

# PRELIMINARY OVERVIEW OF KEY AFFH DEFINITIONS

## National Low Income Housing Coalition

Ed Gramlich  
March 3, 2023

All page numbers refer to HUD's [preview version](#) of the proposed AFFH rule

Not all definitions are included here.

Key additional text is in **green bold type**.

NLIHC has edited *some* of the definitions here to lessen the bureaucratic legalese.

### §5.152 Definitions (Page 156)

**Affirmatively furthering fair housing** means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation, **eliminate inequities in housing and related community assets**, and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, **reduce or end** [“address” in 2015] significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into **well-resourced** areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws **and requirements**.

The duty to affirmatively further fair housing extends to all of a program participant’s activities, **services**, and programs relating to housing and community [“urban” in 2015 and IFR] development; **it extends beyond a program participant’s duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination the Fair Housing Act was designed to redress.**

[Advocates wrote to HUD after the IFR was issued, in anticipation of a proposed rule. Advocates were pleased that the definition of AFFH in the IFR restored the 2015 rule’s definition. Advocates wrote that the IFR’s restoration of the 2015 definition was a positive and important step; the definition reflected the Act’s history and the current need to remedy segregation, discrimination, and the closely related issues of disinvestment, and lack of access to opportunity.

The last sentence added to the proposed rule reflects advocates’ recommendation that throughout the rule there should be language that places a strong emphasis on action steps.]

**Affordable Housing Opportunities** [a new term] means

(1) Housing that:

- (i) Is affordable to low- and moderate-income households;
- (ii) Has a sufficient number of bedrooms to meet the needs of families of various sizes, particularly large families; and
- (iii) Meets basic habitability requirements.

[A major problem with the proposed rule is that it does not define “affordable” while using the word “affordable” not only in this definition, but throughout the proposed rule. The federal government’s largest housing program, the Low Income Housing Tax Credit (LIHTC), is structured in a way that prevents extremely low-income households (those with income at or less than 30% of the area median income (AMI) or with income less than the federal poverty line) to be “cost burdened” (spending more than 30% of their adjusted income for rent and utilities) or even “severely cost-burdened” (spending more than 50% of their adjusted income for rent and utilities).

NLIHC will strongly urge HUD to define “affordable” housing as housing that requires a household to spend no more than 30% of their adjusted income on housing expenses (rent or mortgage) and utilities – the Brooke Rule.]

[NLIHC will suggest that HUD provide examples of “basic habitability” either in the final rule or in subregulatory guidance. For example, the Housing Choice Voucher program’s Housing Quality Standards (HQS), the imminent standards anticipated in HUD’s forthcoming NSPIRE regulation, or more rigorous state and local standards.]

[It is good that the text recognizes the needs of large families.]

(2) Affordable housing includes publicly supported housing (defined on page 169) as well as housing that is otherwise affordable to low-income households.

(3) The term “affordable housing opportunities” includes:

- (i) Locations that are close to community assets (defined on page 159 and page 4 of this outline), that promote integration, and that provide access to opportunity and well-resourced areas.
- (ii) Housing that is accessible to people with disabilities, including by providing necessary accessibility features.
- (iii) Housing stability for protected class groups, who might be adversely affected by factors such as rising rents, loss of existing affordable housing, displacement due to economic pressures, evictions, source of income discrimination, or code enforcement.

[It is a positive sign that factors that can lead to housing instability are recognized.]

**Balanced Approach** [a new term]

Balanced Approach means and refers to an approach to community planning and investment that balances a variety of actions to eliminate the housing-related disparities that result from segregation, racially or ethnically concentrated areas of poverty (R/ECAPs), the lack of affordable housing in well-resourced areas of opportunity, the lack of investment in community assets in R/ECAPs and other high-poverty areas, and the loss of affordable housing to meet the needs of underserved communities.

