

**PRELIMINARY OVERVIEW OF EQUITY PLAN
SUBMISSION AND HUD REVIEW
COMPLIANCE PROCEDURES**

National Low Income Housing Coalition

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

§5.160 Submission Requirements

(a) General (page 204) [In order to get to the basics about submissions first, NLIHC's outline of the proposed rule's Subsection (a) provisions about Joint Submission (if more than one program participants agree to collaborate) is presented on page 4 at the end of this basic outline of submission requirements.]

(b) Submission of First Equity Plan – ConPlan Program Participants (pages 206-207)

[When a state, local jurisdiction, or a PHA will be required to have an Equity Plan will be phased in over many years, starting with the largest jurisdictions or PHAs.]

[A program year is when a jurisdiction's ConPlan begins. Jurisdictions chose their program years when the CDBG program was first implemented. The majority start on July 1, with significant numbers starting on January 1 or October 1.]

- (1) For jurisdictions receiving a total of \$100 million or more in HUD formula grants from programs that are subject to the ConPlan requirements (CDBG, HOME, HTF, ESG, and HOPWA), for the "program year" beginning on or after January 1, 2024, their first Equity Plan must be submitted by 24 months after the day the AFFH rule is finalized and becomes effective or 365 calendar days before the date a new ConPlan is due – whichever is earlier.
- (2) For jurisdictions receiving a total of \$30-99 million in formula grant funds for the program year that begins on or after January 1, 2025, their first Equity Plan must be submitted no later than 365 calendar days before the date a new ConPlan is due.
- (3) For jurisdictions receiving a total of \$1-29 million in formula grant funds for the program year that begins on or after January 1, 2026, their first Equity Plan must be submitted no later than 365 calendar days before the date a new ConPlan is due.
- (4) For jurisdictions receiving a total of less than \$1 million in formula grant funds for the program year that begins on or after January 1, 2027, their first Equity Plan must be submitted no later than 365 calendar days before the date a new ConPlan is due.

[Keep in mind, a new ConPlan might not be due until years later if a jurisdiction had a new ConPlan approved just before the trigger date. For example, if a jurisdiction receives \$50 million in formula funds for their program year that begins on July 1, 2025, there is a good chance that they needed to produce a new ConPlan for their program year 2025 (many have July 1 program years), which means that jurisdiction would not need to have submitted an Equity Plan until July 1, 2029 (365 days before their next new ConPlan was due on July 1, 2030, which is five years after their previous ConPlan (2025) started).]

(c) Submission of First Equity Plan – PHAs (pages 207-208)

[When a PHA must have an accepted Equity Plan will depend on the combined number of public housing and Housing Choice Vouchers they administer.]

- (1) For PHAs that have 50,000 or more combined public housing and voucher units, their first Equity Plan must be submitted no later than 24 months after the AFFH rule becomes finalized and effective or 365 days before a new Five-Year PHA Plan is due following the start of the fiscal year that begins on or after January 1, 2024 – whichever is earlier.
- (2) For PHAs that have between 10,000 and 49,999 combined public housing and voucher units, their first Equity Plan must be submitted no later than 365 calendar days before the date a new Five-Year PHA Plan is due following the start of the fiscal year that begins on January 1, 2025.
- (3) For PHAs that have between 1,000 and 4,999 combined public housing and voucher units or PHAs that operate statewide (which includes certain “Qualified PHAs”), their first Equity Plan must be submitted no later than 365 calendar days before the date a new Five-Year PHA Plan is due following the start of the fiscal year that begins on January 1, 2026.

[Qualified PHAs are those with less than 550 public housing and voucher units, combined.]

- (4) For PHAs that have less than 1,000 combined public housing and voucher units, their first Equity Plan must be submitted no later than 365 calendar days before the date a new Five-Year PHA Plan is due following the start of the fiscal year that begins on January 1, 2027.

