

Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th St SW
Washington, D.C. 20410

Re: Affirmatively Furthering Fair Housing, Docket No. FR-6250-P-01, 88 Fed. Reg. 8516

April 24, 2023

Dear Secretary Fudge:

On behalf of the National Community Reinvestment Coalition (NCRC) and our undersigned members, we thank you for this opportunity to provide our recommendations regarding HUD's implementation of the Fair Housing Act's Affirmatively Furthering Fair Housing (AFFH) requirement. NCRC and its grassroots member organizations create opportunities for people to build wealth and participate more fully in the nation's economy. We work with community leaders, policymakers and financial institutions to champion fairness and end discrimination in lending, housing and business. NCRC was formed in 1990 by national, regional and local organizations to increase the flow of private capital into traditionally underserved communities. We have grown into an association of more than 700 community-based organizations that promote equitable access to affordable housing, basic banking services, entrepreneurship, job creation and vibrant communities. Our members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, and social service providers from across the nation.

We appreciate HUD's restoration of key components of the 2015 AFFH regulation, including the requirement that grantees commit to meaningful goals; the requirement to engage in a "balanced approach" that remedies segregation through expanded housing choice as well as that promotes investments in communities that disproportionately lack resources; and the requirement that program participants engage in a standardized planning process. We support the inclusion of strong and specific community engagement directives, including multi-stage consultation with fair housing groups. (Well structured and impactful community engagement entails a number of improvements to HUD's proposed requirements, as we discuss further below.) Such engagement is needed to ensure that community-based fair housing expertise is built into the planning process and in particular is reflected in goal formation. We also support HUD's proposed inclusion of strengthened compliance mechanisms, and strongly support the addition of a complaint process through which advocacy groups may challenge inadequate fair housing plans as well as substantive failures to comply with the underlying law, the Fair Housing Act's AFFH provision.

However, it is also important that already-overburdened community advocacy groups not be looked to as the sole or primary sources of information on fair housing related data or on local policies and practices and their impacts. This hazards the predictable likelihood that many participants will fail to identify fair housing issues and the goals needed to address them,

especially in areas that may lack a robust grassroots fair housing infrastructure (due to underfunding or spatial distribution). HUD must, at the outset, clearly require program participants to engage in the necessary analysis to support planning activities that generate impactful, precise, and balanced outcomes, responsive to regional issues. This means that HUD should make a number of clarifications, additions, and adjustments to the language of the proposed regulation (including the Definitions section, the Equity Plan framework, and elsewhere) so as to better ensure that participants are on notice as to the data, policy/activity analysis, and specificity of goal commitments that they must produce. We discuss these recommendations in detail below.

COMMENTS AND RECOMMENDATIONS

I. Streamlining

Responsive to:

- 1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?*
- 2. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?*

An abundance of evidence from past eras of AFFH implementation shows that the absence of a rigorous, standardized fair housing planning framework will lead to broad variation in performance among grantees, with many grantees failing to identify or respond to even significant, commonly found problems or to document the regional fair housing impacts of their policies and activities. The pre-2015 AFFH framework (the widely discretionary Analysis of Impediments process) notoriously allowed for widespread neglect of fair housing planning, with numerous grantees doing little or no work to document issues, failing to produce documents on any timely cycle, and facing almost no accountability or oversight for substantive failures to AFFH or for materially inconsistent actions—and therefore rarely taking remedial action to disrupt segregation or to advance housing choice.¹

Following the enactment of the 2015 regulation and the issuance of the related guidance documents (the required template of the Local Assessment Tool, AFFH Data Tool, and detailed additional guidance in the form of the AFFH Handbook), grantees significantly improved performance not only as far as timely generating plans, but in their community engagement activities and, notably, in their commitment to goals, i.e., meaningful actions to advance fair

¹ See, e.g., 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) and Nikole Hannah-Jones, Living Apart: How the Government Betrayed a Landmark Civil Rights Law, ProPublica (June 25, 2015), <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civilrights-law>.

housing.² The requirement that grantees adhere to a rigorous, standardizing planning framework – one which by regulation included baseline data, community outreach and consultation requirements, policy analysis, and the development of goals responsive to the underlying analysis – helped grantees to understand and comply with the requirement that they identify meaningful, supportable goals and to ensure that their activities were consistent with their AFFH duty. It also established an effective platform for engagement between the grantees and HUD staff, in which HUD reviewers had the foundation to consistently and assertively push grantees as needed to ensure that they included all the material information needed to assess fair housing issues and that they responded appropriately in setting goals.

Notwithstanding the importance of a strong standardized planning process, we agree and acknowledge that a number of features of the 2015 AFH Assessment Tool framework (at the subregulatory guidance level) needed improvement and were not optimal in focusing the AFH writer’s or reader’s efforts on the important work of goal formulation. Specifically, the Assessment Tool required extensive narrative descriptions of every data category and provided for often-duplicative discussion of the provided “Contributing Factors” (“CFs”). Some of the CFs were broadly phrased and when put into practice, did not always clearly hone in on policies and practices of the grantee or PHA. As was clear at the time the 2015 guidance was issued, HUD intended that guidance as a “first draft” which it could later improve based on lessons drawn from early implementation.

We therefore support HUD’s efforts to improve on the 2015 framework, but we emphasize that retaining a standardized and comprehensive process remains important and that key process elements for program participants should remain in place or be restored or heightened. These include:

- **Robust community participation;**
- **Examination of a mandatory set of data (setting a floor to which program participants should add information as needed to reflect local and regional variability);**
- **Mandatory examination of a set of policies and activities including but not limited to those around funding, siting, land use (including zoning), enforcement, market regulation (including tenant protections), and publicly assisted housing administration (including consolidated plan participant activities on behalf of PHA residents);**
- **Documented commitment to detailed goals, actions and strategies, and metrics;**
- **Publication of plans and annual public reporting; and**

² See, e.g., Justin Steil and Nick Kelly, *The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance 7* (The Future of Housing Policy in the U.S. Conference, Working Paper, 2017); NYU Furman Center for Real Estate and Urban Policy, *Comment Letter on Proposed Rule Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants* (Mar. 6, 2018), http://furmancenter.org/files/NYUFurmanCenter_CommentsAFHDelay_6MAR2018.pdf.

- **A strong, engaged, and timely HUD review process, with compliance procedures including a complaint mechanism.**

We applaud the inclusion of a complaint process as well as HUD's stated commitment to provide extensive technical assistance resources. However, as stated above, in moving to reduce burden on grantees, HUD should not shift the work of assessing regional AFFH compliance to community groups – while HUD should equip those groups to act as an important planning resource and to challenge noncompliance, it should also set forth clear and complete AFFH process requirements for the grantees and PHAs it funds. Community advocates should be able to look to the grantee's or PHA's provided analysis and focus their attention (and finite capacity) on improving substantive AFFH performance.

