September 27, 2021

Marisa Novara
Commissioner, Department of Housing
City of Chicago
arocomment@cityofchicago.org

RE: Comments on Draft October 2021 ARO Rules

Dear Ms. Novara:

The undersigned organizations, each with significant expertise on issues of fair housing and housing policy in Chicago, submit the following comments on the Draft October 2021 ARO Rules ("Draft Rules"). As is discussed in more detail below, these comments are informed by our experiences with the Affordable Requirements Ordinance ("ARO") Program to date, and the ARO experiences of low-income Chicago residents, particularly residents of color and residents with disabilities, with whom we partner. They are also informed by our extensive involvement with the recently successful effort to strengthen the ordinance earlier this year. Our comments are grounded in two fundamental commitments that we know the City of Chicago shares:

1) **It is unacceptable for housing providers participating in the ARO program to engage in housing discrimination**.

As you know, Chicago's private housing market is rife with discrimination, perpetuating our legacy of segregation and denying members of protected classes access to stable, safe, and accessible housing in the communities of their choosing. While this is highly problematic, we believe it is particularly unacceptable for developers participating in the ARO program, developers gaining significant benefit in return for a commitment to building affordable housing, to engage in discrimination in a program intended to advance fair housing. We also find it unacceptable because developer participation in the ARO program provides the City with added incentive and additional tools to ensure that such discrimination does not occur. Despite this, we know of several specific instances of discrimination by ARO developers and our efforts to better understand how the City ensures that ARO developers comply with fair housing laws have revealed that much more can and should be done to prevent discrimination.

2) **The ARO program has significant potential to affirmatively further the City's fair housing goals and should be administered accordingly**.

The City of Chicago describes the ARO Program as a central component of its efforts to affirmatively further fair housing and as key to its efforts to preserve and expand affordable housing and fair housing choice in high opportunity areas. For example:

- The City's 2014-2018 five-year housing plan points to a refined ARO program as an important strategy for creating and sustaining mixed-income communities.[1]
- The City's 2016 "Analysis of Impediments to Fair Housing" focuses heavily on the ARO Program as a vehicle for addressing an insufficient supply of affordable housing in strong market areas.[2]
- The 2019-2023 five-year housing plan describes the ARO as a key tool for creating new affordable units in strong housing markets, thus addressing disparities in access to opportunity and residential segregation.[3]
- The City's Blueprint for Fair Housing (draft released for public comment in 2021) lists the ARO and amendments to the ARO as a vehicle to "Increase the stock of affordable, accessible rental housing throughout the region, especially in areas of opportunity" which is listed as a "very high" priority strategy for the plan.[4]

The recently passed amendments to the ARO also make explicitly clear that the elected officials who passed the ordinance, including Mayor Lightfoot, view advancing fair housing and combatting segregation as core goals of the program. Recitals in the ordinance call out Chicago's "unfortunate legacy of racial discrimination in housing" and the "decades of exclusion, including by race, class and disability, [that] make Chicago one of the most segregated cities in the country." The ordinance further states that "it is in the public interest to adopt a new [ARO] to address entrenched patterns of citywide segregation more directly."

Despite this, our analysis of the City's administration of the ARO Program to date suggests that important opportunities to affirmatively further fair housing through the program are being lost. For example, to better understand the City's fair housing efforts under the program we submitted a Freedom of Information Act (FOIA) request on June 29, 2020. Given the importance of marketing and outreach to any effort to address segregation, we requested all copies of marketing plans submitted to the City and any guidance documents the City had developed for evaluating the sufficiency of such plans. In response to this request, we were provided documents labelled as "marketing plans" that required a developer to list characteristics of affordable units but did not require any information whatsoever about how the developer was actually *marketing* the units. We were provided no guidance documents developed or used by the City, from which we infer that none exist, an extraordinary omission for a program that has been in existence for 14 years and is intended to address Chicago's segregation.

