

Selected Comments from Civil Rights Groups on HUD's Proposed AFFH Rule

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NAACP Legal Defense Fund

The NAACP Legal Defense Fund (LDF) submitted comments outlining some of the history of the AFFH obligation, expressing support for the Proposed Rule, highlighting a few of the rule's strengths, and making recommendations for improvements to the rule. The letter opens by discussing the wide range of types of FHA cases that LDF has litigated over the years and the continuing need for FHA enforcement, particularly in light of the lingering effects of the foreclosure crisis. The letter argues that piecemeal litigation and isolated policies are insufficient in the face of persistent structural inequality. Instead, housing providers must take responsibility for the effects of their actions and engage in coordinated planning to end segregation. The duty to AFFH plays a pivotal role in that process. The letter points out that Senators Brooke and Mondale recognized the importance of overcoming the segregative effects of federal housing programs when they included the AFFH provision in the FHA. The letter points out that LDF applauded HUD for issuing a proposed rule on AFFH in 1998 and was disappointed when the department withdrew the rule. The letter's introduction closes with a mention of the National Commission

on Fair Housing and Equal Opportunity's 2008 recommendation that HUD establish a regulatory structure for AFFH, conduct compliance reviews, and impose sanctions in the fact of AFFH violations.

The letter heralds the Proposed Rule as a significant step forward, especially insofar as HUD clarified the duty and the rule was the product of extensive outreach designed to identify best practices. Specifically, the letter praises the substitution of the AFH for the AI, HUD's willingness to implement the GAO's recommendations, the provision of comprehensive data, the inclusion of a public participation process, the integration of fair housing considerations into other planning processes, and the promotion of regionalism. The letter adds that LDF will comment on the specifics of data during the dedicated comment period on that subject and recommends that HUD award bonus points to participants in regionals AFHs in competitive grant application processes in order to incentivize regional collaboration.

With respect to the substantive concepts discussed in the Proposed Rule, LDF recommends that HUD clarify that the central purpose of the duty to AFFH is to promote integration. The letter expresses the view that access to community assets is a worthy goal that is related to AFFH but that efforts to that end can never be a substitute for a meaningful analysis of segregation and actions to promote integration. The letter argues for a both/and approach to mobility and investment-based strategies and goes on to recommend clear limits on when a program participant should be able to prioritize investment strategies. The letter suggests that program participants should generally invest in non-housing assets with the goal of transforming high poverty segregated neighborhoods into inclusive high opportunity communities. Program participants should only invest in housing in such areas when necessary to mitigate the effects of gentrification or when the investment is a component of a comprehensive revitalization for which there is a strong evidentiary justification. Lastly, the letter recommends that HUD clarify that a program participant's mobility strategies must extend throughout the jurisdiction and into other parts of the surrounding regional housing market (when the jurisdiction does not contain the totality of the market).

In light of a concern that HUD review of AFH submissions might be perfunctory, the letter contains several recommendations on the subject of enforcement. First, the letter recommends that HUD have mechanisms in place to measure program participants' substantive progress over the course of the five year AFH period. Second, the letter urges HUD to reject substantively inadequate AFHs, not just procedurally deficient ones. Third, the letter recommends that complete acceptance of an AFH be a precondition for consolidated plan or PHA plan approval and the release of funds. Fourth, the letter recommends the inclusion of formal complaint and appeals processes in the rule. Fifth, the letter encourages HUD to conduct random audits of AFFH compliance. Sixth, the letter urges HUD to clarify what sanctions –

including referral of matters to DOJ for possible False Claims Act litigation – for non-compliance. Seventh, the letter argues against the creation of any kind of safe harbor based on HUD’s acceptance of an AFH. Lastly, the letter states that HUD must actually review AFH submissions, despite its limited capacity, and suggests changing the review period from 60 to 90 days to facilitate that process.

Next, the letter addresses the question of performance standards. The letter recommends that HUD revise the rule to include benchmarks and timeframes to aid in the assessment of whether program participants are achieving their goals. The letter recommends defining “proactive steps” and “meaningful actions” in light of language from *Otero v. New York City Housing Authority* and *NAACP v. Secretary of Housing & Urban Development* that emphasizes the importance of increasing the supply of genuinely open housing. The letter criticizes HUD for omitting *NAACP v. Secretary of Housing & Urban Development* from the legal authority section of the Proposed Rule. The letter recommends that the rule explicitly state that a program participant has not met its obligations if it has not taken actions that increase the availability of integrated housing.

