

## **Responding to HUD’s ANPR on AFFH - Fair Housing Analysis & Talking Points**

### **I. Overview. Several themes are apparent in HUD’s introduction and questions:**

- Key process elements of the rule that provide for consistency and accountability are targeted. Rhetorically, HUD is framing its new rulemaking as a way to decrease regulatory burden, provide for great local control, and be more results-oriented (potentially abandoning the analytical and standardized data components).
  - *Counter:* HUD accurately determined in formulating the current rule that these elements – such as standardized data, specific goal-setting that connects to an analysis, and a focused, standardized fair housing assessment – are needed for accountability and to provide clarity around fair housing obligations. This determination was based on problems with the AI system. Additionally, many communities have been benefiting from these features of the current rule.
- Key definitional elements of the rule that advance fair housing & integration are also targeted, even though HUD does not pose explicit questions about the definitions. Specifically, HUD states that it plans to refocus on “creating supply” as a primary way to “increase housing choice,” and asserts that “policies focused on deconcentrating poverty” are problematic because they benefit only certain populations, and “are difficult to implement at scale and without disrupting local decision-making.”
  - *Counter:* In addition to the importance of preserving the rule’s process elements, saving the rule’s definition of AFFH (with a balanced approach that includes housing choice) and its prioritization of fair housing goals is critical – this is needed to guide participants to do the right thing and address long-ingrained segregation and barriers to choice. Emphasize the legal and factual support for housing integration, and how the AFFH regulatory framework is needed to advance it.
- The purported inadequacy of the existing rule is also a focus (HUD refers to its previous suspension notice and findings therein).
  - *Counter:* Emphasize and document how the current rule has been working as intended and has benefited numerous communities. The elements of the rule, including HUD’s “pass-back” system (through which it provided individualized guidance), propelled participants to commit to meaningful goals reflecting specific local problems.

- *Also:* Lift up specific successes, including in public participation, and in commitment to goals (include goals that focus on mobility and creating housing in high-opportunity areas, together with others).
- The ANPR also refers back to HUD’s “Regulatory Reform” notice, which specifically requested input on regulations to withdraw or streamline; HUD describes negative comments received and re-emphasizes themes of burden and over-prescriptiveness.
  - *Counter:* Emphasize and document the benefits of the current rule; how the process has worked well for program participants; how it has worked well for communities. The current rule promotes local flexibility, but importantly it also provides for oversight, clarity, and follow-through on civil rights goals that have been long neglected at great social cost.<sup>1</sup>

See also values-based framing and messaging advice from The Opportunity Agenda: <https://opportunityagenda.org/explore/resources-publications/talking-about-huds-affirmatively-furthering-fair-housing-regulations>.

## **II. Importance of preserving the current definitions and priorities of the rule (a balanced approach and goal-setting that advances housing choice), and the rule’s viability to advance integration.**

1. Legal foundation. HUD must exercise its discretion within the boundaries of the statute’s requirements. Integration and housing choice are fundamental to the AFFH mandate, under established law.<sup>2</sup>
2. Policy foundation. The current rule’s “balanced approach,” which includes strategies to address racial and poverty concentration, has helped communities succeed in committing to both important mobility- and place-based (eg, anti-displacement and community investments) goals.
  - Steil report/declaration in *NFHA et al. v. Carson*.<sup>3</sup>
  - Local examples<sup>4</sup>
3. Factual foundation in support of integration and housing mobility<sup>5</sup>
  - Harms and social cost of concentrated poverty and segregation
  - Extent of segregation and concentrated poverty and relation to housing policies

---

<sup>1</sup> See Regulatory Reform Comment Letter submitted by PRRAC and other groups, [https://prrac.org/pdf/Fair\\_Housing\\_Reg\\_Agenda\\_Comments.pdf](https://prrac.org/pdf/Fair_Housing_Reg_Agenda_Comments.pdf).

<sup>2</sup> See, e.g., Memorandum: The Relationship Between Integration and Fair Housing, The Opportunity Agenda (2010), <https://opportunityagenda.org/explore/resources-publications/memorandum-relationship-between-racial-integration-and-duty-further>.