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1 https://www.cityofchicago.org/content/dam/city/depts/dcd/general/housing/Chicago_Housing_Plan_Web_Final.pdf

2 https://www.cityofchicago.org/content/dam/city/depts/cchr/AdjSupportingInfo/AdjFORMS/2016%20Adjudication%20%20Forms/2016AItoFairHousing.pdf

3 https://www.chicago.gov/content/dam/city/depts/dcd/Housing%20Programs/20733_37_5_Year_Plan_Report_final_WEB_C.pdf

4 https://www.chicago.gov/city/en/sites/blueprint-for-fair-housing/home.html.

To better understand who was accessing ARO affordable units, in this same FOIA request, we asked for Tenant Income Certification (TIC) forms for nine ARO developments, forms that are supposed to include demographic information on prospective tenants for whom a developer seeks income certification from the City. A significant percentage of the forms we received in response were incomplete and omitted demographic information that would be essential to any effort to determine whether the ARO Program is serving its intended beneficiaries. While this incomplete recordkeeping prevented us from thoroughly evaluating the demographics of ARO tenants in these developments, our analysis of forms that did include demographic data indicated that in many developments, people of color made up a smaller percentage of applicants than they would if the developments simply mirrored Chicago's income-eligible population. Similarly, TIC forms inconsistently recorded whether applicants had a disability, and the forms that did record disability information indicate that people with disabilities are underrepresented in ARO applicants at a rate of three to four times lower than would be expected given disability rates among Chicago's income-eligible population. Our analysis of race and disability information suggests that, for these developments, the ARO program was exacerbating rather than remedying segregation in the City. It is unclear to us whether the City has made any similar effort to assess whether the ARO Program is meeting its stated and critical objectives.

The City's Inclusionary Housing Task Force Staff Report, published in September 2020, informed the development of the recent ARO amendments and made clear the need for greater ARO accountability. Describing reporting as "crucial," the DOH staff recommended that ARO reporting requirements be enhanced to include "anonymous tenant demographic information to allow for better evaluation of [ARO's] success in its inclusionary mission and racial equity."[5] To this end, the ARO Ordinance requires annual reporting of the demographics of ARO tenants to the City Council Committee on Housing and Real Estate. Going forward, if the City is to make good on its commitment (and obligation) to affirmatively further fair housing, it must use its administrative authority under the ARO to maximize the program's desegregative potential. This has not occurred to date and the proposed rules need to go much further if the ARO Program is to advance housing opportunity to groups historically denied it.

Steps the City of Chicago should take to root housing discrimination out of the ARO program

We are aware of several instances of ARO developers and their agents discriminating against prospective tenants in violation of fair housing law. For example, one ARO developer denied housing to a Housing Choice Voucher holder on the grounds that he did not meet their requirement that his income be at least three times the monthly rent. This developer persisted in denying the housing even after the prospective tenant informed them that their policy violated local protections against source of income discrimination, forcing the prospective tenant to pursue litigation. Fair housing testers sent to ARO buildings have also encountered discrimination, including: being told that they must make three times the monthly rent, even

[5] DOH Inclusionary Housing Task Force Staff Report, at 47 (2020).

with a voucher; and confronting agents working in ARO buildings who claim to have no knowledge of the ARO program. As recently as this week, one tester was told by a leasing agent that vouchers cannot be used to rent ARO units. Whether these experiences are a result of deliberate discrimination or ignorance of fair housing laws, the City has the ability and the responsibility to address them. Specifically, in its final Rules, the City should adopt the following measures:

1. Create a centralized system for marketing, leasing and selling ARO units.

A centralized system is consistent with the Commissioner's broad authority under the ordinance to "adopt such rules as the Commissioner may deem necessary for the proper, implementation, administration and enforcement of this section."[6] It is also an effective approach for ensuring that the shared commitments described above are met. Indeed, the City's Task Force Staff Report stated as much. Citing broad support for the proposal among "most members of both [tenant and developer] groups," the staff explicitly recommended "a centralized leasing and marketing system to more efficiently, fairly, and transparently fill vacancies in affordable ARO units."[7]

Other cities have taken this approach to administering their inclusionary housing program. For example, San Francisco has an Inclusionary Housing Program that includes over 3,000 affordable units. The Mayor's Office for Housing and Community Development handles the pricing, marketing, and leasing of these units through an application process available on a city-managed housing portal. Available units are filled via lottery among qualified applicants, with various preferences given, based on the type and location of the unit (e.g., people with disabilities are preferred for accessible units; previously displaced and current residents are preferred in gentrifying areas). Consistent with the City's obligation to affirmatively further fair housing, the application makes explicit that Housing Choice Vouchers and other rental assistance programs are accepted, and that applicants with prior justice involvement will be considered under the City's Fair Chance Ordinance.[8]

