

**THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION IN THE FEDERAL REGISTER WILL DETERMINE THE START OF THE PUBLIC COMMENT PERIOD. PUBLIC COMMENTS WILL NOT BE ACCEPTED IN ADVANCE OF THAT DATE.**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 91, 92, 93, 570, 574, 576, 903, and 983**

**[Docket No. FR-6250-P-01]**

**RIN 2529-AB05**

**Affirmatively Furthering Fair Housing**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed Rule.

**SUMMARY:** Through this rule, HUD proposes to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968, with respect to certain recipients of HUD funds. The Fair Housing Act not only prohibits discrimination, but also directs HUD to ensure that the agency and its program participants will proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination. HUD's 2015 Affirmatively Furthering Fair Housing (AFFH) final rule was a significant step towards implementing this requirement, which ensures that Federal policy and funding—that for decades operated to foster segregation and inequality in housing—instead is used in a systematic way to further the policies and goals of the Fair Housing Act. This rule proposes to retain much of the 2015 AFFH Rule's core planning process, pursuant to which program participants will identify fair housing issues in their communities, set goals to remedy them, submit Equity Plans for review by HUD, and implement their Equity Plans. The proposed rule provides for greater transparency and public involvement, including by making proposed Equity Plans available to the public and allowing the public to

provide information to facilitate HUD's review of those plans. This rule also proposes to codify a streamlined, less burdensome analysis that program participants must complete while still requiring them to identify and remedy the most important fair housing issues. HUD plans to provide robust technical assistance on identifying fair housing issues and goal setting, as well as easier-to-understand data. Both of these features, coupled with the robust community engagement expected through this rule, will allow a greater emphasis on goal setting to address fair housing issues identified. This proposed rule also provides a stronger link between the fair housing goals that program participants must develop and the concrete strategies and meaningful actions that must be articulated in subsequent planning processes, as well as a requirement that program participants regularly evaluate their progress towards achieving their Equity Plan goals. Finally, to provide for greater accountability, this proposed rule includes a complaint and compliance review process that is modeled on those used under other Federal civil rights statutes that apply to recipients of Federal financial assistance. Through HUD's use of all available tools, this proposed rule is the most faithful implementation of the promise made to the people residing in this Nation when the Fair Housing Act was first enacted more than fifty years ago.

**DATES:** Comment Due Date: **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S.W., Room 10276, Washington, D.C. 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

*1. Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S.W., Room 10276, Washington, D.C. 20410-0500.

*2. Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments:* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Tiffany Johnson, Director, Policy and Legislative Initiatives Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Room 5250, Washington, DC 20410-8000, telephone number 202-402-2881 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

## **SUPPLEMENTARY INFORMATION**

### **I. Executive Summary**

#### *Purpose of the Regulatory Action*

Housing plays a central role in American life. Where children live and grow up is inextricably linked to their level of educational attainment, their relationship with policing and the criminal justice system, what jobs they can obtain as adults, how much wealth their family can attain, whether they will someday purchase their own home, whether they will face chronic health conditions or other lifelong obstacles, and ultimately the opportunities they will be able to provide for their own children and grandchildren. As the United States Supreme Court noted recently, in enacting the Fair Housing Act more than fifty years ago, Congress recognized the critical role housing played and continues to play in creating and maintaining inequities based on race and color. *See Tex. Dep't of Housing and Cmty Affairs v. Inclusive Cmty Project, Inc.*, 576 U.S. 519, 546 (2015) (“The [Fair Housing Act] must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘our Nation is moving toward two societies, one

[B]lack, one [W]hite—separate and unequal.’ The Court acknowledges the Fair Housing Act’s role in moving the Nation toward a more integrated society.”) (internal citations omitted).