The letter encourages HUD to go further in integrating fair housing planning into other planning efforts. In particular, the letter recommends that program participants specify actions to address fair housing goals and analyze how those actions affected fair housing issues in their annual performance reports. Additionally, the letter stresses the importance of coordinating with the LIHTC QAP process as well as planning efforts involving education and transportation. With respect to disaster recovery, the letter recommends that the rule be made for specific about the revision process. LDF does not believe that disaster recovery funds should be prohibited from going to segregated communities but does not the position that those communities should have to demonstrate how they will increase opportunity and encourage integration. Lastly, the letter recommends that HUD clarify the scope of the Proposed Rule’s applicability to PHAs, particularly with respect to the HCV and MTW programs.

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National Urban League

The National Urban League (NUL) submitted a comment letter in strong support of the Proposed Rule. The letter borrows heavily from a sign-on letter circulated by NFHA. The letter urges HUD to quickly finalize the rule. The letter contains several plaudits for the Proposed Rule as well as suggestions for improvement. The letter praises the rules’ clearer, stronger definition of AFFH, the requirement that program participants submit an AFH in order to receive funds, the requirement that program participants reach out to fair housing groups when developing their AFHs, the requirement that program participants submit their AFHS before they can submit their

consolidated plans or PHA plans, the requirement that program participants revise their AFHS if there are significant changes in circumstances, and the provision of data to program participants.

With respect to areas where the rule could be improved, the letter urges stronger standards for assessing compliance. Grantees should actually have to overcome fair housing issues, not just mitigate or address them. Additionally, the letter recommends requiring program participants to set more than just one goal and goes on to state that grantees should also identify milestones, timetables, and expected outcomes with respect to their goals. The letter contains a handful of recommendations with respect to enforcement. First, the letter urges the inclusion of a process by which stakeholders can request HUD review of the activities of grantees whose AFHS HUD has already accepted. Second, the letter recommends that HUD phase in the AFH requirement in order to avoid straining the department's capacity to review submissions. Third, the letter recommends that FHEO lead review of AFH submissions and that the department provide the office with the resources necessary to do so effectively. Fourth, the letter recommends that HUD conduct periodic audits of AFHs. With respect to regional collaboration, the letter recommends that the rule require PHAs that do not submit an annual plan to collaborate with a state or entitlement jurisdiction on an AFH. The letter also endorses the idea of providing incentives for regional collaboration and stresses the importance of ensuring that participants in regional AFHs still set local goals, as well. Regarding data, the letter stresses the importance of making a more complete version of the geospatial tool available for comment before finalizing it. The letter also recommends including the definitions of RCAPs and ECAPs in the rule itself since they will lack the force of regulation if they are left in the data methodology document.

The letter contains a few final recommendations that are not tied to any overarching themes:

- The letter recommends addressing the housing needs of GLBT people through the rule.
- The letter recommends changing the “or” to “and” with respect to mobility and investment-based strategies.
- The letter recommends requiring grantees to post all relevant documents on their websites, translate the documents into appropriate languages for LEP participation, and conduct outreach in appropriate languages.
- The letter recommends making the assessment tool available for comment before it is finalized.

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The NAACP submitted a comment letter praising the Proposed Rule and urging HUD to quickly finalize it. The letter mentions that Secretary Donovan announced the publication of the Proposed Rule at the organization's national convention. The letter is largely identical to the NUL's, and both follow NFHA's template for the most part.

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National Council of La Raza

The National Council of La Raza (NCLR) submitted a letter expressing support for the Proposed Rule. The letter outlines NCLR's history of fair housing advocacy, provides documentation of the scope of housing discrimination faced by Latino households, and lists some of the many ways in which where a person lives can affect his or her quality of life and future possibilities. The letter mirrors the recommendations contained in the NUL and NAACP letters in arguing that grantees should be expected to overcome barriers, not just mitigate them. Additionally, the letter recommends revising the Proposed Rule to require program participants to set quantifiable annual benchmarks toward the achievement of their fair housing goals and to report on their progress in their annual performance reports. With respect to enforcement, the letter recommends that HUD conduct testing, issue a scorecard, and create a private right of action to enforce the obligation to AFFH. On public participation, the letter argues that the Proposed Rule does not go far enough with respect to outreach because the rule assumes that program participants are already conducting effective outreach when, in fact, their track record has been poor. Specifically, the letter recommends the investment of additional resources in outreach; actions to increase the accessibility, both culturally and linguistically, of the fair housing planning and enforcement infrastructure to LEP populations; and partnerships with community-based organizations that have outreach expertise.

