



April 24, 2023

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-6250-P-01, Affirmatively Furthering Fair Housing

PolicyLink applauds the U.S. Department of Housing and Urban Development (HUD) for taking the necessary steps towards clarifying and strengthening the federal government's obligation to affirmatively further fair housing. Housing choice – especially for low-income communities and communities of color – is a critical component of equitable and economically prosperous regions.

As the nation becomes a majority people-of-color country, the face of many neighborhoods is changing in the process, but the persistence of deep and entrenched patterns of segregation continues. To advance equity, PolicyLink advocates for groundbreaking policy changes that enable everyone, especially people of color, to be economically secure, live in healthy communities of opportunity, and benefit from a just society. PolicyLink is guided by the belief that the solutions to the nation's challenges lie with those closest to these challenges: when the wisdom, voice, and experience of those traditionally absent from policymaking drive the process, profound policy transformations emerge.

Our comments uplift provisions of the proposed rule that we believe will be critical to its success in advancing equity, as well as areas in which the rule can be improved to maximize impact and results. **Broadly, we applaud and strongly support the following improvements to the rule:**

- Encouraging a balanced approach to creating and cultivating Equity Plan goals that acknowledges both place-based and mobility-focused strategies;
- Increasing the clarity and expectations set for community engagement activities required of program participants; and
- Including a complaint process through which residents, community organizations, and advocates can hold program participants accountable to fulfilling their AFFH obligations.

In order to strengthen the proposed rule, we prioritize recommendations to the following areas, which will be described in detail in the relevant sections in the NPRM. These include:

- Improving upon HUD's current definition of key terms, which shape how the proposed rule is interpreted and applied by program participants;
- Expanding the list of questions that Equity Plans need to address, and therefore, growing the list of fair housing goals that program participants must set to include a broader analysis of fair housing factors;

- Increasing transparency in the Equity Plan creation process to allow for more engagement, tracking and accountability for all stakeholders, including HUD, program participants, and community members;
- Strengthening the set of data resources and tools that program participants and stakeholders will have access to in shaping Equity Plans and setting fair housing goals; and
- Embracing the full scope of HUD’s AFFH mandate by taking actions that work towards fulfilling AFFH obligations more comprehensively across agencies, programs, and policies.

As requested, our comments on various aspects of the proposed rule are organized by specific sections in the NPRM.

Executive Summary

Legal Authority

We encourage HUD to include the following citations in the “*Summary of Legal Authority*” to cite the full breadth of legal authority that supports the proposed rule and strengthen HUD’s full authority to implement the proposed rule.

- Related to Regional Analysis – the following authorities recognize segregation’s regional and intermunicipal impact:
 - *Hills v. Gautreaux*, 425 U.S. 284, 285 (1976)
 - *Thompson v. U.S. Dep’t of Hous. & Urb. Dev.*, 348 F. Supp. 2d 398, 409 (D. Md. 2005)
 - *Gautreaux v. Chi. Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969)
 - *Blackshear Resident Org. v. Hous. Auth. of the City of Austin*, 347 F. Supp. 1138 (W.D. Tex. 1972)
 - *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971)
 - *U.S. v. Charlottesville Redevelopment & Hous. Auth.*, 718 F. Supp. 461 (W.D. Va. 1989)
 - *Banks v. Hous. Auth. of City & Cnty. of S.F.*, 120 Cal. App. 2d 1 (Cal. Dist. Ct. App. 1953)
 - *Jorman v. Veterans Admin.*, 579 F. Supp. 1407 (N.D. Ill. 1984)
 - *S. Burlington Cnty. N.A.A.C.P. v. Mt. Laurel*, 67 N.J. 151 (1975)
 - *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977)
 - *Lopez v. City of Dallas, Tex.*, 2006 WL 1450520 (N.D. Tex. 2006)
- Related to Environmental Justice – the following authorities recognize the relationship between housing inequity and environmental equity:
 - *S. Camden Citizens Action v. N.J. Dep’t of Env’t Prot.*, 145 F. Supp. 2d 446 (D.N.J. 2001)
 - *Californians for Renewable Energy v. U.S. EPA*, 2018 WL 1456211 (N.D. Cal. 2018)
 - *E. Bibb Twig Neighborhood Ass’n v. Macon-Bibb Cnty. Plan. & Zoning Comm’n.*, 706 F. Supp 880 (M.D. Ga. 1989)
 - *R.I.S.E., Inc. v. Kay*, 763 F. Supp. 1144 (E.D. Va. 1991)
 - *S. Bronx Coal. for Clean Air, Inc. v. Conroy*, 20 F. Supp. 2d 565 (S.D.N.Y. 1998)

- *Franks v. Ross*, 293 F. Supp. 2d 599 (E.D.N.C. 2003)
- *Rosemere Neighborhood Assoc. v. U.S. EPA*, 581 F.3d 1169 (9th Cir. 2009)
- Related to Education – the following authorities recognize the relationship between school segregation and housing segregation:
 - *U.S. v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2nd Cir. 1987)
 - *Booker v. Bd. of Educ. of City of Plainfield, Union Cnty.*, 45 N.J. 161 (1965)
 - *Holland v. Bd. of Pub. Instruction of Palm Beach Cnty.*, 258 F.2d 730 (5th Cir. 1958)
 - *Dowell v. Sch. Bd. of Okla. City Sch.*, 244 F. Supp. 971 (W.D. Okla. 1965)
- Related to Housing Insecurity – the following authorities address the relationship between housing insecurity and fair housing:
 - *Thorpe v. Hous. Auth. of City of Durham*, 386 U.S. 670 (1967)
 - *Lewis v. Hous. Auth. of City of Talladega*, 397 F.2d 178 (5th Cir. 1968)
 - *Tejeda v. Littlecity Realty LLC*, 308 F. Supp. 3d 724 (E.D.N.Y. 2018)
 - *Garrett v. Hamtramck*, 503 F.2d 1236 (6th Cir. 1974)
 - *Darst-Webbe Tenant Ass’n Bd. v. St. Louis Hous. Auth.*, 339 F.3d 702 (8th Cir. 2002)
 - *L.A. All. for Hum. Rts. v. Cnty. of L.A.*, 14 F.4th 947 (9th Cir. 2021)