Notwithstanding progress in combatting some types of housing discrimination, the systemic and pervasive residential segregation that was historically sanctioned (and even worsened) by Federal, State, and local law, and that the Fair Housing Act was meant to remedy has persisted to this day. In countless communities throughout the United States, people of different races still reside separate and apart from each other in different neighborhoods, often due to past government policies and decisions. Those neighborhoods have very different and unequal access to basic infrastructure (streets, sidewalks, clean water, and sanitation systems) and other things that every thriving community needs, such as access to affordable and accessible housing, public transportation, grocery and retail establishments, health care, and educational and employment opportunities—frequently because government itself has intentionally denied resources to the neighborhoods where communities of color live. And this segregation is perpetuated by policies that effectively preclude mobility to neighborhoods where opportunity is greater.

Moreover, inequities in real housing choice do not exist solely on race or color lines, but across all the classes the Fair Housing Act protects. Individuals with disabilities too frequently are excluded not just from buildings but from whole communities because of lack of accessible and affordable housing. The widespread lack of quality affordable housing shuts out families with children and members of other protected class groups.

This proposed rule implements the Fair Housing Act’s Affirmatively Furthering Fair Housing (AFFH) mandate across the Nation to address these inequities and others that cause unequal and segregated access to housing and the platform it provides for a better life. The

proposed rule is intended to foster local commitment to addressing local and regional fair housing issues, both requiring and enabling communities to leverage and align HUD funding with other Federal, State, or local resources to develop innovative solutions to inequities that have plagued our society for far too long. The proposed rule is meant to provide the tools that HUD—together with other Federal, State, and local agencies, as well as public housing agencies—can use to overcome centuries of separate and unequal access to housing opportunity. In line with the Nation’s current reckoning with racial and other types of inequity, the proposed rule is designed to assist HUD and its program participants to take advantage of a unique opportunity to fulfill the promise made when the Fair Housing Act was enacted on April 11, 1968.

This proposed rule takes as its starting point the fair housing planning process created by the 2015 AFFH Rule, which was a significant step forward in AFFH implementation. It then proposes refinements, informed by lessons HUD learned from its implementation of the 2015 AFFH Rule, by feedback provided by States and localities across the country, and by stakeholder input. For example, the proposed rule is designed to reduce burden on program participants by streamlining the analysis of fair housing issues that they must perform, allowing them to focus more directly on the setting of effective fair housing goals and strategies to achieve them. It also would provide greater accountability mechanisms and increase transparency to and participation by the public.

Ultimately, this proposed rule would provide a framework under which program participants will set and implement meaningful fair housing goals that will determine how they will leverage HUD funds and other resources to affirmatively further fair housing, promote

equity in their communities, decrease segregation, and increase access to opportunity and community assets for people of color and other underserved communities.

### *Summary of Legal Authority*

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619) declares that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits, among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of “race, color, religion, sex,<sup>1</sup> familial status,<sup>2</sup> national origin, or handicap.”<sup>3</sup> See 42 U.S.C. 3604 and 3605. Section 808(d) of the Fair Housing Act requires all executive branch departments and agencies administering housing and urban development programs and activities to administer these programs in a manner that affirmatively furthers fair housing. See 42 U.S.C. 3608. Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Fair Housing Act.

### *Summary of Major Provisions of the Rule*

The proposed rule retains much of the framework of the 2015 AFFH Rule. Under the proposed rule, as under the 2015 AFFH Rule, program participants will identify fair housing

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<sup>1</sup> Consistent with established practice, HUD interprets the term “sex” to include gender identity, sexual orientation, and nonconformance with gender stereotypes. See Memorandum from Damon Y. Smith, Principal Deputy General Counsel to Jeanine M. Worden, Acting Assistant Secretary for Fair Housing and Equal Opportunity, “Application to the Fair Housing Act of the Supreme Court’s decision in *Bostock v. Clayton County, GA*” (Feb. 9, 2021), available at <https://www.hud.gov/sites/dfiles/ENF/documents/Bostock%20Legal%20Memorandum%2002-09-2021.pdf>.

<sup>2</sup> The term “familial status” is defined in the Fair Housing Act at 42 U.S.C. 3602(k). It includes one or more children who are under the age of 18 years being domiciled with a parent or guardian, the seeking of legal custody, or pregnancy.