Given HUD's decision to provide for an Equity Plan framework within the regulation itself and dispense with the Assessment Tool, we strongly urge HUD to make a number of improvements to the Proposed Rule that would provide for more standardization and rigor. HUD should provide for more specific community engagement requirements. It should reinstitute mandatory reference to a prescribed set of data (with improvements over the past Data Tool and data sets), and require that grantees refer to the full, structured set of HUD-provided and other specified data in supporting the assertions and conclusions within their Equity Plans. It should expand the scope and level of detail of the Equity Plan prompts regarding program participant policies and activities, so as to more fully and accurately identify problem areas and opportunities for action. That is, although HUD has decided not to include a broad list of contributing factors within the regulation itself, it should still include in the regulation a more complete set of policies and activities that program participants are required to examine. We discuss these and other recommendations further below.

On an additional note with regard to concerns around burden, we underscore that racial residential segregation is a deeply engrained, intergenerational, and complex American problem. It implicates myriad public and private actors and its nature is fundamentally cross-sectoral, as segregation is a vehicle for the geographic concentration of discrimination (as reflected in environmental health outcomes, school and employment resources, and otherwise). Segregation and its harms, including deep underinvestment in communities of color and the intergenerational concentration of poverty, is too often embedded as a way of life and a way of operating among federal funding grantees and public housing agencies. Program participants are here being asked to undertake a meaningful examination of segregation and its causes and consequences at the regional level. For some this may pose a challenging learning curve, which makes a clear and complete planning rubric all the more important. Positive instances of grantees successfully generating strong, comprehensive, community-informed fair housing plans demonstrate how such plans yield beneficial outcomes including meaningful AFFH goals. Further, as stated above, the data and analysis provided in a well-executed fair housing plan serves as an important resource not only for program participants in setting goals, but also for HUD in its role as a civil rights reviewer and for community advocacy groups, enabling them to help ensure that the participant generates and follows through on meaningful goals.

We thank HUD for acknowledging the ongoing human costs and negative impacts of segregation and housing discrimination in communities across the country, in connection with life outcomes

in educational attainment, health, economic participation, and otherwise. While new AFFH requirements will, if done well, require time and attention on the part of grantees and PHAs, they are important measures in remedying those problems and in realizing the Fair Housing Act's statutory directives.

II. Definitions

“AFFH” and “Balanced Approach”

12. HUD requests feedback on whether including the definition of “Balanced Approach” is helpful in understanding how to connect funding decisions to advancing equity within communities and how this definition can be modified or improved in order to more clearly make that connection.

We support HUD's well-considered and well-founded definitions of “AFFH” and “balanced approach,” as well as the scope of the “Fair Housing Goal Categories” (and a requirement that program participants provide goals for each, wherever supportable by the planning analysis). These definitions rightfully provide that a grantee must undertake meaningful actions to advance broader choice and mobility and to remedy racial segregation, and also to invest where resources are lacking due to the ongoing legacy of discrimination and segregation. As HUD documented in its 2015 rulemaking, and as established law and a significant body of social science shows, each of the definitional prongs is important in implementing the Fair Housing Act's statutory aims.

We support the restored content of the 2015 “AFFH” definition, as well as the additional proposed language stating that: “AFFH 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 the Fair Housing Act was designed to redress.” This language is helpful in providing clarity and adding emphasis around the requirement that program participants are to focus on outcomes, as well as planning activities, as a condition of receiving federal housing and community development funds.

Affordable housing opportunities

6. HUD seeks comments on whether the definition of “Affordable Housing Opportunities” is sufficiently clear. HUD also seeks comment on whether the definition should apply to both rental and owner-occupied units. Are there other categories of affordable housing that should be explicitly referenced in this definition?

“Affordable housing opportunities” should be defined in a way that makes clear the requirement that a program participant is to examine affordability disaggregated across a prescribed range of income levels (i.e., moderate to extremely low income) so as to assess the racial/ethnic distribution of housing cost burden, habitability, and other factors as related to income level. While the Equity Plan content later in the regulation poses questions soliciting such information, income distribution should be more clearly emphasized in the fair housing issue and goal categories regarding affordability.

Disaggregation will aid the program participant and reviewers to ascertain what types of housing investments will yield the most significant fair housing impacts for a given community. Otherwise, as currently written, the proposed definition conflates income levels in ways that may mask the extent of affordability problems faced by protected class groups – and that may decouple the nature of affordability problems faced by protected class members from the designing of goals intended to meet their needs (e.g., a grantee focusing solely on “missing middle” solutions or market rate rental housing while failing to confront the extent of cost burden, habitability problems, and locational issues facing low income renters). The racial homeownership gap and the severe lack of affordable housing for low income renters (who are disproportionately people of color) are each important fair housing concerns, and deserve full and separate consideration.

Throughout the Equity Plan process, HUD should require program participants to support their analyses and conclusions with the baseline set of HUD-provided data (including that provided in the AFFH Tool or successor). While we agree that it makes sense to reduce burden through elimination of the 2015 Assessment Tool’s requirements for the extensive narration of maps and data, use of and reference to HUD’s full AFFH data sets should not be at the program participant’s discretion, and additional local data should also be used as needed. This requirement should be made clear throughout the regulation, including throughout the Definitions. We thus recommend that “affordable housing opportunities” be revised to include language making clear that the assessment of affordability include reference to HUD data sets and local data as needed – and that it be revised to refer to the distribution of affordability by race/ethnicity and by various income levels. This issue and goal category should focus on the existence of “disproportionate housing needs” on the basis of protected characteristics rather than affordability problems as a more general concern.

“Community Assets,” “Well resourced areas,” and “Access to Opportunity”

18. Are there other types of “Community Assets,” that should be included in the new definition and the analysis of disparities in access to opportunity for purposes of the Equity Plan? If so, which assets should be included that are not currently included in this proposed rule?

As stated above, we emphasize that HUD should make clear throughout the regulatory Definitions and elsewhere that program participants must refer to and incorporate the data that HUD provides and structures for them, as well as local data and knowledge as needed, in their analyses and conclusions. We encourage HUD to examine which standardized data best reflect true variation at the regional and community level (for example, the air quality data in the AFFH Data Tool was often insufficient to capture local variations in environmental health; other data such as proximity to pollutant emitters should be included).

It remains important that the assessment of the locational distribution of affordable housing, subsidized housing, and protected class households in relation to “well resourced” areas and “access to opportunity” include standardized opportunity indices and data as well as referencing a list of “community assets;” it should be made clear that one is not a substitute for

the other and that a grantee cannot, for example, simply look at a few assets (such as bus lines, which can often replicate patterns of segregation within a region) while ignoring other criteria such as school performance or poverty rate. Across the Definitions and the Equity Plan framework, the analysis of access to opportunity or resources should consistently include poverty rate as well as other opportunity-related indices. For example, the current definition of “disparities in access to opportunity” does not list poverty rate or environmental health. HUD should amend this definition to refer to those indices.

