

KEY PROVISIONS OF THE 2023 PROPOSED AFFH RULE
Based on the Executive Summary and Background Sections of the Preamble
(NLIHC will elaborate and/or modify after careful review of regulatory text)

Introduction

The proposed rule takes as its starting point the fair housing planning process created by the 2015 AFFH Rule and proposes refinements informed by lessons HUD learned from feedback provided by stakeholders (including advocates) during the implementation of the 2015 AFFH Rule.

It would provide a framework under which program participants (states, cities and counties required to submit a Consolidated Plan, “ConPlan”) and public housing agencies (PHAs) will set and implement meaningful fair housing goals that will determine how they will use federal HUD funds and other resources to affirmatively further fair housing.

In short, program participants will identify “fair housing issues” (defined at the end of this summary), prioritize the issues they will focus on, and develop goals they will implement to overcome fair housing issues during the next three to five years (depending on their ConPlan cycle).

The 2015 AFFH rule’s Assessment of Fair Housing (AFH) is to be replaced by a streamlined Equity Plan. And the AFFH Assessment Tool will be eliminated.

Community Participation

It is significant that HUD’s summary begins with a discussion of improved community participation provisions, which HUD will now call “community engagement.” According to the summary in the preamble to the proposed rule, program participants would be required to:

- Hold multiple community meetings at different times of day and in different locations throughout the jurisdiction, while ensuring that people with disabilities and their advocates have equal access to those meetings;
- Partner with local community-based organizations and stakeholders to engage protected class groups and underserved communities;
- Engage with a broad cross-section of the community, such as advocates, public housing resident advisory boards, community organizations, local universities, healthcare professionals, and other service providers – in addition to fair housing groups.
- Submit, along with an Equity Plan, more information regarding their community engagement efforts.

The public will be able to submit information directly to HUD regarding an Equity Plan submitted by a program participant while HUD is reviewing the Equity Plan. Also, the public will be able to file complaints directly with HUD regarding a program participant’s AFFH-related activities, and this in turn will enable HUD to open a compliance review in response to a complaint. (HUD will be able to on its own initiative as well.)

The Equity Plan

The Equity Plan streamlines the 2015 AFH, still requiring program participants to conduct a fair housing analysis to identify fair housing issues – but by responding to fewer questions covering just a several broad areas (seven for ConPlan recipients, five for PHAs). HUD will consider these the core areas of analysis. HUD will not prescribe the format used by program participants to answer the questions. HUD eliminates a provision of the 2015 AFFH rule that called for an analysis of “contributing factors”; however, program participants would still be required assess the underlying causes of identified fair housing issues. All Equity Plans will be posted to a HUD-maintained webpage.

In addition, the proposed rule eliminates the required use of an AFFH Assessment Tool which had nearly 100 questions and contained a list of 40 fair housing “contributing factors”.

Greater Emphasis on Fair Housing Goals

HUD’s review of submitted Equity Plans will focus on a program participant’s goals. HUD’s review of goals will determine whether a program participant’s goals were designed to, and can be reasonably expected to, overcome fair housing issues that the program participant identified and prioritized to produce meaningful outcomes for various protected classes over the next three to five years.

HUD’s review of a program participant’s answers to the Equity Plan’s simpler, standard questions will entail confirming that the program participant did an adequate job of identifying fair housing issues revealed by HUD-provided data and any information provided during community engagement. HUD claims to have designed the standard Equity Plan questions such that the complexity of questions and whether they were satisfactorily answered will be scaled to the size of the ConPlan entity or the PHA. Even though smaller program participants will be responding to the same questions, they would be expected to have less to analyze.

More Time for HUD to Review Equity Plans and For Program Participants to Revise Shortcomings

The 2015 AFFH rule required program participants to submit an AFH to HUD for review. HUD could “accept” the AFH within 60 days, or if there were shortcomings HUD could send it back with specific corrections that a program participant could consider and resubmit within 45 days. This was an iterative process not limited to one “pass back.” For technical reasons the time limits were a problem for some program participants with ConPlans or PHA Plans due

The proposed rule would extend the HUD review period to 100 days, with the ability to extend the time for good cause.

Review of Equity Plans, *continues*

Review of Equity Plans, *continued*

If a program participant's Equity Plan is not accepted by the time its ConPlan or PHA Plan must be approved, to have that ConPlan or PHA Plan approved, the program participant must provide HUD with special assurances that it will achieve an Equity Plan that meets regulatory requirements within 180 days of the end of HUD's review period for its ConPlan or PHA Plan. At the end of the 180-day period, if a program participant still does not have a HUD-accepted Equity Plan, HUD will initiate termination of funding and will not grant or continue granting applicable funds.

A More Direct Link Between Equity Plan's Goals an ConPlan and PHA Plan

Program participants will have to incorporate their Equity Plan goals into their ConPlan, Annual Action Plan of their ConPlan, or their PHA Plan. Also, the proposed rule still generally aligns Equity Plan cycles with the ConPlan and PHA Plan cycles, it contains clearers submission deadlines.

Greater Transparency

All Equity Plans will be posted to a HUD webpage. In addition, the public will be able to provide HUD with additional information about an Equity Plan still under HUD review and HUD will use this information in its review of an Equity Plan. Also, on the HUD webpage there will be reasons why HUD accepted or did not accept an Equity Plan as, well as HUD decisions regarding a program participant's annual progress evaluation.

HUD Will Track Progress on Fair Housing Goals

Program participants will be required to conduct annual progress evaluations regarding the status of each goal. (The 2015 AFFH rule required program participants to report progress in subsequent AFHs, but that meant only once every five years.) Progress evaluations will be submitted to HUD, which will post them to a HUD-maintained website. A program participant must assess whether to establish a new fair housing goal or whether to modify an existing fair housing goal because it cannot be achieved in the amount of time previously anticipated. Program participants, with HUD's permission, will be able to submit a revised Equity Plan that modifies goals or sets new goals if circumstances changed or if the established goals were accomplished.

Maintaining a Balanced Approach to AFFH

The proposed rule recognizes that there is a need to take a balanced approach in devising ways to overcome fair housing issues. Affirmatively furthering fair housing can involve both bringing investments to improve the housing, infrastructure, and community assets in underserved communities as well as enabling families to seek greater opportunity by moving to areas of the community that already have better community infrastructure and community assets. The proposed rule supports program participants' choice to engage in place-based activities, such as preserving affordable housing in particular neighborhoods while making complementary investments in other infrastructure and assets in those neighborhoods, as well as choices that promote mobility.

HUD-Provided Data and Maps

HUD is updating and improving the existing AFFH Data and Mapping Tool. Program participants must use the HUD-provided data (along with any easily available local data as well as any qualitative "local knowledge," especially that provided through the public engagement process. They will still be required to show the connection between their data analysis and their identification of fair housing issues and the establishment of goals.

HUD Enforcement

The proposed rule would add an enforcement mechanism. However, HUD recognizes withholding funds could adversely impact the people HUD programs are meant to serve. The proposed rule would allow HUD to tailor remedies appropriate to specific circumstances.

Fair Housing Issues

The actual text defines a "Fair Housing Issue" much more comprehensively than the 2015 AFFH's definition:

"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."