<sup>3</sup> Although the Fair Housing Act was amended in 1988 to extend civil rights protections to persons with “handicaps,” the term “disability” is more commonly used and accepted today to refer to an individual’s physical or mental impairment that is protected under Federal civil rights laws, the record of such an impairment, and being regarded as having such an impairment. For this reason, except where quoting from the Fair Housing Act, this preamble and proposed rule use the term “disability.”

issues, prioritize the fair housing issues they will focus on overcoming in the next three to five years, and develop the goals they will implement to overcome those fair housing issues. The proposed rule contains refinements based on HUD's experience implementing the 2015 AFFH Rule and input from many stakeholders. It is structured to simplify and provide greater flexibility: regarding the analysis that program participants must perform as part of their Equity Plans (which are a modified version of the Assessments of Fair Housing performed under the 2015 AFFH Rule), to allow more time and energy to be spent on effective goal setting; to provide clarity, direction, and guidance for program participants to promote fair housing choice; to provide more transparency to the public and greater opportunity for public input; and to provide accountability, a mechanism for regular progress evaluation, and a greater set of enforcement options to ensure that program participants are meeting their planning commitments and to provide them the opportunity to revise commitments where circumstances change. The proposed rule will advance these objectives in a manner that is informed by the lessons HUD learned from the implementation of the 2015 AFFH Rule by:

a. *Giving underserved communities a greater say in the actions program participants will take to address fair housing issues.* When HUD implemented its 2015 AFFH Rule, program participants and community members alike consistently reported to HUD that community engagement (then called community participation) was an extremely effective and important part of identifying fair housing issues and figuring out how best to prioritize and address them. The proposed rule makes that process more inclusive and robust, for example by requiring program participants to consult with a broad range of community members, to hold meetings in diverse settings, ensure that individuals with disabilities and their advocates have equal access to those meetings, and partner with local community-based organizations and stakeholders to engage with



protected class groups and underserved communities. The proposed rule empowers broader segments of the community by, for example, requiring program participants to engage with a broad cross-section of the community, which could include advocates, clergy, community organizations, local universities, resident advisory boards, healthcare professionals and other service providers, and fair housing groups. HUD will also make the data HUD provides to program participants publicly available, including maps and other information demonstrating the existence of fair housing issues such as segregated areas, to facilitate public engagement throughout the process. HUD specifically seeks comment below regarding how it can best ensure that community engagement is effective in informing the Equity Plan. The proposed rule also requires program participants to submit, along with their Equity Plans, more information regarding their community engagement efforts than was required by the 2015 AFFH Rule. Additionally, as described further below, the proposed rule allows the public to submit information directly to HUD regarding submitted Equity Plans, providing HUD greater ability to ensure that community engagement requirements are satisfied. HUD also intends to supply more technical assistance for program participants on effective ways to conduct community engagement.

b. *Streamlining the Equity Plan's required fair housing analysis, while providing easy-to-use data to support that analysis.* HUD will help program participants and their communities understand the data HUD provides them. Aided by that data and more comprehensive community engagement, program participants will be empowered to identify key fair housing issues more effectively and efficiently without unnecessary burden. Under HUD's 2015 AFFH Rule, HUD provided program participants with considerable data and then required program participants to conduct extensive data analysis in response to a large number of questions. This

data-driven analysis was very useful for identifying fair housing issues such as patterns of segregation, but some program participants, particularly smaller ones that lacked relevant expertise, found it more difficult to complete than HUD had intended. The 2015 AFFH Rule used an Assessment Tool that contained approximately 100 questions program participants were required to answer in a prescribed format, as well as about forty contributing factors that program participants were required to consider for each fair housing issue they identified. Some program participants, working on their own or with technical assistance from HUD, conducted successful fair housing analyses using the Assessment Tool. Other program participants, however, struggled to properly interpret the data provided by HUD, and several program participants retained consultants to perform the bulk of the fair housing analysis for them. In HUD's experience reviewing the fair housing plans submitted pursuant to the 2015 AFFH Rule, the fair housing analyses conducted by program participants themselves or with technical assistance from fair housing groups, universities, or HUD were typically of much better quality than the fair housing analyses prepared for program participants solely by consultants. Put differently, the fair housing plans prepared by program participants themselves typically reflected better analysis that gave greater consideration to local fair housing issues and history rather than more generic approaches taken by consultants that prepared analyses for multiple program participants in different geographic areas of the country. The proposed rule, therefore, reflects improvements on the 2015 AFFH Rule framework and is designed to reduce burden for program participants in conducting the fair housing analysis portion of their Equity Plan and identifying fair housing issues, leaving program participants more time to establish meaningful fair housing goals and making them more likely to conduct their own analyses. Under the proposed rule, program participants will conduct their fair housing analyses to identify fair

