

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
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Via regulations.gov [<https://www.regulations.gov/commenton/HUD-2023-0009-0001>]

April 24, 2023

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

The New York Housing Conference (NYHC) submits these comments on HUD's proposed new affirmatively furthering fair housing (AFFH) regulation (Docket No. FR-6250-P-01). NYHC is a nonprofit affordable housing policy and advocacy organization that seeks to advance City, State and Federal policies and funding to support the development and preservation of decent and affordable housing for *all* New Yorkers. We are a broad-based coalition comprised of a mix of nonprofit and private developers, owners, managers, professionals, and funders of affordable housing.

NYHC supports the proposed regulations to implement the obligation to affirmatively further fair housing (AFFH) from "Title VIII of the Civil Rights Act of 1968," also known as the "Fair Housing Act." For decades after the passage of this landmark legislation, the AFFH mandate went unenforced. It is imperative that HUD issue effective regulations to finally implement the Fair Housing Act's requirement to ensure that all federal agencies administer their programs relating to housing and community development in a manner that affirmatively furthers fair housing. The 2015 AFFH rule sought to address this longstanding barrier to full enforcement of the Fair Housing Act. We commend HUD for not only returning to fulfill this promise but for incorporating much of the 2015 AFFH guidance in this new proposed rule while also seeking to reduce some of the challenges jurisdictions faced in implementing the earlier version by creating a simpler and streamlined analysis.

We support the required development of an Equity Plan that identifies, then prioritizes fair housing issues and sets fair housing goals. We also commend HUD for proposing a new requirement for annual evaluations detailing the progress made toward achieving each fair housing goal in the program participant's Equity Plan. This requirement will help ensure that program participants are working diligently to accomplish the goals they have set out, keeping them accountable both to HUD and to their communities. NYHC is especially appreciative that the Equity Plan requires an analysis of how Local and State policies and practices such as zoning impact fair housing and goals that address this issue. We also support the requirement for a more robust community engagement process and a public complaint process that would allow communities to directly submit complaints to HUD regarding allegations that a program participant is failing to comply with the AFFH regulations.

We want to highlight how essential it is that HUD is emphasizing a "balanced approach," allowing program participants to use a combination of place-based and mobility strategies and actions to address fair housing issues. This definition is extremely helpful as it would include vital actions such as investing

in low-income communities to preserve existing affordable housing or implementing zoning reforms to expand access to higher opportunity neighborhoods.

To ensure that it enables localities across the country to fulfill the promise of the Fair Housing Act, we also present some suggestions to further strengthen the proposed rule:

Data Collection

NYHC recommends HUD provide more resources that support land use, zoning and housing supply analyses. HUD should collect and make available to program participants more robust data on housing production including the type of housing being produced such as whether it is single or multi-family, rental or homeownership and also data on affordability. This will allow participants and communities to better understand housing needs and local barriers. Many communities are not producing housing at the pace required to meet demand, this in turn drives up rents and home prices. Exclusionary zoning remains a major barrier to housing production in communities across the US. HUD should highlight the severity of these problems through data sharing and analysis.

Definition of “Affordable Housing Opportunities”

We note that the proposed rule is that it does not define “affordable” while using the word “affordable” housing not only in the definition but throughout the proposed rule. We support using HUD’s definition of “affordable” housing as housing that requires a household to spend no more than 30% of their gross income on housing expenses (rent or mortgage) and utilities.

The proposed rule states that housing also falls under this definition if it is affordable to “low- and moderate-income households,” but “low- and moderate-income” is not sufficient. Instead of simply using “low- and moderate-income” we suggest, “Is affordable to households at a range of income levels from ‘extremely low-income’, ‘very low-income’, ‘low-income’ to ‘moderate-income’”.

However, it is worth noting the discrepancy between HUD calculated area median income (AMI) and local AMI. For example, according to the New York City Housing and Vacancy Survey of 2021, the median income in NYC is \$60,550, far below the HUD median family income for the New York Metro area of \$94,500. NYHC highlighted how this discrepancy threatens to put subsidized housing out of reach for many New Yorkers in a [November 2022 policy brief](#). More importantly for AFFH, the discrepancy between HUD calculated metro area AMI and local AMI can skew data related to affordability and access to opportunity for the lowest income households, potentially hiding the depth of the problem, especially for renters.

Community Engagement

We strongly support the framework for a robust community engagement process, but we believe program participants need more support to fulfill these requirements. While a major city like NYC has extensive experience conducting community engagement, many smaller localities across the

state may find it challenging. We suggest HUD provide more guidance on the types of goals and feedback that should be solicited in the three required public engagement meetings. Further, there is no direction tying a specific public engagement process to a given stage; the rule merely requires at least three public meetings during the development of an Equity Plan. Without more direction, a program participant could simply have three meetings to identify fair housing issues. We also recommend that HUD offer materials such as agenda templates and toolkits with conversation guides, suggested discussion questions, and talking points. These materials should be made available to all program participants to ensure they are able to solicit the local input they need to create more comprehensive analyses, goals, and strategies.

We ask that HUD provide technical assistance to support program participants in utilizing a range of technologies during the community engagement process, to ensure a multi-modal outreach and engagement strategy. Examples can include assisting program participants in providing the option for community members to call into meetings virtually, using a video-conferencing or streaming platform that conducts real-time captioning and/or language translations, or offering the option to submit comments online. NYHC also suggests that the regulation include as an acceptable meeting format, hybrid meetings that provide virtual engagement as long as there is concurrent in-person engagement. Combined, this would enable participants to reach and engage a broader audience including allowing more protected class and underserved community people to engage such as those with childcare or eldercare responsibilities, with a disability that makes attending in-person meetings difficult, and those who lack affordable or reliable transportation.

Finally, the level of community engagement proposed is incredibly resource intensive. We recommend that HUD not only provide more technical assistance to program participants during the community engagement process, but also allocate additional funding to support program participants.

Submission Deadlines

Section 5.160, subsections (b) and (c), propose the first Equity Plan for large program participants is to be submitted by 24 months after the effective date of the regulation, or 365 calendar days prior to the date for which a new 5-year plan or new consolidated plan is due, whichever is earlier. Under this framework, if a PHA plan or consolidated plan is due in 2024 or early 2025, the submission date for the first Equity Plan or Joint Equity Plan could be as early as 2023 or early 2024, potentially just months after the publication of the final AFFH rule. This extremely abbreviated timeframe for large program participants—the first group to file their plans—would undermine program participants’ ability to engage in meaningful community engagement and develop thorough Equity Plan analysis and goals. NYHC suggests HUD adjust timeframes in the final rule to ensure large program participants have at least 365 calendar days from the final rule’s effective date to prepare and submit their first Equity Plan or Joint Equity Plan.