

April 24, 2023

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

To Whom It May Concern:

The Maryland Department of Housing and Community Development (MD-DHCD or DHCD or Department) welcomes the invitation to provide feedback concerning the U.S. Department of Housing and Urban Development's (HUD) new rule on Affirmatively Furthering Fair Housing (AFFH).

DHCD applauds the importance of keeping housing access across race, gender, ethnicity, geography, and social and economic status as well for all protected populations. This rule will help if administered strategically to remove some, if not all barriers that continue to prevent many households from accessing the basic necessities of life such as housing due to discriminatory factors, aforementioned. DHCD and its collaborating agencies will push forward policies that will help the citizens of Maryland plow through barriers to affordable housing, however, state and local agencies do not have control over land use and exclusionary zoning laws that make it harder and costly to build affordable housing.

As a participating jurisdiction (PJ), the DHCD administers federal funding as it relates to Community Development Block Grants (CDBG), Emergency Solutions Grant (ESG), HOME Investment Partnership Program (HOME) and National Housing Trust Fund. The Housing Opportunities for Persons With AIDS (HOPWA) is administered at the Maryland Department of Health (MDH). With related missions, DHCD and MDH collaborate in the submission of the Consolidated Plan (ConPlan), Annual Action Plan (AAP), Consolidated Annual Performance Evaluation Report and the Equity once finalized. We submit the following response to the latest AFFH rule based on communal understanding and engagement from our experience collaborating over the years as state administrators of HUD-CPD programs. Both agencies are submitting one response to the proposed new AFFH rule.

We are submitting general comments as well as feedback to HUDs specific 32 questions attached as Exhibit I and Exhibit II.

Comments from the DHCD's block grant programs highlight a few key issues with the AFFH proposal, along with some insights into how problems can be overcome. The programs have some solutions as to how HUD can help state and local program participants achieve meaningful goals to address fair housing issues without overburdening participants.

Variations in Geographic Size and Program Participant Type

Firstly, geographic size is a major factor in the timeliness and accuracy of data in Equity Plans. DHCD feels strongly that jurisdictions in close proximity to each other should be required or heavily encouraged to collaborate with each other to uncover fair housing issues and implement measurable goals. Since fair housing issues infrequently end at political borders, collaboration would be instrumental to eliminating issues plaguing a particular region.

The new AFFH rule must recognize the effect geographic size will have on the quality of data. A local jurisdiction will be able to access data at a much more granular level than a state will. As such, some programs within DHCD are in support of staggered Equity Plan deadlines for local program participants and state program participants. This would allow time for state program participants to analyze the data of their local jurisdictions instead of submitting an Equity Plan that is out of touch with those of the more local program participants. Staggering deadlines would also be beneficial to local jurisdictions—if they are able to spend one year collecting data and a second year identifying issues and setting goals, they would be able to submit meaningful analysis of their locality.

The DHCD also encourages HUD to create different tools based on geographic area or program participant type, since needs may vary across states with both major metropolitan areas and very rural counties. If HUD is able to create a separate analysis tool for rural areas (and properly direct them to use that tool if they meet the criteria to be considered a “rural” area; DHCD does not intend to cause too much confusion by asking HUD to include too many different tools), it could tailor its queries to ask questions targeting either 1) topics on how the remoteness of the community is affecting fair housing—lack of utilities like broadband, difficulty or cost in moving house—or 2) topics that might be more specific to rural areas—access to transportation, availability of rental units versus owned units, vacancy rates, etc.

Different requirements may also be necessary for different program types. It might not be unreasonable for HUD to allow collaboration between smaller PHAs and a state agency like DHCD. Clarification is also needed for whether or not entities with dual roles (such as DHCD, both a PHA and a state entity) will be submitting two Equity Plans, or if HUD can create a tool that would allow a dual-rolled entity to submit one Plan that covers all relevant topics and questions.

Equity

DHCD strongly recommends that the AFFH rule build requirements around or reference multiple issues of equity and barriers to fair housing. Firstly, the rule makes no mention of tribes or tribal governments outside of stating that the AFFH will not interfere with their operations. This is insufficient, given the long history of marginalization of indigenous peoples and the fact that many of these groups do not have access to HUD funding.

Criminal backgrounds also act as a barrier to housing. DHCD recommends that PHAs with criminal background requirements more restrictive than those at the federal level be made to answer why they have chosen to implement more stringent guidelines in their Assessments of Fair Housing or Equity Plans. Moreover, “persons with criminal records” should be added to the catalog of underserved communities HUD recognizes.

It is important to remember that a one-size-fits-all approach does not always work, especially when it comes to community engagement. As elaborated on in the “Community Participation as a Factor in Information Gathering” section below, some demographics cannot always be reached via newspaper posting or internet forum, due to lack of necessary resources or due to stigma surrounding their condition. The AFFH rule must account for outlying communities that cannot be reached by a single means of communication.

HUD Data Requirements

HUD needs to facilitate better analysis by providing useful data. This data can come from HUD, the myriad of other sources HUD pulls from (the American Community Survey, the Decennial Census, the Comprehensive Housing Affordability Strategy, etc.), or Continuums of Care for the homeless—a particularly glaring omission that can be fixed by reforming HUD regulations to require CoCs to report homelessness data they collect to states. As for the data HUD provides: although the proposal offers static data packages for aiding in regional analysis, some programs would prefer that HUD provide a tool to showcase data over time instead of raw data that would require analysis to be conducted.

Whether or not HUD provides data should not be dependent on that data being consistent between jurisdictions—stakeholders should be able to rely on HUD to provide data that may vary from place to place. Examples of this data include the locations of community assets like grocery stores and green spaces, as well as eviction data.

Community Participation as a Factor in Information Gathering

Next, a proposed change to the AFFH rule must take into account how difficult it is to provide meaningful analysis of an area with 1) the limited toolset program participants have at their disposal and 2) the requirements they must meet. HUD seems to understand that requiring a minimum number of meetings to gather information from the public is useful to an extent, but program participants cannot be expected to expend resources to hold an excessive number of meetings, especially when crowds are sparse. The limited amount of data and information that results from these poorly-attended hearings forces program participants to create a very staff-intensive process to scrounge together enough information to meet HUD’s requirements.

Not only that, but public hearings are not always the best way to reach every demographic. For example, beneficiaries of HOPWA grantees may be unwilling to attend meetings where their status as a person with HIV/AIDS is aired publicly. It may be more beneficial to entrust outreach efforts to a trusted stakeholder that would not require someone to disclose their status as a homeless person, or a victim of abuse, or HIV-positive in order to provide feedback. And, although it might not solve the problem of anonymity and would need some heavy investments in broadband to rural communities, allowing for more virtual meetings would let program participants reach a wider audience without the time to leave the house.

Burden

One of the greatest areas of feedback on the AFFH proposal is the burden placed on program participants, especially smaller ones already operating at capacity. DHCD stresses the importance of simplifying the process as much as possible. HUD can also decrease burden by providing a plethora of best practices guidelines, a repository of case studies and successful implementations of fair housing goals, clear templates for how program participants record their community engagement activities, and frequent webinars with HUD staff for answering questions. This would allow program participants to provide HUD with the accurate data they are looking for in an efficient manner.

Some programs within DHCD also request the standardization of feedback tools. The best submission methods may be either a survey with standardized, selectable answers and sections for typed responses, or a Word document-like tool that allows in-line comments to facilitate the necessary back-and-forth between HUD and the program participant as plans are submitted, reviewed, and re-submitted.

Clarity

Another area of in-depth feedback is with regard to § 5.154 of the rule: the actual content required of the Equity Plan. In order to avoid program participants taking the path of least resistance when answering HUD questions, DHCD programs recommend HUD asks program participants very specific questions. For example: “Does your jurisdiction have an exclusionary housing ordinance, such as prohibiting multi-family homes in certain areas? Are there any neighborhoods or developments that had restrictive covenants? Does your state/locality have source of income laws that prevent a landlord from denying housing on the basis of how you pay your rent?” This would require program participants to perform targeted research on a particular topic. While HUD cannot expect all program participants to be versed in the nature of every law’s effect on housing in a jurisdiction, it can help program participants do this research by providing a tool on its website similar in structure to its Income Limits querying tool, but with the purpose of redirecting users to their state’s laws or county charter.