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Consortium for Citizens with Disabilities

The Consortium for Citizens with Disabilities (CCD) submitted comments that were strongly supportive of the Proposed Rule. The letter strongly endorses the Proposed Rule's emphasis on community integration for persons with disabilities and *Olmstead* compliance. Out of a concern that HUD would bow to some commenters and weaken the rule's community integration language, the letter frames its support in the form of a plea keep certain provisions in the rule as they are currently drafted. To bolster those provisions, the letter recommends including examples of integrated settings from HUD's recent *Olmstead* guidance. To clarify a source of potential confusion, the letter recommends changing the reference to "residency preferences" in the PHA-specific section of the Proposed Rule to "admissions preferences." With

respect to data, the letter points out the current weaknesses of HUD data with respect to persons with disabilities, particularly the omission of persons living in institutions and homeless individuals. The letter recommends that program participants consider information about how many persons with disabilities are being served in a wide range of settings and information provided by state and local disability service providers about the housing needs of their clients. Since there are limits to the availability of geocoded data and institutions tend to be concentrated in a small number of communities, the letter recommends that program participants statewide share responsibility for addressing the housing needs of persons exiting institutions. The letter recommends that HUD provide data on the disproportionate needs of members of other protected classes in addition to those defined by race and national origin. With respect to supplemental local data, the letter argues that HUD should only allow program participants to consider other data in addition to evaluating HUD data, not instead of looking at HUD data. With respect to public participation, the letter recommends requiring program participants to consult with disability rights organizations in preparing their AFHs. With respect to enforcement, the letter recommends that HUD tie AFH approval, in part, to program participants' compliance with existing Section 504 regulations.

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PRRAC

The Poverty & Race Research Action Council (PRRAC) submitted a sign-on letter in strong support of the Proposed Rule. The letter praises the rule's potential to increase grantee compliance with reporting requirements, enhance community engagement, bring about open discussions about fair housing issues, serve as a platform for community organizing around fair housing issues, improve the efficiency of fair housing planning by tying it to other planning processes, and provide uniform data to program participants so they do not have to needlessly spend time on data collection that could have been better spent otherwise.

The letter expresses the concern that the Proposed Rule creates ambiguities with respect to and may even undermine the central purpose of the duty to AFFH. The letter goes over the seminal cases discussing the duty, *NAACP v. Secretary of HUD* and *Otero v. NYCHA*, and identifies that main thrust as being the promotion of integration and the need to increase the availability of open housing. In the Proposed Rule, HUD also identifies the goal of increasing access to community assets as being central to AFFH. To that end, the letter recommends that HUD revise the Proposed Rule to reflect that program participants should take a both/and, not an either/or, approach to mobility and investment-based strategies. Additionally, the letter recommends clarifying the circumstances under which investment-based strategies are appropriate. In particular, investments should primarily come in the form of non-housing

resources, and place-based housing investments should be limited to circumstances where there is a comprehensive revitalization plan in place, including a public housing redevelopment plan that conforms to fair housing standards, or gentrification poses the threat of displacing community residents.

Several sections of the letter address the scope of the issues and obligations at play. The letter recommends that program participants assess segregation and disproportionate housing needs at the regional rather than the local level. Additionally, the letter recommends setting quantitative thresholds for segregation and RCAPs in the rule itself in order to reduce the risk of backsliding. The letter expresses the concern that some program participants might take the view that the obligation to AFFH only applied to HUD-funded activities. Consequently, the letter urges HUD to clarify the range of grantee activities to which the duty applies. The letter also recommends clarifying that the duty applies to the full range of HUD's activities, as well. The letter recommends coordination between the AFH process and planning processes involving the LIHTC program, transportation, and education. Lastly, with respect to states and counties, the letter recommends that HUD state that those units of government have a responsibility to engage with recalcitrant municipalities within their borders that do not receive HUD funds. The letter recommends making sub-recipients of funds directly responsible to HUD in keeping with a few other federal regulatory schemes.