housing issues by responding to questions in a few broad areas (seven for consolidated plan recipients, five for public housing agencies) that HUD is proposing to constitute the core areas of analysis. While HUD anticipates providing program participants with flexibility on the format of their Equity Plans, HUD will expect program participants to answer all required questions, including those that assess the reasons fair housing issues exist, as in the 2015 AFFH Rule. Under this proposed rule, HUD is considering ways to reduce burden for program participants by, for example, providing the program participant with not only raw data and maps, but is also considering providing technical assistance that helps highlight key takeaways and fair housing issues. HUD will also provide technical assistance on common fair housing issues, potential fair housing goals that could overcome fair housing issues, and additional training on how to identify and prioritize fair housing issues. Finally, HUD will make all program participants' Equity Plans available on a HUD-maintained webpage, allowing program participants to review other program participants' Equity Plans that have been accepted by HUD and learn from the experiences of those who already have been through the process. While HUD believes these changes will make it easier for many program participants and their communities to effectively use HUD-provided data, it also understands that the raw data and the AFFH Data & Mapping Tool (AFFH-T) made available under the 2015 AFFH Rule have proven invaluable for researchers and high-capacity program participants, and HUD will continue to make such data available.

*c. Placing greater focus on fair housing goals.* A key difference between the proposed rule and the 2015 AFFH Rule is a much greater focus on HUD's review of program participants' goals that will contribute to positive fair housing outcomes. While the proposed rule sets out questions for program participants to answer, it does not specify the content or length of

responses. In some cases, the answer to the question will be relatively clear based on the HUD-provided data and technical assistance, and the program participant will only then need to assess the causes and circumstances that result in fair housing issues. In other instances, program participant may need to do more analysis, including assessing local data, local knowledge, and information obtained through community engagement, in order to sufficiently respond to the question. HUD is making clear here, and will continue to do so with technical assistance and guidance, that the purpose of the questions is not to generate an extensive written analysis of local conditions for its own sake, but to require program participants to give serious consideration to the specific local conditions (such as the existence of segregation, or the lack of housing choice throughout a jurisdiction) that are likely to implicate fair housing issues faced by different protected class groups. Accordingly, HUD's review of program participants' answers to those questions will entail confirming that the program participant did an adequate job of identifying the fair housing issues revealed by the HUD-provided data and by information provided during community engagement. HUD's review of fair housing goals, meanwhile, will entail determining whether the program participant's goals have been designed and can be reasonably expected to overcome the fair housing issues that the program participant has identified and prioritized for action in the next three to five years. Stated plainly, HUD's review will focus primarily on whether the Equity Plan appropriately identifies the relevant fair housing issues and establishes fair housing goals that can realistically be expected to address them and produce meaningful fair housing outcomes for various protected class groups in the program participant's underserved communities; HUD's review will not focus on the volume of written analysis underlying the identification of the fair housing issues.