On the topic of the content required in an Equity Plan: § 5.154 (a)(1) - (4) of the rule needs to be very clear in its breakdown of the steps required for submitting an Equity Plan that prioritizes fair housing issues. The current proposal is missing the specifics of how a program participant can engage the community, collect HUD data, collect its own local data, identify fair housing

issues and their causes, identify the most critically important fair housing issues of highest priority, and establish fair housing goals to overcome those fair housing issues. Most vitally important to this process is that program participants understand how to identify fair housing issues that are most pressing without prioritizing one protected class over another. Robust technical assistance from HUD needs to accompany this rule, similar to how HOME-ARP and ESG-CV were done.

Definitions

Definitions should be clarified or consistently stressed throughout the entire rule. HUD should add “persons with criminal records” to its definition of underserved communities. Criminal records incurred as a result of homelessness (with offenses like “loitering” being a common charge) act as a barrier to housing. Also, HUD specifically asks if the meaning of the term “affordable housing opportunities” is clear. While it is a clear definition, it is important to articulate throughout the rule that “affordable housing opportunities” means “housing that costs no more than 30% of a person’s income”.

The requirements set forth in the submission of the proposed AFFH rule does not provide enough timeframe and resources for PJs to be able to fully comply with the current rules as set forth. HUD must engage with states and local government to affirmatively further fair housing.

Sincerely

DocuSigned by:



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Jacob R. Day

Secretary

Affirmatively Further Fair Housing Rule, 2023 Proposal

DHCD Comments

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General DHCD Comments of new AFFH Rule

DHCD concurs with comments provided by COSCDA in their draft letter.

Overall, the new rule assumes that many citizens and organizations participate in the State's process to draft and submit the Consolidated or Action Plan. Participation has always been minimal, and we would have to develop a very staff intensive process to try to get enough information to comply with the regulation.

In regard to geographic area of analysis, why require the State to include entitlement counties/cities in our analysis when they are required to do their own analysis? These counties/cities should identify their own FH goals and submit their own Equity Plan which is tied to their Consolidated or Action Plan. Seem duplicative and problematic if the resulting responses are different. And, who's responsible for addressing any identified issues in the county or city? (I can hear someone saying... "You came here, asked a bunch of questions and are now telling us we have to do this and that to fix things you say are a problem.).

Are program participants supposed to create housing strategies and identify actions for the specific counties (and towns within)? Or do they participate in the analysis and identify their own strategies and actions? Who would be responsible to track their progress to meet goals in the State's Equity Plan?

What is the impact to the State if the counties do not participate in meeting goals in the Equity Plans? What if they are willing to forgo requesting HUD funding from the State?

HUD has a staff shortage now, I would be concerned with their ability to keep up with the work in a timely manner. Their delays would impact our programs and processes.

We recommend a phased process... the first year is for undertaking surveys, data gathering and review of ordinances and policies to create a detailed baseline; the second year is to identify specific issues and set goals and create Equity Plan. A longer, more defined process would be more helpful to get participation.

HUD program participants will view complying with AFFH and the goals in the Equity Plan as our priority and then end up utilizing all HUD resources as such. This removes the flexibility of many of the programs, taking away the ability of our program participants to self-determine their needs.

Program participants would be required to identify fair housing issues within their jurisdiction and set meaningful goals that can be measurably implemented over the next 3-5 years. In areas such as the Delmarva area in general, or Maryland specifically, there are 4 jurisdictions, and to meaningfully address issues in the areas across the state and address them, it would require additional collaboration amongst the local jurisdictions.

Equity plans including HOPWA participant participation would require methods of feedback that would allow for participants' HIV serostatus to remain confidential so public forums are not necessarily the best option. Perhaps targeted outreach to these participants via text or some other type of communication may be wider reaching.

Adding persons with criminal records to HUD's definition of underserved communities would be instrumental in helping clients move forward in the housing continuum. Prior criminal records, even crimes that can be directly related to a person's homelessness, such as loitering, become barriers when passing background checks as part of a routine rental application process.

HUD-Specific Questions for Comments or Feedback

The following 32 questions were taken directly from: Response are provided by each division or program that works with the Consolidated Plan, Annual, the CAPER and soon to be the AFFH Equity Plan: <https://www.federalregister.gov/d/2023-00625/p-286>

1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?

To streamline the rule, HUD could create a portal where program participants can select premade answers in a survey submitted to HUD. The Preserving Community and Neighborhood Choice rule from 2020 (<https://www.federalregister.gov/d/2020-16320/p-1>), while not completely undoing the AFFH, may overburden program participants if they have to submit documentation to HUD. With the new ruling, HUD is going to require the submission of both an Equity Plan every year and an Assessment of Fair Housing every three to five years. HUD should provide a template that will include both components for submission at the same time. Beyond shortening the reporting requirements, HUD should also outline how they expect these AFFH goals to be funded, especially in non-entitlement. Under HUD-CPD programs like Community Development Block Grants, states face caps in a number of areas. If HUD expects CDBG money to fund both existing efforts and new AFFH goals, then the effectiveness of both initiatives will fall short.

As a result, participating governments have to want to apply/manage the CDBG funds for these activities. If States will be required to include the entire geographic area of the State rather than just non-entitlement areas, at a minimum HUD should adjust the implementation and reporting schedule to require local programs to submit their Equity Plans first for HUD review and approval. States would then be able to reference the HUD-accepted plans when drafting a statewide plan, reducing duplication of effort and ensuring plans and goals are aligned at the local and state levels. Additionally, the equity plan calls for deep local-level analysis of community resources, disparities, and more. For the state to independently evaluate this for all localities would require significant time and staff resources.

In addition, including local jurisdictions when HUD is conducting the analysis and utilizing their expertise to implement their Equity Plan would allow program participants to set meaningful goals. It would also be beneficial for equity plan formats to be consistent for clarity and comparison.

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? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?

Meaningful analysis can still occur without the need for HUD to get contributing factors from program participants. For instance, Maryland recently passed HB 90 (<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0090/?ys=2021rs>) which requires that local municipalities report to the state on their AFFH compliance efforts, roadblocks, and achievements. So far, this has taken the form of a short survey where municipalities write in responses to very specific questions aimed at providing answers to the seven fair housing goal categories from section § 5.152 of the AFFH proposal (<https://www.federalregister.gov/d/2023-00625/p-494>). This is an example of how HUD can implement more direct and easy-to-understand analysis that implicitly incorporates contributing factors to fair housing issues, rather than relying on program participants to answer extremely open-ended, quantitative questions.

3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH-T, which is available at <https://egis.hud.gov/affht/>, while exploring possible improvements to the existing AFFH-T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants' data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

a. This notice of proposed rulemaking describes potential HUD-provided data, data and mapping tools, guidance, and technical assistance that may highlight some of the key takeaways from the HUD-provided data and help program participants identify likely fair housing issues. 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? If so, what data would be most helpful to include in these data packages and narrative descriptions? For which program participants would data packages and narrative descriptions be most useful?

Although static data alone might be useful to certain stakeholders interested in exactly one time period, if HUD is willing to provide a lot of static data, that can be used to make a time series and chart trends in the effectiveness of their efforts, which would be much more useful to a broader swath of program participants, especially local governments. Specifically, data on changes in demographics and the evolution of housing issues over the years by area.

Data collected and reported by Continuums of Care to HUD should be included in the data sets and analysis tools HUD will publish for jurisdictions to use in equity plan development. At a minimum, the scope of data should include complete raw data from the Point-in-Time Count, Housing Inventory Count, and annual HMIS service data submitted through the Longitudinal Systems Analysis (LSA) report. HUD should also consider making Stella P or Stella M analyses created from LSA datasets available to local governments and States, particularly those analyses that would support evaluation of racial, ethnic, gender, and disability disparities. CoCs are not currently required to submit this data to States independently under HUD regulations, and this

access may only be available through HUD. Including homeless data is essential to adequately evaluating disparities in resources, housing, and housing needs and establishing actions/goals to affirmatively further fair housing. National studies have repeatedly shown that BIPOC, LGBTQ+, and people with disabilities are disproportionately overrepresented in homeless services compared to their low-income but housed peers, as well as the general population. There are also studies showing disparities for these groups in exiting the homeless system to permanent housing.

