

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 undersigned environmental justice and fair housing organizations and advocates, we are pleased to submit our comments on HUD's proposed Affirmatively Furthering Fair Housing (AFFH) regulation. We thank HUD for taking this step toward reviving this important regulation and the requirement that program participants (grantees and public housing agencies) engage in fair housing planning and commit to meaningful fair housing goals.

Fair housing and environmental justice are interrelated and mutually reinforcing frameworks that must both be advanced to achieve a more equitable society, one in which all communities have access to healthy homes and neighborhoods. Racial residential segregation has long served as a mechanism for disparities in resource distribution, including both environmental assets and environmental harms, and land use practices, infrastructure siting, and environmental decision-making (such as the siting of pollutants) can in turn directly contribute to the perpetuation of segregation, displacement, and disparities in quality of life.

The AFFH planning process and AFFH goal-setting should therefore fully account for and respond to environmental justice considerations. This means the required review of relevant data and regional policies and practices (including enforcement); vigorous HUD review for sufficient goals and actions; and enabling of meaningful participation by environmental justice advocates and community members. Our comments focus on ways that HUD can strengthen the AFFH's rule's impact with regard to environmental justice, as well as on key aspects of the proposed rule that we support.

Equity Plan and Goal-Setting

We support HUD's continued emphasis on a "balanced approach" that promotes both broader housing choice (including into areas that have been exclusionary and that are well resourced) and also addresses the harms of discrimination in underinvested communities by bringing greater resources to those areas. The AFFH process should seek to address environmental harms where they disproportionately affect communities of color, both by guiding more resources (such as climate adaptation resources) to those communities and by preventing and remediating the disproportionate siting of environmental burdens (such as freight routes or permitted pollutants) in those areas.

We also support the proposed language instructing program participants to include AFFH related goals, strategies, and actions, including in plans receiving federal funding and climate related plans. HUD should specify that this includes other housing and community development plans generated by the program participant, such as state Qualified Allocation Plans (which can guide housing development or preservation so as to better promote access to healthy areas).

We welcome the restoration of a standardized planning process that consolidated plan participants and public housing agencies must undertake as a condition of receiving HUD funds. Prior to 2015, the lack of clear and comprehensive process requirements meant widespread dereliction of AFFH obligations among HUD grantees, even as they continued to receive significant federal funds conditioned on the substantive duty to AFFH. The persistence and extent of racial segregation and related environmental injustices throughout our country show that on their own, many program participants are unlikely to go beyond the regulatory floor or to exercise their discretion in the direction of meaningful change. We therefore urge HUD to ensure that the final rule provides clear regulatory standards that set forth a mandatory framework describing the kinds of data the program participants must respond to and the types of policies and activities it must examine.

We recommend that the regulatory language itself direct program participants to examine environmental health data. (While program participants need not complete extensive narratives describing the maps and tables as they did under the 2015 AFFH Assessment Tool, they should be required to acknowledge and respond to issues shown by standardized data, as well as local data.) HUD should improve on the health-related data previously provided in the AFFH Data Tool, as nationally available air quality data fails to capture many significant environmental disparities.

The regulatory language should also be clear and directive as to the requirement that a program participant describe and assess its policies and activities relating to housing and community development that impact environmental justice and access to healthy conditions. We discuss a number of such policies/activities in the following sections. Where the analysis indicates that a significant fair housing problem exists in relation to environmental health, HUD should ensure that the program participant responds accordingly and publicly commits to meaningful goals, strategies, and actions to remedy the problem.

We recommend that HUD provide for these requirements in the text of the regulation itself, not only at the guidance level, so that program participants have clarity and are held more fully accountable for environmental justice problems that are inconsistent with their AFFH obligations.

HUD should also offer technical assistance and guidance that more fully explains how to diagnose environmental health disparities and their causes and potential solutions.

