



April 21, 2023

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0001

Re: Affirmatively Furthering Fair Housing, Docket No. FR-6250-P-01

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates this opportunity to provide comments on HUD's Affirmatively Furthering Fair Housing (AFFH) proposed rule, which builds on and streamlines the 2015 AFFH final rule. NCSHA and our state Housing Finance Agency (HFA) members are committed to upholding the 1968 Fair Housing Act, including its obligation that HUD and its program grantees affirmatively further fair housing. Central to NCSHA's vision of an affordably housed nation is the goal of removing obstacles that impede anyone from accessing the affordable housing of their choice.

NCSHA is a nonprofit, nonpartisan organization representing the nation's state HFAs.¹ HFAs administer a wide range of affordable housing and community development programs, including the HOME Investment Partnerships program, the Housing Trust Fund, Section 8 rental assistance, the Emergency Solutions Grant, the Community Development Block Grant, and Housing Opportunities for Persons with AIDS. HFAs also administer down payment assistance, home-buyer education, loan servicing, state housing trust funds, and the Low Income Housing Tax Credit (Housing Credit) and issue tax-exempt private activity Housing Bonds to finance affordable housing for renters and home buyers.

NCSHA applauds HUD for repealing the 2020 Preserving Community and Neighborhood Choice Final Rule, which we believe would not have resulted in meaningful planning and strategies to affirmatively further fair housing as required by the Fair Housing Act. We are also pleased that HUD is seeking to streamline and improve the prior 2015 AFFH rule, rather than

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

reinstating it without critical examination and revisions to reduce its substantial burdens on HUD program participants.

As NCSHA has stated in previous comments to HUD on this topic, we encourage the department to consider the following core principles as it seeks to finalize the AFFH rule:

1. HUD program participants' AFFH activities should focus directly on facilitating the goals of the Fair Housing Act, including eliminating discrimination, removing barriers to housing faced by protected classes, and promoting fair housing choice.
2. HUD guidance should provide grantees with a clear framework that sets forth HUD's expectations and holds program participants to a high standard while not being overly burdensome.
3. Program participants' AFFH planning efforts should be based in large part on the best data already available about the fair housing needs and obstacles in their communities and not require extensive additional research or costly consultants.
4. AFFH planning should not require program participants to have or obtain expertise in policy areas unrelated or merely peripheral to affordable housing and fair housing.
5. HUD's requirements should be tailored by type of program participant as states, local governments, tribal entities, and local public housing authorities have different capacities, resources, and geographic scopes.
6. HUD oversight of program participants' AFFH planning should ensure that grantees are upholding the objectives of the Fair Housing Act.

HUD has taken substantial steps towards incorporating these principles in the proposed rule published in February. In particular, we appreciate that HUD proposes to adopt differing levels of geographic analysis depending on the type of program participant; eliminate the contributing factors analysis, which we believed to be overly burdensome and unnecessary to effective fair housing planning; and streamline the number of questions to which program participants would need to respond to complete their Equity Plans so that they may focus on the setting of fair housing goals and implementation of strategies to meet those goals. We also welcome HUD's emphasis on community engagement and citizen participation, though we remain concerned that meaningful citizen participation may remain elusive despite the best of efforts by state program participants.

HUD's 2023 proposed rule represents a significant step in the right direction. However, we believe there is more HUD can do to facilitate a productive fair housing planning process for program participants by further streamlining aspects of the rule, clarifying that program participants are not responsible for effecting change that is beyond their authority, ensuring the questions HUD requires grantees to respond to can be meaningfully answered with the data at hand, and reducing duplicative planning across overlapping geographies.

The remainder of this letter provides overarching comments about the proposed rule, followed by answers to specific questions posed by HUD.

Overarching Comments

Align expectations with program participations' ability to effect change. Achieving many worthwhile fair housing goals may require changes to zoning, permitting, local taxation policies, and school boundaries. Unfortunately, states have limited ability to impact decisions that are made by local governments. HUD should not penalize state program participants if they are unable to impact change beyond their jurisdictional authority or reject states' Equity Plans if goals identified during public participation are not adopted in the plan because the state does not have the authority to carry out the strategies to achieve those goals.