The letter contains several recommendations with respect to compliance and enforcement. The letter argues that the Proposed Rule allows program participants too much flexibility. Instead, grantees should be required to identify specific goals and timetables for reducing segregation, reducing racially-correlated concentrations of poverty, and increasing access to community assets. The letter recommends that HUD require program participants to develop plans to address each identified fair housing impediment and, to facilitate that process, suggests that HUD provide specific examples of proven strategies to address fair housing issues. In order to best ensure that program participants comply with the duty, the letter recommends the creation of a complaint process that allows stakeholders to object to the content of an AFH, violations of civil rights certifications, and failures to follow through on plans included in AFHs. In order for stakeholders to be able sufficiently informed to bring these complaints, the letter recommends that HUD invest in stakeholder capacity and require program participants to post their AFHs and all supporting documents online in full, in searchable format on a page that is linked to from the jurisdiction's home page. The letter also recommends that HUD abandon its plans to engage in routine review of AFH submissions. In the event that HUD does not take up that recommendation, the letter recommends that HUD extend the review window from 60 days to 90 days, classify AFHs that have not been reviewed as "unreviewed" rather than "accepted," and conduct in-depth audit-style AFH reviews.

The letter endorses the Fair Share Housing Center's comments with respect to disaster recovery and the Center on Budget and Policy Priorities' comments on PHA issues.

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Civil Rights Sign-On (NFHA)

The National Fair Housing Alliance (NFHA) coordinated a sign-on letter in support of the Proposed Rule that was joined by 41 organizations in addition to submitting its own more detailed comments. The letter is largely identical to the NAACP and NUL's letters except for with respect to enforcement and is the source of the material in those letters. On the subject of enforcement, the letter also recommends the extension of the review period to 90 days. Additionally, the letter includes language mirroring CCD's provision concerning the retention of strong community integration language and the recommended incorporation of language from HUD's *Olmstead* guidance. Those comments are not present in the NUL and NAACP letters. The letter also recommends that HUD clarify that the duty applies to all housing and community development resources, not just those assisted with HUD funding.

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National Fair Housing Alliance

NFHA also submitted its own comment letter in support of the Proposed Rule. In the letter, NFHA makes all of the points contained in the sign-on letter but goes into greater depth and provides more historical context with respect to those comments. Interestingly, in contrast to PRRAC's comments, NFHA's letter identifies the extension of the scope of the duty to AFFH to apply to access to community assets as a strength of the Proposed Rule. Some of the more interesting points of elaboration are identified below:

- The letter recommends requiring program participants to consider information that is at their disposal. As an example, the letter argues that a grantee that had access to information about where foreclosures were occurring within its jurisdiction but that did not make use of that data to address the fair housing effects of those foreclosures would not be in compliance with the duty.
- On the balance question, the letter recommends a both/and approach and encourages HUD to provide examples of strategies that might be appropriate for different circumstances. The letter neither criticizes nor praises HUD for its comparative emphasis on mobility and revitalization.
- With respect to enforcement, the letter recommends that HUD specify the sanctions that will attach in the case of noncompliance.

- The letter recommends requiring program participants to ensure that their sub-recipients comply with AFFH mandates.
- The letter recommends requiring states and PHAs to consult with the same range of stakeholders as entitlement jurisdictions.
- The letter explicates the context of the recommendation to phase-in implementation. If HUD had to review AFHs on the schedule contemplated under the Proposed Rule, the department would have to review 40% of all entitlement jurisdiction AFHs at the same time. Meanwhile, since 1994, FHEO's staff has decreased from 750 full time employees to 580 full time employees. The letter also recommends increasing FHEO's staffing levels.
- The letter stresses the importance of making the assessment tool available for public comment prior to its finalization.

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Academics

A group of academics with expertise on the issue of residential segregation signed on to a letter coordinated by Professor Gregory Squires of George Washington University. The letter is supportive of the Proposed Rule. The letter states that fair housing enforcement has helped reduce segregation over time but that, nonetheless, segregation remains a central organizational feature of cities and metropolitan areas. The letter has ten recommendations for possible improvements to the Proposed Rule. First, the letter suggests creating a process by which stakeholders can comment on and challenge AFHs. The letter suggests that the process could be based on the Community Reinvestment Act. Second, the letter recommends that HUD require program participants to identify actions that they will take in order to achieve their goals, establish timetables for the execution of those actions, adopt metrics for evaluating those actions, and identify the entity responsible for taking each action. Third, the letter recommends that HUD require program participants to identify goals and timelines for the reduction of racial isolation and set measurable goals for improvements in access to community assets. Fourth, on the subject of balance, the letter urges HUD to clarify that the predominant purpose of the duty to AFFH is integration, not revitalization though there is some place for discussion of revitalization in the rule and the letter takes a both/and approach. Fifth, the letter echoes PRRAC's recommendations with respect to enforcement. Sixth, the letter adds that, if HUD retains routine review, stakeholders should have the ability to appeal AFH approvals to HUD headquarters and funding for FHEO should be increased. Seventh, the letter recommends increased funding to grow the capacity of community stakeholders. Eighth, the letter echoes PRRAC's comments with respect to the publication of key documents on program participants' websites. Ninth, the letter urges HUD to clarify that the duty to AFFH attaches to all of a grantee's housing and community