Applications

Addressing the Full Scope of the AFFH Mandate

HUD is not the only federal agency with an obligation to affirmatively further fair housing. The agency has a significant role in providing leadership to and coordinating with other agencies to ensure that they administer their programs and policies related to housing and urban development in a manner consistent with the AFFH mandate.¹ We strongly encourage HUD to form and execute an Interagency Council with a mandate for federal agencies to fulfill their AFFH obligations through the implementation and enforcement of the 1968 Fair Housing Act. HUD can also create or revive MOUs with other executive agencies and departments regarding their AFFH obligations.

Definitions

In addressing Question 31 of HUD’s “Questions for Comments”, we provide the following feedback on definitions:

“Affirmatively Furthering Fair Housing”

We applaud the definition of “affirmatively furthering fair housing” because of its inclusion of the following sentence: “. . .it extends beyond a program participant’s duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination that the Fair Housing Act

¹ The Fair Housing Act requires “[a]ll executive departments and agencies” to “administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.” 42 U.S.C. § 3608(d).

was designed to redress.” This is an important reminder to program participants that in addition to taking actions and making investments that will eliminate segregation, discrimination and inequitable policies from the housing market, they must achieve outcomes related to those actions. It also underscores that the obligation to AFFH extends to all programs and activities related to housing and community development.

“Affordable Housing Opportunities”

In response to Question 6 of HUD’s Questions for Comments, HUD should refine the current definition of “affordable housing opportunities” to align the definition with the standards that HUD program participants are actively utilizing to describe the relationship between rents and residents’ available income. Defining “affordable housing” as housing that requires a household to spend less than 30 percent of their adjusted income on housing expenses (rent or mortgage and utilities) would provide program participants with more specific guidance for their work throughout the AFFH process. The analysis of affordable housing must be reviewed for households at all income levels, including extremely low income, very low income, and low income.

Additionally, HUD should separate “affordable housing” from “opportunities” in this definition. Currently, the use of “opportunities” in the “affordable housing” definition makes an assertion that opportunities can only be found in affluent areas that have hoarded wealth and utilized policies to dominate policy making structures and systems, which have led to the inequities we see today. As will be discussed in more detail below, the word “opportunities” should have its own definition given its frequency of use throughout the proposed rule and that it is separately used to discuss “homeownership opportunities.”

“Balanced Approach”

In response to Question 12 of HUD’s Questions for Comments, we strongly support the addition of this term because it makes abundantly clear to program participants that they are expected to use an AFFH strategy that includes both the revitalization of neighborhoods that have concentrations of racially and ethnically concentrated poverty, *and* the enhancement of mobility strategies and expansion of access to communities that have benefited from disproportionately high levels of public and private investment. We strongly encourage HUD to frame and require the balanced approach in a way that does not favor or prioritize mobility strategies over investment strategies, and to hold them as equally important. Strategies employed by program participants must be tailored in a way that opens up access to neighborhoods that are proximate to greater opportunities and to high quality, safe, and affordable housing, while investing in the historically-disinvested neighborhoods where marginalized members of protected classes already call home and have family, jobs, and community. The addition of the term “racially concentrated areas of affluence” – which is described below – and its incorporation into fair housing analyses will strengthen the requirement for a balanced approach.

“Community Assets”

In response to Question 18 in HUD's Questions for Comments, the current definition of "community assets" suggests that assets are not available in communities that have faced substantial historical disinvestment. This runs the risk of perpetuating the inequitable distribution of investments to already high-opportunity areas instead of areas that are in desperate need of substantial investments. Furthermore, it erases the voices of people who live in racially/ethnically concentrated areas of poverty because it does not acknowledge that these neighborhoods are also home to community assets that they have created in the absence of public and private support and investment. This definition must be expanded to acknowledge that disinvested communities have plenty of community assets, and while they may not receive the same level of funding as majority white and affluent neighborhoods, they are still home to crucial assets to local community members and their livelihood. Additionally, not all community assets are directly related to affecting the quality of housing opportunities, as the definition suggests; some community assets provide spaces for healing, community and cultural engagement, and recreation, all of which are key components of healthy, prosperous lives of abundance and joy. Lastly, the use of the term "desirable" in this definition is problematic because "desirable" is often used as coded language for "white and affluent." It is especially important to consider that the word "desirable" was used in redlining to refer to areas in which fewer people of color lived. Inclusion of this word to describe communities without defining it risks perpetuating harmful narratives and practices. The definition of "community assets" must be expanded to acknowledge that government policy and private activity have led to the inequitable concentration and hoarding of "assets" as commonly interpreted - such as high performing schools, employment opportunities, transportation services, and well-maintained parks and recreation facilities - in white geographies.

