

HUD FACT SHEET AND FREQUENTLY ASKED QUESTIONS : AFFIRMATIVELY FURTHERING FAIR HOUSING, NOTICE OF PROPOSED RULEMAKING



On February 9, 2023, HUD published in the Federal Register a Notice of Proposed Rulemaking entitled “Affirmatively Furthering Fair Housing”. The proposed rule, which builds on and refines HUD’s 2015 rule, would faithfully implement the Fair Housing Act’s statutory mandate that HUD ensure that recipients of its funding affirmatively further fair housing (AFFH). The AFFH mandate requires the agency and its program participants to proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination.

This action is vitally important for redressing continued segregation, disinvestment from communities of color, and ongoing discrimination in housing markets. The need for change remains urgent 55 years after passage of the Fair Housing Act, as the effects of many decades of discriminatory policies and practices and historic disinvestment from communities of color are still felt. Our nation remains highly segregated by race, communities continue to have vastly different access to critical resources, and a large racial wealth gap still exists. Many still lack meaningful choice about where to live due to ongoing discrimination and exclusionary practices. This lack of choice, not preferences among low-income families and members of protected class groups, drives residential and income segregation today. Many families continue to face barriers to obtaining or keeping housing in well-resourced, low-poverty areas that provide access to opportunity and community assets, such as desirable schools, parks, grocery stores, and reputable financial institutions. In addition, continued disinvestment in housing and community assets in areas that are not well-resourced magnifies the inequalities caused by this residential and income segregation.

HUD expects that implementation of this proposed rule will greatly enhance equity, human dignity, social welfare, and justice for all protected class groups. The proposed rule would be a significant step in redressing our nation’s history of discriminatory housing policies and practices, while improving economic equity and economic growth within communities and throughout the nation. HUD anticipates that the proposed rule will help ensure that people in protected classes have equitable access to affordable housing opportunities, which can be a crucial lifeline for vulnerable populations that have long been denied equal access in many aspects of American life.

Specifically, the proposed rule would require program participants to identify fair housing issues facing their communities, using both data provided by HUD and local knowledge, and then commit to taking responsive actions.

Fair housing outcomes would be locally driven based on the fair housing issues presented by local circumstances. This proposed rule does not dictate the particular steps a program participant must take to overcome a fair housing issue. Rather, the proposed rule is intended to empower and require program participants to meaningfully engage with their communities. This engagement would allow program participants to understand their local issues and develop the goals needed to achieve integrated living patterns, overcome historic and existing patterns of segregation, reduce racial and ethnic concentrations of poverty, increase access to homeownership, and ensure realistic and truly equal access to opportunity and community assets.



The proposed rule thus builds on the planning framework established by the 2015 AFFH Rule, but it also contains refinements based on considerable input from a wide variety of stakeholders. HUD expects that these refinements will help program participants more easily identify goals and solutions to affirmatively further fair housing. Meanwhile, the proposed rule provides for greater transparency for the public, greater opportunity for public engagement, and accountability mechanisms that ensure that program participants live up to their commitments. HUD is committed to being a partner in the planning process for program participants and the public and expects this rule to result in meaningful actions being undertaken across the country to finally fulfill the promise of the AFFH mandate established in 1968.

HUD welcomes robust public comment on this proposed rule. Public comments may be submitted for 60 days after the NPRM is published in the Federal Register, until April 10, 2023, through the rule's docket on www.regulations.gov or through the mechanisms described in the Notice of Proposed Rulemaking.

THE PROPOSED RULE

Builds on the 2015 AFFH Rule

Like the 2015 AFFH Rule, the proposed rule implements the Fair Housing Act's AFFH mandate by requiring state and local communities—as well as public housing agencies—to identify and address fair housing issues. The proposed rule retains much of the framework of the 2015 AFFH Rule, with some notable refinements. As before, program participants would identify fair housing issues, prioritize the fair housing issues they would focus on overcoming in the next three to five years, and develop the goals they would implement to overcome those fair housing issues.

Requirements

Program participants would submit to HUD for review and acceptance an Equity Plan—a modified version of the Assessment of Fair Housing (AFH) performed under the 2015 Rule—that is developed following community engagement and contains the fair housing analysis, goals, and strategies. An Equity Plan would be submitted every five years. The proposed rule contains a more streamlined required analysis compared to what was required under the 2015 AFFH Rule. It also includes more robust community engagement requirements so that program participants can hear directly from their residents about their specific fair housing-related needs.

The proposed rule would require program participants to incorporate fair housing goals from their Equity Plans into subsequent planning documents (e.g., Consolidated Plans, Annual Action Plans, and Public Housing Agency (PHA) Plans). In addition, program participants would be required to conduct and submit to HUD annual progress evaluations that describe progress toward and/or any needed modifications of each goal in the Equity Plan. Both the Equity Plans and the annual progress evaluations would be posted online.

Refinements

The proposed rule includes refinements informed by HUD's experience implementing the 2015 AFFH Rule and input from many stakeholders. HUD has used that information to propose a rule that would:

- Simplify the required fair housing analysis, making it easier for program participants to



complete the analysis correctly and allowing more time and energy to be spent on effective goal setting;

- Provide more transparency to the public and greater opportunity for public input in the formulation and review of Equity Plans;
- Provide HUD with more practical ability to work with program participants to improve initial submissions and ensure that, when Equity Plans are accepted, they are fully compliant with the rule's requirements;
- Provide a mechanism for regular progress evaluation; and
- Provide for accountability by giving HUD and the public a greater set of enforcement options to ensure that program participants meet their planning commitments or revise commitments where circumstances change.

