

PRELIMINARY OVERVIEW OF THE AFFH EQUITY PLAN

National Low Income Housing Coalition

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

§5.154 The Equity Plan

(a) General Provisions (page 172)

- (1) Program participants **must develop an “Equity Plan”** to overcome local fair housing “issues” (defined on page 163) by **conducting an analysis** that **identifies fair housing issues** in their “geographic area of analysis” (confusingly defined on page 164). That analysis must also identify the circumstances and factors that cause, increase, contribute to, maintain, or perpetuate those fair housing issues.

(Program participants are jurisdictions – states, cities, and counties required to submit a Consolidated Plan, “ConPlan” – and public housing agencies, PHAs.)

The analysis must be informed by community engagement (see §5.158 on page 199 and *Memo, 2/13*), HUD-provided data, and local data and local knowledge (page 167). NLIHC has a separate brief about community engagement.

- (2) After engaging the community, program participants must **prioritize** the identified fair housing issues (discussed on page 189) in order to set one or more fair housing goals (see next item).

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- (3) Program participants must then **establish** one or more fair housing “**goals**” (defined on page 162 and further discussed on page 190) to overcome the prioritized fair housing issues – for each fair housing “goal category” (defined on page 163 and listed under “Scope of Analysis” on page 175).
- (4) Equity Plans must be **submitted** (page 204) to HUD for review (page 211).
- (5) After HUD “accepts” an Equity Plan (page 212), a program participant must **incorporate** (page 197) the Equity Plan’s fair housing goals, strategies, and actions necessary to implement the goals into its Consolidated Plan (ConPlan), Annual Action Plans of the ConPlan, or public housing agency (PHA) PHA Plan.
- (6) Program participants must submit an **Annual Progress Evaluation** (page 194) to HUD describing progress toward achieving each fair housing goal.

All program participants must submit an Equity Plan at least **every five years**.

This provision is at §5.160 Submission Requirements, subsection (h) Frequency (page 210).

(c) Content of the Equity Plan

(2) Fair Housing Goals

A program participant's Equity Plan must include its fair housing goals, including strategies and meaningful actions – all of which must be incorporated (see page 197) into the program participant's ConPlans, Annual Action Plans, PHA Plans, and community plans, including but not limited to, education, transportation, or environment and climate related plans. There is much more on fair housing goals on page 190.

(3) List of Fair Housing Goal Categories

An Equity Plan's identification of fair housing issues and goals must address, at a minimum, the following seven fair housing goal categories, which HUD considers to be the core areas of the AFFH analysis:

- (i) Segregation and integration (defined on pages 170 and 166);
- (ii) Racially or ethnically concentrated areas of poverty, R/ECAPs, (not well-defined);
- (iii) Disparities in access to opportunity;
- (iv) Inequitable access to affordable housing and homeownership opportunities (“affordable housing opportunities” defined on page 157);
- (v) 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 people with disabilities;
- (vi) Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure; and
- (vii) Discrimination or violations of civil rights law or regulations related to housing or access to community assets based on race, color, national origin, religion, sex, familial status, and disability (the Fair Housing Act's “protected classes”).

(4) Conducting the Analysis

Program participants must evaluate a jurisdiction's local policies and practices impacting fair housing in order to determine whether changes are necessary.

(d) Content Analysis for Local Governments, States, and Insular Areas

At minimum, using HUD-provided data, local data, and local knowledge, including information obtained through community engagement, the Equity Plan must respond to questions based on the seven fair housing goal categories. Program participants must answer the questions as they relate to a program participant’s jurisdiction and region. There are 31 questions plus 28 subquestions. Notably, five of the seven ask, “What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?” The seventh fair housing goal category (page 181) has five subquestions focusing on local and state policies such as zoning and land use laws and source of income ordinances. NLIHC encourages residents and advocates to become familiar with all 31 questions and 28 subquestions.

