

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. (See outline of §5.156 about “incorporate” on page 8 of this outline.)
- (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 and page 8 of this outline) 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.

§5.156 Incorporating Equity Plan Goals, Strategies, and Actions in ConPlans and PHA Plans

(a) General.

HUD's policy is to ensure that program **funding** is used to eliminate disparities resulting from federal, state, and local laws, policies, and practices that have perpetuated segregation or denied equal opportunity because of a protected characteristic. Therefore, any policies or practices adopted through a program participant's planning documents [e.g. ConPlan or PHA Plan] or due to its implementation of programs, activities, and services, must be consistent with the commitments it made in its Equity Plan and the AFFH mandate.

By incorporating its fair housing goals, strategies, and actions into its planning documents, a program participant will be better positioned to build equity and fairness into its decision-making processes for the use of resources and other investments, live up to the commitments in its Equity Plan, and fulfill its obligation to affirmatively further fair housing.

A program participant must incorporate its implementation of these concepts and commitments in its Equity Plan into planning documents, such as its ConPlan or PHA Plan, and their respective Annual Action Plans, or any disaster plan.

(b) Strategies and meaningful actions.

To implement an Equity Plan's fair housing goals, a program participant must include strategies and meaningful actions in its ConPlan or PHA Plan and their respective Annual Action Plans.

A program participant is only required to include implementation of fair housing goals intended to be undertaken or **funded** in a particular Annual Action Plan program year; however, all fair housing goals must be incorporated in a Five-Year ConPlan or PHA Plan.

Strategies and meaningful actions must affirmatively further fair housing and identify **specific expected allocation of funds** by program year for the use of HUD and other funds to implement each fair housing goal (if funding is necessary).

Strategies and meaningful actions may include, but are not limited to:

- Elimination of local laws or ordinances that are barriers to equitable access to homeownership or other affordable housing opportunities;
- Enactment of local laws or ordinances that remove barriers or increase access to homeownership or other affordable housing opportunities;
- Build strong fair housing and civil rights protections into state and local laws;
- Enhance mobility strategies and encouraging development of new affordable housing in well-resourced areas of opportunity; and
- Place-based strategies and meaningful actions that are a part of a balanced approach, including preservation of existing HUD-assisted and other affordable housing.

(c) Other planning activities or processes.

A program participant must incorporate its Equity Plan fair housing goals into planning documents required in connection with the receipt of federal financial assistance from any other federal executive department or agency [for example, the U.S. Department of Agriculture's (USDA's) Rural Development (RD) housing programs, or the Department of Transportation's Transit-Oriented Development grants].

This incorporation shall include the **allocation of resources** necessary to achieve a fair housing goal.

A program participant's Annual Progress Evaluation includes an evaluation of the fair housing goals incorporated into the other planning documents.

(e) Failure to incorporate fair housing goals into planning documents.

A program participant must incorporate its Equity Plan fair housing goals into its ConPlan or PHA Plan in order to **allocate funding** to implement those goals as strategies and meaningful actions.

If HUD determines that Equity Plan fair housing goals have not been incorporated into ConPlans or PHA Plans, and after notifying a program participant and providing it with an opportunity to respond and cure any deficiency, the HUD Secretary may condition a grant, obtain an assurance that the program participant will revise the ConPlan or PHA Plan to comply with the AFFH regulations by a specified date, or may disapprove a ConPlan or reject a PHA Plan, or may take actions set forth at §§ 5.170 and 5.172 (pages 229-232).

[NLIHC notes that it is a positive feature that funding is mentioned from the very beginning and consistently in each of the subsections. It is not sufficient for a ConPlan (for example) to state that a program is a high priority. The "value" of that priority is often "weighed" by the amount of federal and other resources actually devoted to a program or activity. ConPlans really are all about how elected officials make decisions regarding HUD funding, especially Community Development Block Grant (CDBG) funds each year.]

ConPlan and PHA Plan Regulations Text Incorporating Equity Plan Goals, Strategies, and Actions

ConPlan Regs

Local Governments (Page 250)

§91.215(a)(5) Strategic Plan

(i) Describe how the priorities and specific objectives of the jurisdiction under paragraph (a)(4) of this section will affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan.

[§91.215(a)(4) requires the local government to summarize the ConPlan priorities and specific objectives it intends to start and/or complete during the time period covered by the Strategic Plan and how funds that are reasonably expected to be available will be used to address identified housing and community development needs.]

(ii) For any fair housing goals from the Equity Plan not addressed by the Strategic Plan’s priorities and objectives, identify how these goals have been incorporated into the Strategic Plan consistent with the requirements of § 5.156 [the “incorporation” provision].

§91.220 Annual Action Plan (Page 251) The Annual Action Plan must include...

(k)(1) Affirmatively furthering fair housing. Actions the jurisdiction plans to take during the next year to implement the fair housing goals established in the Equity Plan or other actions to address fair housing issues consistent with the jurisdiction’s obligation to affirmatively further fair housing.

(l) Program-Specific Requirements

- (1) CDBG (iv)The information about [CDBG] activities shall also include whether the activities are for purposes of implementing any fair housing goals from the Equity Plan.

States (Page 254)

§91.315(a)(5) Strategic Plan

(i) Describe how the priorities and specific objectives of the state under paragraph (a)(4) of this section will affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan. [§91.215(a)(4) requires the local government to summarize the ConPlan priorities and specific objectives it intends to start and/or complete during the time period covered by the Strategic Plan and how funds that are reasonably expected to be available will be used to address identified housing and community development needs.]

(ii) For any fair housing goals from the Equity Plan not addressed by the Strategic Plan’s priorities and objectives, identify how these goals have been incorporated into the Strategic Plan consistent with the requirements of § 5.156 [the “incorporation” provision].