A balanced approach includes a combination of actions designed to address all these disparities. For example, place-based strategies include actions and investment to substantially improve living conditions and community assets in high-poverty neighborhoods while preserving existing affordable housing stock to meet the needs of underserved communities and address inequitable access to affordable rental and homeownership opportunities.

Mobility strategies, on the other hand, focus on the removal of barriers that prevent people from accessing affordable housing, for example in well-resourced areas of opportunity that have historically lacked such housing and effective housing mobility programs and services.

To achieve a balanced approach, community planning and investment would need to balance place-based strategies with mobility strategies. Both place-based and mobility strategies that are part of a balanced approach must be designed to achieve positive fair housing outcomes. A program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely on solely place-based strategies consistent with a balanced approach.

[The text of the proposed rule, unlike the 2015 rule, provides a detailed definition of “balanced approach” to affirmatively furthering fair housing. NLIHC is pleased with the proposed rule’s clear definition, along with references for the need for a balanced approach in three other sections of the proposed rule.]

[In commenting on the 2013 proposed AFFH rule, NLIHC was concerned that the proposed text seemed to imply that AFFH could be interpreted to prohibit use of federal funds to preserve affordable housing or to revitalize areas of racial or ethnic concentrations of poverty that had suffered disinvestment, but were housing developments and neighborhoods where long-time residents wanted to continue living while benefitting from improvements. NLIHC and others stated that the final rule must clarify that program participants are expected to use an AFFH strategy of stabilizing and revitalizing neighborhoods that had concentrations of racially and ethnically concentrated poverty, as well as a strategy of enhancing mobility and expanded access to existing community assets.

The preamble to the 2015 final rule made several references seeming to address NLIHC’s concerns. However, the text of the 2015 final rule only addressed our concern in the rule’s statement of purpose:

“A program participant’s strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.”]

Page 159

**Community assets [a new term]** means programs, infrastructure, and facilities that provide opportunity and a desirable environment.

Examples of community assets include: high performing schools (as well as quality daycare and childhood educational services), desirable employment opportunities, efficient transportation services, safe and well-maintained parks and recreation facilities, well-resourced libraries and community centers, community-based supportive services for individuals with disabilities, responsive emergency services (including law enforcement), healthcare services, environmentally healthy neighborhoods (including clean air, clean water, access to healthy food), grocery stores, retail establishments, infrastructure and municipal services, banking and financial institutions, and other assets that meet the needs of residents throughout the community.

Page 160

**Equity or Equitable [a new term]** means the consistent and systematic fair, just, and nondiscriminatory treatment of all individuals, regardless of protected characteristic, including concerted actions to overcome past discrimination against underserved communities (defined on page 171 and on 13 of this outline) that have been denied equal opportunity or otherwise adversely affected because of their protected characteristics by public and private policies and practices that have perpetuated inequality, segregation, and poverty.

Page 160-161

**Equity Plan [a new term]** means the plan prepared by program participants to advance local equity in housing, community development programs, and access to well-resourced areas, opportunity, and community assets. The Equity Plan includes two distinct parts:

- (1) Analysis of fair housing data and identification of fair housing issues required by the [each?] fair housing goal category; and
- (2) Establishment and commitment to undertake fair housing goals, strategies, and meaningful actions for each fair housing goal category, which program participants shall incorporate into subsequent planning documents [e.g. ConPlans and PHA Plans] that identify how the program participant will use funds or take actions to affirmatively further fair housing. Program participants submit their Equity Plan to HUD for review.

The Equity Plan may be conducted and submitted by an individual program participant (individual Equity Plan) or may be a single Equity Plan that is jointly conducted and submitted by two or more program participants (joint Equity Plan). The Equity Plan includes program participants' submission of annual progress evaluations, which will be published [posted] on HUD maintained webpages.

[The last sentence could be interpreted to mean that only annual progress evaluations will be published on HUD-maintained webpages. However, the text of the proposed rule makes clear that an Equity Plan submitted for HUD review (and open to public comment), an "accepted" Equity Plan, and relevant communications between HUD and a program participant will also be posted to a HUD-maintained website.]