"Equity or Equitable"

We encourage HUD to redefine "equity" to include outcomes-based language, especially when considering that the framework of equity, unlike equality, considers how structural forces prevent equal outcomes from occurring. The AFFH mandate within the Fair Housing Act highlights the need for outcome-based actions through remedies that address previous harms created by discriminatory policies and practices. Adjusting this definition to be more distinct from equality is *critical* for the success of impacts seen through the AFFH process, as it is the foundation for the rule and sets the tone for how program participants will engage with the process, and set their fair housing goals. Without a clear definition that truly evokes the framework of equity, program participants run the risk of creating goals that do not alleviate the disparities they are seeing in their jurisdictions, and potentially cause more harm than good. Expanding the definition of equity to include an orientation towards equitable outcomes will also align this definition better with the definition of "AFFH," which includes program participants' requirement to achieve outcomes.

Opportunity, Access, and Choice

There is a lack of clarity about what HUD refers to when using the terms "opportunity," "access," and "choice" to describe an individual's relationship with the housing market. These terms should not be used interchangeably and must be given their own definitions if they are being utilized throughout the proposed rule. Inconsistent usage of these terms may have ramifications

for the ways program participants can create truly meaningful, targeted goals that address existing inequities and their local impacts. Opportunity and access, for example, have very distinct nuances that are reflected in the current barriers to housing that people experience. The creation of new housing opportunities in the proximity of protected class groups does not guarantee that they have equal access to the opportunities. Furthermore, the strategies and policies that are required to address access to housing may be different than those needed to create and promote greater choice. For instance, changes to tenant screening to reduce their discriminatory effect may increase access to housing, but increased investments in the production of deeply affordable housing across geographies is required to achieve greater housing choice.

Currently, “access” as it is utilized in the proposed rule suggests that the onus is on an individual to have access to a housing opportunity, when that is not the case for many individuals who have had that access revoked because of an eviction record, landlord discrimination, or algorithmically fabricated rent hikes. We recommend defining access in a manner that illustrates a minimum threshold where the policies and practices of local institutions and government departments foster a system where all groups in a community can reliably acquire, use, or be admitted into. Supporting comments made by the National Housing Law Project, “accessibility,” “access,” and “accessible” should also be distinguished and defined. Opportunity can be defined as the possibility for someone, within the context of a situation or set of circumstances, to attain housing, without obstacles. Choice should be defined as when an individual is able to utilize their own preferences to decide amongst various alternative housing opportunities, without the undue influence of external entities or factors. It should be acknowledged that “choice” often is systemically restricted, and thus limits access and opportunities. Housing opportunity, for example, should identify the various possible housing units that an individual can choose from, while housing choice, for example, would denote that out of all the possible alternatives available to someone, they have and can make the choice to stay in their own community.

Racially Concentrated Areas of Affluence (RCAA)

HUD should, in addition to Racially/Ethnically Concentrated Areas of Poverty (R/ECAP), include a definition for Racially Concentrated Areas of Affluence or Wealth (RCAA). The inequities in our housing system would not exist if it weren't for the actions of those living in RCAs to hoard opportunity and wealth, thus creating R/ECAPs. We cannot acknowledge the existence of one without the other. In suggesting the addition of this term, we cite an article by Goetz, Damiano and Williams published by HUD's Cityscape journal: “Racially Concentrated Areas of Affluence: A Preliminary Investigation.”² This article notes:

“The continued elision of White neighborhoods of concentrated affluence and social power within normative inquiry reinforces the decades-old tendency to problematize low-income communities of color, while at the same time sparing White neighborhoods

² Edward G. Goetz, Anthony Damiano, and Rashad A. Williams, Cityscape, 2019, “Racially Concentrated Areas of Affluence: A Preliminary Investigation.”

<https://www.huduser.gov/portal/periodicals/cityscpe/vol21num1/ch4.pdf>

and the advantages they embody from examination of any kind. Analyses of segregation that disregard RCAAs understate the degree to which advantage and disadvantage, opportunity and inopportunity, and mobility and immobility are integrally linked.”

In order to truly encourage a balanced approach to AFFH, program participants must perform an equal assessment of R/ECAPs and RCAAs. The inclusion of this definition will add another layer of analysis for program participants so that they seek to understand how existing policies and continued investments into RCAAs, as well as the decision-making power of RCAAs, are fueling segregation patterns in a way that perpetuates advantages to existing affluent groups over neighborhoods that have pervasive needs. In California, for example, the state-based Assessment of Fair Housing includes a metric for an analysis of RCAAs, developed by California Department of Housing and Community Development to “better reflect California's relative diversity and regional conditions, and to aid local jurisdictions in their analysis of racially concentrated areas of poverty and affluence.”³

“Segregation”

We recommend that HUD amend its definition of “segregation” to differentiate between forced segregation – in which similar people are forced to live together due to laws, policies and practices that concentrate people and/or exclude people without their consent – and voluntary affinity and/or community-building – in which similar people choose to live together because their concentration of shared identities creates a support system and community asset. In order to clearly make this distinction, we recommend that HUD guide program participants’ understanding of the differences between the two phenomena by making note that historical demographic patterns and shifts will help jurisdictions understand which has or is occurring throughout their communities. Additionally, HUD can encourage program participants to utilize the community engagement process and locally acquired data to identify key instances in which the distinction between forced segregation and voluntary affinity are present throughout their jurisdictions.

“Underserved Communities”

HUD should expand the definition of “underserved communities” to acknowledge that there are present forces, as a result of policy, structural and systemic influences, that maintain some communities as underserved and under-resourced.