Allow states to conduct their analysis using Public Use Microdata Areas (PUMAs) as an alternative to a county-by-county approach. NCSHA greatly appreciates HUD's proposal to allow states to conduct the analyses required by Equity Plans on a county-by-county basis rather than at a smaller level of geography, such as by census tract or block level, which is more appropriate for smaller, local program participants. However, certain types of key data are not available at the county level. Thus, NCSHA suggests HUD allow states to conduct the Equity Plan analysis according to PUMAs as an alternative to a county-by-county approach.

PUMAs are non-overlapping, statistical geographic areas that partition each state or equivalent entity into geographic areas containing no fewer than 100,000 people each and are used by the U.S. Census Bureau for the tabulation and dissemination of decennial census and American Community Survey (ACS) data. As the building blocks for PUMAs are census tracts and PUMAs do not extend beyond state borders, they can be ideal geographic areas of analysis for planning purposes. While valuable, relevant data is collected by PUMA, these geographic areas are not necessarily consistent with county boundaries. In fact, in some instances a single county may contain multiple PUMAs, while other PUMAs may cover multiple counties or portions of counties.

Acknowledge the unique challenges of fair housing planning in rural areas. States will be the only program participants conducting the analysis, identifying fair housing issues, and setting goals and strategies for attaining those goals in rural or other local jurisdictions that do not directly receive HUD funding. HUD should be clear that AFFH planning should not result in disincentives for states to invest in housing and community development in rural areas simply because these areas may not have the community assets (as defined in §5.152) that other suburban and urban areas have.

HUD should acknowledge that data in rural areas is sometimes less robust than it is in other areas and this may impact the quality of the analyses states are able to conduct for these areas. HUD should make sure to include margin-of-error calculations with all related ACS data for rural areas so that states will know whether the data provided is statistically significant.

NCSHA is also concerned about data availability in rural areas as it relates to access to community assets. For example, it may be difficult to get consistent and valid data about access

to transportation in rural areas. The HUD provided data on transit is a proxy but not ideal for purposes of truly assessing access to transportation. For example, while some rural areas may have “dial-a-ride” service as the primary transit service available, it will be challenging to measure the extent to which this service is available.

Remove requirements for longitudinal analysis. Several sections of the Equity Plan require program participants to analyze changes over time going back as far as 1990 or the three last decennial censuses, whichever is shorter. It is not necessary to analyze demographics, patterns of segregation and integration, or changes in housing opportunities from well over a quarter century ago to effectively plan to further fair housing with the resources available today. HUD should remove this requirement from the rule or make it optional.

Provide greater clarity on the level of analysis expected, data sources that are acceptable, and the process for conducting an Equity Plan. NCSHA has received a number of questions from its HFA members regarding HUD’s expectations related to the content of the Equity Plans. For example, does HUD expect states to always conduct the analysis of demographics, segregation and integration, R/ECAPS, access to community assets, access to affordable housing opportunities, access to homeownership and economic opportunities, and state and local policies and practices impacting fair housing on a county-by-county basis, or will there be an opportunity to group together certain counties by regions of the state, especially in rural areas? This may be useful if data is available based on geographies other than counties, for example by PUMA.

The HUD-provided data in the AFFH data and mapping tool (AFFH-T) for state plans includes county-level data but not breakouts for all protected classes when assessing all protected classes seems to be expected in the rule. How are states to conduct an analysis for all protected classes if this data is not available?

Furthermore, NCSHA has received questions from its HFA members regarding which entity in the state is responsible for the Equity Plan and what their role would be if the HFA does not administer HUD funding or serve as the primary author of the Consolidated Plan.