[See NLIHC's "Preliminary Overview of the AFFH Equity Plan".]

Page 161

**Fair housing choice** means that individuals and families have the information, opportunity, and options to live where they choose, **including in well-resourced areas**, without unlawful discrimination and other barriers related to race, color, religion, sex (**including sexual orientation gender identity, and nonconformance with gender stereotypes**), familial status, national origin, or disability.

Fair housing choice encompasses:

- (1) Actual choice, which means the existence of realistic housing options (**e.g., those that are affordable and attainable**), **including but not limited to homeownership options**;
- (2) Protected choice, which means housing that can be accessed without discrimination; and
- (3) Enabled choice, which means realistic access to sufficient information, **services**, and other options regarding **both rental housing and homeownership** so that any choice is informed.

For persons with disabilities, fair housing choice **includes a realistic opportunity to obtain and maintain housing with accessibility features meeting the individual's disability-related needs**, housing provided in the most integrated setting appropriate to an individual's needs, and housing where community assets are accessible to individuals with disabilities, including voluntary disability-related services that an individual needs to live in such housing.

**Fair housing goals [a new term]** means the goals developed by program participants that are based on the [fair housing] analysis conducted in the Equity Plan and are designed and can be reasonably expected to overcome circumstances that cause, increase, contribute to, maintain, or perpetuate fair housing issues (page 163) in a program participant’s geographic areas of analysis (defined on page 164, discussed on page 8 of this outline).

Fair housing goals include a description of progress-oriented, specific measurable steps, including timeframes for achievement, and a description of the amount of and potential sources of funds (if any) needed to implement the goal.

Fair housing goals may be short-term, in that they can be achieved relatively quickly, or more ambitious, long-term goals, in that they may take more than a single funding cycle to be fulfilled.

Fair housing goals are designed to achieve tangible, positive, and measurable fair housing outcomes for each of the seven fair housing goal categories (page 163) in a program participant’s community. A program participant’s fair housing goals must work together to overcome fair housing issues identified in the program participant’s Equity Plan.

To ensure program participants affirmatively further fair housing, if program participants establish ambitious goals that are contingent upon funding or other actions that are not entirely within their control, program participants also must establish fair housing goals that will achieve positive fair housing outcomes in each goal category without reliance on contingencies that may not be fulfilled. Each fair housing goal includes a description of the key fair housing issue(s) it is designed to remedy or overcome. When achieved, fair housing goals must result in a material positive change toward overcoming fair housing issues.

**Fair housing goal categories [a new term]** means the following categories for which program participants must establish fair housing goals to overcome identified fair housing issues:

- (1) integration and segregation;
- (2) racially or ethnically concentrated areas of poverty (R/ECAPs);
- (3) significant disparities in access to opportunity;
- (4) inequitable access to affordable housing and homeownership opportunities;
- (5) laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities;
- (6) inequitable distribution of local resources, which may include state or municipal services, emergency services, community-based supportive services, and investments in infrastructure; and
- (7) discrimination or violations of civil rights law or regulations related to housing and access to community assets.

[These are all the key “fair housing issues” from the 2015 final rule.]

[Note how these overlap with fair housing goal categories, above.]  
{edited; last paragraph not included}

**Fair housing issue** means a condition in a program participant’s geographic area of analysis that restricts fair housing choice or access to opportunity **and community assets**.

Examples of such conditions include but are not limited to:

- Ongoing local or regional segregation or lack of integration;
- Racially or ethnically concentrated areas of poverty;
- Significant disparities in access to opportunity;
- **Inequitable access to affordable housing opportunities and homeownership opportunities;**
- **Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced neighborhoods of opportunity;**
- **Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure;** and
- Discrimination or violations of civil rights law or regulations related to housing **or access to community assets**.