§91.320 Annual Action Plan The Annual Action Plan must include...

(j)(1) Affirmatively furthering fair housing. Actions it plans to take during the next year to implement the fair housing goals established in the Equity Plan or other actions to address fair housing issues consistent with the jurisdiction’s obligation to affirmatively further fair housing.

PHA Plan Regs

§903.4 What Are Public Housing Agency Plans?

(a)(3) The plans described in this section include the incorporation of the fair housing goals established in the PHA's Equity Plan.

§903.6 What Information Must a PHA Provide in the Five-Year Plan?

(a) * * *

(4) The PHA's fair housing strategies and meaningful actions it intends to undertake in order to implement the fair housing goals incorporated from the PHA's Equity Plan.

(b) * * *

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan. For purposes of this requirement as it relates to the PHA's fair housing goals, the PHA may rely on the progress evaluations required for purposes of the Equity Plan.

§903.7 What Information Must a PHA Provide in the Annual Plan?

(o) Civil Rights Certification.

(2) The PHA shall demonstrate compliance with the certification requirement to affirmatively further fair housing by fulfilling the requirements of this paragraph (o) by engaging in the following:

(iii) Specifies fair housing strategies and meaningful actions to address fair housing issues and implement fair housing goals established in the PHA's Equity Plan;

(vi) Complies with the community engagement requirements set forth at § 5.158 of the AFFH regulations for purposes of developing the PHA's Equity Plan and the incorporation of the Equity Plan's fair housing goals pursuant to § 5.156 of this title;

§903.17 What Is the Process for Obtaining Public Comment on the Plans?

(a) For purposes of the incorporation of the Equity Plan required by § 5.156 of this title, the community engagement requirements of § 5.158 shall apply.

(b) For purposes of the PHA's 5-Year Plan and Annual Plan, and notwithstanding the requirements set forth at § 5.158 of this title for purposes of the Equity Plan's incorporation into such plans pursuant to § 5.156 of this title, not later than 45 days before the public hearing is to take place, the PHA must:

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans. This outreach is for purposes of the 5-Year Plan and Annual Plan. The requirements of § 5.158 of this title shall apply for purposes of the Equity Plan.

§903.19 When Is The Five-Year Plan or Annual Action Plan Ready for Submission to HUD?

(d) The PHA has incorporated the fair housing goals from its Equity Plan pursuant to § 5.156 of this title.

§5.164 Revising an Accepted Equity Plan Pages 218-219

(a) General—Circumstances for revising an Equity Plan.

(1) An Equity Plan previously accepted by HUD must be revised and submitted to HUD for review under if:

- (i) A material change occurs. That is, there is a change in circumstances to the extent that an Equity Plan’s analysis and fair housing goals no longer reflect actual circumstances.

In addition, an Equity Plan must be revised if there is a Presidentially declared disaster that impacts a program participant’s jurisdiction and is expected to result in additional federal financial assistance under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

- (ii) HUD writes a program participant, specifying a material change that requires a revision.

(2) An Equity Plan previously accepted by HUD may be revised and submitted to HUD for review if:

- (i) There are changes in a program participant’s geographic area of analysis that significantly impact the steps it needs to take to affirmatively further fair housing;
- (ii) A fair housing goal in an Equity Plan cannot be achieved;
- (iii) Significant demographic changes occur;
- (iv) New fair housing issues emerge;
- (v) Short-term fair housing goals have been achieved;
- (vi) Civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders are entered; or
- (vii) A program participant tells HUD about a change that may merit submission of a revised Equity Plan and HUD grants permission to submit a revised Equity Plan by a specific date for HUD review

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(3) Requirements for Revisions of an Equity Plan.

An Equity Plan revision consists of preparing any necessary amended analyses and fair housing goals that take into account the change, including any new fair housing issues. A revision might not necessarily require submitting an entirely new Equity Plan; a program participant may focus only on the change and the appropriate and necessary adjustments to the analysis and fair housing goals. Any revision shall trigger the program participant’s obligation to conduct community engagement on the amended portions of the Equity Plan following the community engagement provisions at § 5.158 (page 199 and see NLIHC’s “Preliminary Overview of AFFH Community Engagement and Complaint Processes”).

(b) Timeframe for required revisions.

- (1) If a revision to the Equity Plan is necessary due to a material change, it must be submitted within 12 months of the onset of the material change, or at a later date if provided by HUD.

[Should non-regulatory HUD guidance offer examples of other types of material change such as when substantial, one-time infusions of funds are provided such as the ARPA State and Local Fiscal Recovery Funds or to the Infrastructure Improvement Act?]

If the material change is the result of a Presidentially declared disaster, the submission deadline is automatically extended to two years after the date of the disaster declaration. HUD may extend this deadline, upon request, for good cause.

[Should the revision be timed to align with a jurisdiction's Disaster Plan?]

(2)

- (i) If a revision is required because HUD specifies a material change that requires a revision, HUD will specify a date for a program participant to submit a revised Equity Plan. HUD may extend the due date if requested.
- (ii) Within 30 calendar days after HUD notifies a program participant that it must revise its Equity Plan, a program participant may write to HUD providing specific reasons why a revised Equity Plan is not necessary. HUD will consider a program participant's reasons and issue a written determination.

(c) Submission of the revised Equity Plan.

Any Equity Plan revisions must be submitted to HUD and will be posted on a HUD-maintained website and will be reviewed by HUD.

(d) Incorporation of revised fair housing goals into subsequent planning documents.

Once HUD accepts a revised Equity Plan, within 12 months a program participant must incorporate any revised fair housing goals into its ConPlan, Annual Action Plan, or PHA Plan.