[It is interesting to note that paragraph (5)(ii),(iii), and (iv) regarding access to affordable housing opportunities (page 179) asks jurisdictions to describe housing cost burden and severe cost burden, housing quality, and housing instability due to rising rents, loss of existing affordable housing, displacement, eviction, source of income discrimination, or code enforcement (page 180). As NLIHC has commented elsewhere, we will urge HUD to define “affordable housing” in the final rule; the proposed rule does not even though it defines “affordable housing opportunities” and uses the term “affordable housing throughout. NLIHC will urge HUD to define “affordable housing” as housing that requires a household to spend no more than 30% of its adjusted income on housing expenses (rent or mortgage payments) and utilities. This definition is known as the “Brooke Rule.”]

[NLIHC will seek clarity regarding the seeming inconsistent use of the use of the terms, region, geographic area of analysis, and geographic area. In addition, there should be guidance regarding use of the words “significant”, “substantial”, “substandard housing conditions”, and “disproportionately”.]

(e) Content Analysis for PHAs

PHAs must include in their Equity Plan, an analysis of the area in which the PHA operates and the PHA’s programs. Using HUD-provided data, local data, and local knowledge, including information obtained through community engagement, the Equity Plan must respond to questions based on five of the seven fair housing goal categories. PHAs must answer the questions as they relate to a PHA’s service area and region. There are 21 questions plus 30 subquestions. For PHAs, the goal categories merge “access to community access” and “access to affordable housing opportunities”, eliminating “access to homeownership and economic opportunity”. NLIHC encourages residents and advocates to become familiar with all 21 questions and 30 subquestions.

[It is interesting to note that on page 184 paragraph (3)(ii)(B) asks PHAs to describe conditions in R/ECAPs that limit access to opportunity, such as housing cost burden, housing quality, housing instability, displacement, source of income discrimination, and eviction risk.]

Paragraph (5) asks about local policies and practices impacting fair housing (starting on page 187). Among topics covered are siting of affordable housing and use of Housing Choice Vouchers in well-resourced areas, a PHA's mobility and portability policies and activities, payment standards and fair market rents. It also asks what specific steps a PHA is taking toward affirmatively furthering fair housing with regard to its discretionary policies such, admissions preferences, voucher portability, reasonable accommodations for people with a disability, and evictions (page 189).]

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(f) Description and Prioritization of Fair Housing Issues

- (1) An Equity Plan must include a description of the fair housing issues identified during the analysis carried out for each of the fair housing goal categories. The description of a fair housing issue must include its specific condition and the protected class(es) that are adversely affected by the issue.

Program participants are expected to identify all fair housing issues and identify the fair housing issues that are the greatest barriers to fair housing choice and deny equitable access to community assets.

- (2) To establish an Equity Plan's fair housing goals, program participants must prioritize the fair housing issues in each fair housing goal category, giving consideration to fair housing issues faced by "underserved communities" historically. In determining how to prioritize fair housing issues within each fair housing goal category, program participants must give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for underserved communities.

HUD defines "underserved communities" (page 171) as protected class members with a particular characteristic, such as households experiencing homelessness, LGBTQ+ persons, domestic violence survivors, and people with criminal records.

(g) Fair Housing Goals

- (1) The Equity Plan must include fair housing goals that are designed and can be reasonably expected to overcome the fair housing issues identified through the analysis. While HUD expects progress toward achieving each goal by the time a program participant's next Equity Plan is due, HUD recognizes that all goals may not be fully achieved during a single five-year cycle.
- (2) Fair housing goals, when taken together, must be designed to overcome prioritized fair housing issues in each fair housing goal category and must be designed and reasonably expected to result in material positive change and be consistent with a balanced approach. Examples of potential goals are presented through paragraph (3), page 191-193, including: siting future affordable housing outside of segregated areas; expanding mobility programs; reducing land use and zoning restrictions; removing nuisance or crime-free ordinances; enacting and enforcing source of income laws; enhancing housing accessibility features for people with disabilities; enacting protections for LGBTQ+ people; and revising PHA eviction, admissions, and prior criminal records policies.

