

# Reviving and Improving HUD's Affirmatively Furthering Fair Housing Regulation: A Practice-Based Roadmap

By Megan Haberle, Peter Kye, and Brian Knudsen

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## *Introduction: The Challenge of AFFH*

Beginning with its inception in 1968, the Fair Housing Act's central intent has been not only to bar discrimination, but to redress our country's deep institutional problems with residential segregation: down to the bones of intergenerational racial separation and resource hoarding. Thus, in addition to spanning the breadth of public and private activities that constitute housing discrimination, the Act contains a directive that the government take steps to redeem its tainted legacy as a sponsor of housing discrimination and segregation, and to serve as an engine for integration and open housing choice. The Act charges the Department of Housing and Urban Development, along with other government agencies, with administering its housing and development programs in a manner that "affirmatively furthers fair housing" (AFFH) – in other words (as defined by HUD in its 2015 regulation), with taking proactive measures to "overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination."<sup>1</sup>

This directive is fundamental to the Fair Housing Act's intended broad remediation of our country's residential divides, but despite the affirmatively furthering fair housing provision's potential reach, it has not so far enabled our government to make a clean break from its history of sponsoring residential segregation.<sup>2</sup> And over fifty years since the Act was passed,

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1 See Affirmatively Furthering Fair Housing Rule Preamble, 80 Fed. Reg. 42275.

2 For fuller discussions of the AFFH provision's potential and the structural reasons it has so far failed to achieve it, see, e.g., Olatunde Johnson, "The Last Plank: Rethinking Public And Private Power To Advance Fair Housing," *Journal of Constitutional Law* 13 (2011): 1191; Stacy E. Seicshnaydre, "The Fair Housing Choice Myth," 33 *Cardozo Law Review* 967, 2012.

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fair housing (especially in the structural sense) has yet to take hold as a moral norm for most American communities. Today, just as persistent discrimination by landlords, real estate agents, lenders, and potential neighbors continues to impose a barrier to open housing choice and integration, government housing policies at all levels still contribute to segregation or fail to prioritize its redress (and to gain traction against the industry interests and institutional inertia

that countervail against structural change).<sup>3</sup> For example, federal funding incentives, overlaid on local zoning decisions, act on a systemic level to shape the locational patterns of subsidized and other affordable housing. Priorities and bureaucratic structures within public housing administration, set by the federal government, tend to reinforce jurisdictional fragmentation among local housing authorities and to focus them on short-term needs and efficiencies, rather than on fair housing goals (such as tenants' mobility beyond segregated areas). Unequal resources meanwhile still concentrate in segregated

communities, as they long have, impeding access to quality schools, employment, health, economic development, stable housing, and other aspects of life opportunity.

Another problem has been agency reticence to engage in rigorous oversight or create accountability for local policies, even among federal funding recipients. This reticence, sometimes presented as a federalism concern, has served to preserve a status quo of local resource hoarding – through exclusionary zoning, for example – that was originally underwritten by the federal government. It can also embody the concerns of industry interest groups over strengthened regulation.

In addition, issues of municipal fragmentation and insufficient political will to support fair housing policies pose enduring challenges to advocates working for change in this field from the grassroots up, as does the general absence of cross-issue policy infrastructure (so that housing segregation and reciprocal problems, such as school segregation or neighborhood environmental health, could be addressed in coordination).

Housing advocates have long pushed for the federal government to use its full powers in the interest of racial justice and the public good, as the Fair Housing Act invites. In 2015, the Obama Administration took a promising step in the right direction: it released and began to implement an AFFH regulation applicable to block grant recipients (states and local entitlement jurisdictions) and public housing authorities (PHAs), requiring them to conduct an "Assessment of Fair Housing" (AFH) through which they would analyze local fair housing barriers and identify "meaningful actions" to overcome them. The 2015 AFFH Rule provided that program participants would use an Assessment Tool template, analyze federal data supplied by a HUD

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3 See Megan Haberle, Ebony Gayles, and Philip Tegeler, "Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs" (PRRAC, 2012).