development activities, not just those funded by HUD. Lastly and perhaps most uniquely, the letter calls for PDR to study the effectiveness of the rule after five years and again after ten years.

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PolicyLink

PolicyLink submitted supportive comments that focused heavily on the mechanics of inter-agency and regional collaboration on fair housing planning, in addition to addressing several issues that many organizations tackled. Their letter praises HUD for clarifying the nature of the duty to AFFH, acknowledging how fair housing and other issues are interrelated, and better aligning planning processes.

The letter contains several recommendations with respect to internal HUD operations and inter-agency relations. First, the letter urges HUD to clarify that the obligation to AFFH applies to all federal agencies. Second, the letter recommends that HUD conduct periodic internal equity assessments. Third, the letter recommends using the Partnership on Sustainable Communities to develop a cross-agency strategic plan to advance regional fair housing goals. Fourth, the letter recommends using the Fair Housing and Equity Assessment to inform internal agency goals. Fifth, the letter recommends reconvening the President's Council of Fair Housing. Sixth, the letter suggests that HUD share AFH data with DOT and identify ways in which MPOs and transit agencies can align their Title VI analyses with the AFH process. The letter recommends that HUD offer guidance on aligning consolidated plans and PHA plans with Regional Transportation Plans. Seventh, the letter recommends the issuance of guidance directing LIHTC allocations to areas that have aligned their AFHs with their QAPs and/or their AFHs with the Regional Transportation Plans. Also with respect to Treasury, the letter recommends that the IRS use AFH data to inform its allocation of New Market Tax Credits. Eighth, the letter recommends the issuance of guidance incorporating AFH data into the strategies of Economic Development Administration grantees. Lastly, the letter recommends that AFH data inform HHS decisions concerning the location of community health centers.

The letter features several recommendations with respect to regionalism. First, the letter recommends including regional planning and collaboration with respect to fair housing goals as allowable uses of CDBG funds. Second, the letter recommends listing regional HCV initiatives as a recognized activity for the purpose of increasing fair housing choice. Third, the letter recommends that HUD incentivize regional collaboration by awarding bonus points in competitive grant processes for the use of CDBG and other program funds to advance fair housing goals regionally.

With respect to enforcement, the letter recommends that HUD create a complaint process. Stakeholders could file complaints alleging failures to fulfill the obligation to AFFH and a failure to comply with an AFH. The letter asks that HUD articulate how it will address complaints, including by specifying which sanctions are available. The letter recommends that FHEO take the lead on enforcement and that FHEO coordinate with other program offices in carrying out that role. The letter also recommends that HUD involve stakeholders in coming up with solutions for program participants' violations of the duty and urges the inclusion of a specific provision stating that sub-recipients of funds are directly accountable to HUD. On the subject of HUD review of AFH submissions, the letter recommends the convening of Fair Housing Review Councils in order to stretch the capacity of FHEO staff. To that end, the letter also recommends phasing-in the AFH requirement. The letter recommends growing HUD's capacity substantively in addition to administratively. Staff should be able to articulate fair housing goals to program participants. Lastly, the letter urges that HUD only actively approve AFHs and remove the feature by which submissions are deemed accepted.

The letter contains several substantive suggestions. First, the letter argues that program participants should have to set more than just one goal. Second, the letter urges a both/and approach to mobility and investment-based strategies. The letter recommends making it explicit that preservation of affordable housing and investments that increase opportunity are consistent with fair housing goals. For non-preservation investment activities, the letter recommends their use when they primarily involve non-housing resources or when they are part of comprehensive strategies. Related to preservation, the letter recommends that entitlement jurisdictions and states – in addition to PHAs – be required to analyze the fair housing implications of displacement stemming from the loss of affordable housing. Third, the letter recommends that HUD include evaluative criteria in the rule. The letter mentions the amount of land zoned for multi-family housing and the adoption of an inclusionary zoning ordinance as examples of possible criteria. The letter also recommends including longer term performance measures which might actually look at levels of segregation and concentrated poverty directly.