Clarify how state and local program participants and/or public housing authorities (PHAs) can work together to submit a joint Equity Plan to reduce duplication of efforts in overlapping jurisdictions. HUD encourages program participants to collaborate to conduct and submit a single Equity Plan (joint Equity Plan). However, this section of the rule seems to envision the collaboration of two or more local, contiguous jurisdictions or a local program participant and a PHA rather than two overlapping jurisdictions, such as a state and the localities within that state.

Joint Equity Plans between states and local program participants or PHAs, in theory, would reduce duplication of effort in undertaking the analysis and allow for better coordination of resources towards common goals. It would also reduce the chances that two entities analyzing the same geography would come to disparate conclusions, resulting in noncomplementary or even conflicting goals and strategies.

We encourage HUD to provide more clarity and direction on how states and localities with overlapping jurisdictions could work together on the analysis in those jurisdictions, setting shared goals, and implementing strategies for meeting those goals that take into consideration the use of resources available to each entity in the collaboration. For example, HUD should provide information about how it believes program participants can reconcile the wide swings in data granularity that might result in a joint Equity Plan when one partner is a state and another is a local government or PHA. HUD should also allow states and local program participants, including PHAs, that will submit a joint Equity Plan to align the submission deadlines for their Equity Plans.

Recognize states may not have all the information they might need to fully answer certain questions in the Equity Plan for all areas. For example, the scope of analysis includes identification of fair housing issues and establishment of goals that address laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity. While it may be possible to get this information for units of local government, we are not aware of any state that has a statewide data source that consolidates all state and local laws, ordinances, policies, etc. HUD should clarify that states may rely on public engagement and local knowledge in this instance and not hold states accountable for knowing all laws, policies, practices, etc. that may impede the provision of affordable housing in every locality across the state.

Better integrate annual planning requirements for AFFH with other HUD annual planning requirements. From an operational perspective, it would be helpful if the AFFH annual plan requirements could be integrated with other HUD annual planning, such as the Consolidated Annual Performance and Evaluation Report (CAPER) and the Annual Action Plan (AAP). Adding another, separate annual plan with its own set of requirements on top of the extensive requirements in the CAPER and AAP is overly burdensome and will lead to participation fatigue among the public from whom program participants are seeking input.

Do not require states to undertake analyses beyond their borders. In §5.152, the rule states that a “region” means the larger geographic area a jurisdiction lies within and includes areas “outside the program participant’s jurisdiction that are identified in HUD-provided data and supplemented based on local data and local knowledge and that impact fair housing issues in the jurisdiction.” Thus, it is NCSHA’s assumption that a regional analysis is expected to go beyond the geographic boundaries of program participants.

Given the large geographic areas of most states and detailed level of analysis required, development of Equity Plans for state program jurisdictions will be challenging and time consuming even if focused just within the state. We do not believe it to be reasonable for HUD to require states to conduct an analysis outside their boundaries in neighboring states.

Improve the provision of technical assistance to states. HUD technical assistance and demonstrations thus far have not included how the AFFH-T or other HUD-provided data would effectively support statewide AFFH analysis. While a flexible format is preferred (without requirements to use specific tables or maps to support the response to any particular question), it would be helpful for states to receive technical assistance or guidance on specific maps and tables within the AFFH-T that may be useful for its analysis.

HUD should also provide technical assistance on best practices for developing measurable fair housing goals and priorities that are responsive to identified fair housing issues and achievable using available funding within a state's jurisdictional authority.

HUD technical assistance related to coordination across program participants with overlapping jurisdictions would be helpful. Technical assistance related to overlapping jurisdictions should consider both joint Equity Plans and instances when overlapping jurisdictions expect to submit separate Equity Plans.

Answers to Specific Questions

Question 2: Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions?

NCSHA strongly supports the removal of the contributing factors analysis, which, as envisioned by the 2015 AFFH rule and related Assessment Tools, was extremely burdensome, particularly for state program participants contending with large geographic scopes.