(d) Until a Program Participant’s First Equity Plan Is Due, How Must It Comply with AFFH Planning and Certification Requirements (pages 208-209)

[As is evident from the preceding discussion, it will be years before most program participants will have to develop and submit an Equity Plan. However, they will still have to meet their AFFH obligations. As established in the Interim Final Rule (IFR), program participants will still have to engage in fair housing planning], which could include preparing an Analysis of Impediments to Fair Housing Choice (AI) as was required until 2015, completing an Assessment of Fair Housing (AFH) as designed in the 2015 AFFH rule, some other fair housing planning, or even voluntarily creating an Equity Plan.]

- (1) Until a program participant is required to submit an Equity Plan, it must still engage in fair housing planning. It may prepare an Analysis of Impediments to Fair Housing Choice (AI), Assessment of Fair Housing (AFH), other fair housing plan, or voluntarily conduct an Equity Plan in advance of one being required.

If a program participant has not conducted or updated its fair housing plan for more than three years before the effective date of a final AFFH rule, and if it is not required to submit an Equity Plan within 24 months of the effective date of the final AFFH rule, the program participant must either conduct or update its fair housing plan (e.g., AI, AFH, or

other fair housing plan), and submit it to HUD for publication (posting on a HUD-maintained website) and potential HUD review, no later than 365 calendar days from the date the final rule came into effect.

If a program participant has conducted or updated its fair housing plan during the three years before the effective date of the final AFFH rule, it must merely submit its existing fair housing plan to HUD for posting on the HUD website and potential review no later than 120 days from the effective date of the final rule.

If HUD determines that there is evidence challenging the accuracy of a program participant's certification that it is affirmatively furthering fair housing, HUD will provide written notice to the program participant.

- (2) Program participants must update their fair housing plans (e.g., AI's, AFHs, other fair housing plan, or voluntary advance Equity Plan) every five years for HUD posting and potential review.

(f) Annual Progress Evaluations (page 210)

The first Annual Progress Evaluation must be submitted to HUD for posting and review no later than 365 calendar days from the date notifies a program participant that its Equity Plan is accepted.

Subsequent Annual Progress Evaluations must be submitted to HUD for posting and review no later than 365 calendar days from the date of the previous Annual Progress Evaluation.

(g) Second and Subsequent Equity Plans (page 210)

After the first Equity Plan, subsequent Equity Plans must be submitted to HUD for posting and review 365 calendar days before the date a new ConPlan or PHA Plan is due.

(h) Frequency (page 210)

Program participants must submit an Equity Plan no less frequently than every five years.

5.160 Submission Requirements – Joint Submissions

[Subsection (a) discussing Joint Equity Plan submissions is presented here, out of sequence.]

(a) General (page 204) Program participants may submit an individual Equity Plan or may collaborate with other program participants (joint program participants) to submit a **Joint Equity Plan**.

- (1) Goals in an individual Equity Plan may include coordination or collaboration with other program participants or other public or private entities even if those entities are not part of a Joint Equity Plan.
- (2) Program participants are encouraged to collaborate to conduct and submit a Joint Equity Plan in order to share resources and develop partnerships to address fair housing issues. Joint program participants may divide work as they choose, but all program participants are accountable for any joint analysis and any joint fair housing goals. Program participants are accountable for their individual analysis and fair housing goals included in a Joint Equity Plan. Participation in a Joint Equity Plan does not relieve each program participant from its obligation to analyze and address fair housing issues by setting goals and implementing strategies and meaningful actions to overcome the effects of any identified fair housing issues. Each program participant must sign a Joint Equity Plan and associated certifications and assurances submitted to HUD.
 - (i) Program participants that are either not located within the same CBSA (Core-Based Statistical Area) or that are not located within the same state that want to be in a Joint Equity Plan must submit a written request to HUD for approval, stating why collaboration is appropriate. The written request must be submitted not less than 180 days before the starting to develop a Joint Equity Plan.
 - (ii) All other Joint Equity Plan program participants must promptly notify HUD of their intent to collaborate, but do not need HUD approval. The notification to HUD must include a copy of their written agreement.
 - (iii) Program participants must designate one program participant to serve as the lead entity to oversee submission of a Joint Equity Plan.
 - (iv) The submission schedule for the Joint Equity Plan must be the schedule that ordinarily would apply to the lead entity unless HUD determines that an earlier submission is required for good cause.
 - (v) Program participants conducting a Joint Equity Plan must have a plan for community engagement that complies with the regulations and must include the jurisdictions of each program participant, not just that of the lead entity. A material change that requires revision of an Equity Plan for any program participant will trigger a requirement to revise the Joint Equity Plan, including any necessary community engagement.
 - (vi) Program participants conducting a joint Equity Plan may determine that it would be practicable to align program and fiscal years for purposes of the submission schedule in this section of the regulation. To the extent that alignment of program and fiscal years is not practical, a program participant may be required by HUD to make