Data Tool, undertake a community engagement process, and submit their AFH to HUD for review. The process was intended to enable communities across the country to rigorously analyze and understand housing issues, identify goals, inform other planning documents (in particular, the Consolidated Plan used for block grant reporting, and the PHA Plan), and ultimately develop policies to respond to fair housing needs. The results from the initial cohort of local AFHs were promising, with commitments to a range of goals relating both to broader geographic choice and integration and to targeted preservation and equitable investment. Just as the rule was getting off the ground, however, it was first suspended and then destroyed by the Trump Administration – replaced by a sham new “AFFH regulation” that requires no progress and contorts the law’s factual and historical foundations.

The Biden Administration has made a clear commitment to restoring the 2015 AFFH rule. The rule’s revival, especially if enacted in combination with other federal programmatic reforms, has significant potential to redress the mechanisms of segregation. The first two years of AFFH rule implementation – both successes and frustrations - offer lessons for the next administration to build upon. In addition, strengthened political will around housing justice and civil rights in particular may enable HUD, Congress, and other agencies to undertake more racial justice initiatives than were feasible in the Obama years.

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This memorandum provides our recommendations for both restoration of the AFFH rule and potential improvements. It draws from PRRAC’s advocacy work around the 2015 rule’s formulation, for which we are indebted to our partnerships and consultation with many other fair housing and civil rights groups – and also from our work on implementation over the past five years.<sup>4</sup> PRRAC’s experiences engaging directly with communities working through the AFFH process has allowed us to gain insight into how the AFFH process actually plays out on the ground. Our experiences applying the rule have helped us understand what works well with the AFFH process but also helped us understand some of its shortcomings. This document provides an overview of key ways that the AFFH process should be improved going forward.

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4 We benefited from working with a number of partners in our AFFH engagements around the country, including the National Housing Law Project, Lawyers Committee for Civil Rights, Housing Choice Partners, Enterprise Community Partners, and the Louisiana Fair Housing Action Center. We also thank the Albuquerque Affordable Housing Coalition and the University at Buffalo School of Architecture and Planning for their insights and expertise.

## RECOMMENDATIONS

### Retain Key Substance and Process Elements

There are two paths to restoring the AFFH rule. Congress may overturn the 2019 Trump rulemaking using the Congressional Review Act, which would revive the 2015 regulation, with its substantive definition of the AFFH obligation and other substance and process components.<sup>5</sup> HUD would then need to produce new guidance-level documents (the

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Assessment Tool templates) structuring the AFHs for each type of program participant, drawing upon lessons and models from the earlier cohort as well as stakeholder input. In the alternative, without Congressional action, HUD may use its authority as an agency to embark on the rulemaking process to reinstate a new rule. Should HUD take the latter path, it may also make either substance or process adjustments to the 2015 rule, in addition to issuing new guidance documents.

As we will discuss below, significant improvements should be made to the Assessment Tools in order to aid the regulation's operation. But should the agency embark on a new rulemaking, it will also have the important opportunity to focus more directly on outcomes and accountability – elements that fair housing advocates urged HUD to include in 2015, but for which the agency could not then muster sufficient political will. However, while the 2015 rule has its flaws, it nonetheless built upon a comprehensive advocacy endeavor by a broad group of civil rights and affordable housing experts – and it has demonstrated that it can serve as a robust compliance platform that results in meaningful goals that take aim at a range of significant fair housing issues.

Although we hope that the rule will be sharpened significantly to yield greater accountability, its core substantive and process elements must remain intact. Each of the “major provisions” heralded at the 2015 rule's publication – a standardized process for all participants to use in documenting and identifying fair housing issues, which is then available for community and HUD review; provision of data from HUD; incorporation into other key planning processes; encouragement of regional cooperation; and community participation, in particular by fair housing groups and other key stakeholders<sup>6</sup> – is fundamental in pushing program participants to take their obligations seriously and move toward real change. (Each of those components, however, can be improved in structure and operation).

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5 These include the rule's applicability to states, localities, and public housing authorities, the requirement that participants submit an AFH consisting of certain analytical elements, a community engagement requirement including the documentation of public comments within the AFH, and a HUD review process.