Disparities in access to opportunity, housing conditions, access to community assets, and municipal services, land use decisions, and publicly assisted housing administration

We urge HUD to ensure that program participants take steps to adequately examine and respond to environmental justice issues in connection with their obligation to promote fair housing. This includes the following recommendations for the final rule:

- Require that program participants examine their land use policies, including residential zoning, industrial zoning, infrastructure siting that displaces residents or negatively impacts quality of life, easements, and environmental permitting, for disparities on the basis of protected characteristics (in particular race and ethnicity). This should also include a historic analysis of land use policies, so that longstanding policies creating and growing industrial parks are addressed.
- Examine publicly assisted housing redevelopment policies to ensure sufficient protections for residents, including the availability of environmental mitigation resources to enable the right to remain and the availability of choice-mobility options for those who wish to relocate (protections should include the requisite environmental analysis under the National Environmental Policy Act).¹
- Assess whether state and local plans pertaining to climate and environmental health adequately address racial disparities and whether they adequately account for the needs of low income renters and subsidized households. Subsidized households are among the most at risk and impacted by climate related harms.²
- Evaluate ways in which state and local land use and related environmental policies exacerbate the racial wealth gap by stripping homeowners of color of home value.
- Assess the extent to which public and private resources for housing and community development relating to climate adaptation (such as energy retrofits) meet the needs of communities of color.
- Examine siting decisions and outcomes for all forms of subsidized housing (including HUD supported housing, the Low Income Housing Tax Credit program, the Housing Trust Fund, and state and local programs) to determine what changes are needed to provide for access to healthy neighborhoods.
- Ensure that the aspects of the rule addressing “affordable housing opportunities” truly focus on disproportionate housing needs, or create a separate section that focuses on conditions as well as cost burden. Housing quality should include reference to HUD standards (or stronger state or local standards) as well as neighborhood health standards. Require program participants to examine sufficiency of code enforcement and provision of funds to address habitability needs (while preventing loss of housing and displacement). Require that state and local participants as well as PHAs examine and respond to the habitability needs faced by assisted households (including those in public housing) as well as other low income renters.

¹ Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing (2020), Earthjustice & Shriver Center on Poverty Law, <https://www.povertylaw.org/report/poisonoushomes>.

² See National Low Income Housing Coalition resources at <https://nlihc.org/explore-issues/projects-campaigns/disaster-housing-recovery/nlihc-resources>.

- With regard to the proposed list of “community assets,” we recommend that HUD add climate response resources. In addition, the rule should make clear that program participants must examine negative as well as positive contributors to neighborhood health conditions. The definition of “disparities in access to opportunity” should be amended to include environmental health.
- We appreciate and support the inclusion of municipal services and infrastructure as part of the required analysis. Disparities in municipal services are a long standing fair housing issue, and in recent history have been difficult to challenge using the Fair Housing Act’s disparate impact prong. Disparities in access to basic services such as clean water have been shaped by, and mutually reinforced by, residential discrimination and segregation.³ Beneficial infrastructure has often failed to serve communities of color, while harms of infrastructure siting – such as highway expansion – disproportionately burden them (and can result in displacement as well as health problems). Whether infrastructure siting and design have negative impacts from a fair housing standpoint should also be part of the AFFH inquiry.
- We recommend that the Equity Plan section of “Access to Community Assets” more directly and specifically ask about place based strategies to promote healthier neighborhoods (in addition to the existing prompts regarding business- and job-related supports). These include, for example, environmental remediation, permitting policies, use of environmental justice reviews, climate mitigation, and green space improvements. Program participants (including consolidated plan participants) should also be asked about the sufficiency of their support for choice mobility options for subsidized and other low income residents facing environmental health hazards (such as for children with asthma or households in proximity to Superfund sites and other risks).⁴
- With regard to the questions addressed fair and affordable homeownership, we recommend that program participants also be asked to evaluate to what extent resources such as energy efficiency and weatherization are available to protected groups. (This would cover, for example, Inflation Reduction Act resources, including those that are not targeted by statute.) These can present significant costs for households that cut against the wealth building aims of homeownership.

Assessing civil rights enforcement capacity and patterns of discrimination

The fair housing and issue goal category regarding discrimination should include an assessment of fair housing capacity, as well as discrimination complaints. This assessment should explicitly include resources provided to enforcement groups, sufficiency of legal frameworks (for example, does the state or locality provide for source of income protections and does it adequately protect for sex discrimination based on gender identity, etc), and structure and efficacy of state or local

³ See, e.g., Robert G. Schwemm, *Cox, Halprin, and Discriminatory Municipal Services Under the Fair Housing Act*, 41 Ind. L. Rev. 717 (2008).