Timing of Equity Plan Submissions

The proposed rule would require larger, higher-capacity program participants to submit Equity Plans first. Submission deadlines would then be staggered across the different categories of program participants, again based on size as well as their respective program year or fiscal year start dates. The proposed rule encourages program participants to collaborate and submit a single "Joint Equity Plan" with other participants.

FREQUENTLY ASKED QUESTIONS

What are HUD program participants?

- HUD program participants are certain recipients of HUD's federal funding. Some program participants are local governments, states, and insular areas participating in and required to submit consolidated plans for the Community Development Block Grant (CDBG) program, the Emergency Solutions Grants (ESG) program, the HOME Investment Partnerships (HOME) program, the Housing Trust Fund (HTF), and the Housing Opportunities for Persons With AIDS (HOPWA) program. Other program participants are public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937.

What is an Equity Plan?

- An Equity Plan is the fair housing plan prepared by HUD program participant to commit the program participant to goals that advance equity in housing, community development programs, and residents' access to well-resourced areas, opportunity, and community assets. The Equity Plan would be developed with the input of the community and consists of an analysis of fair housing data and issues, a prioritization of the issues that would be addressed, and the establishment of and commitment to undertake fair housing goals. Those goals would then have to be incorporated into subsequent planning documents, such as the program participant's consolidated plan, Annual Action Plan, and/or PHA Plan, as applicable. The Equity Plan is a modified version of the Assessments of Fair Housing (AFH) performed under the 2015 AFFH Rule.

What are the topics that an Equity Plan needs to address?

- Equity Plans would address topics in the following areas (with slight variation between the topics that governments and public housing agencies must address):
 - Demographics
 - Segregation and integration
 - Racially or ethnically concentrated areas of poverty (R/ECAPs)
 - Access to community assets



- Access to affordable housing opportunities
- Access to homeownership and economic opportunity
- Policies and practices impacting fair housing

Why is HUD streamlining the required analysis rather than readopting the Assessment Tool used for the 2015 Rule?

- While HUD's implementation of the 2015 AFFH Rule was limited because the previous Administration shut down the rule's operation, HUD learned a great deal from the fair housing goals established by program participants in their Assessments of Fair Housing. Based on that experience and feedback from stakeholders, HUD recognizes, in this proposed rule, that a more practical approach to setting fair housing goals based on a more streamlined fair housing analysis is more likely to result in positive fair housing outcomes. For this reason, the proposed rule places a greater emphasis on setting meaningful, achievable fair housing goals. At the same time, HUD believes the proposed rule would still require program participants to engage in the core analysis necessary to identify local fair housing issues, relying on both data provided by HUD and on local knowledge.

How does the proposed rule provide greater accountability and transparency mechanisms?

- HUD is proposing a number of different mechanisms in this proposed rule to provide greater public transparency and to hold its program participants accountable for fulfilling their obligations to affirmatively further fair housing. Those include:
 - HUD would post on its website all submitted Equity Plans and would accept comments from the public regarding an Equity Plan that is submitted and under review by HUD.
 - HUD would have a greater ability to work with program participants whose Equity Plans fall short of meeting this rule's requirements because it would have remedies at its disposal besides an immediate cut-off of funding.
 - HUD would have the ability to accept complaints from the public and determine whether compliance reviews regarding program participants failing to meet their obligations to affirmatively further fair housing should be opened.

What is public comment and how do I submit a public comment?

- As part of the rulemaking process, comments are accepted from the public on proposed rules published in the Federal Register during a specified comment period. The comment period for the AFFH proposed rule ends 60 days after date of publication in the Federal Register (not publication on HUD's website). The public can make comments through [regulations.gov](https://www.regulations.gov).
- HUD welcomes robust public comment and invites all interested parties and members of the public to submit their views, comments, and recommendations for improvement. HUD will consider all public comments in crafting a Final Rule on AFFH. Here are some [tips](#) for submitting effective comments, , as well as a [How-To Guide](#) for submitting public comments.

What kind of data does HUD anticipate it would provide to program participants and the public to facilitate the development of the proposed Equity Plans?

- Many stakeholders found that the data HUD provided to program participants and made available to the general public was one of the most important parts of the 2015 Rule.
- HUD anticipates that it would continue to provide datasets, including maps, and tools that contain at least as much data as is currently provided in the AFFH-T Data and Mapping Tool to support the identification of fair housing issues by program participants and their communities. HUD anticipates that it would continue to make this data [publicly available](#).
- As noted in the proposed rule, HUD is exploring ways to build on and improve the current AFFH-T Data and Mapping Tool. HUD specifically seeks comment from the public on how it can update and improve the current AFFH-T Data and Mapping Tool, including what additional data HUD should consider providing.



- As part of its general effort to make it easier for program participants to complete the required analysis, HUD is also contemplating providing technical assistance that would highlight key points from the HUD-provided data to help program participants understand what those maps and tables show. HUD anticipates that these efforts would reduce the burden for program participants, provide information in a format that also can be understood by the community to foster increased community engagement, and ultimately result in Equity Plans that address local fair housing issues.

How does HUD expect to assist smaller program participants in complying with their AFFH obligations under the proposed rule?

- The proposed rule contemplates several ways to reduce the burden for smaller program participants to comply with their obligations.
- HUD expects the required analysis to scale to the size and complexity of a program participant. Smaller program participants would have less to consider in conducting their analysis.
- HUD is proposing to allow smaller program participants more time before their first Equity Plan would be due, so that they can receive technical assistance and benefit from lessons learned from the submissions of larger program participants.
- Along with the data and assistance mentioned above, HUD is contemplating making its provision of these data more user friendly for smaller program participants and those with fewer resources while increasing their understanding—and their communities' understanding—of what those data signify.
- HUD is committed to ensuring that smaller program participants can comply with this rule and specifically welcomes public comment on this issue.