Equity Plan

Equity as a practice, value, and framework for pursuing improved livelihoods for people of all backgrounds cannot be pursued quickly or with short-term fixes. Equity is a deep investment that requires consistent time, effort, and intentionality by all stakeholders involved and at every level of government, and especially individuals most impacted by existing inequities to change

³ California Department of Housing and Community Development, Racially Concentrated Areas of Affluence
<https://www.arcgis.com/home/item.html?id=4100330678564ad699d139b1c193ef14>

the structures that produce inequitable outcomes for various groups of people. Therefore, we encourage HUD to balance the needs that program participants may have for a less burdensome AFFH process with the demands that a truly equitable society needs in order to be realized. Much of the detailed feedback that is provided in this section corresponds with the need to ensure that equity does not lose its power as a term or as a framework, but instead continues to drive transformative change throughout communities across the country.

Bring back the analysis of contributing factors.

In response to Question 2 of HUD's Questions for Comments, HUD should reference or reincorporate the 2015 AFFH Rule's requirement to identify and prioritize contributing factors to existing inequities in order for program participants to engage in meaningful goal-setting. Without program participants carefully analyzing the root causes of existing inequities, or identifying the conditions that perpetuate existing disparities among various groups, engagement with the AFFH process and the creation of meaningful equity goals will fall short, risking a lack of strong connection between goals and actions and undermining the impact of Equity Plan implementation. In order to fully meet our moment and the AFFH mandate, learning from mistakes of the past by acknowledging, addressing, and remedying harmful past actions will help to ensure future successes across all communities. Additionally, the identification and prioritization of contributing factors should be a topic that receives substantial input from a program participant's community engagement efforts.

Increase minimum requirements for fair housing goals.

In response to various parts of Question 8 in HUD's Questions for Comments, the proposed rule requires program participants to establish "one or more fair housing goal(s)" to overcome the prioritized fair housing issues for each fair housing goal category. This number is too low, and does not capture the breadth and effort required to repair the harms and discriminatory policies of the past. Our housing system has been broken by multiple layers of predatory and discriminatory policies and programs across every level of government. To undo this harm, program participants must recognize that it will take more than one action to fully address a fair housing issue. HUD must increase this minimum to three or more so that program participants can make meaningful progress in overcoming fair housing issues in every category.

Expand the scope of fair housing goal questions in § 5.154.

In response to various parts of Question 8 in HUD's Questions for Comments, we provide the following feedback: Effective fair housing strategies require clear performance goals, measurable outcomes, and strong local capacity to implement complicated programs and policies. The proposed rule states that "The Equity Plan's analysis, identification of fair housing issues, and establishment of goals, must address, at minimum, the following fair housing goal categories." We believe the rule does not go far enough in naming areas of analysis. HUD cannot rely on program participants to go above and beyond the bare minimum - it must set the requirements for program participants. Therefore, we suggest changes to the list of questions program participants must respond to in creating their Equity Plan to include a broader set of considerations, and require a deeper analysis:

- **Demographics – § 5.154 (d)(1):**
 - HUD should expand this demographic analysis to include groups of individuals that are not adequately captured by existing protected class categories, but still disproportionately face substantial fair housing issues. This includes:
 - Undocumented individuals
 - People with limited English proficiencies
 - People who rent their homes
 - Wherever possible, program participants should be encouraged to disaggregate data by race/ethnicity, ancestry, gender, income, geography, and other characteristics to understand the scope and scale of inequities and develop effective remedies. Data by ancestry in the National Equity Atlas, for example, reveal how Vietnamese, Cambodian, and Korean renters have similarly high rates of rent burden as Black and Latinx renters, although Asian renters as a whole have lower rates of rent burden.
- **Segregation and integration – § 5.154 (d)(2):** In question (iv), HUD should explicitly provide examples of policies and practices, including increased transit investments, development of privately owned stadiums, increase in private equity activity in the housing market (tracked through strengthened rental registries), and tenant screening practices that utilize criminal, eviction and/or credit histories.
- **R/ECAPs – § 5.154 (d)(3):** This section should be expanded to include an analysis of Racially Concentrated Areas of Affluence (RCAAs), with the addition of a corresponding set of questions for program participants to answer. This would require an equal analysis of areas that have been harmed by and benefited from inequitable public and private investment, and go further in requiring program participants to take a balanced approach to AFFH.
- **Require program participants to analyze evictions, terminations of federal housing assistance, and other displacement and to support goal-setting in reducing evictions and displacement:** Covered programs should be required to identify numerical goals and targets to reduce evictions in covered programs, and goals for covered housing providers to ensure that if they must evict a household, evictions occur in accordance with fair housing protections and other guidelines aimed at reducing housing insecurity, such as ensuring access to rental assistance and eviction diversion programs.
- **Supported by HUD-provided data, program participants should assess potential and actual environmental hazards and climate resiliency concerns within its geographic area of analysis:** Decades of discriminatory zoning practices, federal discrimination, urban renewal, and historic disinvestment in communities of color have led to large disparities in neighborhood housing quality, and disproportionate exposure of Black and Brown communities to climate-related disasters, environmental pollution, or co-location to toxic waste sites. In neighborhoods across the country, local governments conspired with businesses to locate polluting operations — roadways, highways, industrial plants — in redlined communities. As a result, Black, Brown, and Native American people face greater exposure to noxious pollutants and allergens which can

have immense negative health impacts — particularly on children — and which contributed to higher rates of Covid-19 infection and death in these same communities. A [recent study](#), for example, found that Black and Latinx Americans live with more smog and fine particulate matter from cars, trucks, buses, coal plants, and other nearby industrial sources in redlined areas.⁴ Residential segregation is also closely related to food access, nutrition, and health. Even when adjusting for individual education, income, and employment status, people living in racially and economically segregated neighborhoods have higher instances of heart disease and cancer. Program participants, supported by data from HUD as suggested in public comment submitted by NHLP, should be encouraged to analyze disparities in exposure to environmental hazards and climate-based displacement risks, and to prioritize goals and strategies that address such disparities.