<sup>3</sup> Available at [https://prrac.org/pdf/37-1\\_Supplemental\\_Declaration\\_of\\_Justin\\_Steil.pdf](https://prrac.org/pdf/37-1_Supplemental_Declaration_of_Justin_Steil.pdf).

<sup>4</sup> See, e.g., *NFHA, et al. v. Carson* case materials: amicus brief of the State of Maryland, et al.; affidavits accompanying the amicus brief of the State of New York; affidavits of Maxwell Ciardullo (New Orleans), Daniel Urevick-Ackelsburg (Philadelphia), Frank Lenk (Kansas City), available at <https://prrac.org/national-fair-housing-alliance-et-al-v-carson-2018/> and <https://prrac.org/national-fair-housing-alliance-et-al-v-carson-plaintiffs-preliminary-injunction-motion-and-attachments/>.

<sup>5</sup> For resources on housing mobility, see <https://prrac.org/all-articles-under-the-housing-mobility-initiative/>.

- Unbalanced distribution of publicly-supported housing and relation to opportunity<sup>6</sup>
- Availability of strategies that address barriers to mobility and racial concentration
- Benefits to families of moving
- Successes of current mobility initiatives

4. Inadequacy of overall supply increase to address these issues – this is not the same as ensuring a fair housing lens and promoting strategies that address barriers to housing choice.

5. Importance of AFFH strategies for PHAs, public housing authority residents, and their communities.

### **III. Flaws in HUD’s supposition that the previous rule was ineffective or unduly burdensome**

1. The current rule has been succeeding and has benefited communities. Results/benefits:
  - Improved public engagement in fair housing planning (Furman research;<sup>7</sup> local examples)
  - Helping communities commit to meaningful fair housing goals (Steil research; local examples)
  - Time and effort spent on the process has been well worth it, yielding robust community outreach and participation, fuller understanding of important issues, and meaningful, localized fair housing goals.
2. The rule’s accountability and oversight mechanisms, as well as its standardized template, have been working as intended to produce these successes.
  - Individualized reviews and “pass-backs” achieved meaningful goals that are connected to actual local problems and further fair housing

### **IV. Specific ANPR questions**

Note: HUD poses extensively compound questions. Key points are below. Local examples will be helpful in responding.

- (1) Community participation & consultation – what type? And can these be merged into Con Plan/PHA Plan?
  - The current rule establishes a floor (with additional recommendations in guidance), but has successfully increased public participation, in particular by fair housing groups. These groups offer important relevant expertise.
  - This would be less effective if merged into the Con Plan; it is important to have participation that is focused on fair housing issues and planning in order for these issues

---

<sup>6</sup> See, e.g., Ingrid Ellen and Kerne Horn, Housing and Educational Opportunity: Characteristics of Local Schools Near Families with Federal Housing Assistance, PRRAC 2018, <https://www.prrac.org/pdf/HousingLocationSchools2018.pdf>.

<sup>7</sup> See Furman Center Comment Letter (March 2018), The Potential Costs to Public Engagement of HUD’s Assessment of Fair Housing Delay, available at <http://furmancenter.org/news/press-release/nyu-furman-center-responds-to-huds-assessment-of-fair-housing-delay>.

to be given due attention and weight, and to address the scope of issues that impact fair housing.

