

April 24, 2023

Regulations Division
Office of General Counsel
U.S. 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

To Whom It May Concern:

The 48 undersigned fair housing, civil rights, housing advocacy, faith, consumer, women's, real estate, LGBTQI+, senior and allied organizations submit these comments on HUD's proposed new affirmatively furthering fair housing (AFFH) regulation (Docket No. FR-6250-P-01). We commend HUD for advancing this important regulation, which is a critical tool for creating more equitable and inclusive communities in which all residents – regardless of who they are or where they live – have access to the resources, amenities and opportunities they need to flourish. A strong AFFH regulation will amplify the impact of the Biden-Harris administration's commitment to advancing equity in our country.

Background and context

The mandate to affirmatively further fair housing has been an essential component of the Fair Housing Act since it was passed in 1968. It is meant to rectify our nation's deep inequities in access to opportunity: the result of unfair policies put in place over many decades; policies that have created unfair systems depriving millions of people access to secure and healthy housing opportunities. Those systems – unfair appraisals, biased technologies, a dual credit market, restrictive zoning policies, health and food deserts and many more – are driving disproportionate outcomes in health, education, wealth, homeownership, technology, environment, climate, employment and other areas.

AFFH is a major tool for removing those unfair structures and replacing them with systems that benefit everyone. This will not only lead to better outcomes for individuals, it will also strengthen our communities and boost our nation's prosperity. [Researchers have found](#) that eliminating racial inequities for Black people alone would add hundreds of thousands of jobs and increase our nation's GDP by \$5 trillion over a 5-year period.

Our comments below highlight some of the provisions of the proposed rule that are particularly crucial for its success, and which must be preserved in the final rule, as well as some areas in which the rule should be strengthened to make it more effective.

Provisions that must be maintained in the final rule

A number of the elements in the current proposed regulation are particularly important to its long-term success, and we urge HUD to ensure these elements are preserved in the final rule. These include, among others:

1. **The strengthened definition of AFFH.** The definition of AFFH in both the 2015 AFFH rule and the 2021 Interim Final AFFH rule articulated the concepts at the heart of the AFFH mandate: that it is not enough to eliminate discrimination from the housing market and our housing and community development programs, although that is necessary. But to overcome the harms caused by decades of sustained and systemic discrimination and segregation, in which the government played a major role, we must take deliberate – affirmative – steps to eliminate the barriers that have disadvantaged members of protected classes and ensure they have equitable access to our communities' important assets and resources.

That definition also reminded program participants that the AFFH obligation is not limited to the funding they receive from HUD. Rather, it extends to all of their programs and activities relating to housing and community development. This is critical to ensure that program participants do not adhere to their AFFH obligations with funding from HUD while simultaneously administering other programs or taking other actions that conflict with and undermine the AFFH mandate.

This proposed rule adds a further important component to the definition of AFFH. It requires a program participant to “take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination the Fair Housing Act was designed to redress.” (§ 5.152.) The focus on actions, investments and outcomes underscores the distinction between creating plans and executing those plans. The former is an essential step in the AFFH process, but the latter is required for program participants to actually fulfill their AFFH obligations. This has been a point of confusion for some program participants, which the new language should help to dispel.

2. **Measures to ensure accountability.** According to the NPRM, there are 1,250 jurisdictions required to conduct Consolidated Plans (ConPlans) and more than 3,800 public housing agencies, putting the number of program participants required to create Equity Plans above 5,000. Even with the additional staff resources requested in the President's recently proposed budget, it will be a

challenge for HUD to monitor closely the equity planning process and its implementation for all of those program participants. Therefore, it is important to create backstops to ensure that HUD can carry out its oversight responsibilities effectively. The proposed rule would put in place a number of mechanisms to ensure greater accountability for program participants. These include:

- a. The opportunity for the public to submit comments to HUD on draft Equity Plans.** The proposed rule provides that members of the public may submit comments to HUD during its review of draft Equity Plans, preferably within the first 60 days after a plan has been submitted. This will allow community stakeholders to alert HUD to potential problems that require particular review. Those could include a program participant's failure to adhere to the community engagement requirements of the rule, consider important local data or knowledge that has been brought to its attention, address concerns raised during the development of the plan, set goals that will result in meaningful action and measurable results, or other flaws in the development of the Equity Plan. Establishing a mechanism through which community stakeholders can flag issues of concern early on will allow HUD to take corrective action when needed before a plan is finalized. This, in turn, will improve the quality and effectiveness of Equity Plans and enhance HUD's oversight capacity.
- b. The requirement for annual progress evaluations.** In an improvement over the 2015 rule, which had no comparable provision, the proposed rule requires program participants to submit progress evaluations to HUD annually, detailing the progress made toward achieving each fair housing goal in the program participant's Equity Plan. This requirement will help ensure that program participants are working diligently to accomplish the goals they have set out, keeping them accountable both to HUD and to their communities. This is especially important since most Equity Plans will cover a five-year period, which is a relatively long time – too long to go without any updates on program participants' progress. The annual progress evaluations will also allow for course corrections to be made in a timely manner, where needed.