appropriate revisions to its full ConPlan or PHA Plan approved by HUD prior to the submission and HUD review of the Joint Equity Plan in order to appropriately incorporate strategies and meaningful actions to implement the fair housing goals from the Joint Equity Plan.

- (vii) A program participant that, for any reason, decides to withdraw from a previously arranged Joint Equity Plan must promptly notify HUD. HUD will work with the withdrawing program participant, as well as the remaining program participants conducting the Joint Equity Plan, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date for the program participant's individual Equity Plan that is as close as feasible to the originally intended submission date and is no later than the original submission date for the joint Equity Plan.

The proposed rule at §5.162(b)(1) "Review of Equity Plan: Nonacceptance" (page 213) states, HUD's decision to not accept a Joint Equity Plan with respect to one program participant does not necessarily affect the status of the Joint Equity Plan with respect to another program participant.

§5.162 Review of Equity Plan

(a) HUD Review of Submitted Equity Plan (page 211)

(1) General.

HUD reviews an Equity Plan to determine whether a program participant has developed one that includes a fair housing analysis, identified fair housing issues, and fair housing goals. HUD will promptly “publish” (that is, post to a HUD-maintained website as described on page 7 of NLIHC’s “Preliminary Overview of the AFFH Equity Plan.”) each submitted Equity Plan. The public may directly submit to a HUD official, comments regarding the submitted Equity Plan. The public should submit comments no later than 60 days from the date the Equity Plan was submitted to HUD. Commenting on a submitted Equity Plan is distinct from using the formal complaint process (described on page 10 of NLIHC’s “Preliminary Overview of AFFH Community Engagement and Complaint Processes.”)

[NLIHC will suggest that:

- The 60-day timeframe for submitting comments should not start until HUD posts the submitted Equity Plan. The public might not be aware that a program participant has submitted an Equity Plan for several days if HUD does not post it immediately. HUD does not have a good track record for posting important items in a timely fashion.
- The program participant post this “submitted” Equity Plan on an easy to locate webpage on its own website.
- On the day an Equity Plan is submitted to HUD, the program participant must notify via electronic means, all those who have submitted input or comments regarding fair housing issues, priorities, goals, and any “draft” Equity Plan, that an Equity Plan was submitted and that the public may submit comments to HUD.]

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- (2) Within 100 calendar days after HUD receives an Equity Plan, HUD will either “accept” the Equity Plan or HUD will give the program participant notice that it’s Equity Plan is not “accepted” and indicate in writing the reasons why along with actions that can be taken to get to acceptance. HUD will post notices of non-acceptance and related communications on its webpage.

See also discussion of §5.162 (b)(2) on page 7 of this NLIHC brief and on page 214 of HUD text.

[It is not clear that HUD will post the reasons an Equity Plan is not accepted and what a program participant can do to gain acceptance. The text of the proposed rule might intend that, but the text should be cleaned up to remove any ambiguity.]

- (3) Meaning Acceptance. HUD acceptance of an Equity Plan means only that, for purposes of administering HUD program funding, HUD has not found a program participant failed to meet the regulatory provisions required for an Equity Plan. Acceptance does not mean that a program participant met its obligation to affirmatively further fair housing.

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(b) Nonacceptance of an Equity Plan.