- (2) Data – need it be uniform; can participants provide qualitative experience instead?
- Uniform data eases the burden on participants, enabling them to spend time on community participation and goal formulation
  - Uniform data ensures that community groups have access to key information about their localities, enabling them to participate effectively
  - Uniform data enables review by HUD and fair housing groups
  - “Local data and knowledge” are also important parts of the current process that allow for localized input, including qualitative input
- (3) Reporting and analysis. What kind of reporting, and how often? Is an analysis really needed too, or just goals? Can planning and results be integrated into the Con Plan/other existing plans?
- Reporting. Participants must currently report on progress in their next AFH and annually (alongside other issues) in their CAPER. A separate, audited fair housing report would provide for additional accountability and help fair housing groups engage in real time.
  - Analysis. An analysis is needed in order to ensure that goals reflect on the ground facts and respond meaningfully to local problems; and so that local groups and HUD can engage in oversight if this is not the case.
  - Plan integration. No, the fair housing analysis and planning process should be separate and focused on those issues. This enables adequate scoping, public engagement and review, and accountability for these particular issues.
- (4) Identification of obstacles to fair housing - should the rule specify these, or should participants have leeway to identify these themselves? Collaborations (regional and PHA/jurisdiction) - should these be incentivized?
- Obstacles. Participants are currently able to identify localized obstacles – these are not prescribed by HUD, although HUD’s list of Contributing Factors is helpful guidance in aiding participants to understand the range of potential issues they should address. However, for the rule to be effective, it is critical that participants be given clarity around the need to commit to goals that advance the core purposes of the Fair Housing Act (and that are not inconsistent with AFFH obligations). The use of the standardized template currently provided by the AFH (requiring participants to identify contributing factors to fair housing issues including segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs) responds directly to the GAO report’s recommendation and provides clarity for participants, community stakeholders, and HUD. This also helps to ensure that specific issues of importance to many communities are addressed.
  - Collaborations. Yes, these should be incentivized, and a regional analysis should still be required. The AFFH requirement is a regional one. As a factual and policy matter, issues cross borders and regional solutions are often best at advancing fair housing (or necessary to do so). PHAs are extremely fragmented regionally and their constituents benefit when they work together to address barriers to regional housing choice. PHAs benefit from collaboration with jurisdictions, in order to ease burden and position them to better provide input to shape jurisdiction’s analysis and goals.

(5) Goals/metrics: how much deference should jurisdictions get?

- Participants currently are able to identify their own goals and metrics as makes sense for AFFH in their localities. Localities have significant discretion in choosing goals that reflect local conditions and are realistic commitments. However, they also must provide explanations and support for the goals they identify, and be responsive to input by fair housing and other groups. It is important to retain these aspects of the rule in order for it to be effective.
- Further, it is critical that there be clarity and accountability around the requirement to commit to specific goals that are consistent with core AFFH obligations (and to give high priority to goals that address lack of choice along with other key issues, within the balanced approach designated by the rule).
- The current rule’s implementation has demonstrated the need for both a clear template and for a robust review process with regard to goal-setting. HUD guidance and TA, and the HUD pass-back process, were helpful mechanisms that yielded a range of meaningful goals and metrics for communities.
- The requirement that jurisdictions commit to “meaningful actions” should be retained, as it is consistent with civil rights law and responds to documented inadequacies of the AI regime.

(6) How should HUD evaluate AFFH efforts? What should be required of jurisdictions and PHAs with unacceptable efforts?

- The current requirements and review process have been significantly successful in advancing fair housing, in a way that responds to local conditions and enables engagement by fair housing organizations and other public stakeholders. HUD should continue to review a program participant’s assessment/analysis for consistency with fair housing and civil rights laws and determine if the assessment/analysis is substantially complete. If the assessment is not acceptable on those bases, the participation should be required to revise it in order to be eligible for block grant funds.
- This accountability mechanism is needed in order to overcome longtime inertia on fair housing, which has been damaging to many communities.
- In addition, HUD should continue to require that Consolidated Plans and related reports, as well as PHA plans, include AFFH goals and metrics, and that participants report annually on progress.
- HUD should provide for a complaint process to enable fair housing & community organizations to engage in oversight.<sup>8</sup>

(7) Safe harbors – should certain levels of effort on specific actions be deemed in compliance?

- No. Local conditions are too variable and safe harbors would not accurately reflect whether a participant is fulfilling its duty to AFFH.

(8) Other revisions - to advance the FHA, add clarity, reduce burden, etc?

---

<sup>8</sup> See recommendations submitted in 2013 by the Lawyers’ Committee for Civil Rights, <https://lawyerscommittee.org/wp-content/uploads/2015/06/LCCRUL-AFFH-Comment-Letter.pdf> (at pp. 3-4).

- The 2015 rule was in the early implementation phase when suspended, and restoring it would enable HUD and participants to build on early successes and learn what adjustments, if any, would be helpful in advancing HUD's mission.
- Affirmative asks: e.g., robust complaint process; revisions to Con Plan structure and priorities to promote alignment with fair housing requirements; incorporation into additional planning processes.