The proposed rule states HUD's intention to publish program participants' progress evaluations on a HUD-maintained website. While such a website may prove to be a useful, centralized source for finding progress evaluations and making comparisons between them, **we urge HUD to require program participants to make these reports publicly available on**

their own websites as well. This is an important step to facilitate access to those reports by local stakeholders and to increase their value as a mechanism for local accountability.

- c. Establishment of a process for filing AFFH-related complaints.** It has never been entirely clear whether members of the public could file a complaint with HUD alleging an AFFH violation by program participants. The absence of a clear process for doing so has hampered the public's ability to hold program participants accountable for fulfilling their AFFH obligations, and HUD's ability to ensure compliance with this important provision of the Fair Housing Act. The proposed rule establishes a straightforward process for doing so and sets out the protocols that HUD will use to investigate and resolve such complaints. As other commenters note, it would be helpful for the rule to specify the timelines associated with accepting, investigating and resolving complaints, and the remedies available to complainants. Nonetheless, the inclusion of this provision in the proposed rule is a significant improvement over the previous AFFH regulations, and we urge HUD to ensure that it remains in the final rule.
- d. Clear procedures for enforcing AFFH.** The proposed rule spells out clearly the procedures HUD will use to enforce the AFFH obligation and the remedies it has available to resolve violations. HUD's history of enforcing AFFH is limited, so making these procedures clear to program participants and community stakeholders alike will be helpful. In addition, by including these provisions in the rule, HUD sends a helpful message about the importance it places on program participants taking their AFFH obligations seriously.

- 3. Strong connections to other planning processes.** One of the major flaws of the 1995 AFFH process, as noted by the Government Accountability Office¹ was the lack of connection between the fair housing plan, which under that rule was the Analysis of Impediments to Fair Housing Choice or ("AI"), and the plans that guide program participants' decisions about how to use their housing and community development resources. In too many cases, the AI simply sat on a shelf and collected dust, doing little to ensure that program participants were taking meaningful actions to advance fair housing goals. The 2015 rule attempted to address that problem but fell short of making a firm link between

¹ U.S. Gov't Accountability Office, GAO-10-905, Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans. (2010), available at <https://www.gao.gov/assets/gao-10-905.pdf>

the Assessment of Fair Housing and other plans, including the ConPlan and PHA plan.

The proposed rule spells this connection out in clear and unambiguous terms in § 5.156(a), where it says, “any policies or practices adopted through program participants' planning documents or as part of program participants' implementation of programs, activities, and services shall be consistent with the commitments program participants have made in their Equity Plans, this part, and the AFFH mandate.” The next paragraph elaborates on this requirement, stating, “To implement the fair housing goals from the Equity Plan, program participants must include strategies and meaningful actions in their consolidated plans, annual action plans, and PHA Plans (including any plans incorporated therein).” These provisions, along with the requirement for annual progress evaluations and the complaint and enforcement provisions of the rule, should work to ensure that the plans that guide a program participant’s allocation housing and community development resources will reflect and be in alignment with the goals of the Equity Plan. This framework holds real promise for ensuring that program participants make meaningful progress in advancing fair housing goals and implementing Congress’ vision in the AFFH provisions of the Fair Housing Act.

The proposed rule goes one step further and requires program participants to incorporate the goals from their Equity Plans into plans required in conjunction with funding from other federal agencies and departments. Further it requires them to designate the resources needed to achieve the goal, and to report in their annual progress evaluations on their progress toward the goals incorporated into these other plans. 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.² We commend HUD for taking this initial step, urge it to ensure this provision remains in the final AFFH rule, and, as discussed further below, encourage it to take additional steps to ensure that the full scope of the AFFH mandate is realized.

Changes needed to strengthen the final rule

There are also a number of elements in the current proposed regulation that must be strengthened in order for the equity planning process to work as it should, and as it appears that HUD intends. Among these are:

² 42 U.S.C. § 3608(d).

- 1. Local fair housing outreach and enforcement capacity should be a fair housing goal category.** The proposed fair housing goal categories – the areas for which program participants are expected to identify fair housing issues and set goals – include one category that addresses the legal and policy framework relating to the provision of affordable housing in well-resourced areas, and a second that addresses discrimination or violations of civil rights laws and ordinances relating to access to housing and community assets for members of protected classes under the federal Fair Housing Act.