The letter has several comments with respect to public participation and engagement. First, the letter recommends requiring program participants to obtain local letters of support for their AFH submissions. Second, the letter recommends a minimum public comment period of 45 days for each AFH. Third, the letter recommends that HUD require program participants to document how their engagement activities targeted protected class members. Program participants should also be required to provide explanations if their AFHs did not address barriers that stakeholders mentioned during the engagement process.

With respect to data, the letter suggests that the rule encourage local supplementation of HUD-provided data and provide HUD data at smallest geographic scale possible. The letter

recommends that program participants also use qualitative processes like interviews and surveys in order to conduct their analyses.

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Chicago Area Fair Housing Alliance

The Chicago Area Fair Housing Alliance (CAFHA) submitted a comment letter expressing support for the Proposed Rule and urging HUD to finalize the rule with some revisions. The letter lauds the rule's focus on integration and achieving structural change. The letter's suggested improvements include clarifying the substantive requirements of the duty, including accountability benchmarks, enhancing the geospatial data tool, and allocating responsibility within HUD for overseeing implementation of the rule. The letter also contains answers to several of the questions that HUD included in the Federal Register with the Proposed Rule.

With respect to substance, the letter recommends the inclusion of definitions for “inclusive communities” and “affirmative move.” The letter recommends that HUD build upon the required steps under the existing AI process and include five steps that program participants would have to take to AFFH. Those would involve evaluating historical segregation and the current housing market, identifying fair housing issues and barriers, proposing policies to address the findings of the first two steps, measuring progress under those policies, and reporting on the outcomes of those policies. The letter recommends an increased emphasis on familial status. In addressing the issue of the balance between mobility and investment-based strategies, the letter points out that past policies have skewed toward the perpetuation of segregation and concentrated poverty and argues that investment-based strategies should emphasize economic development in lower opportunity communities whereas the focus in higher opportunity areas should be on affordable housing. With respect to regionalism, the letter recommends hemming in grantees' discretion about the range of potential entities with which they could partner. The purpose of such a provision would be to ensure that regional collaboration was logical and entered into in good faith.

On the subject of benchmarks, the letter recommends focusing on segregation and doing so through the lens of metrics that are appropriate to the scale of the jurisdiction. Program participants and HUD would look at dissimilarity and RCAPs, but they would also, in the case of smaller geographic units, look at the expected proportion of the population that would be comprised of members of certain protected classes based on income. The letter recommends that HUD incentivize successful integration through financial and non-financial rewards.

With respect to HUD's geospatial data tool, the letter criticizes the tool for missing some RCAPs. The letter also encourages the inclusion of additional data sets and recommends that HUD improve the usability of the tool (including by allowing the printing of maps). The letter urges HUD to make the data more transparent. With respect to enforcement, the letter recommends that FHEO lead HUD's efforts, that the AFH review period be lengthened to 90 days, and that AFHs that HUD has not reviewed be classified as unreviewed rather than approved.

In the section of the letter where CAFHA provides answers to specific HUD questions, the following points emerge:

- The letter recommends considering the comparative fiscal capacity of various program participants in order to gauge what actions might be realistic and effective.
- The letter recommends that the development of units in higher opportunity areas be the explicit focus of regional PHA collaborations on AFHs.
- The letter recommends the coordination of the AFH planning process with planning involving the LIHTC program and ADA and Section 504 compliance.
- The letter urges HUD to clarify that the rule applies to all of its programs, not just those specifically mentioned in the Proposed Rule.
- The letter recommends including analysis of disproportionate housing needs in both the AFH and the Consolidated Plan.
- The letter suggests technical assistance focusing on best practices that some grantees have adopted in the past.