HUD should work with the Treasury to provide States with more detailed demographic data on tenants assisted through the Emergency Rental Assistance (ERA) Program across all the ERA grantees within their state. This should include data by ERA grantee, with all program metrics disaggregated by race, gender, and ethnicity.

b. What additional data and tools could HUD provide to facilitate a regional analysis?

A browser-based visualization tool might be beneficial to show and evaluate trends in data over time, not just the raw data that requires staff analysis.

c. What types of data relating to homeownership opportunities should HUD consider providing? In addition to data on homeownership rates, which already are available in the consolidated planning data (CHAS) (which can be accessed at <https://www.huduser.gov/portal/datasets/cp.html>), including by protected class, what other data sources are reflective of disparities in homeownership opportunity?

The CHAS data is comprehensive but daunting. A streamlined version for program participants will be useful.

d. What other data sources should HUD provide for program participants to better identify the various types of inequity experienced by members of protected class groups that are the subject of the proposed rule's required analysis?

HUD should provide data on R/ECAP areas as well as predefined majority-minority data sets to make it easy for program participants to identify inequities experienced by members of the protected class by state by jurisdiction.

HUD should also provide data on foreclosure rates, disaggregated by location, race, gender, and ethnicity if possible. HUD should also consider including data from the Census/BLS Current Population Survey.

e. Are there specific functions that could be included in the AFFH-T to allow the data to be more usable, more clearly displayed, or otherwise easier to interpret? If so, please provide a description of such functionality.

The AFFH-T needs to be updated. Its best quality is that it is easy to use and relatively intuitive; its worst is that it's a non-standard way of displaying mapping data. Rather than having program participants select the type of data they want to display at the outset (Map 1: Race/Ethnicity, Map 2: Race/Ethnicity Trends, etc.), the tool should allow users to toggle layers as they go.

This would help eliminate some of the information missing in the pre-loaded maps. For example, maps 14 and 15 limit the ability to perform queries—a user who wants to see how disabilities affect people by race, or whether a person with an ambulatory disability is able to easily get to places of public transit, or whether a person with an ambulatory disability is in close proximity to their place of employment, is currently unable to do so.

To make this tool more user friendly, it needs a key for ease of understanding. For example, some of the jurisdictions in the Map 13: Demographics and Environmental Health basemap are deep gray and others are closer to white. Colors must be differentiated clearly to separate results for whether it indicates a higher Environmental Health Index. A good visualization should provide simple, intuitive information immediately and provide greater detail upon the user's demand. The AFFH-T mostly meets that need, but could use some improvements.

f. Should HUD consider providing data that are not nationally uniform if they are available for certain program participants even if such data are not available for all program participants? If so, please provide examples of data that would be useful to provide for which there is not nationally uniform data and the reasons why it would be useful for HUD to provide these data.

HUD should incorporate data on proximity to community assets (grocery stores, green spaces, etc.) into its AFFH-T. This would help program participants recognize where food deserts are located, a problem not shared by all communities.

Providing eviction data is beneficial, as it can indicate reforms that are needed to reduce disparities in renting practices and/or indicate discriminatory practices.

g. Are there additional data sets HUD could provide or require to be used for purposes of conducting a fair housing analysis that relate to eviction, neighborhood features (access to parks, green space, trees), zoning and land use, and housing-related costs (like transportation)?

Providing data on community spaces would be very beneficial. Specific to researching equity in homeownership, standardized tables from the Home Mortgage Disclosure Act (HMDA) for reporting along surveys will be beneficial in the discovery.

4. Are there different or additional regulatory changes HUD could make to the proposed rule that would be more effective in affirmatively furthering fair housing, including ways to improve access to community assets and other housing-related opportunities for members of protected class groups, including historically underserved communities, individuals with disabilities, and other vulnerable populations?

Mandating that Equity Plans follow a specific format would standardize them all while making it very clear to program participants what sorts of answers HUD is looking for. The most important thing HUD can do is minimize ambiguity to avoid confusing or slowing down program participants.

One solution would be to mandate X number of community asset Y in an Equity Plan. For example: “within 5 years, Allegany County will have constructed 10 grocery stores to serve low-

income residents.” Another example: “within 2 years, Baltimore City will have secured enough investment to create 15 green spaces.”

A format like this would not be entirely fill-in-the-blank; it would allow for some creativity on the part of Equity Planners, while also painting a clear picture of what sort of information is expected.

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? HUD specifically seeks feedback on the following:

a. Should HUD require that a minimum number of meetings be held at various times of day and at various accessible locations to ensure that all members of a community have an opportunity to be heard? Should HUD require that at least one meeting be held virtually?

Yes. It should be a requirement. HUD should encourage more virtual hearings to make the hearings more accessible to those without access to transportation but with access to the internet as a utility, and HUD should ensure that hearings, both in-person, virtual, or hybrid, be held at various times of day (if scheduling hearings during the workday can be mostly avoided, that would be most beneficial to stakeholders).

However, mandating a certain number of meetings may not always be sufficient. It is critical that HUD expands beyond a one-size-fits-all approach to holding meetings, which it can do by consulting each state on the best strategy for outreach into very remote or very metropolitan areas and by offering assistance in achieving that outreach.

In terms of HOPWA participants, many clients will not attend public meetings where their HIV serostatus may be revealed because of a fear of stigma. Often public hearings and meetings are not effective ways to reach many HOPWA participants. A more targeted outreach effort, whether it be a survey or through another stakeholder, that does not require someone disclosing their HIV status to others would elicit more and accurate responses.

It is important to remember that some Maryland rural communities have limited online access, through no fault of their own.

b. Should HUD provide different requirements for community engagement based on the type of geographic area the program participant serves (e.g., rural, urban, suburban, statewide, etc.) and if so, why should requirements differ based on type of geography?

Yes. Judging from some of the existing comments on the proposed rule (which can be found here: <https://www.regulations.gov/document/HUD-2023-0009-0001/comment>), some program participants, especially smaller ones, fear the burden of additional administrative tasks bogging down their organization’s performance. However, the burden or administrative work should not be an excuse to not hold these organizations to account, but the rule goes into detail about how it desires to make exceptions for smaller PHAs and not be too overbearing. It is critically important that HUD adhere to this particular need of program participants.

If broadband or internet connectivity is not widely available in parts of Appalachia, then program participants there need to hold more in-person meetings than might be held in Montgomery County, MD. If a program serves the entire state, then a greater number of hearings (of either type—in-person or online) need to be held to accommodate more people. If people are located in places where travel might be more restrictive, then they might only trek into the world for events they really want/need to do. Program participants would want to intercept them there—at festivals or near grocery stores, for example.

Most importantly, HUD will need to help localities financially should the need arise. Project sponsors in rural areas in MD have smaller health departments, less staff, and differing effective communication styles from the more urban areas in MD. Allegany, Garrett, and Washington Counties still struggle with internet connectivity so much of their consumer feedback needs to be in person or via telephone whereas in the more urban areas such as Montgomery County, online forums and platforms may be effective. Additionally, smaller jurisdictions are concerned about the reporting requirements since they are operating at capacity.

- c. Should HUD require program participants to utilize different technology to conduct outreach and engagement? If so, which technologies have proven to be successful tools for community engagement? Are these technologies usable by individuals with disabilities, including those who utilize assistive technology or require reasonable accommodations such as real-time captioning or sign-language interpreters?**

Yes, but to an extent. It is not unreasonable for HUD to expect its program participants to make accommodations for members of protected classes, so long as these accommodations are not too preposterous. Holding meetings on first floors of buildings/buildings with elevators that wheelchair users might attend. Using conference call telephones to include members of the public without access to reliable transportation. Posting meeting notes, agendas, or minutes online for those who are unable to attend.

Project sponsors in rural areas in Maryland have smaller health departments, staff, and different effective communication styles from the more urban areas in MD. Allegany, Garrett, and Washington Counties still struggle with internet connectivity so much of their consumer feedback needs to be in person or via telephone whereas in the more urban areas such as Montgomery County, online forums and platforms may be effective. Additionally, smaller jurisdictions are concerned about the reporting requirements since they are operating at capacity.

- d. Has HUD sufficiently distinguished the differences between community engagement and citizen participation or resident participation such that program participants understand that HUD expects a more robust engagement process for purposes of the development of the Equity Plan than has previously been required for purposes of programmatic planning? How can HUD ensure that these important conversations are fully had within communities while not significantly increasing the burden on program participants and the communities themselves? Are there ways in which HUD can reduce any unnecessary burden resulting from separate requirements to conduct community engagement and citizen participation (for consolidated plan program participants) or resident participation (for PHAs)?**

Section § 5.158 and § 5.168 should properly outline ways program participants are meeting the needs for community engagement. Engagement plans need to be tailored to specific counties or localities due to different outreach needs.