These are important areas for analysis, but they overlook an equally important component of the fair housing infrastructure in our communities: the local fair housing outreach and enforcement capacity. Outreach and education help ensure that community residents and housing providers understand their fair housing rights and responsibilities, and that public officials understand the fair housing implications of the decisions they make on matters relating to housing and community development. Enforcement capacity – organizations with the expertise and resources to take in complaints, investigate them and resolve meritorious complaints through administrative or judicial channels – is necessary to ensure that residents' fair housing rights are protected, and when those rights are violated, that the affected people are made whole and corrective measures are put in place. Without this capacity, the laws on the books have little meaning, and violations are likely to go unnoticed and unremedied.

Fair housing organizations serve this function in their communities, especially when they have the necessary resources and support for their work. Other civil rights organizations, some legal services offices and other groups may play similar roles. Without this infrastructure, fair housing outreach, oversight and enforcement may be weak. As part of their equity planning process, program participants should be required to assess the condition of the fair housing outreach and enforcement infrastructure in their communities, and then encouraged to provide support for these organizations where they exist and help to establish them where they do not. We urge HUD to correct this oversight in the final rule.

- 2. Clarifying the requirements of the community engagement process.** Based on the definition of community engagement and the general provisions regarding community engagement, the proposed rule sends a message about the importance of seeking and considering input from a variety of local stakeholders throughout the equity planning process. However, the rule lacks the clarity and specificity needed to ensure that the community engagement process functions in the way HUD appears to intend. The likelihood that the community engagement process would work in practice the way the rule envisions would be

greatly increased if the final rule incorporates more detail on the following aspects of community engagement.

- a. **Whom to engage with** – the rule should make clear that program participants must engage with those people whose lives and experiences are most directly impacted by fair housing issues, namely members of protected classes and organizations that represent them. Further, program participants should engage with fair housing organizations and others involved in fair housing outreach and enforcement, as those groups are uniquely positioned to understand the kinds of barriers to fair housing that community residents encounter, as well as local fair housing trends and emerging fair housing issues. Organizations that provide housing, health, social services and other services to members of protected classes may offer valuable input, as well. Finally, program participants should engage with groups representing different segments of the housing industry (e.g., lending, insurance, real estate sales and rentals), and with public agencies and private organizations involved in efforts related to the various types of community assets the rule encompasses, including those working on education, transportation, environmental issues and climate resilience, community development efforts and the like.
- b. **How to engage with the community** – The rule should make it clear that community engagement may take many different forms, ranging from formal public hearings to smaller, more focused discussions with targeted groups, virtual meetings that allow stakeholders to participate from their homes and surveys or other means of collecting feedback on particular issues. The rule and accompanying guidance should provide greater detail to program participants about the variety of mechanisms and formats that may enhance their community engagement activities.

These activities may be most successful when program participants work with community-based groups who serve as trusted advisors to various segments of the community and with fair housing groups who can help translate the AFFH mandate in ways that are accessible and meaningful to local stakeholders. HUD should offer guidance about best practices for such efforts, which may include providing childcare and meals at community meetings, small grants to local organizations to enable them to participate, and advertising in the preferred language of target communities. Program participants may also need to take care to create safe spaces for some stakeholders who may not be comfortable sharing their views in large public settings. This may include members of the

LGBTQ+ community, immigrants and non-citizens and people with limited English proficiency, among others.

Further, the rule should state directly the requirement to ensure that program participants take the necessary steps to enable full participation in the equity planning process by people with disabilities, including people who are deaf or hard of hearing, and those with limited English proficiency. It should avoid relying on references to other statutes, such as Title VI and the ADA, to communicate those requirements, although it may be helpful to refer to those statutes and any accompanying guidance for more detail.

- c. **When and how often to engage with the community** – The rule should provide greater clarity about the points in the equity planning process at which community engagement is required. These include prior to the development of the Equity Plan, during the identification of fair housing issues, in the decisions about which issues should be priorities, in the identification of strategies and meaningful actions to be incorporated into the plan, and on the draft Equity Plan itself.

The proposed rule states that program participants must hold three public meetings during the development of their Equity Plans, and two public meetings in other years. For program participants with large populations or that cover large geographic areas, these numbers may be insufficient and HUD should consider adjusting them based on the size of the program participant.