Similarly, Cambridge Massachusetts' Community Development Department (CDD) administers the city's Inclusionary Housing Rental Program's "Rental Applicant Pool." CDD determines eligibility, and identifies and maintains a pool of eligible applicants that are referred to properties with available affordable units for their approval. The Rental Applicant Pool groups eligible applicants according to household size and composition, as well as CDD's selection preferences, including those who live and work in Cambridge, households with children, and those with an emergency housing need. The program's website makes clear that applicants with Housing Choice Vouchers are eligible to apply and do not need to meet general minimum income requirements.[9]

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[6] Chicago Mun. Code at 2-44-085(Q).

[7] Task Force Report at 45.

[8] Information on San Francisco's program can be found at: Inclusionary Housing Program | Mayor's Office of Housing and Community Development (sfmohcd.org) and DAHLIA San Francisco Housing Portal (sfgov.org)

[9] Information on Cambridge's Program can be found at: Rental Applicant Pool - CDD - City of Cambridge, Massachusetts (cambridgema.gov).

A centralized system in the City of Chicago should:

- Take responsibility for marketing ARO units and do so in a manner that advances ARO goals and fair housing.
- Provide a single, central portal for people to learn about current and impending availability in the ARO program and to apply for ARO housing opportunities. This should include the ability to apply for specific units as well as to apply, and be income qualified for, affordable units generally so that prospective tenants can be proactively notified and considered as units come online.
- Cross-list units in other existing portals that serve populations similar to those intended to benefit from the ARO program, such as listing provided by the IHDA.[10]
- Partner with housing counseling agencies and community-based organizations that can most effectively ensure that intended beneficiaries of the ARO program are reached. This should include providing these partners with regular information on units that are coming online and impending vacancies, and allowing residents they serve to apply as early as possible. The City should also consider allowing and paying these partners to conduct outreach and assist individuals with the application process.
- Eliminate fees and unnecessary risk assessments that create barriers for families intended to benefit from the ARO program.
- Include universal application standards for ARO affordable units that avoid unnecessarily restrictive requirements and/or requirements that disparately impact protected classes, such as blanket "no eviction" policies and income requirements that discriminate against voucher holders.
- Ensure that any rent increases and increases in utilities are compliant with state and local law, as well as ARO requirements. Recently, one ARO developer notified tenants of their affordable units that their rents would be increased mid-lease because the developer would be "implementing the City's new rates."[11]
- End the current "first-come first served" preference and random lottery and instead preference ARO applications that advance program and fair housing goals including:
    - Preference people with disabilities for accessible units;[12]
    - Preference previously displaced and current residents in gentrifying communities;
    - Preference applicants from lower-opportunity communities for units in high-opportunity areas; and

[10] See, https://ilhousingsearch.org/.

[11] In a similar vein, the City should develop tenant- and developer-facing materials that clearly lay out Program rules and requirements, including a clear description of programmatic rental rates.

[12] This preference is explicitly called for in the 2021 ARO Ordinance: "All on-site affordable units must be accessible dwelling units, as that term is defined in Section 17-17-0202. The developer shall give preference in leasing or selling such units to people with disabilities as specified in the rules." 2021 ARO Ordinance at (W)(10).

- Preference applicants with children for multi-bedroom units.[13]

Beyond a centralized system, there are additional measures the City should adopt in its final rules to ensure that housing discrimination is eliminated from the ARO Program. As noted above, the City has tools and levers available through the ARO ordinance that can and should be used to ensure ARO developers do not engage in the same discrimination that pervades Chicago's private housing market generally.