- e. Are there specific types of technical assistance that HUD can provide to assist program participants in conducting robust community engagement, including how community engagement can inform goal setting, implementation of goals, and progress evaluations? If so, please specify the types of technical assistance that would be most useful.**

Readily available examples of stellar AFHs and Equity Plans hosted on HUD's website would go a long way. For instance, after attempting to search for such examples online, the DHCD found them on MIT's site (<https://furtheringfairhousing.mit.edu/assessment-fair-housing-city>). The DHCD was able to locate the 2015 AFH on HUD's site, but no examples of AFHs. This would fall under the sort of technical assistance program participants would need HUD to provide. HUD should offer robust technical assistance similar to that provided for HOME-ARP and ESG-CV. Weekly/regular webinars with opportunities to engage with national HUD staff for questions, issuing fact sheets and best practice documents, building a repository of case studies and examples from communities of successful fair housing goals and actions, and highlighting best practices for incorporating people with lived experience of disparities into plan development (the HUD SNAPS office and their TA providers have created a robust set of training and case study materials on people with experience of homelessness, for example). HUD should annually update and make available the CoC-PHA (<https://www.hudexchange.info/resource/4779/coc-pha-crosswalk-report/>) and CoC-ConPlan (<https://www.hudexchange.info/resource/6484/coc-home-cdbg-esg-recipient-crosswalk/>) Jurisdiction Crosswalk reports for the Equity Plan Development and progress reports.

- f. Should HUD require the community engagement process to afford a minimum amount of time for different types of engagement activities (e.g., public comments on proposed Equity Plans, notice before public meetings)? If so, what should the minimum amount of time be in order to afford members of the community an equal and fair opportunity to participate in the development of the Equity Plan?**

HUD should continue the practice of requiring at least one round of hearings before the plan is developed and one after the draft plan is posted. Public notice periods should be extended and not less than 2 weeks ahead of holding a hearing. Public comment period should be a minimum of 30 days but preferably more.

HUD should provide a clear template for how to document community engagement activities, record feedback from participants into the plan, and the level of detail that should be included in the body of the plan vs. appendix. HUD should be more specific about recordkeeping requirements for demonstrating community engagement requirements were met—for example, is a list of groups outreached to and who attended meetings sufficient, do recordings need to be captured, etc.

6. HUD seeks comments on whether the definition of “affordable housing opportunities” is sufficiently clear. HUD also seeks comment on whether the definition should apply to both rental and owner-occupied units. Are there other categories of affordable housing that should be explicitly referenced in this definition?

While the definition is clear, the metric HUD uses (median income) in the definition is consistent, and the definition does not forget to mention the importance of local community assets and accessibility, it might help to add that affordable housing should not be more than 30% of a household’s income.

Currently, for the HOPWA program, project sponsors can request a Community Wide Exception for utilizing financial limits outside of fair market rents, because these have been determined that available units in their areas are well above the fair market rent limits. This would need to be considered when applying this definition universally. It would be beneficial to reiterate the 30% rule stating that affordable housing should cost no more than 30% of a household’s adjusted income for rent or mortgage. It should be applied to both rental and owner occupied units.

7. HUD has provided a new definition of “geographic area of analysis,” which is intended to provide program participants and the public a clear understanding of the types and levels of analysis that are needed by different types of program participants. Does this definition clearly articulate the geographic areas of analysis for each type of program participant and are the levels of analyses for the types of program participants appropriate to ensure Equity Plans are developed and implemented in a manner that advances equity?

Yes, this definition clearly states what is expected of each program participant. That said, on the scope of analysis at the state level: If states need to cover both areas that are a part of HUD’s entitlement program and areas that are not and instead receive HUD-CPG funding through programs like CDBG, HUD would be receiving duplicate data. This should be discouraged—states should not have to cover areas that they would have less familiarity with than would a local program participant. If state entities will still be made to cover areas within the state regardless of where that area’s funding comes from, then local program participants should be required to submit their Equity Plans before the state so that states are able to receive more data and information on those areas.

8. HUD requests commenters provide feedback on new § 5.154, which sets out the content of the Equity Plan. HUD specifically requests comment on the following:

a. 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? Put differently, do the proposed questions clearly elicit from program participants an assessment of the fair housing issues that exist and their causes so that goals can be appropriately tailored to address the identified fair housing issues?

Although these questions are very thorough for assessing fair housing needs, as program participants must assess how to devote the necessary time and resources to creating an Equity Plan, some may be forced to complete these answers in a rushed fashion. While questions like “How do local laws, policies, ordinances, and other practices impede or promote the siting or location of affordable housing in well-resourced neighborhoods?” allow for a deeper analysis of the area’s impediments to fair housing, it is likely that many program participants will need to answer some questions as quickly as possible in order to meet HUD deadlines, undercutting the analysis HUD is hoping to receive.

The DHCD proposes that HUD make available a self-assessment tool that has specific questions/recommended criteria with common issues that exacerbate and/or correct fair housing issues. Jurisdictions can use it to evaluate possible actions they might take and/or policies and practice that could be invested in further. Some questions that would get at the heart of fair housing issues include: “Does your jurisdiction have an exclusionary housing ordinance, such as prohibiting multi-family homes in certain areas?” “Are there any neighborhoods or developments that had restrictive covenants?” “Does your state/locality have source of income laws that prevent a landlord from denying housing on the basis of how you pay your rent?”

HUD would need to provide some tools that allows for program participants to drill down into their area’s laws and regulations, similar to the query tool HUD has for discovering an area’s income limits.

b. Does the analysis in proposed § 5.154 lend itself to identifying fair housing issues for each of the following protected class groups: race, color, national origin, sex, religion, familial status, and disability? If not, how can HUD improve this aspect of the analysis to better serve this purpose? Are there additional data sources that would assist in facilitating this analysis?

Yes, the questions proposed in this section are good for identifying fair housing issues based on a number of different traits.

c. What additional areas of analysis, if any, should HUD include in § 5.154 that are not currently included in this proposed rule?

The areas of analysis covered here are fairly comprehensive.

d. Should the section on fair housing goals (§ 5.154(g)) be modified, improved, or streamlined so that program participants can set appropriate goals for overcoming systemic issues impacting their communities?

The section gives an excellent overview of how program participants can outline their Equity Plans and their goals. The ability to be able to copy and paste § 5.154(g) into their own word processing software, comment out the example text, and fill in their own fair housing issues is

critical to ensuring that each program participant follow HUD's requirements exactly. This plays into the idea of standardizing and simplifying responses.

e. This 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 § 5.154, and if so, what benefit would that have? How can HUD ensure that program participants, in using the HUD-provided data, identify the fair housing issues and underlying reasons for what the data show in order to assess where equity is truly lacking in their geographic areas of analysis?

For the most part, HUD should ask program participants to use specific maps containing data provided by HUD. This will eliminate any confusion on how to achieve a certain kind of analysis and lessen the likelihood that a program participant will lose funding for submitting a subpar Equity Plan. However, if a program participant informs HUD of a reason why the HUD map or HUD data does not apply to their jurisdiction, then HUD should allow for this flexibility.

f. What is the proper regional analysis program participants should undertake in order to identify fair housing issues and set meaningful fair housing goals? Should different program participants have different required regional analyses (e.g., States vs. local governments; non-statewide PHAs)?

Different sizes of program participants should be required to do different levels of regional analysis, but HUD must understand that states cannot always accurately perform analysis on the entire region without insight from more local areas, especially when many areas within states are not serviced by the state due to their status as entitlement areas.

If HUD is unwilling to reduce the coverage area for states, then HUD should mandate that local jurisdictions and program participants with smaller areas of coverage submit their Equity Plans before the state is required to submit its Equity Plan. This would allow states to see data more granularly in a way that they would be unable to without the additional information provided by more local Equity Plans.

g. 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? For example, should HUD require certain types of program participants to conduct an analysis at the following levels of geography for each fair housing issue: Core-Based Statistical Area, Metropolitan Statistical Areas, Block Groups, Census Tracts, and counties?