- **Access to affordable housing opportunities – § 5.154 (d)(5):** Proximity to and the ability to pay for affordable housing does not mean access to affordable housing. This section should be expanded to consider the ways that policies (or a lack of policies) prevent protected class communities from getting into affordable housing *and* their ability to maintain stable housing.
 - Require program participants to perform a landscape analysis of the tenant protection policies in place (and not in place) that can improve access to housing, and explicitly name the following examples: just cause eviction protection; right to counsel, rent stabilization, prohibiting source of income discrimination; ensuring tenants’ right to organize; prohibiting “crime-free” ordinances; enforcement of habitability standards and disparities in housing conditions, such as quality, stability, and exposure to health and environmental hazards; tenant screening standards that reduce the impact of negative criminal, eviction, and/or credit histories. The landscape analysis should also include state laws that impact the ability of local jurisdictions to pass, implement and enforce ordinances that advance fair housing goals.
 - Require program participants to include an analysis of permanently affordable, publicly and community-controlled, non-speculative housing as a long-term solution to a chronic lack of stable and affordable housing.
- **Access to homeownership and economic opportunity – § 5.154 (d)(6):** The Rule must provide clear requirements and guidelines to jurisdictions on how to assess whether households that are members of protected classes have equal access to homeownership, analyze the factors contributing to disparities, and meaningfully advance solutions and protections that afford them long-term stability. HUD should also clarify “homeownership” to include ownership structures that go beyond individual ownership, such as tenant cooperatives and community land trusts, which also provide access to economic opportunity.

⁴ Haley M. Lane, Rachel Morello-Frosch, Julian D. Marshall, and Joshua S. Apte, Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities, *Environmental Science & Technology Letters* 2022 9 (4), 345-350 DOI: 10.1021/acs.estlett.1c01012

- **Local and State policies and practices impacting fair housing – § 5.154 (d)(7):** The following changes should be made to this section:
 - To complement question (i), add this question: “How do local laws, policies, ordinances, and other practices impede or promote the siting or location of affordable housing in historically underserved neighborhoods?” Answering this analysis will require program participants to take a more balanced approach to AFFH and assess the factors that prevent affordable housing investments from being made in R/ECAPs. This balanced approach includes promoting the siting or location of affordable housing in both historically underserved neighborhoods *and* communities that have benefited from disproportionately high levels of public and private investment, paired with efforts to make the latter less exclusionary to members of protected class groups.
 - To complement question (ii), add this question: “How do local laws, policies, ordinances, and other practices impede or promote equitable access to long-term stability in housing access by protected class group?” This question is currently only asked regarding homeowners, which ignores the experience of tenants in accessing and achieving long-term stability in housing.
- **Add “Local fair housing outreach and enforcement capacity” as a fair housing goal category:** The currently proposed areas of analysis omit an assessment of an important component of the fair housing infrastructure in jurisdictions, which is the local fair housing outreach and enforcement capacity. This capacity does not exclusively come from the program participant; more often than not, it exists in the form of grassroots organizations, and local fair housing and civil rights organizations that take on the duties of outreach, education, taking and investigating complaints, and enforcement of fair housing rights. This category must be added so that program participants are required to assess the capacity that currently exists in their communities. Furthermore, we support the recommendations made in the National Fair Housing Alliance comment that program participants should be encouraged to provide support for these organizations where they exist, and help establish them where they do not exist.

Provide technical assistance and capacity-building grants to program participants and community groups.

In response to Question 21 of HUD’s Question for Comment: Local government leaders, equity advocates across sectors, organizers, and impacted communities need guidance and technical assistance to affirmatively further fair housing when engaging in local consolidated plan and assessment of fair housing/equity plan processes. The proposed AFFH rule supports integrated assessment and planning approaches that can more closely examine and address patterns of disinvestment and barriers to opportunity. Communities require capacity-building, and equity framing and support in creating pathways to equity to successfully implement the rule at a local level. HUD should provide technical assistance and capacity building grants to strengthen communities’ abilities to scale equitable city, regional, state, and/or public housing agencies’ AFFH strategies and allow for direct services to support implementation of those strategies.

Grants can support the alignment of resources and efforts across multiple sectors which focus on measurable shared goals.

In the NPRM, HUD notes that “fair housing analyses conducted by program participants themselves or with technical assistance from fair housing groups, universities, or HUD were typically of much better quality than the fair housing analyses prepared for program participants solely by consultants.” In order to support jurisdictions in completing high quality fair housing analyses and conducting robust community engagement processes, HUD should encourage collaboration with local fair housing groups and universities when undergoing the analysis and goal setting for Equity Plans, provide ample time for the completion of Equity Plans, effectively communicate timelines for Equity Plan submissions, and most importantly, offer technical assistance grants for program participants to partner with and compensate any partners that are engaged throughout the process. These adjustments to the process will help and encourage program participants to identify the best community-based organizations and individuals to work with and create high-quality Equity Plans.

Require program participants to take steps to resolve fair housing issues.

The proposed rule does not dictate the particular steps a program participant must take to resolve a fair housing issue, but it should still be clear in requiring program participants to take steps (even if those steps are not prescribed).

Employ the assessment tool during HUD-provided technical assistance.