2. **The Rules should include explicit measures to ensure developer compliance with fair housing law.**

The final Rules should include an explicit and effective framework for ensuring that ARO developers and their agents are knowledgeable of, and in compliance with, fair housing laws. Specifically, the Rules should:

- Mandate fair housing training for all ARO developers and any agents they intend to use for marketing, leasing, sales, etc. This training must cover federal, state, and local laws, including source of income discrimination and the Just Housing Amendment, as well as practices that are known to disparately impact protected classes.
- Require developers and their agents to submit to the City a written affirmation that they understand and will fully comply with fair housing laws as a condition of their participation in the program.
- Treat discrimination by ARO participants as non-compliance with the Program that is subject to the broad enforcement powers granted to the Commissioner under section (P) of the ordinance, including fines, monetary penalties, and recovery of funds. This should be in addition to any private remedies available to those harmed by such discrimination under the law. Developers and their agents should explicitly acknowledge that they understand that discrimination will be treated as non-compliance in the affirmation they sign.
- Develop and apply a clear framework for addressing non-compliance that includes: explicit processes and timelines; dedicated investigatory and enforcement resources; and collaboration with other agencies, such as Chicago Commission on Human Rights and the Chicago Housing Authority, where advantageous to ensuring compliance.

A number of housing programs use program-specific levers to address housing discrimination. For example, the U.S. Department of Housing and Urban Development (HUD)'s Affirmatively Fair Housing Marketing (AFHM) regulations allow individuals, and private and public entities, to file complaints with any monitoring office, or HUD's Office of Fair

[13] The 2021 ARO Ordinance envisions and directs that the City develop such a system for prioritizing ARO applicants, stating that "the Department shall develop… a tenant or home buyer selection plan *that outlines applicant qualification criteria and procedures and waiting list protocols.*" 2021 ARO Ordinance at Section 8 (emphasis added).

Housing and Equal Opportunity alleging violations of AFHM regulations or an approved AFHM plan.[14] Sanctions can include banning the developer from participation in future HUD programs.[15] Similarly, the City of Kalamazoo, Michigan requires participating developers to use an affirmative marketing plan for affordable units. Where a developer fails to do so, and after an opportunity to correct the deficiencies, the city treats the failure as "a breach of the terms of the agreement with the City" subject to enforcement. [16]

3. The Rules should include explicit affirmative guidance and standards to avoid practices that disparately impact protected classes.

The ARO Ordinance requires the Department to develop "a tenant or home buyer selection plan that outlines applicant qualification criteria and procedures and waiting list protocols."[17] As part of this, the City's rules for application and leasing should use best practices to ensure ARO units are leased in a manner consistent with federal, state, and local fair housing law.

Specifically, the City should amend the Draft Rules' requirement that "landlords may not apply criteria or charge fees to tenants applying to rent affordable units that are not applied or charged to tenants applying for market rate units." Requiring uniform standards across all units in ARO buildings fails to account for the fact that facially neutral standards can functionally discriminate against members of protected classes. Many common tenant screening practices, such as credit and background checks, have an adverse disparate impact on protected classes. The Rules should safeguard against this by requiring that developers only use non-discriminatory standards. Acceptable standards should only screen residents for their ability to maintain lease compliance without regard to their membership in a protected class.

Conviction and Eviction History. The City should require that all ARO applicants be given an individualized assessment to determine whether the applicant is likely to comply with lease requirements, rather than rely on eviction and conviction background checks, tenant screening services, or credit scores. The criminal and civil legal systems produce an abundance of information that landlords often use to disqualify applicants.[18] The most used pieces of information in the criminal-legal context are arrest and conviction records.[19] The most used pieces of information in the civil-legal context are eviction filing records[20] or other litigation involving a prior landlord (e.g., participating in a previous housing court case against a former

[14] 24 C.F.R. § 108.35.
[15] 24 C.F.R. § 108.50.
[16] Information on Kalamazoo's policies can be found at: https://www.kalamazoocity.org/docman/housing-documents/191-affirmative-marketing-policies-and-procedures-for-affordable-housing/file
[17] ARO Ordinance, Section 8.
[18] *See e.g.* Shriver Center on Poverty Law, *Screened Out: How Tenant Screening Reports Undermine Fair Housing Laws and Deprive Tenants of Equal Access to Housing in Illinois* (2020), *available at* https://www.povertylaw.org/wp-content/uploads/2021/01/tenant-screening-final-report.pdf
[19] *See e.g.* BPI and Roosevelt University, *No Place to Call Home: Navigating Reentry in Chicago* (2018) *available at* https://www.bpichicago.org/wp-content/uploads/2018/09/No-Place-To-Call-Home.pdf
[20] *See e.g.* Lawyers' Committee for Better Housing and Housing Action Illinois, *Prejudged: the Stigma of Eviction Court Records* (2018) *available at* https://eviction.lcbh.org/reports/prejudged