With regard to environmental health, it is important that a grantee examine not only “assets” but also health burdens (negative determinants of health) such as proximity to Superfund sites and other pollutants. Further, we recommend that climate response resources be added to the list of “community assets” that program participants are to examine.

Other recommendations on the proposed definitions

10. HUD has included several new definitions in this proposed rule and requests feedback on whether they should be drafted differently, whether there may be additional definitions that are not included that would be useful, and whether any definitions included in this proposed rule are unnecessary.

“Fair housing goal categories” and “fair housing issue”

The breadth of the fair housing goal categories appropriately reflects the AFFH definition and the balanced approach required of grantees. The requirement that a program participant formulate goals for each category that indicates a fair housing issue is helpful in structuring grantee’s planning such that each aspect of the AFFH definition will receive attention in goal formulation. We support the requirement that, where supported by the Equity Plan analysis, a program participant is to develop goals for each fair housing category. This structure is very much needed to better ensure that strategies such as integrative siting policies, which have significant fair housing benefits in promoting access to resources and equality in housing choice but have long been overlooked due to a lack of political will, are adequately considered and implemented.

We recommend that, as in the 2015 rule, the fair housing issue and goal category relating to discrimination and enforcement include not only evidence of discrimination by the program participant, but also an evaluation of fair housing enforcement capacity. This should include assessments of the support provided to independent fair housing groups; the efficacy of local or state governmental entities charged with fair housing oversight; and the sufficiency of local and state laws (such as source of income protections, familial status protection, protection of gender identity in keeping with the Fair Housing Act, etc.).

We also strongly recommend that the required examination of discrimination and enforcement include fair housing and Title VI discrimination/enforcement in the context of land use and services policies and activities and environmental siting practices. (That is, both in regard to provision of services and in regard to siting of health burdens.) Fair housing, and specifically

AFFH, includes municipal service provision and land use policies/activities that result from and mutually reinforce residential segregation, including disparities in environmental protection.³ HUD should make this application of AFFH explicit within the content of this rule, including in the definitional language for goal category (7) and under the definition of “fair housing issue.” We support HUD’s inclusion of “discrimination...relating to community assets” under goal category (7), as well as under the definition of “fair housing issue,” and urge HUD to make clear and explicit that this includes discrimination relating to land use, municipal services, and environmental siting decisions.⁴ (While beyond the focus of this letter, we also ask HUD to redress these issues assertively and systemically through its ongoing AFFH enforcement activity.)

Regional nature of fair housing:

That AFFH is a regional obligation is well established in law.⁵ This reflects the realities of resource hoarding and economic extraction (and interdependence) across municipal lines. Fair housing solutions often must be regional in order to be impactful. The 2015 rulemaking acknowledged the regional nature of housing discrimination and of fair housing, in the preamble and throughout the AFH framework. However, the 2023 proposed rule fails to consistently set forth regional analytical or planning requirements, rather referring in a number of places to “local” conditions or to the “local” impact of the planning participants policies on segregation. We ask that HUD fix this error where it occurs throughout the proposed regulation. This includes, for example, under the definition of “Equity plan” (“...advance local equity...”).

The failure to clearly and consistently require a regional analysis hazards missed opportunities to further fair housing in important ways. For example, a housing authority in a high-poverty area might fail to consider action to improve regionwide voucher portability so as to expand access to opportunity; a relatively well-resourced municipality may fail to assess the impacts of its zoning policies on regionwide segregation.

We also suggest that HUD add “including regional goals” to the language encouraging “relevant, effective goals” in the regulatory section on “Incentives,” 88 Fed. Reg. 8572.

“Data”:

³ See, e.g., See Julie Perrino, “Redlining” And Health Indicators: Decisions Made 80 Years Ago Have Health Consequences Today, NCRC, available at <https://www.ncrc.org/redlining-and-health-indicators-decisions-made-80-years-ago-have-health-consequences-today/>; Paul Mohai & Robin Seha, Which Came First, People or Pollution? Assessing the Disparate Siting and Post-Siting Demographic Change Hypotheses of Environmental Justice, 10 Env’t Res. Letters 11508 (2015), <http://iopscience.iop.org/article/10.1088/1748-9326/10/11/115008/pdf>.

⁴ Some courts have held that the FHA’s discrimination prongs do not apply in post-acquisition cases or unless there is an actual eviction; we believe that HUD should issue guidance and engage in enforcement initiatives that correct those misinterpretations and better reflect the realities faced by vulnerable households who continue to live in environmentally burdened conditions. Further, such conditions may also perpetuate segregation in violation of the Fair Housing Act, and in any case, the AFFH provision is not limited in those respects. See, e.g., Robert G. Schwemm, *Cox, Halprin, and Discriminatory Municipal Services Under the Fair Housing Act*, 41 Ind. L. Rev. 717 (2008).

⁵ See, e.g., *Thompson v. U.S. Dep’t. of Hous. & Urban Dev.*, 348 F.Supp.2d 398 (D. Md. 2005).

With regard to publicly supported housing data, HUD should require examination of “occupancy” data by development in addition to locational and demographic data by housing program. That is, a public housing agency should not only provide the general demographic makeup of its cumulative public housing portfolio (for example), it must also provide such data for each development. This additional data provides for an assessment as to whether particular demographic groups are clustered within public housing developments in particular areas (i.e., black residents predominantly in certain developments or in under-resourced areas). This in turn should prompt the PHA to examine policies and activities such as, for example, whether its waitlist management has segregative impacts. References to “occupancy” data should be added in a number of places throughout the proposed rule, including in the Equity Plan framework as well as in the Definitions. For example, HUD should add references to both occupancy and demographic data alongside the current reference to publicly-supported housing locational data, under the definition of “Local Data.”

“Fair housing choice” and “protected characteristics”

We recommend that HUD add “sex characteristics” to the parenthetical clarifying that discrimination on the basis of sex includes gender identity. We appreciate this update to the regulation.

“Fair housing strategies and actions”

We appreciate the proposed regulation’s clarity and direction as to the requirement that strategies and actions be incorporated into planning documents. We note that some of these will be “subsequent” planning documents and some may entail updates to existing plans (such as Moving to Work (MTW) Plans). The inclusion of planning processes beyond those administering HUD block grant funds – that is, of environmental protection and other plans impacting equitable access to opportunity in ways that reflect and reinforce racial segregation - is an important and positive measure. We hope to see HUD lead future coordination among federal agencies to collectively further fair housing, in keeping with Executive Order 12892, “Leadership and Coordination of Fair Housing in Federal Programs” (1994), and with the statutory requirement that *all* federal agencies further fair housing in their administration or oversight of their housing and community development programs.⁶

We strongly recommend that HUD add here “other local, state, and regional plans relating to housing and community development (including Qualified Allocation Plans).” As HUD recognizes, the AFFH obligation extends throughout the program participant’s activities relating to housing and community development—while its receipt of HUD grant funding is conditioned on AFFH compliance, its AFFH compliance extends beyond how it uses those funds. It is thus important that HUD be clear as to the full scope of the planning processes and other policies that the Equity Plan, goals, and strategies and actions should inform. This recommendation also applies to §5.154(c)(2), Content of Equity Plan: Fair housing goals.