HUD should rewrite the level of geographic analysis needed to specify that states need only perform analysis on all non-entitlement areas if HUD-CPD funds are expected to be used to achieve AFFH goals. As for the more granular levels of analysis, such as Core-Based Statistical Area, HUD's AFFH-T should be able to drill down to those levels without the need for the state to do so. A program participant that specifically deals in Core-Based Statistical Areas or operates only within a particular Core-Based Statistical Area should have to analyze that area, but otherwise, there will be little need for such granularity.

Not only is it unnecessary for a state to need to review data at a hyper-local level, a statewide plan also cannot meaningfully assess data at a census tract/block group level for the types of disparities HUD references in the proposed rule—particularly access to community resources—without a massive amount of time and effort. State plans should focus on counties, state boundaries, and, if the program participant is collaborating with neighboring jurisdictions, regions. Local plans, however, could go into that level of detail.

h. 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?

HUD should create a separate analysis tool for rural areas (and properly direct them to use that tool if they meet the criteria to be considered a “rural” area; don't cause too much confusion by including too many different tools), it could ask questions about how the remoteness of the community is affecting fair housing—lack of utilities like broadband, difficulty or cost in moving house, etc.

Topic of analysis should include access to transportation, general availability of rental units vs. owned units in the market, vacancy rates, etc.

i. Has HUD sufficiently explained how to prioritize fair housing issues within fair housing goal categories for purposes of establishing meaningful fair housing goals? What additional clarification is needed, if any?

If the wording of sections § 5.154 (a)(1) - (4) (<https://www.federalregister.gov/d/2023-00625/p-543>) are intended to guide program participants on how to properly prioritize fair housing issues, the DHCD strongly recommends that HUD implement some other form of guidance elsewhere, such as a checklist or step-by-step instructions on its site. For example:

1. Engage the community to gather qualitative data
2. Collect HUD-provided data specific to that locality
3. Collect local data
4. Use all data to conduct analysis to:
 - a. Identify fair housing issues
 - b. Causes of fair housing issues (each of which would fall into a category specified by the definition of “fair housing goal categories” (<https://www.federalregister.gov/d/2023-00625/p-494>))

5. Identify the most critically important fair housing issues and prioritize them. How to prioritize one issue over another is outlined by section § 5.154 (f)(2) (<https://www.federalregister.gov/d/2023-00625/p-677>)
6. Establish fair housing goals to overcome the fair housing issues of highest priority. The Equity Plan is now complete.
7. Submit Equity Plan to HUD.

However, note that § 5.154 (f)(2) does not do much to tell program participants how to prioritize fair housing issues affecting one underserved community over fair housing issues affecting another. In order to avoid subjecting program participants to accusations of prejudice or putting one protected class over another, HUD must provide more thorough guidance on how to prioritize a fair housing issue. Robust technical assistance would be a requirement for HUD.

j. In new § 5.154(e), the required analysis for public housing agencies (PHAs), has HUD sufficiently tailored the analysis required for these entities, in particular for small or rural PHAs, while still ensuring the PHA's Equity Plan is developed and implemented in a manner that advances equity for members of protected class groups, particularly those the PHAs serves or who are eligible to be served by the PHA? How can HUD continue to streamline the required analysis for PHAs while also ensuring an appropriate fair housing analysis is conducted and meaningful fair housing goals are established and implemented?

For smaller PHAs, the rule is not requiring that they submit extensive Equity Plans, so this need is met. It also encourages collaboration between program participants. As a means of trimming out extraneous Equity Plans that cover similar areas, this should be emphasized even further. However, the rule neglects to mention how entities with dual roles should approach plan development. HUD must specify if they are required to submit two plans, or if one plan be submitted that includes the extra questions for PHAs. As an example, DHCD is both a PHA and state entity.

k. Are there areas of analysis that HUD should include for PHAs that it has not included in this proposed rule that would better assist PHAs in meeting their obligation to affirmatively further fair housing? This may include analysis addressed to PHA-specific programs, such as public housing, vouchers, Moving To Work, or other PHA programs, as well as by type of PHA, such as troubled or qualified PHAs.[28]

PHAs should specifically be required to address how they utilize preferences for vouchers (both general and limited set-asides) and public housing to address discrimination and reduce disparities. For example, having set-asides or preferences for chronically homeless households has a natural outcome of increasing access to vouchers for both people with disabilities as well as people of color because these groups are disproportionately impacted by homelessness and are overrepresented. PHAs should also specifically have to address why they have implemented criminal background restrictions beyond the federal requirements, and what steps they are taking to increase accessibility for individuals with criminal backgrounds.

l. Are there additional ways HUD could incentivize PHAs to collaborate with consolidated plan program participants in conducting an Equity Plan such that they can pool resources and develop broader solutions to fair housing issues?

Section § 5.154(e) (<https://www.federalregister.gov/d/2023-00625/p-622>) does an admirable job at differentiating the requirements of PHAs, especially when compared with those of local government in § 5.154(d) (<https://www.federalregister.gov/d/2023-00625/p-562>). Although it is doubtful that many program participants will read the federal register and make that comparison, HUD could make it easier to see the difference in collaboration between types of program participants by highlighting example Equity Plans that were the result of collaboration on its website. HUD should also stress that funding is tied to a successfully submitted and accepted Equity Plan, which is why participants should consider collaborating with their neighbors on a joint Equity Plan.

HUD should also de-emphasize its disdain for consultants and contractors. It is not unheard of for a PHA to consult the private sector to complete reports like this, and this rule proposal seems to imply that it is making the AFFH requirements simpler so that program participants do not use contractors or consult the private sector. Because funding is tied to an accepted Equity Plan, it is more important that some entity in collaboration with the PHA, be it a program participant or a consultant, help to submit the plan.

Finally, HUD might consider making it a requirement that smaller PHAs, some of which have less than 100 units under their purview, collaborate with PHAs in their area.

m. Since HUD has removed the requirement to identify and prioritize contributing factors, as was required by the Assessment Tool under the 2015 AFFH Rule, do the questions in § 5.154 appropriately solicit responses that would include the underlying causes of the fair housing issues identified?

Yes; they are sufficient in getting responses that will identify fair housing issues. Identification of contributing factors will result from this line of questioning without requiring program participants to actively seek out contributing factors.

HUD should allow participants to select some options from a standardized list or questionnaire or survey, since it is crucial that a correctly-formatted Equity Plan be submitted and approved in order for them to receive funding. For example, section § 5.154 (d)(2)(iii)(C) asks “How have siting decisions of private or publicly supported housing or the location of residents using Housing Choice Vouchers impacted the overall patterns of concentration (identified in paragraph (d)(2)(i) of this section)?” This would be a perfect question to attach a Likert scale to—answers can be “very positive effect”, “positive effect”, “no noticeable effect”, “detrimental effect”, “very detrimental effect”---in an effort to standardize the results.

n. Are there specific questions HUD should ask that it has not proposed in § 5.154 of this proposed rule?

No; the questions HUD asks are sufficient and cover all necessary areas.

9. In order to reduce burden on program participants, and based on the lessons learned from the implementation of the 2015 AFFH Rule, HUD requests comments on how Equity Plans should be submitted to the Department (e.g., through a secure portal, via email, through a web page that allows uploads, etc.) and whether HUD should mandate the file format the Equity Plan is submitted in (e.g., MS Word, PDF, etc.).

A secured portal that accepted PDFs would be the best way to ensure that third parties cannot tamper with Equity Plans upon submission. Such a portal should also allow for the inclusion of inline comments to let program participants and HUD respond directly to each other.

10. HUD has included several new definitions in this proposed rule and requests feedback on whether they should be drafted differently, whether there may be additional definitions that are not included that would be useful, and whether any definitions included in this proposed rule are unnecessary.

The definitions are sufficient, although the definition for “geographic area of analysis” (<https://www.federalregister.gov/d/2023-00625/p-505>) for states should be edited to exclude the need for states to analyze areas that do not receive from HUD-CPD programs like CDBG. It may also be worthwhile to define the term “equity” to be consistent with Executive Order 13985 (<https://www.federalregister.gov/d/2021-01753/p-5>), as well as the term “material positive change.”

11. Has HUD appropriately captured the types of populations—based on the characteristics protected by the Fair Housing Act—that have historically been underserved and continue to be underserved today in communities in the new definition of “Underserved communities,” and if not, which additional types of populations or groups should HUD consider adding to this definition?

Since the AFFH rule’s definitions of “underserved community” is both fairly comprehensive and consistent with [Executive Order 13985](#), no changes are recommended further or additions to the list.

12. HUD requests feedback on whether including the definition of “Balanced approach” is helpful in understanding how to connect funding decisions to advancing equity within communities and how this definition can be modified or improved in order to more clearly make that connection.

The definition of “balanced approach” is helpful because the definition (<https://www.federalregister.gov/d/2023-00625/p-116>) asks program participants to a) identify areas for investment, and b) outline their plan.

13. HUD has changed the way submission deadlines are determined from the way submission deadlines were established under the 2015 AFFH Rule and requests feedback on whether the new submission deadlines provided in § 5.160 are clearer and are the appropriate way to create tiers for the submission by entities of different sizes. HUD welcomes feedback on different cutoffs for this section that are accompanied by explanations of why different cut offs should be used instead of those in this proposed rule. HUD also welcomes comment on whether the timeframes set out in § 5.162 are appropriate and what, if any, obstacles might these new timeframes present with respect to the development of the Equity Plan and compliance with other programmatic requirements?

In § 5.160 (a)(2)(i) (<https://www.federalregister.gov/d/2023-00625/p-747>), specify that the written request to collaborate with another program participant outside of the state does not need to be long. In § 5.160 (d) (<https://www.federalregister.gov/d/2023-00625/p-763>), and in fact, for most of these sections, HUD should create a flowchart or a visualization tool that lets programs see when their next Equity Plan is due. Language like “the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2025” to provide a definitive submission date for program participants. Since funding relies on punctual adherence to deadlines, confusing language can be detrimental to them and to the communities they support.

The first equity plan would be due to HUD no later than May 15, 2025. <https://www.federalregister.gov/d/2023-00625/p-756>. HUD should consider adding a layer that requires local government plans to be submitted first in the order of priority, if they are going to retain the requirement that states include all geographic areas of the state.

14. HUD seeks comment on whether it should require new program participants to engage in any specific planning process or other actions to meet their obligation to affirmatively further fair housing prior to the submission of their first Equity Plan.

The AFH and the Equity Plan will be sufficient in program participants’ efforts to affirmatively further fair housing, even if they are new.

15. HUD requests specific feedback on new sections §§ 5.170 through 5.174 and whether the compliance procedures and procedures for effecting compliance can be further clarified and improved.

Something about the language of § 5.170 (b) (<https://www.federalregister.gov/d/2023-00625/p-846>) seems to imply that the Responsible Civil Rights Official may be conducting surprise audits of program participants. HUD must clarify, especially on whether or not such audits would be

directed at only program participants that have had complaints filed against them or at all program participants.

At what point in the complaint process is the program participant notified of the complaint against them? Do program participants only get to find out about the complaint when the Responsible Civil Rights Official is gearing up to begin their review? Please clarify.

16. This proposed rule provides a stronger link between the regulatory requirements for implementing the AFFH mandate and program participants' subsequent planning processes in order to better ensure that all programs and activities are administered in a manner that affirmatively furthers fair housing, including by taking into account how to allocate funding to effectuate that obligation. HUD requests comments on how HUD can further ensure that program participants are adequately planning to carry out activities necessary to advance equity in their communities. Specifically, are certifications and assurances requirements in this proposed rule, along with the new regulatory provision at § 5.166 sufficient to achieve this objective, and if not, what additional regulatory language can be added that would achieve this objective?

The language in this rule is sufficient to ensure program participants intend to keep up their commitment to affirmatively furthering fair housing. DHCD stresses the importance of including language like that found in section § 5.166 (b)(3) (<https://www.federalregister.gov/d/2023-00625/p-833>), which specifies that, if one participant in a joint Equity Plan has their certification rejected, this will not affect other participants. Ensuring that there is minimal risk to collaborating is crucial to encouraging collaboration between program participants.

HUD should consider special consultation requirements for jurisdictions that are contiguous to or inclusive of Tribes and Tribal lands, due to the historic marginalization and oppression of indigenous communities - especially because many of these groups still do not have direct access to HUD funding themselves as Tribal governments. HUD should include a definition of tribes/tribal lands/tribal governments in the rule. The proposed rule does not reference tribes or tribal governments except to state that the rule would not interfere with the exercise of their operations. This could take the form of certifications/assurances attached from tribal communities.

17. Has HUD adequately incorporated the need to assess any lack of homeownership opportunities for protected class groups in this proposed rule? If not, in what ways should access to homeownership be further incorporated? Is there specific data that HUD could provide to further facilitate this analysis?

HUD can provide information on the income levels in certain areas. Map 12 of the AFFH-T has useful information on demographics by poverty in an area, but historically, protected classes have had to overcome more than just dire poverty to own a home—for example, they need enough money to make a down payment. Incorporating Census data on income could show

which populations or communities are still unable to afford that down payment despite not being poor by HUD's definition.

HUD can also provide standardized tables and surveys from HMDA. Lending and foreclosure data, disaggregated by demographics if possible, should be provided.

18. Are there other types of “community assets,” that should be included in the new definition and the analysis of disparities in access to opportunity for purposes of the Equity Plan? If so, which assets should be included that are not currently included in this proposed rule?

State Highway Administrations or other Offices of Maintenance are also reliable sources of information for the status of community assets, specifically those related to transportation. For example, the Bureau of Transportation Statistics collects data on the quality of many roads, typically at the state level. This would be useful data to access on a map that can also depict areas of high poverty, demographics, income level, and proximity to other assets.

Regarding the other community assets, HUD should specify “high quality schools” to include early childhood care and education.

19. How can HUD best facilitate receiving feedback on Equity Plans submitted for its review from members of the public in order to inform the review process and how should HUD consider such feedback? HUD seeks comment on whether changes to the regulatory text are necessary, and specifically whether the new definition of “publication” at § 5.152 and the provisions in § 5.160 achieve this objective.

The best way to track changes, make comments, and allow for electronic back-and-forth between HUD and program participants would be through a secure portal and PDF submissions. Once HUD receives the first draft, it can post them publicly on a website. The site should be accessible to the public; while it should not require a login like on a secure portal, it should require a level of verification similar to what <https://www.regulations.gov/> has for commenting on rules or proposals.

Preferably, this portal would allow for the ability to make inline comments, similar to Google Docs or Microsoft Word. As stated in the response to question 13, a dashboard that shows the progress of an Equity Plan, including the current status of that jurisdiction's Plan and the upcoming deadlines the Plan needs to meet, would be extremely helpful.

20. Are there ways that HUD could better clarify how the fair housing goals from an Equity Plan are incorporated into subsequent planning processes? If so, how can HUD clarify this requirement such that program participants will be able to implement their fair housing goals and achieve positive fair housing outcomes in their communities?

Paragraphs (a) and (b) of section § 5.154, specifically § 5.154 (a)(5), explicitly states “the program participant must incorporate the fair housing goals from its Equity Plan... into its

planning documents that are required by Federal statutes or regulations,” complete with some examples of what HUD expects: “program participant must prepare and submit to HUD for review an annual progress evaluation that describes the program participant's progress toward achieving each fair housing goal... any changed circumstances that are likely to affect [their] ability to achieve any of its established fair housing goals, and any proposed adjustments to [these] fair housing goals” (<https://www.federalregister.gov/d/2023-00625/p-547>).

Although this may clearly state what HUD requires of program participants, HUD should consider including examples of fair housing goals and ways to overcome systemic issues on a dashboard or in documented guidance for the program participant. Dashboards, flowcharts, and documentation on HUD’s site would be extremely beneficial for program participants to help outline what they need to do next and why.

21. What forms of technical assistance could HUD provide that would better position program participants and their communities to develop their Equity Plans and ultimately implement and achieve the fair housing outcomes set therein?

As documented previously, robust technical assistance, similar to that provided for HOME-ARP and ESG-CV, should be a requirement for HUD. This can include regularly occurring webinars with HUD staff, fact sheets and best practice documents, repositories and examples from communities of successful fair housing goals and actions as well as highlighting best practices for incorporating people with lived experience of disparities into plan development.

HUD must also commit to annually updating and making available the CoC-PHA (<https://www.hudexchange.info/resource/4779/coc-pha-crosswalk-report/>) and CoC-ConPlan Jurisdiction (<https://www.hudexchange.info/resource/6484/coc-home-cdbg-esg-recipient-crosswalk/>) Crosswalk reports for the Equity Plan Development and progress reports

Finally, HUD must make a point of taking the AFFH rule’s important paragraphs from the new rule into extremely clear rules, timelines, and guidelines for program participants to follow.

22. HUD specifically solicits comment on the proposal to publish submitted plans that it is reviewing but has not yet accepted or non-accepted. HUD seeks comment on both the benefits of this proposal and concerns with it.

If the practice of publishing unaccepted/unrejected Equity Plans online for the public to see is adopted, it is necessary for HUD to make use of a secure portal. This would require members of the public to provide some form of verification in order to comment (a name, an email, and why this Equity Plan is relevant to them). This should also be standard practice for those who wish to comment on accepted/reject Equity Plans, but this guideline is most applicable while these Plans are still mid-development.

23. HUD specifically asks for input on the following proposals for reducing burden on small program participants:

a. HUD notes that some pieces of the analysis may not always be relevant to some small program participants, depending on the local circumstances. If specific parts of the proposed analysis are not applicable to a small program participant's local circumstances, should HUD permit the program participant to respond to that specific piece of the analysis with “not applicable”? If so, please identify the specific parts of the analysis that might not always be applicable and the circumstances under which it would not be applicable. If HUD were to permit this, are there procedures it should follow to ensure that program participants still conduct an appropriate fair housing analysis, such as requiring an explanation of why the piece of the analysis is not applicable, with reference to HUD-provided data, local data, and local knowledge, including information gained from community engagement? HUD seeks comment on the extent to which it can achieve significant burden reduction for smaller program participants (and in particular small PHAs) by clarifying expectations in this manner rather than altering the proposed questions. In responding to this request for comment, to the extent a commenter contends that a particular program participant can or cannot reasonably conduct the analysis set forth in the proposed rule, please describe the relevant local circumstances for the program participant, including any demographic patterns, number of units or consolidated plan program allocations, and local infrastructure, as well as the analysis the commenter believes the question is requiring.

Yes; allow for open-ended answers to questions that are not applicable to smaller program participants. For example, the question “What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments involving the PHA related to fair housing or other civil rights laws” is clearly only relevant either to PHAs or to housing entities undergoing or keeping track of some legal action.

The DHCD emphasizes the need to standardize and simplify these questions to encourage as much quality in Equity Plans as possible. With that in mind, although some open-ended responses should be allowed to question where a standardized response might not work, open-ended responses should be the exception, not the rule.

b. HUD intends that the burden of analysis for many of the questions in the proposed rule will be lower for smaller program participants that have fewer people, places, and geographic areas to analyze and seek comment on this topic. Do the questions proposed in § 5.154 appropriately scale with the size and complexity of a program participant, such that it would be easier for smaller program participants to complete the analysis than larger program participants? For example, does the fact that smaller program participants often operate in smaller communities with fewer people, fewer community assets, and less public infrastructure make the analysis easier to complete? If so, how can HUD make explicit that the same question is expected to result in a less burdensome analysis for smaller or less complex program participants? What other mechanisms could be utilized to

minimize the burden for all program participants, but particularly smaller program participants, while ensuring an appropriate analysis is conducted to meet the proposed requirements in this rule?

Yes. HUD's recognition that smaller participants in smaller communities is very helpful for reducing burden. This will be beneficial for many program participants located in communities with more homogeneous demographics or program participants with fewer staff or resources than others.

HUD should also consider providing intensive one-to-one technical assistance to a set of targeted communities to develop best practices in their Equity Plans. The idea is to publicly post these Plans for programs to use as example documents. Pursuant to the need for in-depth technical assistance, these best practices would serve as case studies for how communities can arrive at their own fair housing goals and actions. This would be similar to how HUD Youth Homelessness Demonstration Program communities work.

The best practices documents should include a variety of types—states, large urban entitlement areas, small PHA, etc.—to demonstrate how Plans might differ in scope and length based on their locality.

c. Are there other ways in which HUD can alter the required analysis for small program participants that meaningfully reduce burden while ensuring an appropriate AFFH analysis such that these program participants can establish meaningful fair housing goals?

The existing rules are sufficient.

d. To what extent, if any, should small program participants have modified community engagement requirements, such as requiring fewer in-person meetings and allowing different formats for meetings? Are there other ways this proposed rule could modify community engagement requirements to reduce burden on small program participants, while ensuring that underserved communities and groups who have historically not participated in this type of engagement have the opportunity to be part of the process? For purposes of small program participants, are there other ways they may be able to receive equivalent input from the community, aside from those contemplated in the community engagement process set forth in the proposed rule, that would reduce their burden in obtaining local data and local knowledge, while still ensuring they have the necessary information to produce a well-informed and meaningful analysis?

A smaller jurisdiction could justify a smaller number of community engagement events, but HUD should assess this requirement based on population size over other metrics, such as number of housing vouchers or amount of funding the program has received.

Since many of these program participants will have their Equity Plan posted online anyway, an online forum would create a good avenue for feedback.

Beyond acknowledging the size and scope of program participants and their jurisdictions, HUD should also recognize some of the continued barriers that exist within the housing system. For example, HUD should consider adding special consultation requirements for jurisdictions that are contiguous to or inclusive of Tribes and Tribal lands.

These groups have been historically marginalized and oppressed, and the way this history continues into the present is in how many of these groups are still unable to directly access HUD funding themselves. HUD should include a definition of tribes/tribal lands/tribal governments in the rule—notably, the proposed rule does not reference tribes or tribal governments in any capacity, even as “underserved communities”, except to state that the rule would not interfere with the exercise of their operations.

e. Would it be appropriate to modify the goal-setting requirements for smaller PHAs and consolidated plan participants and, if so, what modification would be appropriate? The proposed rule does not specify the number of goals that program participants must set. It does provide that program participants must set goals that collectively address each of the seven fair housing goal categories (which may require fewer than seven goals, since a goal can address more than one category), unless no fair housing issue is identified for any category, in which case no goal is required to address that category. HUD seeks comment on whether any modification of this requirement is appropriate for smaller entities.

No, so long as HUD maintains its flexibility based on smaller program size. If no fair housing issue is identified in the area, then smaller program participants should be allowed to say so.

24. One way small program participants can reduce the burden of completing the required analysis is to complete joint Equity Plans with other program participants. HUD seeks comment on how it can further encourage small program participants to complete joint Equity Plans.

There is language in the rule about discouraging the use of contractors and consultants to write these reports. This implicitly tells program participants not to talk with other parties, which is counter to the joint Equity Plan effort.

Please ensure that it is readily apparent to small program participants that they can and are encouraged to consult with other program participants. Please also reduce the burden of consulting with other program participants across state lines by ensuring the document they must provide to HUD to justify their collaboration can be short. Program participant funding relies on an accepted Equity Plan, and the fewer barriers there are to getting that submitted, the more likely a program participant will not lose funding that is crucial to their community.

25. HUD seeks comment on whether it is necessary to establish a definition of “small PHA” or “small consolidated plan participant” and, if so, how should HUD define these terms.

Yes; it is important that HUD contrast this with its definition of a “small jurisdiction,” which should be defined by the population in the area (as outlined in the response to question 23d), HUD should define “small PHA” or “small consolidated plan participant” based on how many housing vouchers or how much funding that program participant has received. The rule does this for other sections, such as the time frame in which a program participant must submit their first Equity Plan, and that same definition should be implemented here as well.

26. Program participants who collaborate and conduct a joint Equity Plan may benefit from pooling resources to overcome fair housing issues. Are there further incentives HUD should or could offer to program participants that submit joint Equity Plans to HUD?

Promising or highlighting the reduced burden for collaborating organizations would be very helpful.

27. Proposed § 5.164 sets out the minimum criteria for when an Equity Plan must be revised. HUD seeks comment on whether the proposed § 5.164 properly captures the circumstances under which a program participant should revise its Equity Plan, and in particular on the circumstances under which a disaster should or should not trigger the need for such revision.

Yes; it is clear when an Equity Plan must be revised. HUD should be mindful to provide additional technical assistance to any program participants who have run into issues with submission of their Plan.

28. With respect to the proposed AFFH enforcement scheme, proposed § 5.170 would provide that complaints alleging the failure of a program participant to affirmatively further fair housing must be filed with HUD within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause. While noting that the proposed inclusion of a good cause exception reflects HUD's intent to be consistent with the regulations and practices of Federal agencies with respect to enforcement of various civil rights statutes, HUD specifically seeks comment on the following:

a. Is 365 days an appropriate time limit? Are there specific considerations that argue for a longer or shorter time limit?

One year is a suitable time limit. If the time limit were too short, it would not allow the program participant adequate time to address or modify the organizational structure that has allowed a transgression to occur. If the time limit becomes too long, the complaint might become irrelevant.

b. What specific circumstances might constitute “good cause,” under which the Responsible Civil Rights Official might be justified in extending the proposed 365-day deadline (e.g., the conduct constituting the alleged violation was not known or made public

within the 365-day period)? Are there specific concerns that mitigate against a good cause exception (e.g., a concern about inconsistent application)?

If the cause of the complaint was stifled or the program participant attempted to hide the issue, then the 365-day timeframe should be extended to allow more time for a complaint.

29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (e.g., urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.

a. 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?

To encourage broader fair housing strategies at the state and local levels, submission of equity plans and strategies must be tied to funding to local jurisdictions. Recently enacted HB 90 requiring all municipalities/towns/cities (reporting locales) to submit an equity plan to the General Assembly will serve as a tool that will encourage broad participation with funding from HUD.

States can pass legislation asking smaller governing bodies to submit Equity Plans to the state legislature. For example, Maryland recently passed HB 90 that requires city/local governments to do exactly that. As long as HUD is willing to provide funding to these local governments, then local governments will be able to engage in more ambitious, more comprehensive fair housing strategies.

It should be stressed that splitting up HUD-CPD program funding between the programs' existing purpose and a new AFFH goal will impact the effectiveness of both. This is especially true when a state allocates funding to as wide an array of local organizations as possible, rather than just a few entities. If HUD intends to use CDBG funds in non-entitlement areas to achieve AFFH goals as well, HUD must be prepared to provide more flexibility in how CDBG funds are used, more hands-on guidance to program participants, and more funding overall.

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

HUD should lay out the necessary elements states and localities are required to cover in affirmatively furthering fair housing and provide the data sets accordingly. This will guide the analysis.

As highlighted in Question 3a, data collected and reported by Continuums of Care to HUD should then be provided to state jurisdictions. Data should include complete raw data from the Point-in-Time Count, Housing Inventory Count, and annual HMIS service data submitted

through the Longitudinal Systems Analysis (LSA) report. Beyond that, HUD must consider making Stella P or Stella M analyses available to states, particularly those analyses that would support evaluation of racial, ethnic, gender, and disability disparities. Since some groups are disproportionately affected by homelessness, it is vital that HUD provide this information to states.

Finally, HUD should work with the Treasury to provide States with more detailed demographic data on tenants assisted through the Emergency Rental Assistance (ERA) Program across all the ERA grantees within their state. This should include data by ERA grantee, with all program metrics disaggregated by race, gender, and ethnicity.

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

HUD should share details on AFFH planning and the approaches taken by individual localities.

d. 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 must update its AFFH-T to handle large amounts of data. HUD must also provide technical assistance to each state so that they might collaborate with HUD to describe their particular needs. All data should be drillable to a local level if HUD requires state plans to include that granularity.

e. Given the unique role that States play, does the analysis and content required in the Equity Plan provide States with sufficient opportunities to coordinate both within the State (e.g., across various departments, offices, or agencies as well as with local jurisdictions) and, as appropriate, with neighboring States?

States are not well-positioned to coordinate with other states' housing agencies due to the intense workload that comes with accommodating existing program planning and engagement with various stakeholders.

30. HUD seeks comment on whether the conforming amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 are adequate to ensure that programmatic requirements are consistent with program participants' implementation of this proposed rule's requirements. Specifically, HUD seeks comment on whether the specific provisions amended are sufficient or whether additional amendments should be made. Are there specific ways in which HUD can further clarify the conforming amendments to assist program participants in understanding and fulfilling their obligations to affirmatively further fair housing?

HUD should emphasize the difference between a strategic plan and an action plan further (<https://www.federalregister.gov/d/2023-00625/p-223>).

Between these, the community participation plan, the Equity Plan, the consolidated plan, and the assessment of fair housing, HUD will be receiving a lot of documentation with overlapping information highlighted in each one.

A useful place to outline all of this documentation and the difference between each one would be Part 903 of CFR Title 24 (<https://www.federalregister.gov/d/2023-00625/p-amd-75>), since it already includes information on what information goes into a PHA's Annual Plan and a PHA's 5-year plan.

In sum: once this rule goes into effect please list in one place all the documentation HUD is asking program participants to provide and why they are necessary.

31. Certain definitions in this proposed rule contain language explaining how the defined term applies to the analysis required by § 5.154 and the type of analysis that HUD expects to be included in an Equity Plan. HUD seeks comment on whether the inclusion of this type of language in the regulations is helpful and provides additional clarity regarding how the defined term should be used for purposes of developing an Equity Plan.

Yes, this clarification is helpful. Defining a term but failing to provide context can make it difficult for program participants to find exactly where a particular term is supposed to come into play in their Equity Plans.

32. As explained in this preamble, the proposed rule would take a different approach than the 2015 AFFH Rule did as it relates to circumstances in which HUD has not accepted a program participant's fair housing plan prior to the date HUD must accept or reject its programmatic plan (i.e., consolidated plan or PHA Plan). Under the 2015 AFFH Rule, HUD was required to disapprove a program participant's programmatic plan under such circumstances, putting the program participant's continued funding at risk. This meant HUD had only two options: (a) accept a fair housing plan despite deficiencies or (b) terminate the program participant's funding. In practice, although HUD rejected some program participants' fair housing plans on initial review and required them to be revised and resubmitted, HUD then accepted every resubmitted plan before the program plan was due, and thus never invoked the only available remedy of rejecting a programmatic plan. In this proposed rule, HUD sets out a more flexible framework that would enable HUD to take additional steps that do not put funding immediately at risk but give a program participant a reasonable opportunity to address deficiencies and submit an acceptable fair housing plan. Under the proposed framework, HUD can reject a program participant's Equity Plan but accept its programmatic plan, allowing funding to continue so long as the program participant signs special assurances prepared by the Responsible Civil Rights Official that require the program participant to submit and obtain HUD acceptance of an Equity Plan by a specific date. The proposed rule provides that the program participant must commit to achieving an Equity Plan that meets regulatory requirements within 180 days of the end of the HUD review period for the programmatic plan and to amend its programmatic plans to reflect the Equity Plan's fair housing goals within 180 days of

HUD's acceptance of the Equity Plan in order to continue to receive Federal financial assistance from HUD. A program participant's failure to enter into special assurances will result in disapproval of its funding plan. Those program participants that submit special assurances but do not fulfill them within the timeline provided will face enforcement action that includes the initiation of fund termination and a refusal to grant or to continue to grant Federal financial assistance. Consistent with the increased transparency this proposed rule provides, HUD will publicly post all executed special assurances, and subsequently publicly post Equity Plans submitted pursuant to the special assurances and HUD's decision to accept the plans or not. HUD requests specific feedback on this special assurance framework in general and on revisions that would better effectuate the purposes expressed here and throughout this preamble. In particular, HUD asks:

a. Does the special assurance framework, which would make program participants that enter into special assurances subject to the remedies set out in §§ 5.172 and 5.174, provide sufficient incentive for program participants to develop and submit compliant Equity Plans in a timely manner? Are there changes that can be made to this proposed rule that would further incentivize timely and sufficient submissions?

HUD should allow these special assurances to be brief, given the slim timeframe of a few days to comply.

33. Are the remedies available to HUD under this framework sufficient? Does HUD need to set forth with greater specificity the remedies that a program participant could face for failing to provide an acceptable Equity Plan by the time its programmatic plan must be accepted? In particular, should the final rule specify the circumstances under which a program participant necessarily will lose funding, and if so, what are those circumstances?

Yes, HUD should be extremely clear in exactly what circumstances that come from a review by the Responsible Civil Rights Official could result in lost funding. HUD should clearly indicate what noncompliance would result in HUD pulling grants from program participants.

HUD also put in place waivers and extensions if submissions are late due to issues with loss of tenured employees, new hires with no less experience or vacancies due to the current labor market.