



KIRWAN INSTITUTE  
for the Study of Race and Ethnicity

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

**Re: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing**

The following comments are in response to the Administration's proposal for new Affirmatively Furthering Fair Housing requirements. The response below is based on the Institute's experience as an engaged research institution focused on issues of social and racial equity, our experience in fair housing and community development, and our work as a technical assistance provider for the U.S. Department of Housing & Urban Development's Sustainable Communities Initiative ("SCI"). Working with our partner organization PolicyLink, the Institute has been engaged in assisting grantees with equity considerations in the planning and the implementation of the Fair Housing Equity Assessment ("FHEA").

The Kirwan Institute for the Study of Race and Ethnicity commends the Administration for turning its attention to a long-awaited need in the fair housing and civil rights community: greater guidance and support for the government's obligation to affirmatively further fair housing. As we all know, and as research confirms, the geography of opportunity can powerfully influence the lives of people in our country. Research and experience have long taught that expanding access to opportunity is hugely important to individual and societal progress. Indeed, the importance of safeguarding access to opportunity was well-understood when the Fair Housing Act was drafted in 1968. The Fair Housing Act upholds America's interest in protecting equal opportunity and freedom from discrimination for everyone, a responsibility that benefits all of us and is crucial to a prosperous future in an increasingly diverse nation. Unfortunately, the promise of equal access to opportunity has long eluded many communities, particularly people of color and low income families. This promise of opportunity is the promise that the AFFH obligation rightly seeks to protect and uphold.

While there is much to commend in the proposed rule, there are clarifications that could make the rule more meaningful and effective. These are outlined below.

**Guidance on implementation should be strengthened.** The proposed rule does not promote meaningful action and change; instead, similar to the current guidance for Analysis

of Impediments ("AIs"), the emphasis is on analysis and planning, or process. For example, "[T]he specific actions of local governments or PHAs that would generate benefits for protected classes are not prescribed, obligated, or enforced by the proposed rule (p. 43726)." Simply put, jurisdictions need stronger guidance on implementation.

Our experience with SCI grantees has shown that data collection is fairly easy for them. However, grantees have explicitly stated the need for more guidance on implementation and evaluation. HUD should require jurisdictions to identify specific goals and timelines for reduction of racial isolation in a community, and measurable goals for neighborhood improvements and access to community-wide resources for residents of low-income communities.

While we applaud the regional focus of the proposed rule, we have also learned that addressing equity at a regional level has proven difficult for many grantees when most programs, organizations, and constituencies are focused on a city or neighborhood level. More guidance on collaborative implementation could help bridge this gap. Toward this end, HUD should include more specific examples and best practices of policy approaches that might be undertaken by various local organizations to address fair housing barriers in a region.<sup>1</sup>

***Meaningful community engagement with a focus on marginalized communities is critical - as are measurable outcomes.*** The enhanced community engagement elements of the rule will bring new groups to the table and promote an open discussion in thousands of communities about issues of racial segregation, "racially concentrated areas of poverty," unequal conditions and resources in low income communities, and remedies to segregated housing patterns. A well-designed community engagement process can literally transform the planning process. However, our experience has shown that equity is often *solely* equated with engagement activities. Real success in achieving equity is measured by policy and investment *outcomes*. To this end, AFHs should be required to document how community engagement activities were targeted to protected classes and how input from engagement specifically informed fair housing goals and strategies. If comments could not be addressed from engagement, explanations should be included as to why they were not.

In addition, although there are very positive provisions for community involvement in the planning process, there is no support in the rule for capacity-building to carry out this community involvement. The effectiveness of community engagement will thus depend on existing community capacity, unless additional support is included in 2015 budget. One of the most important lessons learned from the SCI process thus far is that budgeting support for the participation of organizations and residents from traditionally marginalized communities is critical to achieving meaningful equity outcomes.

Finally, transparency is key to community participation. The proposed and final Assessment of Fair Housing, as well as related information used to create the AFH, should be posted on a readily available webpage of the program participant.

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<sup>1</sup> The proposed rule's "Summary of Regulatory Impact Analysis" at p. 43726 lists four very general types of actions program participants might pursue including "modifying local regulations and codes, constructing new developments, creating new amenities, and facilitating the movement of people." HUD has an obligation, either in the final regulation or in later guidance implementing the rule, to offer substantially more concrete and detailed suggestions than those listed here.

**HUD should explicitly state the need for a balanced approach that incorporates investment in high poverty communities and access to communities of opportunity.** While the proposed rule's emphasis on community reinvestment and revitalization is positive, HUD should provide explicit direction that resources used to prioritize non-housing investments in high poverty and segregated communities is allowed. In addition, the final rule should be clear that the predominant purpose of the Affirmatively Furthering Fair Housing standard is reduction of segregation and poverty concentration. The proposed rule states:

"A program participant's strategies and actions may include strategically enhancing neighborhood assets (for example, through targeted investment in neighborhood revitalization or stabilization) **or** promoting greater mobility and access to communities offering vital assets such as quality schools, employment, and transportation consistent with fair housing goals."

In the final rule, the "or" must be an "and." Jurisdictions cannot satisfy their mandate to promote fair housing choice and integration solely through one strategy.

Further, the final rule should be far more explicit that all of a program participant's housing and community development resources, as well as its policies, practices, and procedures (such as zoning which inhibits development of permanent supportive housing or multifamily housing) must be assessed in the Assessment of Fair Housing and in any certification that it is affirmatively furthering fair housing. As written, the proposed rule could be misunderstood to only consider use of HUD funds.

**Stronger encouragement for use of local data in addition to HUD-provided data.** The Kirwan Institute has been a strong advocate for comprehensive data analysis as it relates to opportunity. This proposed rule supports a more holistic analysis through HUD's provision of data. However, our experience over the past ten years and our recent work with SCI grantees reinforces the need to encourage the complementary use of local data sets and local data expertise. While the HUD- provided data is a great starting point, we are concerned that without the input and support of local expertise (including data experts in various opportunity domains), the new rule will be reduced to a "checklist," and will lead to few robust local conversations -- which diminishes the prospects for meaningful change. HUD should encourage, and provide to the extent possible, additional data related to opportunity. (For example: fair housing complaint data, HMDA data, and data on the fiscal capacity of jurisdictions to implement change.) Lastly, the definition of RCAPs will be problematic for many regions. The 40% threshold is too high in many rural and smaller regions. HUD should provide clarity on what can be considered RCAPs in these places.

In closing, we feel that the proposed AFFH rule can be critically important to ensuring that all communities have access to the opportunities needed to thrive in our 21<sup>st</sup> century society, and to advance sustainability and prosperity in the United States. We are hopeful that our input will help ensure that the AFFH rule will live up to this potential.

Best regards,

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