⁶ 42 U.S.C. §3608(d), providing that “All executive departments and agencies shall 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.”

For similar reasons, we recommend that HUD add text to or following the last sentence of this definition to avoid confusion as to the expectation that a program participant consider strategies and actions that extend beyond “the funds that are the subject of the particular planning document.” While we thank HUD for promoting accountability in the direct use of federal funds to further fair housing, it is an important and established principle that civil rights performance is assessed beyond the specific application of those dollars and extends throughout programs and activities relating to housing and community development. HUD has recognized this elsewhere but should ensure that it more consistently makes this clear.

“Funding decisions,” “siting decisions,” and “land use decisions”

We recommend that HUD clarify that “funding decisions” refers to non-housing as well as housing-related resources. Assessment of non-housing related funding decisions (including tax incentives supporting community development or climate response) will enable the program participant to evaluate the causes of disparities in resources and community assets and to formulate goals relating to community investments (which should involve non-housing resources so as to bring in new assets to disinvested areas).

We appreciate the inclusion of federal, state, and local resources and the inclusion of Low Income Housing Tax Credits in this definition. The tax credit program is especially influential in shaping siting outcomes given that it is often layered with other publicly supported housing programs in order to achieve deeper affordability, such as the HOME program and the voucher program. We call HUD’s attention to use of the other term “siting decisions” as used in the Equity Plan questions to refer to decisions that influence publicly supported housing locational outcomes, and recommend that the LIHTC program be included in the definition of “siting decisions” as well so that participants will include LIHTC policies (such as Qualified Allocation Plan incentives) when answering those questions.

We also recommend that HUD add “land use decisions” to the regulatory definitions. Land use decisions should include a non-exhaustive list pertaining to residential zoning, commercial and industrial zoning, environmental permitting, and other factors.

III. Proposed Equity Plan Process

Use of data and data requirements

3. HUD intends to continue to provide much of the same data it made available in 3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH-T, which is available at <https://egis.hud.gov/affht/>, while exploring possible improvements to the existing AFFH-T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants’ data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

e. This proposed rule does not currently identify which specific maps and tables contained in the HUD-provided data program participants should rely on in answering specific questions provided at § 5.154. Should HUD require the use of specific data sets when responding to these questions in § 5.154, and if so, what benefit would that have? How can HUD ensure that program participants, in using the HUD-provided data, identify the fair housing issues and underlying reasons for what the data show in order to assess where equity is truly lacking in their geographic areas of analysis?

We recommend that HUD make mandatory the use of a baseline data set as provided in an improved Data Tool (that is, reference to all HUD sets), while also requiring program participants to refer to additional data, i.e., local data, where needed to complete their analyses. This is not to say that HUD should restore the data narration requirements of the 2015 guidance or that the 2015 Data Tool does not require improvement (for example, alternative sources of environmental health data should be used). However, the proposed rule's failure to set forth requirements that would direct grantees to assess and respond to HUD-provided data is concerning. Even though the data is available for the grantee's use at its discretion, this cannot substitute for structured directives that would ensure that the grantee actually incorporate, references, or refer to this data when assessing its fair housing issues.

Without this structured foundation, a grantee may at the outset simply chose not to incorporate data even where such data documents significant fair housing problems, thus shifting the burden to scrutinize the data and flag likely fair housing problems to community-based advocates. While it remains important that both HUD reviewers and community advocates also have access to the data, as a practical matter they should not be expected to continually correct for widespread grantee discretion. Though they are likely to be of critical importance in many places, community-based challenges to inadequate plans should serve to supplement, rather than be expected to substitute for, the clarity and direction that HUD should provide to grantees themselves at the outset.

Equity Plan Analysis (question framework for program participants)

- 8. HUD requests commenters provide feedback on new § 5.154, which sets out the content of the Equity Plan. HUD specifically requests comment on the following:*
- a. Are the questions in this proposed rule at § 5.154 effective for purposes of how to assess where equity is lacking and to facilitate the development of meaningful goals that are designed and can be reasonably expected to overcome the effects of past or current policies that have contributed to a systemic lack of equity? Put differently, do the proposed questions clearly elicit from program participants an assessment of the fair housing issues that exist and their causes so that goals can be appropriately tailored to address the identified fair housing issues?*
 - 3. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?*

We find the lack of structure and direction around program participants' analysis of their policies and activities very concerning. We do not believe that this current structure is sufficient to produce a meaningful analysis across participants that lack knowledge or motivation to support strong fair housing performance—or that are hesitant to produce a public record of their fair housing performance in particular respects. We urge HUD to provide an Equity Plan framework that will instruct grantees and public housing agencies to examine a more comprehensive set of policies and activities.

Our specific recommendations with regard to the Equity Plan are as follows.

§5.154(c)(2), Fair housing goals: As discussed above in our recommendation on the definition of “fair housing strategies and actions,” we urge HUD to include “other local, state, and regional plans relating to housing and community development (including Qualified Allocation Plans).”

§5.154(c)(3), Scope of analysis: As discussed in our recommendations regarding the definitions of “fair housing strategies and actions” and “fair housing goal categories,” the assessment of discrimination should encompass enforcement capacity and sufficiency of nondiscrimination protections. We support the inclusion of “discrimination...relating to access to community assets” (including environmental health), for the reasons noted above.

§5.154(c)(4), Conducting the analysis: As discussed in our recommendation regarding the regional nature of fair housing under “Definitions,” HUD should make clear that while the program participant is evaluating local policies and practices, it must assess the regional impact of those policies and practices.

§5.154(d), Content-Analysis, local and state governments:

Segregation and R/ECAPs:

With regard to the distribution and demographics of publicly supported housing ((2)(iii)(A) and (B), (3)(iii)(A) and (B)), HUD should require the program participants to refer separately to each publicly supported housing program, including the voucher program. For example, the program participant should separately assess (and provide local data as needed regarding) the distribution of HOME program units, project-based voucher units, tenant-based vouchers (neighborhood concentration), public housing, LIHTC, and local or state-assisted affordable housing units, as well as the overall concentration. This additional granularity is needed for the program participant to identify where new policies or activities can be enacted to better promote housing choice and improve access to opportunity.