6 Fed Reg. at 42273, “Summary of Major Provisions.”

Further, the key *definitional* elements of the 2015 rule are important to retain, as they articulate what it means for program participants to “further the purposes of the act” by squarely confronting the problem of segregation, as well as the persisting and multi-faceted nature of structural discrimination in the housing market and in housing policies. The rule’s definition and the components it sets forth for an AFH recognize the need to proactively disrupt patterns of exclusion and lack of geographic choice as well as to remedy other aspects of racism relating to place-based disinvestment and economic vulnerability, including housing conditions and stability. The 2015 rule defines “AFFH” as follows:

...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 and balanced living patterns, transforming racially and 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.

A program participant must identify goals and metrics/milestones for undertaking these “meaningful actions,” with action steps and strategies to be identified in other planning documents as appropriate.

As well as completing and submitting the AFH, participants must certify that they will affirmatively further fair housing and will not take actions that are materially inconsistent with this duty. The information contained in the AFH enables HUD and the public (including fair housing and other advocacy groups) to assess whether this certification is valid: by presenting both data and local policy analysis, it thereby provides a valuable oversight and compliance resource. The AFH stops short, however, of requiring specific outcomes or policy changes or of providing a new complaint process for procedural shortfalls: its effectiveness remains largely reliant on agency culture and discretion, which is its greatest weakness.

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## ***Sharpen Accountability and Ensure Rigorous Goals and Follow-Through***

HUD should consider how the Assessment Tool can be changed to help prompt grantees to develop more robust policy goals and priorities and to ensure follow-through. The key

outcome of a successful AFH is the adoption of concrete goals, innovative strategies, and priorities that are translated into policy to advance fair housing. The AFH process has indeed helped lead many grantees to develop more rigorous goals and metrics compared to those developed through the previous Analysis of Impediments process.<sup>7</sup> However, there is still

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significant room for improvement. For example, HUD should require additional specificity regarding goals and benchmarks, including the identification of potential policy changes and funding sources and specific steps (with a timeline) that the program participant will take toward achieving its goals. As noted below, the Assessment Tool should be adjusted to provide a program-by-program look at fair housing issues, as well as a clearer breakdown of housing and development-related funding streams and key policies, and how these may stand as barriers to fair housing – and whether they are being

fully harnessed to advance fair housing or have potential to serve as a better vehicle to AFFH. (The causal question whether a particular housing policy is a problematic “contributing factor” to an issue such as segregation is important to answer, but may be distinct from the potential for a policy change to have a positive impact.) HUD review protocol should entail close substantive examination of the participant’s fair housing performance for each of its programs and policy initiatives, as well as its overall performance in furthering the regulatory aims (such as expanding choice, addressing disparities, etc.), and goals and metrics should be assessed for their sufficiency accordingly.

HUD should also consider regulatory changes to sharpen accountability. This includes adding a complaint process to the rule, so that advocacy groups are able to perform a watchdog role and to ensure that relevant information and analyses are fully accounted for and that significant problems are brought to light and addressed. Whether reporting on AFH goal progress occurs as part of the annual Consolidated Plan reporting process (as provided by the 2015 rule) or otherwise, an annual report should provide meaningful content responsive to each of the AFH goals, be reviewed by HUD fair housing staff, and be distributed to the public and to participant leadership.

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***Public housing authorities are crucial actors in affirmatively furthering fair housing***

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Public housing authorities are crucial actors in affirmatively furthering fair housing due to their significant role in administering housing programs, and are subject to the 2015 AFFH rule. They are thus required to conduct an assessment, formulate goals, and certify to AFFH in a range of documents submitted to HUD – including the PHA Plan, which the AFH must inform. HUD is uniquely positioned with regard to oversight of PHAs and also the design of the housing programs they administer

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7 Justin Steil & Nicholas Kelly (2019) The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance, *Housing Policy Debate*, 29:1, 85-105

(within the parameters granted by Congress, which also plays a role in program structure and funding limitations). HUD should use this authority to incentivize (or require, where feasible) PHAs to enact substantive policy changes that further fair housing – adding an additional layer of accountability. For example, HUD can encourage PHA consortia (to overcome issues of fragmentation) and use its assessment and competitive scoring criteria to push PHAs to better deconcentration outcomes, linking this to the AFFH rule process. HUD should also consider approaches that incentivize or require joint-PHA regional coordination, beyond the administrative efficiencies offered by a collaborative AFH; PHA fragmentation stands as a significant barrier to mobility and improved subsidized housing siting practices.