- (1) HUD will not accept an Equity Plan if it or a portion of it is “inconsistent” with fair housing or civil rights requirements, which includes any “material noncompliance” with the AFFH regs requirements. HUD provides eight examples of that might make an Equity Plan “inconsistent”, including:
- The Equity Plan does not identify local policies or practices as fair housing issues when they pose a barrier to equity.
 - The fair housing goals are not designed to and cannot be reasonably be expected to result in material, positive change with respect to one or more identified and prioritized fair housing issues.
 - The Equity Plan was developed without the required community engagement.
 - The Equity Plan does not acknowledge the existence of fair housing issues identified during community engagement.
 - The Equity Plan has a fair housing analysis with fair housing issues or fair housing goals that are “materially inconsistent” with data or other evidence.
 - The Equity Plan’s fair housing goals are not designed to overcome the effects of the fair housing issues identified by the program participant.

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[Paragraph (2) seems to repeat much of what was presented in (a)(2) above.]

- (2) HUD will provide a program participant with a written notice explaining HUD’s decision to accept or not accept an Equity Plan. If an Equity Plan is not accepted, the notice will provide guidance on how an Equity Plan may be revised to achieve acceptance.

A program participant may also ask HUD to reconsider nonacceptance by submitting clarifying information, and HUD will provide a decision before a revised Equity Plan is due.

HUD will post all such notifications on HUD-maintained webpages.

(c) Revisions and Resubmissions

HUD’s notification of nonacceptance will provide a program participant with reasonable time to revise and resubmit an Equity Plan. All revisions or resubmissions, and any HUD notices relating to them must be posted on HUD-maintained webpages.

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- (1) If HUD does not accept an Equity Plan, a program participant will have no more than 60 calendar days after HUD’s notice of nonacceptance and guidance to revise and resubmit an Equity Plan.
- (2) HUD will review a revised Equity Plan within 75 calendar days of receiving one. If HUD does not accept a revision, the procedures for revising and resubmitting continue to apply until a program participant’s revised Equity Plan is accepted.

If an Equity Plan cannot be accepted after repeated notices, revisions, and resubmissions, HUD will take procedures designed to gain compliance (as detailed at §5.172, page 229 and page 10 below).

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(e) Failure to Have an Accepted Equity Plan When ConPlan or PHA Plan Due

- (1) When a program participant submits its ConPlan or PHA Plan it must have a current, accepted Equity Plan.

Alternatively, it must have executed “special assurances” (explained below). If a program participant fails to provide special assurances, HUD will disapprove a ConPlan or PHA Plan, which will jeopardize funding (as detailed in §§ 5.172 and 5.174 on pages 229-232 and page 10 below). Failure to provide or comply with special assurances may constitute evidence that a program participant’s AFFH certification is inaccurate, providing HUD a basis to challenge the validity of the AFFH certification pursuant to § 5.166 (pages 221-223).

For ConPlan Program Participants

- (i) When a ConPlan is due, if a program participant does not have an accepted Equity Plan, HUD must obtain “special assurances” within the 45 days of the date a ConPlan is submitted to HUD before HUD must disapprove a ConPlan.
Special assurances shall:
 - (A) Require a program participant to have an accepted Equity Plan within 180 days following the end of HUD’s 45-day ConPlan review period;
 - (B) Set a date for a program participant to submit an Equity Plan for HUD review; and
 - (C) Require a program participant to amend its ConPlan to incorporate the fair housing goals of the accepted Equity Plan within 180 days from the date HUD accepts the Equity Plan.

If a ConPlan program participant fails to provide special assurances, HUD will initiate disapproval of the ConPlan.

For PHA Plan Program Participants

- (ii) When a PHA Plan is due, if a program participant does not have an accepted Equity Plan, HUD must obtain “special assurances” within the 75 days of the date a PHA Plan is submitted to HUD before HUD must disapprove a PHA Plan.

Special assurances shall:

- (A) Require a program participant to have an accepted Equity Plan within 180 days following the end of HUD’s 75-day PHA Plan review period;
- (B) Set a date for a program participant to submit an Equity Plan for HUD review; and
- (C) Require a program participant to amend its PHA Plan to incorporate the fair housing goals of the accepted Equity Plan within 180 days from the date HUD accepts the Equity Plan.

If a PHA Plan program participant fails to provide special assurances, HUD will disapprove the PHA Plan.