Although the assessment tool from the 2015 AFFH rule was not revived for the 2023 AFFH rule, HUD should employ the tool, or a similar, equally in-depth tool when providing program participants with technical assistance. Compared to the assessment tool from 2015, the current iteration of evaluative questions that HUD has proposed to help guide program participants through the analysis portion of the Equity Plan pales in comparison to the strength of the assessment tool. The assessment tool guided jurisdictions to think of not only all of the inequities that should be analyzed, but also their potential contributing factors. We understand that the previous iteration of the assessment tool was regarded as too burdensome by some program participants; therefore, utilizing that assessment tool or one similar to it in strength for HUD’s technical assistance will provide program participants with the proper guidance to create robust and transformative Equity Plans. If either parties (HUD or a program participant) forgo the deep analysis that is provided by the use of the assessment tool, both HUD and program participants run the risk of producing perfunctory Equity Plans that do not adequately achieve the AFFH mandate or the goals set out by the AFFH Rule.

Re-institute the priority for program participants to conduct data analysis.

In response to various parts of Question 29 of HUD’s Questions for Comment: HUD should reestablish the priority for program participants to conduct data analysis throughout the AFFH process. Although program participants’ reliance on local data and local knowledge is vital to bring forward nuances that otherwise may go overlooked in data, data analysis can still reveal trends and connections that may not be known to the public. While we understand that program

participants will not, and should not, be expected to employ highly rigorous statistical methodology to identify fair housing issues, they should still be able to reliably utilize data to validate and underscore local data and knowledge that is captured in community engagement activities when identifying fair housing issues. By improving existing data analysis resources provided by HUD, such as the AFFH-T Data & Mapping Tool, with updated data, accessible visuals, and a high-performing platform, HUD will be able to enhance user experiences with this tool. Improvements such as these that make the data analysis portion clear and more self-explanatory will help ease the work of data analysis on program participants and provide an engaging way to conduct the work of identifying existing fair housing issues.

In response to Question 3.D. of HUD's Questions for Comments, HUD should also go further and encourage program participants to utilize non-HUD data sources and tools, especially sources that are easily accessible, relevant to their jurisdiction, or that provide more depth to their analysis of existing inequities. For example, a program participant may find disparate eviction rates are important for them to understand spatial disparities in eviction rates, they could utilize data tools such as the [Eviction Research Network](#). Additional examples of highly accessible and user-friendly data analysis tools that HUD can model improvements after or encourage as non-HUD data sources are:

- PolicyLink's [National Equity Atlas](#)
- PolicyLink's [Shrinking Geography of Opportunities Report](#)
- PolicyLink's [Rent Debt Dashboard](#)
- Urban Displacement Project's [Housing Precarity Risk Model](#)
- [Kids COUNT Data Center](#)
- Urban Institute's [Data and Tools for Fair Housing Planning](#)
- [Diversity Data Kids](#)
- [Mapping Inequality: Redlining in New Deal America](#)
- [PolicyMap](#)
- [Social Policy Data Map](#)
- U.S. Census Bureau's [My Community Explorer](#)

Other tools for HUD's consideration, as NHLP's comment letter recommends, are: DOJ data from state and federal criminal legal systems that identify the areas where people return home after incarceration which could be helpful to ensure that policies promote fair housing choice for people post-incarceration; and EPA data, which could be helpful for program participants to evaluate the impact of their decisions and policies (such as zoning, siting, land sales, air permitting, and water permitting) on environmental justice communities.

Furthermore, the proposed rule states "program participants would not need to reference specific percentages or calculations...but would be required to show the connection between their data analysis, their identification of fair housing issues, and the establishment of fair housing goals." While we agree with not requiring references to calculations, we strongly suggest requiring program participants to reference specific percentages. Calculations may be burdensome, but citing a percentage from a map or report is not, and if anything, it is necessary

for well-rounded analysis of fair housing issues. Percentages are crucial for comparison of various groups and to tell the quantitative story of how they experience access to housing, community assets and stability.

Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents

Incorporation, not duplication.

In order to reduce burden on jurisdictions, HUD should emphasize the importance of incorporation and integration of the Equity Plan into planning documents – not duplication.

Cross-Sector requirements.

We applaud the reminder for program participants to incorporate the fair housing goals from their Equity Plans into planning documents required in connection with the receipt of federal financial assistance from any other Federal Executive Department of Agency. This is an important initial step toward implementing the broader AFFH mandate, which applies to all federal agencies and departments with programs and activities relating to housing and urban development.

Community Engagement

Increase minimum requirements for community engagement methods.

In response to various parts of Question 5 of HUD's Questions for Comments, HUD should increase the minimum requirements for community engagement methods that program participants must undertake in order to help potential participants overcome barriers to participation. The following requirements should be added:

- Provision of tools and resources that make it possible for potential participants to participate in person, such as transportation support (transit vouchers, gas cards), childcare support (in-person daycare provided), and food (serving food at meetings that take place during a mealtime). The City of Boston's AFH process, led by the AFFH Community Advisory Council, is a strong example of how deep community engagement processes work to create robust fair housing goals that will achieve equitable outcomes, and why these processes should be supported⁵. The Boston AFH process included 14 public meetings attended by more than 500 residents and surveys to which 2,500 residents responded.
- Use of multiple techniques to notify community members of the opportunity to provide feedback, such as newspaper notices, radio announcements, community newspapers, community organization newsletters, and social media.

⁵ James Jennings, Kathy Brown, Lincoln Larmond, and Robert Terrell. "Fair Housing and Zoning: Toward a New Boston?" *Shelterforce*. February 18, 2021: <https://shelterforce.org/2021/02/18/fair-housing-and-zoning-toward-a-new-boston/>.