## ***Build Capacity for Change***

HUD, Congress, and philanthropy can all play a role in ensuring that the AFFH rule leads to actual follow-through on strong fair housing goals. HUD’s fair housing staff will be critical to any endeavor to ensure that AFHs are properly conducted – in particular, in ensuring robust, specific goals that respond to the problems on the ground. (It was in significant part thanks to the review efforts of such staff that the rule’s early implementation was successful in producing such goals, with staff declining to accept AFHs that did not have sufficiently specific goals.) Fully staffing the Office of Fair Housing and Equal Opportunity (FHEO) with qualified personnel, and providing a transparent review process with clear accountability for goals – and making this an explicit emphasis to program participants at the outset – should be a high priority for HUD. HUD staff should also be equipped to rigorously review other relevant planning and policy documents of grantees and PHAs – such as Moving to Work (MTW) plans, Rental Assistance Demonstration (RAD) and other public housing redevelopment and refinancing plans, and others – to ensure alignment with AFFH-related problem-solving and commitments.

The AFFH rule’s revival can also offer a productive platform for state and local capacity-building around fair housing policy reform: community-level expertise and community-level politics will be the crucial drivers and sustainers of true change. HUD previously provided competent technical assistance focused on introducing localities to the AFH process, but additional resources should focus on helping localities roadmap and implement concrete policy change, offering a continuing resource. This could take the form of “solutions labs” at HUD and elsewhere, with individualized technical assistance accompanying accessible, clearly communicated public resources. Peer-to-peer learning is an especially effective strategy for delivering persuasive, knowledgeable advice, including across advocacy groups – requiring additional capacity-building. The on-the-ground presence of strong advocacy groups, armed with knowledge and invested in housing systems change, will be critical to ensuring progress at the outset and in moving change forward in years to come. Community engagement is a core component of the AFFH rule and AFH process, but

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### *Foster Effective Cross-Issue and Interagency Collaboration*

The AFFH rule was heralded for its view of housing and segregation as inextricably linked to other issues, in particular those it examines in assessing “disparities in access to opportunity” (transit, employment, environmental health, and schools), as well as its wide look at the full complexity of factors contributing to inequality and segregation (such as public and private investment strategies and interagency coordination). In practice, however, it is challenging for program participant staff to gain traction on policy commitments outside the purview of the housing agency charged with HUD grant administration. (To a variable degree, even planning departments are in some instances working at a remove from block grant administrators.) State and local agencies are as siloed as their federal counterparts, and outreach efforts to staff at other agencies may falter when they do not share the same directives and funding incentives traveling down from HUD. Positive models – as in Seattle, which embarked on an intensive inter-agency endeavor throughout its AFH process – show that high-level buy-in from such agencies, and their early enlistment, can help yield commitments; it is helpful to have an overarching equity-based directive or culture already in place at the municipal level. However, we urge HUD and the Biden Administration to work to build coordination and to align incentives and oversight across federal agencies and funding streams. This process was just beginning to happen in 2016, with the joint guidance letter on AFFH from the Secretaries of Education, Transportation and Housing.<sup>8</sup>

Under the 2015 rule, PHA have the option of completing their own AFHs, collaborating with other PHAs, and/or collaborating with localities, and localities and states must assess publicly-

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***PHAs are often siloed from their own jurisdiction’s AFFH processes.***