landlord). In both areas, records are often filled with errors and are presented in a way that makes the circumstances they purportedly describe difficult to decipher. Social science research finds that they are not a reliable predictor of an individual's future performance as a tenant.

The Just Housing Amendment (JHA) to the Cook County Human Rights Ordinance went into effect in January 2020 and protects over 5 million people across the City of Chicago.[21] Under the ordinance and regulations promulgated by the Cook County Human Rights Commission, a landlord may only consider adult conviction records that are less than three years old, and that are not sealed or expunged.[22] The JHA requires that an applicant be prequalified for a unit by determining whether they first meet all other criteria for tenancy before running a conviction background check. ARO Rules and guidance should ensure that ARO developers are in compliance with this requirement. Prequalification should include any income qualifications required by the ARO, and developers and their agents should be prohibited from performing a conviction background check until that has occurred.

Under the JHA, a landlord is obligated to inform the applicant of its screening criteria during the initial application stage. If the landlord runs a conviction background check after an applicant has been prequalified, and the report shows the applicant has a conviction less than three years old, the landlord must give the applicant the chance to dispute both the accuracy of the report and whether it is "relevant," i.e., whether the applicant's conviction history makes it more likely they will pose a demonstrable risk to persons or property. If the report is accurate and the information it contains is relevant, the provider must still conduct an "individualized assessment" that considers a number of factors, including: the individual's history as a tenant before and after the conviction; the nature, severity, and recency of the conviction; the age at time of conviction; any evidence of rehabilitation; and other factors as the landlord sees fit. This individualized assessment helps landlords understand a given conviction and consider its complex circumstances. Based upon that assessment, the housing provider should determine whether all the information, taken together, still makes it necessary to deny the applicant.[23] ARO developments must conduct the same individualized assessments as other housing providers in Cook County who are subject to the JHA,

Credit and Other Tenant Screening. ARO developers should also not be allowed to require minimum credit scores for ARO affordable units or deny an application solely based on information contained in a tenant screening report. Instead, the City should require developers

[21] See Cook County, IL, Just Housing Amendment to the Human Rights Ordinance, https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance

[22] The housing provider may consider whether the applicant is subject to a sex offender registration requirement or a child sex offender restriction, even if the conviction that serves as the basis for the registration requirement or restriction is more than three years old. Cook Co. Code of Ordinances § 42- 38(c)(5). The ordinance also does not supersede any restrictions that may be imposed under federal or state law.

[23] See Cook Cnty. Code of Ordinances § 42-38; Cook Cnty. Comm'n on Human Rts., Procedural Rules and Substantive Regulations pt. 700. More information is available on the Cook County's Just Housing Amendment website.

to provide an individualized assessment of the tenant's ability to ensure the rent is paid and abide by the terms and conditions of the tenancy. Lower-income renters—who are much more likely to be members of protected classes under federal, state, and local fair housing law—generally have lower credit scores because the calculation only looks at credit and loan payment history, length of credit history, types of credit, and number of accounts. Noticeably missing is a history of on-time rental payments, even though most lower-income tenants prioritize rental payments over nearly all other expenses. As a result, many studies show that people of color are much more likely to have lower credit scores than white people. For example, the Woodstock Institute found that Black consumers were more than four times as likely to have very low credit scores compared to white consumers, and white consumers were three times more likely to have very high scores.[24] Credit reports also frequently contain errors, and according to the Federal Trade Commission up to one in four people have errors in their report that negatively impacts their score.[25]

Third-party tenant screening companies have proliferated in recent years and there is currently no industry-wide standard for how these companies ensure accuracy of the reports or what information is contained in them.[26] These reports systemically block renters of color, who face well-substantiated barriers to accessing credit, wealth, and banking, from the ability to access rental housing.[27] Inaccurate and racially discriminatory credit scores or tenant screening reports should not be used to restrict access to ARO units. Instead, the City should require developers to provide an individualized assessment of the tenant's ability to ensure the rent is paid and abide by the terms and conditions of the tenancy.