- (5) Fair housing goals must not require residents of racially or ethnically concentrated areas of poverty to move away from those areas if they prefer to stay as a matter of fair housing choice.
- (6) Fair housing goals must:
 - Identify the fair housing issue(s) the goal is designed to address;
 - Explain how the goal, alone or along with other goals, will overcome the fair housing issue(s) it is designed to address;
 - Set timeframes for achieving the goal, including metrics and milestones; and
 - Describe the specific steps or actions needed to achieve the goal and the amount of funding needed to achieve the goal.

(h) Additional Content (Community Engagement oriented)

This short subsection lists items a program participant must include as part of its Equity Plan:

- (i) Summary of community engagement activities;
- (ii) Description of how comments received through community engagement were addressed;
- (iii) Attachment of all written comments received and transcripts or audio or video of "hearings" held during the development of the Equity Plan. [NLIHC will ask HUD add "meetings" as well as "hearings".]

(i) Progress Evaluation

- (1) Program participants “should” engage in continual evaluation of their progress, but must do so at least once per year, to determine whether any changes, adjustments, or new information requires a revision to the Equity Plan or a subsequent ConPlan, Annual Action Plan, or PHA Plan.
- (2) Program participants must conduct and submit Annual Progress Evaluations to HUD. It must include a report on progress achieved under each fair housing goal, including whether goals have been fully achieved, and an assessment of whether the Equity Plan’s fair housing goals need to be adjusted because of changed circumstances or because the goals are unlikely to result in material positive change in overcoming fair housing issues. The Annual Progress Evaluation must be published on HUD-maintained webpages.

[NLIHC will urge HUD to require program participants to post their Annual Progress Evaluations on an easily identifiable webpage of their website.]

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- (3) After the first Equity Plan, a program participant must provide a summary of the progress it achieved in meeting the prior Equity Plan’s fair housing goals and include this summary in the next Equity Plan. This summary of past progress is distinct from the required Annual Progress Evaluation that must be in the “next Equity Plan,” but may include a compilation of prior progress evaluation summaries.
- (4) Annual Progress Evaluations *and* summaries must include:
 - (i) Progress on each goal set in the prior Equity Plan, including whether the goal was achieved, or some progress was made, or no progress was made;
 - (ii) Identification of barriers to making progress;
 - (iii) A description of any changes or adjustments made during the prior Equity Plan and how those changes impacted progress;
 - (iv) A description of HUD funds or other federal, state, local or charitable funds were used with the aim of achieving a goal;

(j) Publication

Equity Plans, Annual Progress Evaluations, and HUD notifications related to Equity Plans shall be public documents.

[NLIHC will urge HUD to require program participants to post their draft Equity Plans, submitted Equity Plans, and Annual Progress Evaluations on an easily identified webpage of their website. HUD merely “encourages” program participants to post only their HUD-reviewed Equity Plans on their own websites.]

- (1) Program participants must make draft Equity Plans available following the community engagement section of this regulation (§ 5.158).
- (2) Once a program participant submits an Equity Plan, HUD will post it on a HUD-maintained webpage. HUD will update the webpage to reflect the status of an Equity Plan, reflecting whether an Equity Plan has been “accepted”, and if it has been accepted whether it differs from the initially submitted Equity Plan.

- (3) HUD will accept information from the public during its review of a submitted Equity Plan, consistent with § 5.162 [HUD Review section, page 211], relating to whether:
 - The Equity Plan was developed following the required community engagement provisions of this regulation (§ 5.158);
 - The content of a published Equity Plan is deficient, including whether fair housing issues were appropriately identified,
 - The information provided during the community engagement process was appropriately incorporated into the Equity Plan;
 - Fair housing issues were appropriately prioritized; and
 - The fair housing goals are appropriate, meaning that they are designed and can be reasonably expected to overcome the effects of the identified fair housing issues.