d. *Providing HUD more flexibility to work with program participants to improve a submitted Equity Plan and ensure it meets regulatory requirements.* HUD's experience implementing the 2015 AFFH Rule demonstrated that a robust back and forth between HUD and program participants regarding the content of submitted plans was important to the rule's success; in many instances, a submitted plan improved substantially as a result of HUD engagement. However, the structure of the 2015 AFFH Rule limited HUD's practical ability to do this work. HUD was required to either accept or not accept a plan within 60 days of submission. If an Assessment of Fair Housing (AFH) was not accepted by HUD after the initial submission, HUD provided the program participant an opportunity to revise and resubmit the plan for HUD review; however, HUD then had a limited amount of time to review the revised plan, work with the program participant to address remaining issues, and then accept that plan before a decision on a submitted consolidated plan or public housing agency (PHA) plan needed to be rendered. If the program participant could not achieve an accepted AFH by the time the program participant's consolidated plan or PHA Plan was due, the automatic consequence was a cut-off of Federal funding. Faced with that consequence, HUD ultimately accepted every plan, although many of the plans that HUD accepted could still have benefited from improvements if there had been additional time for HUD to work with the program participant. This proposed rule provides HUD more time—100 days, with the ability to extend that time for good cause—to review a submitted Equity Plan and work with a program participant to ensure the plan meets the requirements of this proposed rule. In addition, the proposed rule provides that, if a program participant does not have an accepted Equity Plan by the time a consolidated plan or PHA Plan must be approved, to have that plan approved it must provide HUD with special assurances that it will achieve an Equity Plan that meets regulatory requirements within 180 days of the end of

HUD's review period for its consolidated plan or PHA Plan. At the end of the 180-day period, if the program participant still does not have an Equity Plan that has been accepted by HUD, HUD will seek the most serious of remedies by initiating the termination of funding and will not grant or continue granting applicable funds. HUD believes this structure will provide it with the necessary enforcement authority and the flexibility to work with program participants to achieve an Equity Plan that meets this proposed rule's requirements. By obtaining special assurances, HUD will continue to have the ability to enforce this proposed rule by initiating the termination of funding for program participants that do not provide the required special assurances or that do not achieve an Equity Plan that is accepted by HUD in the time allotted. HUD believes the addition of the procedures relating to special assurances provide a stronger yet more flexible mechanism for HUD to compel compliance with the requirements of this proposed rule beyond what it could require under the 2015 AFFH Rule.

*e. Creating a more direct linkage between the Equity Plan's fair housing goals and the planning processes in the consolidated plan, annual action plan, or PHA Plan.* The proposed rule requires the program participant to establish concrete fair housing goals that are designed and can be reasonably expected to achieve meaningful fair housing outcomes. In the process, program participants will identify the funding and any contingencies that must be met for the program participant to achieve the goal. The proposed rule then requires program participants to incorporate the fair housing goals from their Equity Plans into their consolidated plan, annual action plan, or PHA Plan. The direct linkage between the Equity Plan and subsequent program planning documents will enable program participants to make more informed decisions about how to overcome circumstances that cause, increase, contribute to, maintain, or perpetuate fair housing issues. By incorporating their fair housing goals, strategies, and actions into their

planning documents, program participants will be better positioned to build equity and fairness into their decision-making processes for the use of resources and other investments, live up to the commitments they have made in Equity Plans, and ultimately fulfill their obligations to affirmatively further fair housing.

*f. Implementing a more transparent process for program participants' development and HUD's review of Equity Plans.* The proposed rule will enable members of the public to have online access to all submitted Equity Plans; to provide HUD with additional information regarding Equity Plans that are under HUD review; and to know HUD decisions on Equity Plan acceptance and on program participants' annual progress evaluations. HUD will use information submitted by the public in its review of the Equity Plan. This transparency is intended, in part, to assist program participants with understanding how other similarly situated program participants conducted their analyses. HUD believes that this transparency will allow the public to be more engaged in the local fair housing planning process, the implementation of fair housing goals, and ultimately in assisting their local leaders in determining how to allocate resources to address fair housing issues.

*g. Tracking progress on fair housing goals.* The proposed rule requires program participants to conduct annual progress evaluations regarding the progress made on each goal. These progress evaluations will be submitted to HUD, and HUD will make them publicly available on a HUD-maintained website. This annual progress evaluation ensures that goal implementation stays on track and that progress (or lack thereof) is disclosed to the public. In conducting this evaluation, a program participant must assess whether to establish a new fair housing goal or whether to modify an existing fair housing goal because it cannot be achieved in the amount of time previously anticipated. The proposed rule allows program participants, with

HUD's permission, to submit a revised Equity Plan that modifies goals or set new goals if circumstances changed or if the established goals have been accomplished. HUD believes this ability to account for changed circumstances will make program participants more willing to set ambitious, creative goals that may be dependent on certain contingencies, since the goals can be updated if the contingencies are not met. However, HUD will not grant permission to alter goals if the program participant is simply choosing not to take necessary steps. The annual progress evaluation will allow for public awareness that a goal is not being met before it is too late to change course to meet it.