- Use of multiple meeting formats to maximize participation. For example, virtual or online meetings may be more accessible for people with disabilities or those with children. In addition to public meetings, HUD should also encourage the use of focus groups or smaller community meetings, such as ones hosted by stakeholder organizations who have strong relationships with community members experiencing housing disparities.
- Ensuring access for people with limited English proficiency through the provision of interpretation services.
- Ensuring access for people with disabilities, including people who are deaf or hard of hearing.
- Ensuring community engagement outreach materials are available in multiple languages commonly spoken by the jurisdictions' residents.
- There is currently a lack of support and resources for grassroots and community-based organizations to access TA and guidance to meaningfully engage in the fair housing planning process. Given that the federal rule plays out in specific and localized ways, AFFH local rule implementation often calls for local support and expertise to guide communities through this process in a way that is effective and can help communities leverage local, long-term strategies that connect to translocal goals and strategies. HUD should consider providing community-based organizations and organized tenant groups with grants and TA to increase participation in the community engagement process.
- In response to Question 23 of HUD's Questions for Comment, HUD must ensure that all program participants are able to engage deeply with communities, regardless of the size of program participants. HUD will need to consider providing additional fiscal support to jurisdictions that lack the resources to complete all of the required community engagement activities, and integrate varied expectations and requirements for community engagement based on the size and the resource levels of program participants.

In addition, it would be helpful for HUD to clarify whether administrative funds within CDBG and HOME can be used towards community engagement work.

Expand list of stakeholder examples.

In addition to the examples of local community leaders provided in the proposed rule, HUD should add the following community members to the list of people who should be asked to provide input:

- Tenants, tenant unions, resident groups, tenant organizations and other community organizing groups that represent the lived experiences of people experiencing housing disparities
- Local fair housing and legal services organizations, and others engaged in fair housing enforcement
- Organizations that assist and represent members of historically underserved and excluded members of protected classes, such as tenants' groups, social service and community-based organizations, disability advocacy groups, LGBTQIA+ advocacy groups, immigrant rights organizations, culturally-based organizations,

unhoused/homeless service organizations, civil rights organizations, faith-based organizations, womens' groups, youth groups, and foster care groups

- Housing developers, real estate agents, labor unions, universities, anchor institutions, property managers, financial institutions
- Elected officials and other government agencies
- Organizations that provide health, education, housing and social services to members of protected classes
- In areas where there may not be tenant or resident organizing groups, program participants should partner with and do outreach to non-housing organizations

Clarify the role of community stakeholders in setting priorities.

While the proposed rule states that program participants should involve community stakeholders in identifying fair housing issues and establishing goals, strategies and meaningful actions, it does not clearly state that community stakeholders should also be involved in setting priorities among the many competing issues that are likely to be identified. Community stakeholders must have a role in deciding which specific issues should be the focus of the Equity Plan and its implementation.

Integrate additional stages for community input on Equity Plans before submission to HUD.

In response to Question 22 of HUD's Questions for Comment, HUD should require program participants to establish several stages within the timeline of development of Equity Plans to receive public comment before submitting to HUD for acceptance or denial. We strongly support NHLP's suggestions to establish five stages for input: 1) Data Review 2) Identification of fair housing issues 3) Prioritizing fair housing issues 4) Establishing fair housing goals and 5) Commenting on the draft Equity Plan before submission. Adding these review stages and community input periods will enable HUD to receive the strongest Equity Plans, and can also minimize the administrative capacity needed to review complaints received for accepted Equity Plans.

Encourage collaboration and engagement with cross-sector departments and organizations.

Cross-sector engagement can help break down silos that typically prevent agencies within the same jurisdictional body from working together, as well as getting groups and individuals who are not normally at the decision-making table to take ownership of the public planning processes. The involvement of nonprofit organizations and other key stakeholders across sectors and agencies within a jurisdiction can also leverage additional resources into the assessment and implementation of goals and strategies. HUD should underscore the need to deeply engage with other government departments, such as public health departments, regional planning organizations, and state transportation departments, as well as other fair housing, racial justice, and community-based organizations that have a vested interest in pursuing equity in a local jurisdiction throughout the AFFH process. This will ensure that program participants receive additional support on the analysis of and identification of fair housing issues, and that

they incorporate goals that cut across issues and engage other organizations and government offices.

Equity plans should identify disparities experienced by protected class members in access to high quality transit, access to high quality public education, access to high quality health care, and access to clean environmental conditions. To accomplish this analysis, Equity plans must include data from local agencies that are charged with administering transit, education, health and environmental protection programs. Program participants must be required to initiate a collaboration with local agencies to review relevant data and create strategies for reducing disparities connected with their programs that are experienced by members of protected classes. In considering access to transit, for example, Equity Plans should examine the affordability of bus and train service in a particular jurisdiction, the adequacy of transit routes to connect members of protected classes to important job centers, and the frequency and quality of transit services that are used by members of protected classes. In its AFH under the 2015 AFFH rule, the City of New Orleans engaged over 100 stakeholder organizations and heard many residents express concern about disparities in access to “good schools,” the lack of housing near schools, problems with resources at schools, and a desire for schools that were more integrated into neighborhoods.⁶ This led the city to make “location of proficient schools and school assignment policies” a high priority in its fair housing goals, writing: “The City’s study and other national studies have shown a direct link between educational attainment and access to other opportunities. Many in protected classes have not had opportunities to further their education and have been subjected to failing schools.

Posting Equity Plans online.

To increase transparency, program participants must be required to publicly post both the draft and final Equity Plans on their own websites along with their annual progress evaluations. Posting only on the HUD website is insufficient.

