work in this process. Your commitment to achieving fair housing in Philadelphia is commendable and we look forward to working with you and all of our community partners to realize these goals.

Very truly yours,



Sari Bernstein
Staff Attorney

⁶ The Fair Practices Ordinance requires that conciliation agreements be made public under these circumstances. *See* at Phila. Code § 9-1116(2).

⁷ As you know, this matters because amongst other things, tenants have a limited amount of time in which to use or lose a HCV—the quicker the investigation, the more likely a meaningful outcome for the tenant.