Several sections of the new proposed rule require program participants to consider policies and practices that may impact fair housing and do so in a more efficient and less burdensome way than the 2015 rule's contributing factors analysis approach. Specifically, Equity Plans under the proposed rule must include analysis of disparities in access to opportunity; equitable access to affordable housing opportunities and homeownership opportunities; laws, ordinances, policies, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity; inequitable distribution of local resources; and an evaluation of the jurisdiction's local policies and practices impacting fair housing. These requirements are sufficient to determine what factors contribute to fair housing issues, without requiring a costly and burdensome academic approach to determining statistical significance of a pre-determined list of possible factors.

Question 3: Provision of HUD data

3a: Should HUD also provide static data packages that include some of the data included in the AFFH-T and a narrative description of those data?

Given the sheer amount of data to be analyzed, we strongly encourage HUD to provide static data packages with narratives of the data derived from various sources, including the U.S. Census, ACS, Comprehensive Housing Affordability Strategy, and other national datasets to assist program participant.

In addition, we urge HUD also to provide a crosswalk between the content requirements for the Equity Plan and the respective data provided by HUD to ensure program participants use the most useful data elements to address relevant questions. In this case, both maps and data tables would be helpful.

3c. What types of data relating to homeownership opportunities should HUD consider providing?

We encourage HUD to provide Home Mortgage Disclosure Act (HMDA) data. One of NCSHA's state HFA members specifically suggests the provision of HMDA data using the methodology used by the Minneapolis Federal Reserve Bank.²

Question 5. In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of?

Many state HFAs report to NCSHA that despite persistent and costly outreach efforts to facilitate public and community engagement in other HUD planning efforts, they struggle to get participation in public hearings or written comments from stakeholders. The proposed rule would require at least three public meetings in different locations for the Equity Plan itself, plus two public meetings in different locations for the annual engagement in other years. This is overly burdensome and may not produce the intended outcomes HUD is seeking if attendance at these meetings is not robust despite the best of efforts.

We encourage HUD to allow alternative mechanisms for community engagement. At a minimum, HUD should allow at least some public hearings to be held virtually. During the coronavirus pandemic, states relied on virtual meetings for all their public input into various planning efforts, including the Consolidated Plan and related annual planning and the Qualified Allocation Plan for the Housing Credit program. In practice, virtual hearings allowed more stakeholders to participate in these efforts because they were generally more convenient and accessible than in-person meetings.

Another alternative to public meetings that HUD should allow is the creation of a Fair Housing Advisory Board representing protected classes and other stakeholders that could review policies and procedures and make recommendations based on expert advice.

² [*Lenders More Likely to Deny Conventional Mortgages to People of Color Living in the Twin Cities*](#), Federal Reserve Bank of Minneapolis, May 19, 2022.

Further, HUD should allow state and local program participants to collaboratively hold public meetings, even if they are not doing a joint Equity Plan, to reduce participation fatigue among the public, as many people are not willing to attend multiple public meetings for different entities. Program participants in the same state should be encouraged to notify each other of when they will hold community engagement/feedback activities for purposes of their Equity Plans so that they may collaborate to hold joint meetings.

Question 8: Content of the Equity Plan

8a. Are the questions in this proposed rule at §5.154 effective for purposes of how to assess where equity is lacking and to facilitate the development of meaningful goals that are designed and can be reasonably expected to overcome the effects of past or current policies that have contributed to a systemic lack of equity?

The requirements outlined in the Equity Plan reflect what an ideal analysis would include. Unfortunately, the data available to program participants does not always provide the information they would need to live up to these ideals. HUD's expectations should accurately reflect what program participants can realistically provide and HUD should develop a crosswalk showing program participants which HUD-provided data sets might be useful in answering specific questions.

8e. The proposed rule does not currently identify which specific maps and tables contained in the HUD-provided data program participants should rely on in answering specific questions provided at §5.154. Should HUD require the use of specific data sets when responding to these questions in §5.145, and if so, what benefit would that have?

While HUD should not require a specific dataset, it should provide program participants with a crosswalk showing which elements in the HUD-provided data would support each plan content question.