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- (2) If HUD determines that a program participant has failed to submit an Equity Plan that meets all of the regulatory requirements, and after the 180-day period described in any applicable special assurance has expired, the following shall apply.

- (i) For a ConPlan program participant:

- (A) HUD shall promptly initiate termination of funding;
- (B) HUD shall refuse to grant or not continue granting applicable federal financial assistance until a program participant comes into compliance; and
- (C) HUD shall follow the procedures at § 5.172 (page 229 and page 10 below) to effect these remedies.

- (ii) For PHAs:

- (A) HUD shall notify the PHA that it is in substantial default;
- (B) HUD shall take any other action authorized by law to effect compliance; and
- (C) HUD shall follow the procedures at § 5.172 (page 229 and page 10 below) to effect these remedies.

- (3) Special assurances and any submission of an Equity Plan, including HUD’s decision to accept or not accept an Equity Plan, shall be subject to the regulation’s posting requirements. Posting shall indicate whether special assurances have been satisfied as part of HUD’s decision to accept an Equity Plan.

§5.172 Procedures for Effecting Compliance

(a) General.

If HUD determines that compliance cannot be voluntarily secured and ten days have passed since HUD issued a determination of noncompliance, HUD may:

- (1) Make a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;
- (2) Initiate an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action seeking suspension or termination of, or refusal to grant or to continue to grant federal financial assistance, and any other appropriate relief necessary to remedy non-compliance, including but not limited to conditioning the use of federal financial assistance, and other declaratory, injunctive, or monetary relief;
- (3) Initiate debarment proceedings; and
- (4) Initiate any applicable proceeding under state or local law.

(b) Noncompliance with §§ 5.160(i), 5.162(e), or 5.170(c).

If a program participant fails or refuses to furnish an assurance required under §§ 5.160(i), 5.162(e), or 5.170(c), or otherwise fails or refuses to comply with the requirements imposed by the AFFH regulations, federal financial assistance may be refused under paragraph (c) of this section. HUD is not required to provide assistance while administrative proceedings are pending. (§5.160(i) on pages 210-211, refers to three Equity Plan certifications and assurances; §5.162(e) on page 216 refers to “special assurances” as discussed on page 8 above; and §5.170(c) on page 228 refers to voluntary compliance.)

(c) Termination of or refusal to grant or to continue to grant Federal financial assistance.

If HUD seeks to terminate, refuse to grant, or to not continue granting federal financial assistance, no order suspending, terminating, or refusing to grant or to continue to grant federal financial assistance shall become effective until:

- (1) HUD has advised a program participant of its failure to comply and has determined that compliance cannot be secured by voluntary means;
- (2) There has been an express finding on the record, after an opportunity for a hearing, of a failure by the program participant to comply with the requirements of the AFFH regulations or its obligation to affirmatively further fair housing;
- (3) The action has been approved by the HUD Secretary; and
- (4) Any action to suspend or terminate, or to refuse to grant or to continue federal financial assistance shall be limited to the particular political entity, or part thereof, or the

particular program participant as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which noncompliance was found.

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(d) Notice to State or local government.

Whenever the Secretary determines that a state or local government that is a recipient of Community Development Block Grant (CDBG) funds failed to comply with a requirement of the AFFH regulations or its obligation to affirmatively further fair housing, the Secretary shall notify the Governor of the state or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least 60 days before:

- (1) An order suspending, terminating, or refusing to grant or to continue to grant federal financial assistance becomes effective; or
- (2) Any other action to effect compliance is taken under paragraph (a) of this section.

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§5.174 Hearings

(a) Opportunity for hearing.

Whenever a hearing is required by § 5.172 (a)(2) or (c) above, HUD must notify the program participant, advising the program participant of the action HUD proposes to take, the specific provisions under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:

- (1) Fix a date not less than 20 days after the date of the notice for the program participant to request an administrative law judge to schedule a hearing; or
- (2) Advise the program participant that the matter has been scheduled for hearing at a stated time and place that is reasonable and subject to change for cause. A program participant may waive a hearing and submit written information and argument for the record. The failure of a program participant to request a hearing or to appear at a hearing is a waiver of the right to a hearing and consent to the making of a decision on the basis of available information.