4. **The Final Rules should ensure that marketing standards are designed to affirmatively further fair housing**.

As discussed above, current "marketing plans" used in the ARO Program appear to be marketing plans in name only. Our FOIA results indicate that ARO developers do not submit information on how they intend to market units and that the City does not have established standards for evaluating marketing plans. It is our understanding from discussions with City officials that a more robust Affirmative Fair Housing Marketing Plan is being developed and will soon be published in draft form for comment. We look forward to discussing the forthcoming Plan with the City and offer these recommendations for consideration as the Draft Plan is finalized:

- The Draft Plan should have clear, effective standards for marketing units. This should include standards for where and through whom units are marketed, as well

[24] https://woodstockinst.org/wp-content/uploads/2013/05/bridgingthegapcreditscores_sept2010_smithduda.pdf
[25] https://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports
[26] Lauren Kirchner & Matthew Goldstein, How Automated Background Checks Freeze Out Renters, N.Y. TIMES, May 28, 2020, https://www.nytimes.com/2020/05/28/business/renters-background-checks.html (quoting representative of an industry trade group, who acknowledged that no industry standard exists).
27 See e.g. Kaveh Waddell, How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times, Consumer Reports, March 11, 2021, https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/

as standards for ensuring that marketing materials are produced in plain language, accessible formats, and in multiple languages. As is discussed below, it should also include measures for evaluating the effectiveness of the Plan and actions taken by developers pursuant to it. The City should ensure that it can determine which marketing strategies work and are being faithfully implemented, and which are not.

- As much as possible, the Marketing Plan and its standards should be stated in the ARO Rules.
- Developers should be required to affirmatively state in any marketing materials or advertisements that Housing Choice Vouchers are accepted and fair housing laws are complied with. Discriminatory advertising and marketing materials should be explicitly forbidden and subject to enforcement action.
- Marketing strategies should vary depending on characteristics in the community where the housing is located. For example, ARO housing in gentrifying communities should be marketed to existing low-income residents and recently displaced residents. ARO housing in a high-opportunity area should be marketed to people who do not already live in the area and may have historically faced barriers to accessing it. Any existing guidance that may be incorporated into the new plan should be assessed for its potential to advance or hinder ordinance goals. For example, current guidance that a developer's marketing should target "income-qualified people who live or work in the neighborhood surrounding your development"[28] should be discontinued for units in high-opportunity, historically exclusive communities.
- Accessible units should be marketed in locations and through community partners that routinely engage with people with disabilities and seniors.

The City should learn from, and improve upon, the affirmative marketing plans of similar programs, beginning with the affirmative fair housing marketing regulations for certain HUD programs. HUD has standardized affirmative marketing practices in its Affirmatively Fair Housing Marketing (AFHM) regulations. These regulations require developers to identify who is "least likely to apply" by comparing the project census tract and housing market in terms of demographics, including race and ethnic groups, people with disabilities, and families with children. Developers must then clearly articulate an outreach plan to target those who are least likely to apply. The outreach plan must include at least one community contact and at least one method of advertising, with justification about how the advertising method will reach those who are least likely to apply.[29]

Other jurisdictions have expanded on HUD's affirmative requirements. For example, the City of Kalamazoo, Michigan requires developers to target racial and ethnic groups that are underrepresented in the development as compared to the City overall, rather than compared

[28] 2015 ARO For-Sale Marketing Form updated August 2015 effective October 13, 2015 at p. 3.
[29] https://www.hud.gov/sites/dfiles/OCHCO/documents/935-2A.pdf

to the developer-selected "housing market area" as is required in AFHM regulations.[30] The State of Massachusetts outlines specific requirements in their Affirmative Marketing guidelines, requiring:[31]

- Newspaper ads run at least twice over a sixty-day period, and advertisements targeting regional, local, and minority news sources.
- Applications for affordable units to be available at public locations, including at least one that has some night hours.
- Developers to conduct informational meetings during weekend or evening hours to educate applicants about the application process and about the housing development.
- Affordable units to be placed on certain public government-run registries.