8g. Does HUD need to more specifically explain the required level of geographic analysis, whether in this rule itself or in sub-regulatory guidance, for purposes of the development of the Equity Plan, including how different levels of geographic analysis would facilitate the setting of fair housing goals that would result in material positive change that advances equity within communities?

NCSHA appreciates HUD's proposal that state program participants conduct their analysis on a county-by-county basis rather than require a more granular analysis at the neighborhood or census tract level, which is not as appropriate for states as it is for smaller units of government. It is our expectation some states may choose to conduct an analysis that is more granular and at a lower level of geography in certain metropolitan areas for certain issues. However, HUD should not impose a requirement that they do so.

Moreover, there may be instances where the available data does not lend itself to a county-by-county analysis and states may need to conduct the analysis at a larger or different geographic level. Sparsely populated counties often operate as regional clusters in which the crossover of

residents is common. It is for this reason that we suggest HUD allow states to rely on a PUMA-by-PUMA analysis as an alternative to a county-by-county analysis.

8h. Are there different or additional questions that HUD should pose to rural areas to assist such areas in meeting their obligations to affirmatively further fair housing? If so, how should the analysis for rural areas differ from the required analysis in proposed §5.154?

The analysis in rural areas should be consistent with the data available for those areas. If HUD data and local data/knowledge are not available to answer certain questions for those areas, program participants, including both states and localities in rural areas, should not be held accountable if data is unavailable to fully answer the questions posed for the Equity Plan.

Question 29: Data needs and tools that may be useful to states in conducting their Equity Plans.

29a. How can States encourage broader fair housing strategies at the State level and in localities, and what changes if any, are needed to the proposed rule that could improve its effectiveness as a tool for States to further fair housing goals?

HUD must acknowledge that states do not have jurisdictional control over the zoning and other policy decisions made by local governments. States should not be held accountable for policies that are outside their control.

29b. Are there data that HUD could provide to States to assist and facilitate the fair housing analysis required by §5.154?

HUD should provide states with the number of Housing Choice Vouchers (HCV) in each census tract. HUD data currently lumps together HCVs with other publicly supported housing. HCVs should be separated out.

HUD should also adjust the AFFH-T to allow program participants to group data available by census tract, block group, county, or PUMA into areas defined by the user when creating reports and maps. This change would facilitate regional analysis that is unique to each state or other joint planning group within a state. The AFFH-T currently offers more granular data only to local program participants and PHAs but not states.

Additionally, HUD should provide census microdata or key disaggregates to address disparate impacts of fair housing issues. HUD's requirement to consider key disaggregates of data are limited with the current data in the AFFH-T. Most of these data are available in census microdata, including renter cost burdens by area median income (AMI), time use data for specific activities including healthcare and government services, and age-based disaggregates of disability.

29c. Is there additional information HUD could provide to States, such as, for example, identifying regional issues where metropolitan areas cross State borders?

As noted previously, HUD should not require states to conduct an analysis beyond their borders. However, HUD should provide data to states for full metropolitan areas, including sections of metropolitan areas that go beyond their borders so that they have the option to conduct such an analysis if they determine it would benefit their Equity Plan.

29d. How can HUD best display or provide data to States given their varied sizes and geographies in order to facilitate the analysis required by §5.154?

HUD should provide states with data at various levels of geography, including census tract, neighborhood, county, and PUMA while only requiring county-by-county or PUMA level of analysis. Some issues lend themselves to a county-level analysis, while others are best addressed at the census tract or PUMA level. This data should be provided in both tabular and map formats.

The ACS is often the best option for this sort of data, but the rule requires a level of demographic and geographic specificity (for example, cost burden rates broken out simultaneously by protected classes by R/ECAPS) that is not available. Geographically, the detailed ACS microdata is only available for PUMAs. HUD-provided data does not have this level of specificity in some cases, though even the ACS also lacks data on religion, making it an imperfect source for answering questions about protected classes qualifying based on religion.

Thank you for your consideration of our comments. Please contact me if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives