

July 6, 2021

U.S. Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Re: Request for Information: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government, 86 Fed. Reg. 24029 (May 5, 2021)

Dear colleagues,

These comments are submitted on behalf of the Poverty & Race Research Action Council (PRRAC), a 31-year-old civil rights policy organization based in Washington, DC. In addition to our federal research and policy advocacy on housing, education, and environmental justice issues, in the past three years PRRAC has provided technical assistance to numerous state and local governments and public housing authorities on civil rights best practices and compliance with federal civil rights mandates (including compliance with HUD’s affirmatively furthering fair housing mandate). These comments will address sections 1, 4, and 5 of the Request for Information.

Considering the OMB RFI in the context of racial and economic segregation

Residential racial segregation has historically been a leading mechanism for delivering unequal outcomes for African Americans and other people of color in the United States.¹ Intentional government policies helped create segregated African American communities, deprived these areas and their residents of wealth and basic resources, while heavily advantaging white areas.² These historical actions continue to harm families living in racially concentrated areas in multiple dimensions of wealth, health, education, and employment.³

¹ Stephen Menendian, Arthur Gales, and Samir Gambhir, *The Roots of Structural Racism: Twenty-First Century Racial Residential Segregation in the United States* (Othering and Belonging Institute, June 2021); Alexander Polikoff and Elizabeth Lassar, *A Brief History of the Subordination of African Americans in the U.S.: Of Handcuffs and Bootstraps* (Routledge, 2020); Gunnar Myrdal, *An American Dilemma* (1944) (“Housing segregation necessarily involves discrimination...[it] permits any prejudice on the part of public officials to be freely vented on Negroes without hurting whites.”); Douglas Massey and Nancy Denton, *American Apartheid* (1993) (“Residential segregation is the institutional apparatus that supports other racially discriminatory processes and binds them together into a coherent and uniquely effective form of racial subordination”); Patrick Sharkey, *Stuck in Place* (2013) (“segregation, by concentrating disadvantage in black neighborhoods, continues to divide US society into divergent black and white social worlds that remain truly separate and unequal...”).

² See Richard Rothstein, *The Color of Law* (2017).

³ See Menendian et al, *supra* note 1; Alexander Polikoff and Elizabeth Lassar, *supra* note 1.

Compensatory and reparative strategies are essential to make up for the continuing legacy of unjust treatment for communities of color. To be successful, they need to empower, enrich, and protect the communities, families, and descendants that have been harmed. But these important “separate but equal” policies are insufficient, by themselves, to remedy the harms of segregation.⁴ Community empowerment and wealth building need to be combined with policies that radically expand residential choices for people of color (particularly lower income families) and desegregate racially isolated white areas.⁵

Any overarching federal equity policy must take into account the history and continuing salience of state-created residential segregation, and its accompanying impact on school segregation. Policies that redistribute resources based solely on geography can risk reifying existing patterns of racial and economic segregation – and in the case of federal low income housing policy, directing resources largely to existing low income communities of color can intensify patterns of segregation for decades to come.

The 2015 HUD Affirmatively Furthering Fair Housing rule⁶ provides an excellent framework for simultaneously addressing the resource needs of existing low income communities of color, expanding housing choice and integrating exclusionary communities. While the principles set out in the rule apply to HUD grantees, the underlying obligation to affirmatively further fair housing also applies directly to HUD, the Treasury Department and any other federal agency engaged in housing and urban development related activities.⁷ The internal policies and activities of these agencies should be held to the same standards as HUD has imposed on its grantees,⁸ and any new executive branch equity policy affecting housing and urban development must also be consistent with the statutory obligations set out in the Fair Housing Act.

The AFFH rule as an equity policy

HUD recently restated the scope of the duty to affirmatively further fair housing, in its interim rule, *Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*, 86 Fed. Reg. 30779 (June 10, 2021):

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated

⁴ See Menendian et al, *supra* note 1 (“It is an uncomfortable truth for anti-racism advocates, but one that we must confront and acknowledge: it is unlikely that we can ever close out racial disparities let alone significantly improve life outcomes for racially marginalized people in a racially segregated society. Compensatory schemes that redistribute resources can help to ameliorate these inequities, but racial residential segregation so effectively sorts people across space and bundles vitalizing resources that no redistribution plan can ever match the swift efficacy of the underlying mechanism.”)

⁵ See, e.g., Henry Louis Taylor, Jr., “Land Values and the Enduring Significance of Racial Residential Segregation,” *Poverty & Race* (Jan-Apr 2021).

⁶ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272 (July 16, 2015).

⁷ 42 U.S.C §3608.

⁸ See, e.g., “Analysis of Impediments to Fair Housing in HUD’s Affordable Housing Programs” (PRRAC, December 2009).

and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.⁹

In explaining the reinstatement of this regulatory definition, HUD made clear that the goal of “dismantling historic patterns of racial segregation” was at the core of the AFFH obligation:

For decades, courts have held that the AFFH obligation imposes a duty on HUD and its grantees to affirmatively further the purposes of the Fair Housing Act. These courts have held that funding recipients, to meet their AFFH obligations, must, at a minimum, ensure that they make decisions informed by preexisting racial and socioeconomic residential segregation. The courts have further held that, informed by such information, funding recipients must strive to dismantle historic patterns of racial segregation; preserve integrated housing that already exists; and otherwise take meaningful steps to further the Fair Housing Act's purposes beyond merely refraining from taking discriminatory actions and banning others from such discrimination.... [E]ach federal court of appeals that has construed the Fair Housing Act's AFFH requirement has recognized that the AFFH obligation requires a funding recipient to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them. These cases make plain that the AFFH obligation requires HUD and recipients of its funding to take proactive steps towards fair housing in this manner, beyond merely refraining from discrimination.¹⁰

The 2015 AFFH rule provided that HUD program participants would use an assessment tool template, AFFH data and mapping tool to analyze federal data, and undertake a community engagement process to conduct an AFH. The AFH assessment tool structured the analysis and prompted jurisdictions to consider a range of issues including levels of segregation and integration, high-poverty and racially isolated neighborhoods (racially or ethnically concentrated areas of poverty), as well as disparities in access to opportunity in key areas such as transportation, education, environmental health, and jobs. Additionally, the AFH included a wide look at various contributing factors that help to exacerbate or create inequality. The strategies from the AFH were intended to be included in other housing and community development plans such as the Consolidated Plan and plans for Public Housing Authorities. The AFH process allowed jurisdictions to produce a comprehensive analysis that documented key fair housing challenges and laid out fair housing priorities and actions.

The AFH process produced promising results in its initial rollout before being suspended in early 2018. Notably, the AFH process provided a platform to address issues crossing multiple sectors and to enhance intergovernmental coordination. Our experience with the AFH process also revealed that effective equity assessments need concrete goals and strategies and should have mechanisms in place to ensure that there is follow-through on policy proposals. A high level of specificity regarding goals and benchmarks including the identification of potential policy changes and funding sources can help increase the likelihood that an equity assessment will actually lead to tangible improvements. Reporting on progress can help ensure that there is accountability on goals and strategies. The AFH framework is a useful example that federal

⁹ 86 Fed. Reg. at 30790.

¹⁰ *Id.* at 30780-81.

agencies can successfully use for their own assessments of the impact of agency policy on systemic inequities.

The value of transparent and accessible data

The AFFH data and mapping tool is an example of how data can be applied to strengthen equity assessments. In creating the AFFH data and mapping tool, HUD put together a user-friendly apparatus for quickly accessing visual and tabular data and information relevant to understanding fair housing issues of concern to protected groups in a jurisdiction. For instance, the tool encompasses information on a number of diverse topics, including racial concentration (present and over time), the location of households of different national origins, the racial/ethnic concentration of neighborhoods in which publicly supported housing is located, the demographics of publicly supported housing, housing problems, disparities in access to opportunity among protected groups, disability, and more. As we note in our recent policy brief on reviving the AFFH regulation, "HUD has created an impressive AFFH data and mapping tool to assist jurisdictions through this process. The tool provides an array of tables and maps using data from the U.S. Census Bureau as well as other sources. These data and maps help provide key insight into demographics, housing conditions, and barriers to access to opportunity."¹¹ In the context of the AFFH process, these data tools (to be supplemented with qualitative data as well as local data and knowledge) help to assess the presence and character of fair housing challenges and to therefore inform the strategies necessary to address inequities in the jurisdiction. Other agencies should consider similar building tools with publicly available information to collect data and use when conducting their own equity assessments.

While the AFFH data and mapping tool proved to be an essential resource for conducting AFHs, more could have been done to ensure that data accurately captures a clear picture of the inequalities that people of color and other historically marginalized communities experience. We concluded that, "to the extent possible, HUD should explore ways to include more disaggregated data on race and ethnicity into the tool so that the needs of the most marginalized subgroups within racial or ethnic groups can be explored in greater detail when appropriate. Data disaggregation can provide valuable information on disparities and trends that would otherwise go unnoticed and help program participants better plan policy solutions. Even if disaggregation cannot be accomplished through the data and mapping tool, HUD should encourage program participants to use disaggregated local data when feasible and appropriate and provide guidance on how to use such data."¹² Similarly, other agencies should carefully consider disaggregating data and other methods of data collection to ensure that they are evaluating accurate and detailed data that can help them address the needs of people of color and marginalized communities.

Community Engagement in the AFFH rule

The AFFH rule made community participation a vitally important part of the AFH process and can be a model for other agencies' efforts to engage communities. In order to ensure that an AFH is informed by meaningful community participation, the AFFH rule requires that HUD program participants give the public opportunities for involvement and consult with a range of agencies and organizations.

¹¹ Megan Haberle, Peter Kye, and Brian Knudsen, "Reviving and Improving HUD's Affirmatively Furthering Fair Housing Regulation: A Practice-Based Roadmap" (PRRAC, December 2020).

¹² *Id.*

The AFH assessment tool detailed several requirements for a strong community engagement process: HUD program participants conducting an AFH needed to describe outreach activities, identify media outlets used, and include a description of efforts made to reach the public. Grantees were required to describe outreach to populations that are typically underrepresented such as persons with disabilities and persons who are limited English proficient (LEP). Additionally, the assessment tool required grantees to provide a list of organizations consulted and to describe whether outreach activities elicited broad participation. Moreover, program participants are required to summarize comments obtained in the community participation process and include a summary of any comments or views not accepted and why. Collectively, these requirements helped to broaden community engagement and strengthen the fair housing analysis.

HUD's AFFH implementation guidebook recommended several best practices for enhancing community engagement in an AFH process. These include prioritizing inclusivity and transparency, working with existing networks and community leaders, and building incentives for engagement that reduce barriers to participation such as offering childcare or transit fares. Our experiences in conducting assessments of fair housing provided additional lessons for improving a community engagement processes. First, laying the groundwork for engagement should start as soon as possible, particularly when there are considerations such as language access assistance that need to be worked out. Agencies should also reach out to a broad variety of stakeholders, including those that may not be typically involved in engagement efforts for certain issue areas. Broadening the range of stakeholders allowed us to better understand the communities we worked with, and some of the most important feedback we received in the AFH process came from organizations that had never engaged in a housing planning process before.

Agencies should also consider a range of alternative approaches to traditional methods of soliciting feedback such as public meetings and hearings. These settings are not always successful at eliciting genuine and broad community participation. Indeed, such settings can be intimidating for some people, may not fit into individual schedules, and often suffer from low attendance. Instead, a range of alternatives such as workshops, open houses, and virtual meetings should be considered to reduce barriers and reach more people in the community. When presentations are being made, simple presentations that plainly explained background information and the tangible impact of issues on the community were most effective. Overly technical language and excessive detail about legal obligations and regulations can be confusing or alienating for audiences. Although it is important to allow for the public to voice their opinion at forums and hearings, a focused structure for discussion is helpful to keep a meeting on-topic. In our experience, discussion prompts ultimately led to more valuable feedback. Location is also an important consideration for in-person meetings. Agencies are often able to easily use government buildings as a venue but these locations could be unwelcoming to some members of the community and discourage participation. Agencies should consider whether meeting locations are close to transit, accessible for persons with disabilities, and are a safe space for all people. OMB should consider using these lessons to help enhance agencies' community engagement efforts.

Conclusion

The Affirmatively Furthering Fair Housing rule and its accompanying guidance and data tools represented a major government effort to address equity during the Obama Administration, and should be assessed as a potential model as the Biden Administration develops new equity tools. Especially in the context of housing and education, where continuing and increasing racial and

economic segregation are the key drivers of inequity, the framework laid out in the AFFH rule remind us that compensatory and integrative strategies need to be pursued simultaneously if we expect to achieve greater racial equity in our lifetimes.

Please feel free to contact us for further detail on any of the points raised in this letter.

Sincerely,

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