**Fair housing strategies and actions [a new term]** means the specific policies and actions intended to implement fair housing goals established in an Equity Plan that are incorporated into a program participant’s subsequent planning documents (e.g., consolidated plan, annual action plan, PHA Plan, and other plans relating to education, transportation, infrastructure, and environmental protection, including those required in connection with the receipt of Federal financial assistance from any Executive Agency or Department).

Fair housing strategies and actions describe how the funds that are the subject of a particular planning document will be used to affirmatively further fair housing in a program participant’s jurisdiction consistent with the Equity Plan.

[This definition and other lines in the text emphasize how HUD funds and other funds will be allocated to programs and activities that help a program participant comply with its fair housing goals.]

[This definition and other lines in the text clarify and emphasize the requirement to “incorporate” a program participant’s fair housing goals, strategies, and actions in the ConPlan, Annual Action Plan, and PHA Plan.]

[Note how other important planning efforts (e.g. transportation) are included.]

**Funding decisions [a new term]** means decisions made to allocate resources, including federal financial assistance, state or local funds, bond financing, and the administration, utilization, and allocation of low-income housing tax credits by states, local governments, public housing agencies (as applicable), or other entities.

[This definition again emphasizes how HUD funds and other funds will be allocated to programs and activities that help a program participant comply with its fair housing goals.]

[The Low Income Housing Tax Credit (LIHTC) is the largest federal housing program but is overseen by the Internal Revenue Service (IRS) – not HUD. It is critical that LIHTC be rigorously included in AFFH obligations. The Treasury Department (the umbrella agency for the IRS claims that LIHTC is not “federal financial assistance” because it is not appropriated by Congress; instead it is a tax expenditure meaning the IRS forgoes the amount of LIHTC available each year (estimated to be around \$11 billion in 2023)].

Page 164-165

**Geographic area, geographic area of analysis, or area [a substantially modified term]** means the areas, including a jurisdiction, region, state, Core-Based Statistical Area (CBSA), or other applicable area (e.g., census tract, neighborhood, Zip code, block group, housing development, or portion thereof) **relevant to the required fair housing analysis. The geographic areas of analysis for the different types of program participants are as follows:**

**[All of the following is new]**

- (1) **For states or Insular Areas**, the “geographic area of analysis” includes the whole state or Insular Area, **including entitlement** and non-entitlement areas, on a **county-by-county basis** (not neighborhood-by-neighborhood), and where necessary to identify fair housing issues, lower levels of geography, while also including any analysis of circumstances outside the state that impact fair housing issues within the state;
- (2) **For local governments**, the “geographic area of analysis” includes the entire jurisdiction, the CBSA, and where necessary to identify fair housing issues, lower levels of geography such as neighborhoods, Zip codes, census tracts, block groups, housing developments, or portions thereof, while also including any analysis of circumstances outside the jurisdiction that impact fair housing issues within the jurisdiction; and

(According to the Census Bureau, CBSAs consist of the county or counties (or equivalent entities) associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties.)

[To clarify, the final rule should read, “...includes the entire jurisdiction *and the CBSA it is part of*, and where necessary...]

[If the geographic area of analysis includes the CBSA, then is the last clause “while also including any analysis of circumstances outside the jurisdiction that impact fair housing issues within the jurisdiction” automatically required?]



(3)

- (i) For PHAs that operate below the state level, the “geographic area of analysis” includes the PHA’s service area (e.g., the area where a PHA is authorized to operate), the CBSA, and where necessary to identify fair housing issues, includes lower levels of geography such as neighborhoods, Zip codes, census tracts, block groups, housing developments, or portions thereof, along with locations where **vouchers** administered by the PHA are or could be utilized, while also including any analysis of circumstances outside the service area that impact fair housing issues within the service area.

[It is good that vouchers are specifically mentioned.]