The program participant should be asked to engage in analysis of its policies and practices impacting subsidized housing distribution (including for voucher households). This is currently touched on in (2)(iii)(C), (2)(iv), and (3)(iv), but HUD should add emphasis and specificity. For example, HUD should be clear that the program participant is required to examine its funding and siting relating policies and activities across each of its significant programs (e.g.,

state Qualified Allocation Plans, inclusionary housing programs, etc.). Local or state governmental policies and laws that impact regional distribution and the geographic fragmentation of publicly supported housing administration and housing voucher concentration should also be examined—for example, state laws regarding PHA jurisdictional issues.

In addition to the important consideration of siting decisions, we recommend that HUD directly ask a set of questions regarding the state or locality’s coordination with public housing agencies and services targeted to assisted households to further housing choice, address disparities in housing need, and improve access to opportunity for those households. This includes, for example, involvement in redevelopment initiatives, affirmative marketing, funding of counseling and landlord outreach services, funding and oversight to improve habitability and weatherization, targeted support for services such as childcare and job training programs, and adequate consideration of subsidized households in climate and environmental related policies, plans, and activities. HUD should strive to provide throughout the Equity Plan a choice architecture that propels local and state governments to better coordinate with PHAs and to acknowledge the needs of, and act in the interest of, subsidized households.

Access to community assets:

We respectfully call HUD’s attention to inconsistencies in the use of “access to opportunity” and “access to community assets” here and in the Definitions. This is a minor drafting issue, but clarity would be improved if HUD relabels this section “access to opportunity and community assets” and consistently ensures that each of the opportunity indices (poverty rate, education, transportation, employment, and environmental health) is examined in addition to other community assets. Please note our comment above regarding the definition of “disparities in access to opportunity” and the need to refer to environmental health and poverty rate.

We support the inclusion of municipal services and infrastructure disparities in the goal categories and definitions sections. Questions addressing such disparities and the need to address them should be added to this section of the Equity Plan framework. Racial and ethnic disparities in the distribution of benefits and burdens relating to municipal services, facilities, and infrastructure are persisting fair housing problems and ones that have not effectively been addressed. The inadequate provision of infrastructure and services is deeply tied to our nation’s history of housing discrimination and segregation; segregation serves as a mechanism for unequal resource distribution, while basic service disparities have at the same time served to exacerbate and reinforce segregation.⁷ Inquiries as to the existence of such disparities and how a program participant can remedy them are thus an important and appropriate aspect of the Equity Plan and of the participants’ underlying AFFH performance.

We appreciate HUD’s question in (3)(v) regarding the need for place-based community or economic development. We also recommend that HUD include a specific question prompt regarding issues impacting equitable access to healthy neighborhoods and asking whether there

⁷ See, e.g., Jessica Trounstine, *Segregation by Design: Local Politics and Inequality in American Cities* (Cambridge Press 2018), introduction available at <https://inequality.hks.harvard.edu/files/inequality/files/trounstine18bkintro.pdf>.

is a need for additional place-based and mobility-based strategies to promote access to healthy conditions.⁸ This prompt should include environmental remediation, environmental permitting and enforcement, climate mitigation, green space improvements, and support for choice-mobility for subsidized and other low income residents facing environmental health hazards.

Access to affordable housing opportunities:

With regard to the question asking about disparities in housing stability due to rising rents and other factors ((5)(iv)), we appreciate the inclusion of this question and its component parts. However, it is also important that program participants be required to examine each of these conditions and related policies and activities separately so as to assess the sufficiency of existing policies and any actions that would be helpful in address disparities in housing instability and cost burden.

Questions pertaining to housing conditions and habitability (referencing HUD standards or if stronger, local/state standards) should also be included in this section. This includes not only questions to assess disparities in conditions (as in the current (5)(iii)) but also a set of distinct (that is, non-compound) questions regarding causes and providing prompts that ask about specific relevant policies and activities, such as code standards and enforcement, existence of rehabilitation, maintenance and weatherization funds, etc.

Questions pertaining to policies and activities impacting affordable housing opportunities could be included in this section or this section could cross-reference such questions in a subsection of section 7 (“Local and State policies and practices impacting fair housing”). In either case, a fuller mandatory, non-compound list of question prompts should be included.

“Local and State policies and practices impacting fair housing” (§5.154(d)(7)).

We hope that HUD will take significant steps to add structure and specificity to this section. In draft form, many of the important question prompts are exceedingly general and open-ended. We thank HUD for soliciting input as to what improvements would best support a meaningful analysis that will lead to strong fair housing goals responsive to local (and regional) conditions.

The Equity Plan questions should require the evaluation of the existence, strength, and impacts of a fuller, more well-rounded set of policies and activities including but not limited to those around the following categories: funding decisions (including non-housing and housing resources, and including tax credits), siting decisions (including the QAP for states and requiring that the program participant examine siting policies for all programs it administers), land use (including residential zoning, industrial zoning and environmental siting), enforcement, market regulation (including rent protections, other tenant protections, and inclusionary housing requirements), and publicly assisted housing administration (including a state or locality’s coordination with regional PHAs).

⁸ See, e.g., case studies and policy recommendations described in *Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing* (2020), Earthjustice & Shriver Center on Poverty Law, <https://www.povertylaw.org/report/poisonoushomes>.

With regard to coordination around equity, (d)(7)(iv), we call HUD's attention to a small drafting issue; the "program participant" is the entirety of the state or local government, such that this question should ask about coordination within the program participant's departments. We would also recommend adding a general question regarding regional collaboration.

With regard to enforcement, (d)(7)(vi), we recommend that HUD provide for a more complete set of sub-questions regarding fair housing capacity, sufficiency of laws and ordinances, and rigor of enforcement initiatives (including around issues of discrimination relating to land use and community assets, such as environmental issues).

Our recommendations regarding the Equity Plan for public housing agencies are addressed in our response to 8(k) below.

We again thank HUD for soliciting input as to the removal of the Contributing Factors and the sufficiency of the proposed Equity Plan, and for considering our recommendations on this critical aspect of the regulation.

17. Has HUD adequately incorporated the need to assess any lack of homeownership opportunities for protected class groups in this proposed rule? If not, in what ways should access to homeownership be further incorporated? Is there specific data that HUD could provide to further facilitate this analysis?

We thank HUD for adding additional content on homeownership to this version of the regulation. As noted above, rental and homeownership opportunities and affordability for various income levels should each be separated out in the Equity Plan analysis, so that a grantee is required to assess how a lack of affordable housing opportunities (including habitability and access to opportunity) impacts protected class households given their distribution across the income spectrum. Homeownership and rental affordability should be looked at separately. This more detailed and accurate analysis will aid the grantee in prioritizing fair housing issues and formulating goals.