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supported housing-related data and issues within their regions, as a section of their AFHs. Yet even PHAs are often siloed from their own jurisdiction’s AFFH processes. This is despite the substantial impact that their policies and decisions have on local housing issues. Without adequate coordination between PHAs and jurisdictions, many issues will continue to go unaddressed. This mirrors the broader problem of

subsidized housing administration lacking sufficient resources and attention from all levels of government. More consideration needs to be put into how to restructure the AFFH process so that there is a greater incentive for collaboration between jurisdictions and PHAs. This can in part be done by restructuring elements of the Assessment Tool to examine and promote local and state government support for PHAs. This includes, for example, a more explicit focus on

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8 See HUD-ED-DOT Joint Letter, June 2016, archived at [https://prrac.org/pdf/Joint\\_Letter\\_on\\_Diverse\\_Schools\\_and\\_Communities\\_AFFH.pdf](https://prrac.org/pdf/Joint_Letter_on_Diverse_Schools_and_Communities_AFFH.pdf).



the resources supplied to PHAs; involvement in redevelopment policies; source of income protections; service provision (including counseling); and at the state level in particular, statutory and funding schemes that structure and impact PHAs (such as limitations on PHA jurisdiction, subsidy layering strategies, and others). In addition, new competitive grants and technical assistance resources could enable improved coordination and a better focus on PHA needs.

### *Improve the Assessment Tool*

HUD program participants use the Assessment Tool to conduct an AFH along with local and HUD-provided data and local knowledge. The Assessment is a key resource as it contains directions and questions to guide the analysis. The Assessment Tool provides a template for the various sections of the AFH, including data analysis of general fair housing issues: segregation/integration, racially or ethnically concentrated areas of poverty (RECAPs), disparities in access to opportunity, and disproportionate housing needs (cost burden and basic housing conditions). Other components of the AFH include a publicly supported housing analysis (examining HUD-supported programs), a fair housing enforcement analysis, and a disability and access analysis. A long list of specified “contributing factors” to the fair housing issues presented by the data are also evaluated: this is where policies, practices, market conditions, funding and resource provision, and the like are discussed. The Assessment Tool also requires grantees to discuss the community participation process, evaluate past goals and actions, and establish fair housing goals and priorities. While the tool provides a thorough foundation, we have observed challenges that the tool creates in practice, and we offer several suggestions for improvements that can be made to provide a better structured and more effective analysis.

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***The Assessment Tool would benefit from restructuring to remove redundancies.***

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### **Streamline the tool but retain its scope over key issues**

The Assessment Tool would benefit from restructuring to remove redundancies (such as multiple discussions of the same contributing factors, which cut across multiple fair housing issues) and to give more in-depth and prominent attention to key fair housing issues. In the past version of the tool, discussion of important housing-related policies was often buried deep between layers of data analysis. In addition, although the discussion of policies, practices, funding frameworks, and other contributing factors laid a foundation for the identification of fair housing goals, these two parts of the AFH were often disconnected – lacking a persuasive conceptual or narrative connection between the analytical discussion and the list of goals. We recommend that HUD place greater emphasis on core fair housing problems that tend to drive inequality and segregation across communities, with the understanding that communities will have different conditions to prioritize, and that the AFH devote greater attention to explaining the reasoning and implementation strategies for the identified goals (while streamlining the analytical components). However, we also emphasize that it is important that comprehensive

data and policy analyses remain publically documented as part of the AFH, for oversight by both HUD and advocacy groups. This would strike a better balance in the AFH's multiple uses – as a tool for building political will and understanding around fair housing reforms, as well as a compliance mechanism. Each of these purposes is important.

Advocacy groups and HUD staff engaged in extensive commentary and discussion when crafting the prior version of the Assessment Tool, ensuring the inclusion of a range of important factors – such as housing siting, impediments to mobility, preservation, responses to displacement, equitable community investment, and many others. Any proposals to revise the Assessment Tool should be careful to take into account the need for a well-rounded set of housing strategies and should include a review of this prior commentary, in addition to new perspectives and expertise (including on previously-overlooked issues such as climate adaptation and mitigation).