- (ii) For PHAs that operate within an entire state, the PHA’s “geographic area of analysis” includes the areas of non-state PHAs and the areas in which the PHA owns, operates, and administers housing programs, and where necessary to identify fair housing issues, includes lower levels of geography.

[As NLIHC wrote on page 3 of “Preliminary Overview of the AFFH Equity Plan”, NLIHC will seek clarity from HUD about §5.154 Equity Plan, (d) “Content Analysis for Local Governments, States, and Insular Areas” because it seems to inconsistently use the terms, jurisdiction, region, geographic area, and geographic area of analysis.]

Jumping ahead to page 169 to define “region”

**Region** [a new term] means the larger geographic area that a jurisdiction is within. Regions may vary in size, scope, and relevance based on the nature of the jurisdiction and the fair housing issues present. Regions, which include areas outside a program participant’s jurisdiction that are identified in HUD-provided data and supplemented with local data and local knowledge, and that impact fair housing issues in the jurisdiction [sic – this is not a sentence].

For local governments or PHAs that are next to but not located within a CBSA, the region includes the CBSA. For local governments or PHAs that are located within CBSAs, the region includes but is not necessarily limited to the other portions of the CBSA.

**Local knowledge** [a **substantially modified term**] means information not provided by HUD that relates to a program participant’s geographic area of analysis. It is information that is relevant to identifying fair housing issues and setting fair housing goals to overcome the effects of identified fair housing issues, and is necessary to complete an Equity Plan. Local knowledge is information that is known or becomes known to a program participant. Local knowledge includes, but is not limited to:

- (1) Historical information on why current conditions within the geographic area of analysis exist and persist, which may include state or local laws, ordinances, or policies that cause, perpetuate, increase the severity of, or maintain fair housing issues;
- (2) Information about the existence or cause of one or more fair housing issues provided to a program participant during the community engagement process; and
- (3) Information that assists a program participant in identifying the causes of local fair housing issues along with appropriate solutions.

[NLIHC suggests that HUD provide examples in subregulatory guidance, such as studies conducted by local universities, planning entities, and service providers.]

[As with guidance provided for the 2015 rule, it could help reduce reluctance on the part of some program participants if HUD clarified that program participants do not need to take extraordinary measures to create or research local knowledge.]

**Meaningful actions** means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, **decreasing segregation and increasing integration**, increasing fair housing choice, or decreasing disparities in access to opportunity **in the program participant’s jurisdiction**.

**Protected characteristics** are race, color, religion, sex (**including sexual orientation, gender identity, and nonconformance with gender stereotypes**), familial status, national origin, having a disability, and having a type of disability.

[The elaboration on the meaning of “sex” is a welcome addition.]

[Note: When writing about the Fair Housing Act’s “protected classes”, race, color, religion, sex, familial status, national origin, and disability are the terms generally used. In the proposed rule, these are now categorized as “characteristics” while “protected class” is being used in an aggregate sense of a “group” of persons.]

**Protected class** means a group of persons who have the same protected characteristic; e.g., a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.

**Publicly supported housing [a new term]** means affordable housing assisted with funding through federal, state, or local agencies or programs as well as affordable housing financed or administered by or through any such agencies or programs.

Examples of publicly supported housing for purposes of the required fair housing analysis include:

- Public housing
- Housing subsidized with Housing Choice Vouchers
- Project-Based Section 8 (PBRA)
- Housing converted under the Rental Assistance Demonstration
- Section 202 Supportive Housing for the Elderly
- Section 811 Supportive Housing for Persons with Disabilities
- Housing financed with Low-Income Housing Tax Credits (LIHTC)
- HOME Investment Partnerships Program
- Housing Trust Fund program
- Housing financed through loan guarantees (e.g. Section 108)
- Housing funded through the U.S. Department of Agriculture (e.g. Sections 515, 514, 516, and 521)
- Housing funded through the U.S. Department of Veterans Affairs

[It is good that LIHTC is specifically listed because HUD does not administer or oversee LIHTC – it is a program overseen by the Internal Revenue Service (IRS) which is primarily concerned with compliance with the tax code and not with housing development, sustainability, or fair housing issues.]