⁴ See *Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing* (2020), Earthjustice & Shriver Center on Poverty Law, <https://www.povertylaw.org/report/poisonoushomes>.

offices charged with nondiscrimination oversight. In evaluating the rigor of state or local enforcement initiatives, the program participant should include an assessment of enforcement around issues of discrimination relating to land use and community assets, including environmental issues.

We appreciate and support the proposed language asking that grantees include information regarding discrimination in access to community assets. We ask that HUD make clear and explicit that this includes discrimination in environmental permitting, infrastructure siting (including discriminatory distribution of both benefits and burdens), industrial zoning, environmental enforcement, and other aspects of land use that relate to both environmental justice and fair housing. These environmental harms arise from residential segregation and relate directly to housing and community development policies. HUD should be clear that its interpretation of AFFH includes the obligation that program participants disrupt and remedy such harms.

HUD complaint process

We strongly support the addition of a complaint process to the AFFH regulation. This complaint mechanism is necessary to enable impacted residents to challenge inadequacies in program participants' plans, including the failure to adequately assess environment harms or to engage community advocates. It is also much needed to enable advocates to challenge substantive failures to AFFH or policies that are materially inconsistent with the duty to AFFH. HUD should issue further guidance on multijurisdictional complaints involving AFFH, including where they may be also related to a civil rights complaint before the EPA or other federal agencies.

Community participation

Participation in decision-making is a core tenet of environmental justice. Further, a meaningful, robust, and consistent community engagement process is critical to the success of Equity Plan development. As HUD has acknowledged, "when [it] implemented its 2015 AFFH Rule, program participants and community members alike consistently reported to HUD that community engagement (then called community participation) was an extremely effective and important part of identifying fair housing issues and figuring out how best to prioritize and address them."⁵ Data and knowledge from community groups with relevant experience (including lived experience) and expertise can contribute vital information to the Equity Plan. This participation is also needed to ensure that a program participant's formulation of fair housing goals reflects the needs and preferences of impacted people. Rigorous community engagement requirements are thus an important component of the rule.

Targeted outreach to community-based groups is key to collecting adequate information and to engaging impacted residents and their advocates in ongoing efforts to support fair housing, including environmental justice concerns. Program participants should be required to consult with fair housing, civil rights, and environmental justice groups as well as engaging in outreach more broadly. Grassroots groups and other advocates should be involved from the beginning of

⁵ 88 Fed. Reg. 8517.

the process, and at multiple stages in the process, including scoping, fair housing issue identification, goal formulation, and goal implementation and monitoring.

We also recommend that HUD provide guidance and technical assistance on the formulation and engagement of community advisory committees that work alongside program participants to engage the community and to provide input. Program participants should provide funding to support this work. These should include environmental justice as well as fair housing groups. For example, the city of Boston’s Assessment for Fair Housing outlines the extensive process used to gather data from community members and states “[c]ommunity engagement represents a critical and first piece in developing any assessment about fair housing.”⁶ The effort to create the city’s AFFH ordinance was built through a “connection between political activists, community activists, lawyers, academics, environmental justice groups, and health advocacy groups.”⁷ For the Assessment of Fair Housing, Boston city officials worked with more than 60 organizations, who “recruited residents and others to attend and participate in meetings but also to complete surveys for each public meeting.”⁸ These organizations hosted public meetings and led breakout groups, “thereby encouraging participants to speak candidly about their housing experiences.”⁹ One lesson learned from Boston’s AFFH process was the need for sustained commitment to community engagement, even after the completion of the formal process.

Thank you for considering these comments and recommendations. Please contact us via Megan Haberle, mhaberle@ncrc.org, with any questions or for further discussion.

Best regards,

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⁶Assessment of Fair Housing, “Affirmatively Furthering Fair Housing in Boston, Massachusetts: Process, Findings and Goals,” (June 2019), <http://charlehamiltonhouston.org/wp-content/uploads/2020/05/June-2019-Plan-2.21.20.pdf>

⁷ Poverty and Race Research Action Council, Jan-Apr 2021 P&R Issue, “The Making of Boston’s AFFH Ordinance – A Brief Oral History,” (March 22, 2021), <https://www.prrac.org/the-making-of-bostons-affh-ordinance-a-brief-oral-history/>

⁸ Boston Assessment 2019, 27.

⁹ Id.

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