5. The Rules should require disaggregated data collection and analysis sufficient to determine whether the ARO Program is affected by discrimination and otherwise achieving its fair housing goals.

To achieve the important goals of the ARO Program, it is imperative that the City collect and assess data on its implementation. It will be impossible to determine whether marketing strategies are effective, tenant selection processes are prioritizing the right residents, and overall policy goals of the Program are being met if its performance is not measured. Such an approach is consistent with the Ordinance's directive that "the Department shall develop policies and procedures to ensure a fair and transparent rental and sale process."[32]

As noted above, current data collection practices are inadequate. Even if TIC forms were being consistently filled out, the City would still only know information about the prospective tenants ARO developers put forth for income verification. This is a small portion of the overall process and fails to capture performance, and potential discrimination, that occurs before and after income certification is sought.

The Draft Rules' Monitoring and Reporting Requirements for for-sale units (Section 9.6.2) and for rental units (Section 10.6) are also inadequate. In the Final Rules, the City should describe a data collection and analysis framework that allows it to effectively evaluate whether individual ARO developers, and the ARO Program as a whole, are successfully meeting the Ordinance's goals. Such a framework should include:

- Regular collection of data that is disaggregated by race, ethnicity, disability status, housing voucher holders, as well as other protected classes, and by community area of applicants.

[30] Information on Kalamazoo's policies can be found at: https://www.kalamazoocity.org/docman/housing-documents/191-affirmative-marketing-policies-and-procedures-for-affordable-housing/file
[31] Information on Massachusetts's policies can be found at: https://www.mass.gov/files/documents/2016/07/oj/afhmp.pdf
[32] 2021 ARO Ordinance at Section 8.

- Collection of data at each step of the rental and sale processes sufficient to determine whether intended beneficiaries are being reached/served and where overall results are unsatisfactory to enable the City to identify where the system is failing. This should include the collection of data, disaggregated as described above, on:
    - Who is reached by marketing plans;
    - Who inquires about each available unit;
    - Who applies for each available unit;
    - Who is approved by the developer for each available unit;
    - Who is denied by the developer for each available unit, along with a reason for the denial;
    - Who leases or purchases a unit, including accessible units; and
    - Tenants whose leases are not renewed, along with an explanation of why the lease was not renewed.

The Final Rules should also specify that the City will publish data it collects, at both the Program level and building level, with appropriate measures to protect the personal information of ARO unit applicants. Publication of data should occur quarterly and should also include an analysis of the data by the City that identifies areas where ordinance goals are being met and areas where performance is unsatisfactory. Where performance results do not meet Program expectations, the City should engage with developers and other stakeholders to identify and undertake corrective measures at the Program and/or developer-specific levels.

In acting upon this recommendation, the City can learn from, and improve upon, the efforts of other jurisdictions that take similar approaches to their fair housing programs. For example, the State of Connecticut requires any developer who receives financial assistance from the Connecticut Department of Housing to report racial and economic data of applicants and tenants at three points: 1) after the period of submission of applications; 2) after applicants have been pre-screened; and 3) after the final selection of applicants.[33] The three reporting points enable the State's affirmative action office to then use the demographic data to take corrective measures, including through a compliance meeting and additional outreach where warranted.

6. The City should ensure minimal vacancy in the ARO Program.

The City should track and ensure that ARO affordable units are occupied throughout the 30-year affordability period. We are aware of specific instances of ARO units remaining vacant for extended periods of time. We have also heard from at least one real estate agent that an ARO developer directed its agents not to rent out affordable units. Our testing of buildings in the ARO program has also revealed several instances where leasing agents were unaware of, or purportedly unaware of, ARO units in a building. Given the acute affordable housing crisis in Chicago, there is no reason for a properly marketed, high-quality affordable unit to remain vacant and the City should require that any vacancies are addressed expediently and in a

[33] Connecticut Fair Housing Regulations, §8-37ee-7.