### **Better tailoring of contributing factors to programs and funding streams**

HUD's list of "contributing factors" should be re-tailored to include a square look at housing and community-development related policies, programs, and funding streams, more specifically identifying these within the AFH rubric. Parsing out the contributing factors in this manner would better mirror the way that housing agencies and public housing authorities actually operate, and would do a better job at laying the table for identification and implementation of specific changes. (We do not suggest that the contributing factors be limited to a list of programs and funding streams, but rather suggest greater specificity regarding these programs alongside other relevant contributing factors.) Many such policies, programs, and funding streams are referred to in the AFH Guidebook, but explicit inclusion in the Assessment Tools would more effectively guide participants to discuss them in a meaningful way. In addition, a clearer breakdown of programs, policies, and funding streams would enable more systematic HUD review of the federal programs under HUD's own administration. The AFH Guidebook should in turn be revised to include more specific questions relevant to each program or common policy or funding stream. For example, is the

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HOME program promoting integration? Is the LIHTC program? Does the jurisdiction have a housing preservation fund in place? Addressing such programs under thematic umbrella factors such as "site selection policies" within a long list of contributing factors – as is currently done - is less likely to set up a participant for successful change. Likewise, the publicly supported housing section of the AFH does not track many core PHA programmatic areas and initiatives, and should be revised to better do so. This includes, just for example, public housing redevelopment initiatives. In addition, some contributing

factors may apply differently in the context of a publicly supported housing analysis, in contrast to other parts of a fair housing analysis: for example, discussions of interagency coordination and public and private investment should in this context be refocused. This needs to be clarified in the guidance.

## Reconceptualize the state tool

The draft State Assessment Tool (formulated in 2016 but not formally released for use) was designed to operate in large measure as a scaled-up version of the Local Assessment Tool. Yet the states present dramatic and untapped opportunities for fair housing reforms (as well as those relating to other issues) - opportunities that are lost without a reconceptualized focus on the particular roles and powers of state government. State governments hold unique regulatory and land use powers, such as control over public housing authority structures and zoning authority. They serve as the nexus to other issues – such as education and environmental policy – where power is similarly situated at the state level. In addition, states hold the “power of the servant” (that is, the administrator and implementer of federal programs and funding) in ways different from localities: for example, they run housing finance agencies, administer the Housing Trust Fund and the Low Income Tax Credit Program, and hold oversight responsibilities. States are situated to help overcome the fragmentation and resource-hoarding inclinations of local government structures, with potential to serve as vehicles for regional coordination and to reach locations where direct federal funding may not. HUD should exert full leverage to examine state policies and prompt states to serve as better, proactive agents for fair housing. One step is to revise the State Assessment Tool so that it refocuses on state-level policies, programs, and funding streams, including states’ legislative authority. HUD should engage with fair housing advocates and others to craft a more powerful tool targeted at state use.<sup>9</sup>

We also urge HUD and Congress to think ambitiously about additional sources of leverage to prompt state-level action, as by attaching requirements to funding streams or through competitive grant programs.

## Upgrade the AFFH Data and Mapping Tool

The AFFH process requires extensive data analysis, particularly when assessing disparities in access to opportunity. 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.

While the AFFH data tool is a helpful resource, there are several improvements that HUD should consider to enhance its utility. In particular, the tool can suffer from subpar performance. Some

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9 Megan Haberle and Philip Tegeler (2019), Coordinated Action on School and Housing Integration: The Role of State Government, *University of Richmond Law Review*.

information does not load or takes too long to load, especially when looking at jurisdictions and regions with high population density. The mapping tool's print function is especially flawed. Because the print function is the only way to print and view certain maps, technical issues in the function can cause issues. There are frequently errors when using the print function. For instance, the system did not permit the user to print single race/ethnicity or single national origin data overlaid on opportunity dimensions. Instead, the printed map would default back to showing all races/ethnicities or all national origins. Additionally, the tool does not always display all of the available detailed tract-level information. Detail that was visible on the main mapping screen would for some reason be lost when one used the print tool. This makes it harder to capture granular information at the neighborhood level. HUD must revise the print function and make changes to help the public better understand what maps are displaying. In updating the data and mapping tools, HUD should consult with end users to address these and other display issues.