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Center on Budget & Policy Priorities

The Center on Budget & Policy Priorities (CBPP) submitted a letter expressing support for the Proposed Rule and providing detailed comments on some of the rule's PHA-specific components. The letter recommends making the deconcentration component of PHA plans more rigorous and providing examples of deconcentration strategies in the text of the rule. The letter suggests clarifying the definition of development-related activities to explicitly include former public housing and on-site replacement housing that receives project-based rental assistance. With respect to performance standards, the letter recommends defining "meaningful actions" to require PHAs to explain the measurable results that the entity expects to see, the timeline on which it expects those results to occur, and how the expected results would advance the goals in the AFH. Additionally, PHAs would have to follow up by reporting on those results in their subsequent plans. Regarding the scope of the duty to AFFH, the letter recommends clarifying that the duty applies to HCV administrative plans. The letter also recommends revising the

definition of “hard units” to include both public housing and units assisted by project-based vouchers. With respect to regional AFHs, the letter recommends allowing PHAs to collaborative with entitlement jurisdictions where the PHAs have some hard units or vouchers rather than the more stringent requirement of a majority of hard units. The letter also asks HUD to describe the consequences of a PHA dissenting from an entitlement jurisdiction’s AFH and recommends the creation of a regional AFH option whereby two or more PHAs could collaborate with each other. Lastly, the letter recommends against reducing the reporting obligations of small PHAs, recommends creating non-financial PHA-specific sanctions for AFFH violations, and endorses the idea of a stakeholder complaint process.

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Building One America

Building One America submitted a letter that was supportive of HUD’s attempts to better define the duty to AFFH and outlined how the absence of clear guidance has burdened diverse middle class communities while allowing the most affluent, exclusive localities to maintain the status quo. In order to rectify this imbalance in current efforts to promote integration and the deconcentration of poverty, the letter recommends that HUD require regional collaboration on AFHs, including MPOs, PHAs, and counties in the process. Under this vision, localities would still be responsible for addressing local issues, but they would also be accountable for helping to meet regional goals. The intent of this approach would be to place more pressure on exclusive communities, to reward diverse communities for their inclusiveness, and to abstain from assigning blame to communities with low fiscal capacity. The letter recommends additional incentives for diverse communities through preferential consideration for grants from the Sustainable Communities Partnership and the Department of Education. With respect to performance standards, the letter recommends requiring program participants to set multiple goals and to establish timetables for the achievement of those goals. Progress toward the goals would be measured in relation to regional integration. The letter also expresses concern that the Proposed Rule’s mention of transit access in its discussion of community assets could result in reducing the obligations of the most exclusive communities. The letter observes that many wealthy communities omitted mass transit by design as a means of keeping out low-income residents. The letter also recommends including fiscal capacity in the definition of community assets. With respect to the balance between mobility and investment-based strategies, the letter encourages a both/and approach and recommends that HUD mention the viability of investment-based strategies throughout the rule and not just in the statement of purpose.

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National Community Reinvestment Coalition

The National Community Reinvestment Coalition (NCRC) submitted a comment letter applauding HUD's decision to re-examine the effectiveness of existing regulations and issue the Proposed Rule. The letter features seven recommendations for improving the rule. First, the letter recommends increasing the length of the AFH review period from 60 to 120 days and requiring HUD to make a formal decision about whether the AFH complies with the rule. The letter expresses a concern that, if there is a presumption of AFH acceptance, program participants may not be thorough in preparing their submissions. Second, the letter urges HUD to clarify that HUD-provided data represents a floor rather than a ceiling for what grantees should consider in conducting their analyses. The letter asks that HUD recommend that program participants take into account a broad array of qualitative and quantitative sources of information, including several data sources relevant to lending, insurance, and fair housing enforcement. In the event that HUD does not have the capacity to supply all of that information, the letter recommends that HUD at least steer grantees in the direction of potential sources. Third, with respect to public participation, the letter recommends that the rule require program participants to formulate an affirmative marketing plan for every AFH-related event that is open to the public, make all documents available in plain language and in multiple languages, and make all comments on the AFH available to the public. Fourth, the letter recommends that the rule require program participants to identify quantifiable and reasonable performance benchmarks in their AFHs. Fifth, the letter urges HUD to consider what resources would be necessary to enforce the rule and to make sure that it has those resources. Sixth, the letter urges HUD to clarify that grantees can and should contract with outside consultants to assist in the preparation of their AFHs. Apparently, there is some confusion in the field on this subject. The letter emphasizes the independence and expertise of consultants and recommends that program participants use competitive bidding processes to ensure that consultants are optimally objective. The letter suggests that HUD create a portal on its website for the posting of RFPs for AFH consulting services. Lastly, the letter recommends that HUD continue to develop robust and innovative tools to help communities better identify fair housing issues.

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