Reconsider allowing program participants to combine community engagement processes for the Equity Plan and ConPlan or PHA plan.

We are concerned that this ability to “double-dip” community engagement across programs will end up resulting in less robust community engagement. We believe the AFFH community engagement requirements must be separate from and in addition to the ConPlan citizen participation regulations and the PHA Plan resident and public participation requirements. ConPlan processes can be consumed by entities identifying housing and community development needs, and by entities seeking CDBG and HOME funds. PHA public engagement processes can be consumed by issues raised by residents, such as housing quality. These are examples of important topics that are deeply related to AFFH, and ones that deserve their own dedicated time and process. Equity Plan questions cover a broader range of topics and should

⁶ City of New Orleans. “2016 Assessment of Fair Housing.” Office of Community Development. October 4, 2016. <http://www.nola.gov/community-development/documents/2016-updated-afhplan-090516/afh-plan-090516-final/>.

have its own separate process to ensure stakeholders can uplift concerns specific to the fair housing categories.

Submission Requirements

Publish Equity Plan due dates for program participants.

The current description of Equity Plan due dates is unclear and difficult to understand for non-program participants. HUD should publish a list of Equity Plan due dates so that community stakeholders can adequately prepare and plan for their engagement in the Equity Planning process.

Changing compliance with AFFH planning and certification requirements until first Equity Plan submission.

The proposed rule states that program participants who have not done an Analysis of Impediments (AI) or Assessment of Fair Housing (AFH) within three years of the effective date have to do one and submit it to HUD within a year of the effective date. However, given that HUD has just designed a new fair housing planning process (the Equity Plan) that is better defined than the Analysis of Impediments and more streamlined than the Assessment of Fair Housing, it does not make sense for program participants in that scenario to complete what is now an outdated fair housing planning process. To reduce administrative burden and simplify expectations, HUD should require these participants to complete an Equity Plan.

Review of Equity Plan

Clarify community process for review of Equity Plan.

The proposed rule states that “HUD will use information submitted by the public in its review of the Equity Plan.” HUD must provide additional details outlining how this will happen. For example, what would be the scope of information provided by the public that HUD would consider? The inclusion of a review period during which the public can provide feedback on a program participant’s draft Equity Plan would simplify this process.

Revising an Accepted Equity Plan

Removing a circumstance for Equity Plan revision.

The proposed rule allows revision of an Equity Plan if “a fair housing goal established in the Equity Plan cannot be achieved,” and also states that “HUD will not grant permission to alter goals if the program participant is simply choosing not to take necessary steps.” While we appreciate the flexibility of allowing for revision, it also gives program participants too much leeway to simply claim that something can’t be done, rather than being accountable to why it isn’t working and what root causes must be addressed in order for the goal to be achieved. Furthermore, the revision of an Equity Plan to remove a goal could result in the erasure of community voices that uplifted the goal as a priority through the community engagement process. HUD should remove the above circumstance that allows revision of an Equity Plan.

Procedures for effecting compliance

In response to Question 15 of HUD's Questions for Comment, we offer the following recommendations:

Establish internal accountability standards to effect compliance with program participant's duty to AFFH.

HUD's role in ensuring compliance with the AFFH rule is critical to the future success of communities' ability to pursue lasting equitable change and outcomes for their neighborhoods. However, HUD also needs to implement internal accountability standards to enforce program participant's adherence to the AFFH rule. These internal accountability standards will make certain that there is a procedure for not only correcting noncompliance, but also considering a staggered escalation of enforcement actions available to HUD to assume in some cases.

Provide a timeline for complaints and detailed remedies.

We strongly support the inclusion of a detailed process for filing AFFH-related complaints. This provision would be strengthened by specifying the timelines for accepting, investigating and resolving complaints. HUD should also provide a description of the remedies available to complainants, which should include the full array of those authorized under the Fair Housing Act, including injunctive relief, policy changes, money damages, and attorney's fees.

Establish standards for HUD and its enforcement arm to address political obstacles preventing a program participant's duty to AFFH.

In addition to HUD establishing internal accountability standards to effect compliance with program participants, HUD must also consider what other actions they will take to address external obstacles that affect a program participant's ability to properly achieve the AFFH mandate. We recommend establishing procedures and clear and specific timeframes within the complaint process that illustrate escalating actions that HUD and the responsible civil rights office (RCRO) will take against jurisdiction administrations that are rightfully found to be frustrating the achievement of the AFFH mandate. HUD should provide further guidance on the types of complaints that will be heard from the RCRO and which will merit action from the office. We also encourage the RCRO to be frequently informed and brought into conversations about complaints HUD receives during the AFFH process and take investigative action quickly in order to understand what other measures may need to be taken.

Conclusion

The complicated and changing nature of the geography of opportunity is an indication that we need a 21st century imperative to fulfill the Fair Housing Act of 1968. We need a comprehensive fair housing policy that acknowledges that expanding opportunity for all requires alignment across federal programs and investments, enforcement of guidance to ensure that policy translates as intended in local communities, and innovation in methods of assessing and developing fair housing goals and strategies that take into account the latest research.

We commend HUD's advancement of fair housing as supporting the dual priorities of mobility for people of color, families, people with disabilities and other protected classes – as well as investment in neighborhoods that have been left behind. We reiterate our strong support of HUD as it moves to make the necessary changes and adopt a strong final AFFH rule. Please contact me at rasheedah@policylink.org if you would like to speak with PolicyLink in more detail about our comments.

Sincerely,

A handwritten signature in cursive script that reads "Rasheedah Phillips".

Rasheedah Phillips, Director of Housing
PolicyLink