Grantees should also assess fair lending data and fair lending enforcement capacity, as well as the existence of programs that support homeownership and that are tailored to address the racial homeownership gap, such as down payment assistance programs. The availability of weatherization, energy efficiency resources, and maintenance resources for low income homeowners is another important policy consideration (that could be developed through forthcoming AFFH guidance). In addition, grantees should document how disaster recovery/climate response policies/plans specifically address the needs of low- and moderate-income homeowners (as well as renters, who are disproportionately people of color and often have been disadvantaged in such policies/plans).

29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair

housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (e.g., urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.

We thank HUD for recognizing the unique role and responsibilities of states with regard to fair housing. We urge HUD to include in the Equity Plan framework for states, and in future guidance, questions (and example goals) relevant to state housing administration and state enforcement powers. States should be asked to answer questions pertaining to state powers and responsibilities, which differ from localities. The state equity plan should address both policies and activities within the domain of agencies administering housing and community development funds (such as the LIHTC program and the Housing Trust Fund) and also broader use of state powers (including legislative powers). This includes the use of preemption of local laws addressing housing issues, such as tenants' rights and source of income protections. It also includes the extent of support for regional coordination or operation among localities and among PHAs, for example with regard to PHA jurisdictional issues.

Public housing agencies

8(k). Are there areas of analysis that HUD should include for PHAs that it has not included in this proposed rule that would better assist PHAs in meeting their obligation to affirmatively further fair housing? This may include analysis addressed to PHA-specific programs, such as public housing, vouchers, Moving To Work, or other PHA programs, as well as by type of PHA, such as troubled or qualified PHAs?

Yes, we strongly recommend that HUD add the mandatory examination of a full range of policies and practices that commonly impact fair housing within the PHA context. HUD should require that PHAs assess the fair housing impacts of those policies and practices and identify opportunities for improvement. In the absence of such directives, PHAs will lack clarity as to the full scope of policies that they should examine and address. This places a significant burden on community-based advocates (as well as HUD technical assistance providers and HUD review staff) to push PHAs toward institutional change, given the extent of discretion that is available to PHAs in the planning context and in their program administration. While guidance-level documents and various forms of technical assistance can and should provide more extensive detail as to which policies to analyze and how, as well as examples of goals, actions, and metrics appropriate for PHAs, the content of the regulation itself should provide additional structure beyond what is currently proposed. There are established and evidence-based best fair housing practices and policies that run as a thread across the majority of PHAs (and on the converse, practices and policies that can presumptively be assumed to run counter to fair housing and should be assessed, especially in segregated regions). References to a more comprehensive list of these should be included in the regulation itself.

For example, the Equity Plan regulatory framework should require a fair housing examination of redevelopment policies and practices, sufficiency of counseling/mobility services,

affirmative marketing, siting policies and practices across all forms of PHA-administered housing, admissions and occupancy policies (such as rescreening and criminal background policies), waitlist management, maintenance, provision of choice-mobility as part of Rental Assistance Demonstration (RAD) redevelopment, services for Limited English Proficiency (LEP) households, eviction policies, payment standards, search times, and other important policies and practices.⁹ MTW participants should be required to assess how their waivers and MTW activities impact fair housing. The regulatory language should include a rubric of detailed and separate (not compound) prompts asking about these and other key policy areas. Guidance and technical assistance can and should provide additional detail as to *how* to assess *what* is required by the regulation as well as sample goals, strategies, and metrics to advance fair housing in these areas – but the regulation itself should clearly set forth expectations as to a fuller list of policies and activities that PHAs must examine.

As noted above, occupancy data for developments should be examined for distributional fair housing problems (not only overarching demographic data for subsidized housing programs). Some fair housing groups acting as consultants on AFHs experienced difficulty obtaining occupancy data from PHAs, so we recommend that HUD make clear this obligation wherever appropriate in the text of the regulation. In some places, tenant characteristics may vary broadly across developments and may track along racial lines, thus perpetuating segregation.

Further, while we appreciate that HUD requires the PHA to look at whether developments equitably provide access to community assets including assets that relate to environmental health (for example, water, drainage, and infrastructure), the PHA should also look at the distribution of environmental burdens with regard to assisted households and housing developments.¹⁰ Among the policies and activities that HUD should require PHAs to assess are those that enable residents to move away from environmental harms (at either the development or the neighborhood level) should they chose to exercise that option.

8(k). Are there additional ways HUD could incentivize PHAs to collaborate with consolidated plan program participants in conducting an Equity Plan such that they can pool resources and develop broader solutions to fair housing issues?

While reasons of efficiency and administrative resource-sharing serve to encourage collaboration, collaboration can also benefit PHAs by motivating con plan program participants to more fully consider the needs of subsidized households and to formulate relevant fair housing goals. We appreciate that HUD is considering additional incentives to reward collaboration.

The converse of this question is equally important to pose—and even if consolidated program participants are not collaborating with a PHA on the Equity Plan itself (though we encourage that as broadly as possible), they should still be responsive to the needs of PHA households. We recommend that HUD ask consolidated plan program participants to assess how their

⁹ For a more complete set of factors, please refer to Working with PHAs to Adopt Policies that Affirmatively Further Fair Housing: An Advocacy Guide and Toolkit for Local Advocates (PRRAC & NHLP, July 2021).

¹⁰ See Poisonous Homes, *supra*.

local/state/regional policies and activities (including their funding decisions and enforcement policies) do or can impact fair housing in publicly assisted administration and for publicly assisted households. Such inquiries and related goals can yield positive results targeted to help vulnerable households that are disproportionately protected class members, as through the consideration of strategies such as use of local funds to support voucher holders (e.g., security deposit funds), source of income protections, marketing and services for voucher holders to support opportunity moves, the improved coordination of neighborhood community development resources with affordable housing resources, and support for PHA siting strategies that promote access to resources and improved housing conditions. Such strategies should be viewed as among the important housing administration duties for localities and states, but often are not, due to administrative siloing of PHAs from other housing-related departments and due to the general political disempowerment of the population base that PHAs serve. While the program regulations do require that participants consult with PHAs, states and localities should also be prompted (through explicit, relevant questions within the Equity Plan framework) to assess whether they have impactful policies in place to coordinate with PHAs and to advance fair housing for PHA residents.

State and local governments should, further, be asked whether and how they account for the needs of subsidized households in their climate-related plans.

We also recommend that guidance and technical assistance content aid state and local governments in assessing ways their policies and activities impact fair housing for subsidized households and in formulating relevant goals and strategies.

IV. Goals, strategies and actions, and planning processes

16. This proposed rule provides a stronger link between the regulatory requirements for implementing the AFFH mandate and program participants' subsequent planning processes in order to better ensure that all programs and activities are administered in a manner that affirmatively furthers fair housing, including by taking into account how to allocate funding to effectuate that obligation. HUD requests comments on how HUD can further ensure that program participants are adequately planning to carry out activities necessary to advance equity in their communities. Specifically, are certifications and assurances requirements in this proposed rule, along with the new regulatory provision at § 5.166 sufficient to achieve this objective, and if not, what additional regulatory language can be added that would achieve this objective?