HUD should also make changes to the data and mapping tool to make it easier to understand displayed data. The maps provided help to visualize data but certain indices are displayed in a confusing manner. Index levels are shown in a greyscale color scheme that is sometimes difficult to see. Other maps (such as the maps depicting familial status) are often hard to interpret, especially in dense urban areas because it can be difficult to distinguish between different data points. Certain data on protected class groups are also unavailable on both a local and regional level since the tool only shows the most populous groups at each level. In our experience, this makes it more difficult to make comparisons and conduct other analysis at both levels.

HUD should continue to make the AFFH raw data files publicly available. These files, which contain all of the indicators and indices that HUD computes at various levels of geography, are an excellent resource for researchers and analysts. However, in the interest of full transparency as well as research replicability, HUD should also make publicly available the code that they use to generate these indicators and indices. Additionally, HUD should make available the input data files that they employ with their code to generate these indicators/indices. Ideally, HUD would have a public repository that they would use to provide their code, input data sources, and final files of indicators/indices.

HUD should consider revisiting their approach to operationalizing dimensions of "opportunity." For instance, HUD's opportunity indicators frequently fail to depict patterns of differences across

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census tracts within jurisdictions or regions. This is often especially true for transportation, jobs proximity, and environmental health indices, where index values (1) are often close in magnitude (or identical) across tracts in jurisdictions/regions, or (2) display something close to random patterns across tracts. As a result, maps of these opportunity indices are sometimes not useful, especially when trying to determine patterns in access to opportunity at the neighborhood level.

The root cause of these problems is the type of data that HUD chooses to represent each dimension. For example, the transportation index is a crude indicator of the quality of transportation. The environmental health index is also flawed as it is based solely on measurements of air quality but this does not fully capture the relevant range of environmental indicators. Other information such as hazardous waste sites and environmental concerns such as water runoff should be included as well. We recognize that providing uniform data on a national level is a challenge. However, if HUD wants to continue measuring “opportunity” in this multi-dimensional way, then they should endeavor to improve the indices they provide. One possible way to do this is by incorporating additional sources of data for each dimension. A potential model is the CalEnviroScreen tool used to measure environmental conditions in communities in California. The tool uses a variety of indicators that draw on data from local, state, and federal agencies. (Even if HUD cannot provide additional data for each dimension, the Assessment Tool should prompt grantees to use local data to discuss disparities in access for each dimension.) Another useful alternative to the HUD opportunity map is the Child Opportunity Index developed by researchers at Brandeis University, which includes opportunity maps for much of the U.S. Another possible way of addressing this issue is for HUD to move entirely away from providing multiple “proxy” measures of opportunity, and shift instead to an outcome-based operationalization. The tract-level income-mobility estimates generated by Opportunity Insights are one prominent example of this kind of indicator.

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When completing the AFFH process, up-to-date data are essential to help program grantees evaluating housing conditions on the ground. While HUD does provide a substantial amount of data, much of it may be outdated. HUD should provide more guidance to help program participants better understand how to use their own timely data. Qualitative data can also be useful in order to gain additional background about a jurisdiction or fair housing issues. In our experience, qualitative data are especially helpful for completing an analysis of contributing factors. While a variety of qualitative data sources are important, it could be useful to have clearer HUD guidance on how to incorporate them into an AFH and offer explicit examples of such data.

Additionally, 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.

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## *Conclusion*

We welcome the next era of housing justice and the federal government's re-engagement with civil rights. The revival and improvement of the AFFH process is a cornerstone of this work at HUD. We look forward to future conversation with policymakers, researchers, and our fellow advocates about additional ways this can be achieved.

## *About the Authors*

**Megan Haberle** is Deputy Director at the Poverty & Race Research Action Council.

**Peter Kye** is Law & Policy Associate at the Poverty & Race Research Action Council.

**Brian Knudsen** is Senior Research Associate at the Poverty & Race Research Action Council.

**PRRAC**

*Poverty & Race  
Research Action Council*

740 15th St. NW, Suite 300 Washington, DC 20005  
202-866-0802 • Fax 202/842-2885 • [www.prrac.org](http://www.prrac.org)