manner consistent with other fair housing measures and priorities. The Rules should thus include a timeline for unit turnover and lease up complying with industry standards, and regular reporting to the City regarding any turnover and leasing timeline. The City should similarly have a protocol for approving and monitoring any offline units to ensure that the proper number of affordable units remained leased throughout the 30-year affordability period. This recommendation is also consistent with the Ordinance's requirement that the City develop "a management plan that describes processes for filling vacancies and maintaining the habitability of affordable dwelling units."[34]

7. **The Final Rules should ensure that ARO units have the same amenities as market rate units.**

The Draft Rules encourage, but do not require ARO units and market-rate units to have the same in-unit amenities and finishes. This creates potential fair housing issues that the City could more effectively guard against by reminding developers that they have a fair housing obligation to not discriminate on the basis of protected classes under federal, state, and local fair housing law in the terms, conditions, or privileges they offer.

Further, the Rules are silent as to how the City will effectively monitor whether residents have access to the same on-site amenities as market rate units, as is required by the 2021 ARO Ordinance, which states:

> *Affordable units shall have access to all on-site amenities available to market rate units, including the same access to and enjoyment of common areas and facilities in the residential development (or off-site location in the case of off-site affordable units).*[35]

Despite this, the Draft Rules do not require ARO residents to have equal access to amenities available at the building, such as access to recreation space, pools, community rooms, and other features that are generally available at these luxury developments. The City should make this requirement explicit to developers and ARO residents, and treat failure to adhere to it as non-compliance. ARO residents should not be charged more than is reasonably necessary to ensure those amenities are maintained. The City should likewise review and approve any fees that are proposed for ARO residents.

8. **The Final Rules should retain the assurance that ARO tenants are not evicted without cause.**

We applaud the City for including protections against no-cause evictions in the Draft Rules and want to strongly express our support for retaining those important protections in the Final Rules. We also recommend that the City provide guidance to ARO developers and ARO tenants on these important protections. When implementing this requirement, we also

[34] 2021 ARO Ordinance at Section 8.
[35] 2021 ARO Ordinance at 2-44-085(w)(2).

recommend that the City ensure that developers are aware of and amenable to emergency rental assistance for tenants that need it.

9. The City's income verification and appeal process should be clearly articulated and directly involve prospective ARO tenants.

Current ARO procedures exclude prospective ARO tenants from direct involvement in the income verification process. This creates anxiety for prospective tenants, enables potential discrimination in the ARO Program, and has led in multiple confirmed cases to a qualifying tenant being denied an ARO unit due to errors in the income certification process unknown to them at the time. In one instance, the City found that a prospective tenant did not meet income qualification based upon a handwritten form erroneously filled out by her employer. Follow-up conversations with DOH officials revealed that this form was treated as more reliable than numerous pay stubs submitted by the tenant because it was received later and thus was considered a more recent indicator of her income. Because she was excluded from the certification process, she had no opportunity to correct the mistake (in fact, she was unaware it had happened until she submitted a FOIA request) before missing out on the unit. She later learned that there was an informal rule in the Program that prohibited her from accessing an ARO unit for 12 months after she (erroneously) failed the certification process.

The Draft Rules move in the right direction, creating an "Appeals for Income Determination" process,[36] however, the Final Rules should go further. The Draft Rules still put a prospective tenant at the mercy of a developer who may or may not be motivated to ensure the tenant is treated fairly. Specifically, the Draft Rules still only require that notification of denial be sent to the developer, and not the applicant, and create a limited, 10-day window for appeal that begins when the developer, not the applicant, receives notification. Should the applicant decide to appeal, that appeal must be filed through the developer. This approach disempowers ARO applicants and puts them at the mercy of a developer who may or may not be motivated to help the tenant. The Final Rules should directly involve ARO applicants in the income verification and appeals process. They should also require that any rules related to income qualification be in writing, including the option and process to appeal, standards and methods for verifying income, and any adverse consequences that may result from being denied income certification.

Having advocated for its passage, we are excited by the potential of the 2021 ARO Ordinance and look forward to working with you to ensure that its important goals are met. Should you have any questions about or wish to further discuss our comments, please do not hesitate to reach out to any of the undersigned organizations and individuals.

[36] Draft ARO Rules, Section 10.5.

Sincerely,

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