20. Are there ways that HUD could better clarify how the fair housing goals from an Equity Plan are incorporated into subsequent planning processes? If so, how can HUD clarify this requirement such that program participants will be able to implement their fair housing goals and achieve positive fair housing outcomes in their communities?

As stated above in our comments on the “Definitions,” we appreciate and support the strong link between the AFFH Equity Plan and other planning processes. We also appreciate and support HUD’s articulation (here as in the 2015 regulation) that the AFFH obligation applies all throughout the program participant’s programs and activities related to housing and community development (that is, while ongoing receipt of specified federal funds are

contingent on compliance with the AFFH regulation, the regulatory as well as statutory AFFH obligation extends beyond activities directly funded by those dollars). We recommend that HUD ensure that it is clear and consistent as to this expectation across all provisions of the regulation.

As HUD recognizes, the duty to AFFH extends throughout a program participant's programs and activities relating to housing and community development. That is, the obligation does not apply only to federal housing funds or to federal funds obligated as part of the entitlement grant process. It is therefore important that HUD consistently be explicit that, while incorporating actions into its own program planning documents (specifically the Consolidated Plan, as well as the PHA Plan in the case of PHAs) is required and is an important oversight mechanism given that program funds are conditioned on AFFH certification, actions and strategies should (wherever indicated by policy analysis and data) extend beyond the dedication of federal funds and beyond activities funded by the CDBG, HOME, ESG, and HOPWA programs. The Consolidated Plan serves as a platform for accountability (given its connection to the grants that are conditioned on AFFH compliance), and not as the sole planning or policy vehicle for fair housing goal implementation. HUD should make sure the final rule is drafted so as to avoid confusion on this point.

HUD should also be consistent in stating that a program participant should make amendments to other housing and community development-related planning processes as needed in order to implement its fair housing goals, such as local comprehensive plans, state Qualified Allocation Plans, state or local climate action plans, and others. In these instances, as elsewhere, while federal funds may and should support fair housing actions and strategies, those actions should extend more broadly (beyond the federal funding footprint) as needed to further fair housing. Such expectations are not consistently clear in the proposed drafting of 5.156 or in the proposed modifications to the program regulations.

Notwithstanding the above, HUD and its program participants should take specific measures to improve fair housing performance for the HOME and CDBG programs themselves – for example, ensuring that the HOME program does not reinforce segregation and that CDBG funding promotes mobility and reinvestment and adequately addresses the needs of protected classes.¹¹ Local administration and decision-making for each of these programs should be squarely addressed in the Equity Plan framework, in guidance, and in a program participant's goals as necessary.

Finally, HUD should amend the proposed language to account for planning requirements applicable to Moving to Work (MTW) participants; while MTW extension agencies are subject to the five-year periodic PHA Plan requirement, the original MTW cohort is not. These PHAs must be adequately accounted for in the regulation.¹²

¹¹ See, e.g., issues raised in Taking Stock of the Community Development Block Grant, Brett Theodos, Christina Plerhoples Stacy, and Helen Ho (Urban Institute 2017), <https://www.urban.org/research/publication/taking-stock-community-development-block-grant>, and Is the HOME Program Affirmatively Furthering Fair Housing?, Ebony Gayles (PRRAC 2014).

¹² As with other PHAs, MTW policies and practices have serious fair housing consequences including around housing choice, perpetuation of segregation, and access to opportunity, and many of these policies are still little assessed at the local level; see, e.g., Moving to Work Agencies' Use of Project-Based Voucher Assistance, Martha

V. Transparency and reporting

22. HUD specifically solicits comment on the proposal to publish submitted plans that it is reviewing but has not yet accepted or non-accepted. HUD seeks comment on both the benefits of this proposal and concerns with it.

We support HUD's proposal to publish submitted plans that it is in the process of reviewing. The availability of submitted and under-review plans will enable community advocates to raise concerns with the Equity Plan. It is important that advocates have this opportunity to point out insufficiencies with the Equity Plan, such as failures to include or respond to policies and practices impacting fair housing or stronger alternatives to the goals proposed by the program participant. Public availability of the plans should also be viewed as an opportunity for advocates to provide information indicating that a program participant is acting in a way that is materially inconsistent with its AFFH obligation.

HUD has made a beneficial move toward greater transparency and public accountability by requiring that Equity Plans be posted publicly. In addition to supporting compliance, publication means that these Plans will also serve as a useful reference to both program participants and community groups in other locations, so that they can learn from models of analysis and goal setting generating by the ongoing, staged Equity Plan process.

HUD should also clarify that all of the AFFH documents that are to be "public" must be published, that is, posted publicly so as to be easily accessible. Otherwise, when documents that are "public" record require record requests to obtain, community groups will counter delays and administrative burdens in order to obtain and evaluate grantee submissions. This applies, for example, to the annual reports.

The addition of an annual reporting requirement is a positive step that will support substantive performance. While grantees should include annual activities in their CAPER reports (submitted annually to HUD in connection with HUD entitlement grants), a separate public reporting requirement enhances accountability. The Equity Plan annual report provides that community members, staff at other local/state agencies, and local/state policymakers should have readily available a complete and focused look at AFFH performance.

5. *In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of?*

A robust community engagement process is essential to ensuring that a grantee adequately gathers and accounts for local knowledge, incorporates information from community stakeholders with relevant expertise in identifying fair housing issues, and formulates fair housing goals that respond to the needs of protected groups. We therefore recommend that

Galvez et al (HUD PD&R 2021), <https://www.huduser.gov/Portal/sites/default/files/pdf/MTW-Project-Based-Voucher-Assistance.pdf>.

HUD include strong and specific standards for community engagement in its final rule, including a number of improvements over the proposed requirements.

We recommend that the rule set forth requirements that incorporate and formalize principles of effective community engagement, including: dedicated outreach to fair housing groups, civil rights groups, and other groups with expertise, including environmental justice, tenants' rights, and LGTBQ advocacy groups, at multiple stages of the process; engagement designed to reach low-income community members, with regard to location, timing, and publicity; and LEP considerations. HUD should specify that outreach to fair housing groups and other key constituencies is required, beyond the relatively general directions in the proposed rule regarding the gathering of diverse perspectives. HUD should require that community groups be engaged at multiple points, including early in the Equity Plan process, around goal formulation, and in commenting on the draft Plan and goals.