**Racially or ethnically concentrated areas of poverty or R/ECAPs** means a geographic area with both significant concentrations of poverty and segregation of racial or ethnic populations.

[HUD must provide a specific standard in subregulatory guidance that is readily identifiable (unlike for the 2015 rule where a R/ECAP standard was buried deep in an obscure document that most people were not aware of).]

[In the obscure “[Data Mapping Tool \(AFFH-T\)](#), [Data Documentation](#)” HUD wrote that it developed a census tract-based definition of R/ECAPs involving a racial/ethnic group concentration threshold and a poverty test.

- For the racial/ethnic group concentration threshold, an area can be a R/ECAP if it has a non-White population of 50% or more.
- For the poverty test, an area in a CBSA can be a R/ECAP if it has a poverty rate that exceeds 40% or is three or more times the average tract poverty rate for the metropolitan/micropolitan area, whichever threshold is lower. For places not in a CBSA, the racial/ethnic group concentration threshold is set at 20%.

**Region** (see page 9 above.)

Page 170

**Responsible Civil Rights Official [a new term]** means the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or his or her designee.

**Reviewing Civil Rights Official [a new term]** means the FHEO official with the designated authority to carry out the actions described in the regulation sections concerning compliance and procedures for effecting compliance with the regulation (§§ 5.170 and 5.172).

[NLIHC has not spelled out these official titles in this or other of NLIHC’s preliminary summaries about the proposed rule. Instead, NLIHC simply used the word “HUD”.]

Page 170

**Segregation** means a condition within a program participant’s geographic area of analysis in which there is a significant concentration of persons of a particular race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a different or broader geographic area. **Racial segregation includes a concentration of persons of the same race regardless of whether that race is the majority or minority of the population in the geographic area of analysis. For example, in a community where persons of one race (e.g., White) are concentrated in one neighborhood and persons of another race (e.g., African American) are concentrated in a different neighborhood, racial segregation exists in each of the neighborhoods.**

For persons with disabilities, segregation includes a condition in which available housing or services are not in the most integrated setting appropriate to an individual’s needs in accordance with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. Participation in “housing programs serving specified populations” as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act (including the duty to affirmatively further fair housing), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and other federal civil rights statutes and regulations.

Page 171

**Significant disparities in access to opportunity** means substantial and measurable differences in access to and [sic] **quality of [sic] housing**, education, transportation, economic, and other important opportunities in a community, **including community assets**, based on protected class ~~related to housing~~ **and related to where individuals of a particular protected class reside in the program participant’s geographic areas of analysis.**

**Siting decisions [a new term]** means decisions made by state or local entities, including cities, counties, or general units of local government, regarding where and where not in a jurisdiction to locate, build, finance, rehabilitate, develop, or permit the development of affordable housing.

[A welcome addition.]

**Underserved communities** [a new term] means groups or classes of individuals who are protected classes or who share a particular characteristic, disproportionately include members of protected class groups, and have not received equitable treatment. It also means geographic communities where members of protected class groups do not have equitable access to housing, education, transportation, economic, and other important housing and community-related opportunities, including [in?] well-resourced areas and community assets. Examples of underserved communities include: communities of color, individuals experiencing homelessness, Lesbian, Gay, Bisexual, Transgender, Queer, + persons (LGBTQ+), low-income communities or neighborhoods, survivors of domestic violence, persons with criminal records, and rural communities.

[The examples are welcome. HUD guidance should emphasize using them.]

Page 172

**Well-resourced areas** [a new term] means areas within a program participant's geographic area of analysis that have high-quality and well-maintained community assets that afford residents genuine access to opportunity (e.g., transportation, infrastructure, high performing schools, economic opportunity, etc.) as a result of public and private investments.