- d. **Role of the community in setting priorities** – While the rule says that program participants should involve community stakeholders when identifying fair housing issues and establishing goals, strategies and meaningful actions, it fails to specify that community stakeholders should also be involved in the critical interim stage, which is setting priorities among the many competing issues that are likely to be identified. Community stakeholders should have a role in deciding which specific issues should be the focus of the Equity Plan and its implementation over the subsequent 3-5 years, and the final rule should be clear on this point.
- e. **Opportunity for comment on the draft Equity Plan** – Although the proposed rule states that the draft Equity Plan is to be a public document, that HUD will post submitted Equity Plans on a website that it maintains, and that the public may submit comments to HUD on Equity Plans that have been submitted, it does not state directly that program participants

must give the public any specific amount of time to comment on the draft plans before they are submitted to HUD. This is a standard component of most public planning processes and should not be omitted here.

Further, allowing the public to offer feedback on the plan after it has been drafted and before it is submitted to HUD is important to ensure that the program participant has not overlooked any significant information or input or omitted fair housing issues that are top priorities for stakeholders. Creating this opportunity for public comment on and corrections to draft plans will minimize the number of occasions on which stakeholders must take their concerns about a draft plan directly to HUD in the form of public comments. We encourage HUD to correct this omission in the final rule.

3. **Increasing transparency in the equity planning process** – Transparency is a critical component of any public planning process, and there are several steps that HUD should take to increase transparency in the Equity Planning process.
 - a. **HUD should publish a list of the dates on which Equity Plans, ConPlans and PHA plans will be due for each program participant.** This will enable stakeholders to plan for their engagement in the Equity Planning process and allow for a more robust engagement process.
 - b. **HUD should require program participants to post on their own websites their draft and final Equity Plans and their annual progress evaluations.** There is value to HUD’s proposal to maintain a website containing all submitted Equity Plans, some final plans or portions thereof, and annual progress evaluations. However, that should not be a substitute for program participants themselves providing access to those documents for the benefit of local stakeholders. This is a basic form of transparency for any public agency and HUD should include this requirement in the final rule.
4. **Addressing the full scope of the AFFH mandate** – This regulation covers only a portion of HUD’s programs and activities related to housing and urban development, but the statutory AFFH mandate covers them all. There is more HUD must do to fulfill its AFFH obligations comprehensively.
 - a. HUD should adopt a policy addressing the steps it will take and the policies it will implement to ensure that it administers its programs, policies and activities not covered by this regulation in a manner affirmatively to further fair housing.

- b. HUD is not the only federal agency with an obligation to affirmatively further fair housing; that obligation applies to all executive agencies and departments, including those with regulatory or supervisory authority over financial institutions. (See 42 U.S.C. § 3608 (d)). HUD has a special role to play in providing leadership to and coordinating with other agencies and ensuring that they administer their programs and activities that relate to housing and urban development in a manner consistent with their AFFH obligations. HUD should adopt a policy detailing how it will carry out this function, along with a concrete plan for doing so. HUD should consider creating or reviving memoranda of understanding with other executive agencies and departments regarding their AFFH obligations.

Conclusion

This year is the 55th anniversary of the passage of the Fair Housing Act. For most of that time, the AFFH mandate has languished without effective implementation and adequate oversight or enforcement. We must not wait any longer to make good on the promise of the Fair Housing Act to use our resources to end systemic discrimination and redress the harms of segregation. We urge HUD to move ahead quickly to make the necessary changes and adopt a final AFFH regulation.

Sincerely,

American Friends Service Committee
 Americans for Financial Reform Education Fund
 AREA A
 Build Up California
 Center for Community Progress
 Center for Law and Social Policy (CLASP)
 Center for Responsible Lending
 Center for the Study of Social Policy
 Church World Service
 Consumer Action
 Funders Together to End Homelessness
 Grounded Solutions Network
 Habitat for Humanity International
 Integrated Community Solutions, Inc
 Justice in Aging
 Lawyers for Good Government (L4GG)
 LGBT Tech
 Liberation in a Generation
 Metropolitan Interfaith Council on Affordable Housing (MICAH)
 NAACP

National Association For Latino Community Asset Builders
National Association of Real Estate Brokers Inc.
National Baptist Convention Housing Commission
National Center for Lesbian Rights
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Homelessness Law Center
National Housing Law Project
National Housing Resource Center
National Low Income Housing Coalition
National NeighborWorks Association
National Organization for Women
National Urban League
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
Our Spring Lake Store, LLC
PolicyLink
Poverty and Race Research Action Council (PRRAC)
Prosperity Now
RESULTS
Revolving Door Project
SAGE
The Leadership Conference on Civil and Human Rights
True Colors United
UnidosUS
United Church of Christ Justice and Local Church Ministries