We note our concern with the proposal that consolidated plan and Equity Plan community engagement be allowed to be conducted as a joint process. Fair housing problems and strategies, and relevant local knowledge, merit full attention during the equity planning process. In addition, the Equity Plan process should be viewed as a rare and important opportunity to broaden public understanding of fair housing issues and more fully engage community groups in focusing on such issues, thus strengthening local and regional support for forthcoming initiatives that further fair housing. HUD should require separate community engagement for the Equity Plans.

VI. Enforcement

15. HUD requests specific feedback on new sections §§ 5.170 through 5.174 and whether the compliance procedures and procedures for effecting compliance can be further clarified and improved.

The complaint process that this rule would make available for advocates is a significant, positive, and potentially impactful addition. We strongly support inclusion of the complaint process in the final regulation. The addition of this complaint procedure helps to bring the AFFH framework up to the standard that is more generally in place for the effective enforcement of civil rights requirements, as exists for Title VIII's nondiscrimination requirements and both at HUD and across federal agencies for Title VI of the Civil Rights Act of 1964, prohibiting discrimination in the use of federal funds. The complaint process addition is an important development that will enable community groups to directly challenge the inadequacy of a grantee's Equity Plan, prompting HUD to take action to require the grantee to improve the plan and commit to meaningful fair housing goals (or else potentially lose funding).

Program participants should be required to notify community members as to the availability of a complaint process and to refer them to resources on the HUD website as to how to submit a complaint. HUD should develop such resources and ensure they are accessible and easily understood.

We also emphasize that proactive and robust enforcement initiated by HUD will be critical in ensuring that program participants actually meet their AFFH obligations. Under the short-lived

implementation of the 2015 regulation, HUD staff engaged very actively in reviewing draft AFHs and requiring grantees to improve them, including the formulation of meaningful goals responsive to local conditions. For a new rule to succeed in meeting its regulatory and statutory objections, HUD will need to exert a strong oversight presence.

With regard to the timeline for Equity Plan submission and HUD review and acceptance, we recommend that HUD remove or limit the ability for a program participant to receive an extension based on special assurances without facing a delay in funds. Program participants should start planning early to allow for full community input and for feedback by HUD as needed. Allowing a broad loophole that applies to major and clear regulatory requirements risks decreased accountability. The lack of standards governing when HUD is to allow for such extensions is concerning.

VII. Technical assistance

21. What forms of technical assistance could HUD provide that would better position program participants and their communities to develop their Equity Plans and ultimately implement and achieve the fair housing outcomes set therein?

Especially given that HUD is not providing for a successor to the Assessment Tool required under the 2015 regulation, it will need to issue comprehensive guidance and technical assistance regarding the analysis of policies and activities that are likely to impede or advance fair housing. Technical assistance resources, including written materials and coaching, should provide detailed guidance on how to formulate and execute strategies and actions that meaningfully advance fair housing across a range of market and other regional characteristics. Guidance and TA should provide robust example strategies and actions, along with examples of metrics. These resources should be available and accessible to community groups as well as program participants. Technical assistance should also emphasize ways to ensure that goals are adequately incorporated into other policies and plans besides those submitted to CPD and PIH at HUD, for example with regard to QAPs, Comprehensive Plans, climate action plans, and others.

We support provision of TA and guidance on a full set of fair housing problems and goals/strategies, and we would welcome future opportunities to provide HUD with detailed recommendations on content. For purposes of this letter, we note one area in particular where guidance is needed: strategies to focus both public and private investments on areas that lack in such resources or community assets. This should include strategies to engage and obtain commitments from institutions such as hospitals and other anchor institutions, as well as other private and public sector sources. Technical assistance can also assist program participants in promoting alignment of banks' Community Reinvestment Act activities with AFFH goals. For instance, banks can receive CRA credit for community development investments in low- and moderate-income communities, for supporting homeownership, and for financing multifamily housing. With regard to the latter category, banks' CRA activities should be aligned with AFFH goals and principles (such as preventing displacement and cost burden, promoting access to highly resourced areas, and providing for meaningful tenant protections). Banks often look to affordable housing programs such as LIHTC for CRA credit, as well to other avenues of community development finance and for homeownership (lending and counseling services), but

CRA is rarely mentioned as a strategy in fair housing plans. HUD should provide program participants with guidance on ways that they can effectively promote and harness CRA investments in affordable housing and in other activities relating to community development finance, and in affordable homeownership, as a source of funding for their AFFH activities.

Please contact Megan Haberle, Senior Director of Policy, at mhaberle@ncrc.org with questions about this letter or proposal.

Sincerely,

National Community Reinvestment Coalition (NCRC)

Affordable Housing Centers of Pennsylvania

African Community Housing and Development (ACHD)

Alliance 85

California Coalition for Rural Housing

California Reinvestment Coalition

CASA of Oregon

CCCSMD (Consumer Credit Counseling Service of Maryland and Delaware, Inc)

CDC Small Business Finance/Capital Impact Partners

Ceiba

Center for Fair Housing, Inc.

Central Baptist Community Development Corporation

Centre for Homeownership & Economic Development

Chester Community Improvement Project

Chicago Community Loan Fund

Community Growth Fund

Delaware Community Reinvestment Action Council, Inc.

Detroit People's Platform

Economic Action Maryland

Fair Finance Watch

Fair Housing Center of Central Indiana, Inc.

Fair Housing Center of Metropolitan Detroit

Family Housing Advisory Services

Family Resources of New Orleans

Florida Housing Coalition

Georgia Advancing Communities Together, Inc.

Greater Baltimore Community Housing Resource Board

Habitat For Humanity of Michigan

Housing Action Illinois

Housing and Education Alliance, Inc.

Housing Assistance Council

Housing Education and Economic Development

Housing Justice Center

Housing Oregon

HousingWorks RI
Latino Leadership Council
Legacy CDC
Leviticus 25:23 Alternative Fund, Inc.
Martindale Brightwood Community Development Corporation
Metro Milwaukee Fair Housing Council
Metropolitan St. Louis Equal Housing and Opportunity Council
Montana Fair Housing
National Association of American Veterans, Inc.
NC Housing Coalition, Inc.
Neighborhood Improvement Association
New Urban Development LLC
North Carolina Justice Center
Northside Community Development Corporation
Olive Hill Community Economic Development Corporation
Pima County Community Land Trust
Poverty & Race Research Action Council
Prosperity Indiana
Real Estate Education and Community Housing Inc
Rebound, Inc.
Rockford Area Habitat for Humanity
Self-Help Housing Corporation of Hawaii
South Bend Heritage Foundation
Southern Dallas Progress Community Development Corporation
Southwest Economic Solutions
Southwest Georgia United
St. Petersburg Neighborhood Housing Services, Inc.
Sun Chdo
The Greenlining Institute
To Each His Home Community Redevelopment
Ubuntu Institute of Learning
Universal Housing Solutions CDC
Urban Land Conservancy
W I T H Action
Welfare Reform Liaison Project, Inc.
Working In Neighborhoods