*h. Increasing accountability by creating a mechanism for members of the public to file complaints and for HUD to further engage in oversight and enforcement.* Under the proposed rule, HUD will have the ability to open compliance reviews, and members of the public will be able to file complaints directly with HUD regarding a program participant's AFFH-related activities. While these processes are new to AFFH compliance, the proposed regulatory provisions relating to the filing and investigation of complaints and HUD's procedures for obtaining compliance are consistent with the oversight and enforcement mechanisms that exist for other Federal civil rights statutes that HUD implements. Accordingly, HUD anticipates that the agency, program participants, and the public should be able to readily acclimate themselves to these processes and that the associated burden will be manageable.

These improvements are intended to result in tangible fair housing outcomes that advance equity and increase opportunity for people of color and other underserved communities while minimizing burden and constraints on program participants in how those outcomes are determined and achieved. Ultimately, those tangible fair housing outcomes will be locally driven based on the fair housing issues that are presented by local circumstances. This proposed



rule does not dictate the particular steps a program participant must take to resolve a fair housing issue. Rather, the proposed rule is intended to empower and require program participants to meaningfully engage with their communities and confront difficult issues in order to achieve integrated living patterns, overcome historic and existing patterns of segregation, reduce racial and ethnic concentrations of poverty, increase access to homeownership, and ensure realistic and truly equal access to opportunity and community assets for members of protected class groups, including those in historically underserved communities.

As previously noted, this proposed rule is intended to ensure that program participants set and achieve meaningful fair housing goals while reducing program participant burden in performing the required analysis in the planning stage. The proposed rule reduces burden compared with the 2015 AFFH Rule for program participants through the provision of HUD data and assistance in interpreting the data and other modifications such as not prescribing a particular format for the written analysis. It is HUD's intention to allow program participants to spend less time on data analysis and more time on setting meaningful fair housing goals that are based on that data and other information, including conversations with their local community regarding the most effective means of advancing fair housing and equity. This does not diminish the key role that interpretation of maps and other objective data will continue to play in the required analysis, but rather enables program participants to focus more of their time and energy on the fair housing goals and strategies and actions they will employ to overcome the fair housing issues identified using the data. HUD will continue to provide program participants datasets, including maps, and tools that contain at least as much data as is currently provided in the AFFH-T Data & Mapping Tool. HUD will continue to make these data publicly available, including for use by program participants in conducting their Equity Plans, at

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh). HUD will explore ways to build on and improve the current AFFH-T Data & Mapping Tool and will continue to evaluate whether these data or other data may be helpful to program participants and the public in undertaking an analysis of how to advance fair housing outcomes within local communities.

HUD is contemplating making its provision of these data more user friendly in ways that will reduce burden for smaller program participants and those with fewer resources while increasing their understanding—and their communities' understanding—of what those data signify. Along with updating and improving the current AFFH-T Data & Mapping Tool, HUD is contemplating providing technical assistance that would highlight key points to help program participants understand what those maps and tables show. For example, technical assistance may include identification of racially or ethnically concentrated areas of poverty (R/ECAPs) in the jurisdiction and demographic information about the R/ECAPs' residents, making it simpler for the program participant to answer the relevant question in the required analysis. HUD anticipates that these efforts will reduce the burden for program participants to answer the required analysis questions and identify fair housing issues, while providing information critical to the fair housing analysis in a format that also can be understood by the community.

The proposed rule is less burdensome compared to the 2015 AFFH Rule. While this proposed rule continues to require program participants to review and understand the data and their fair housing implications, including for purposes of setting fair housing goals, program participants will not be required to submit responses in the form of data analysis. Except as specifically instructed in the proposed analysis questions (in instances where HUD expects its own provision of data to make it simple to do so), program participants would not need to reference specific percentages or calculations, for example, regarding demographics or

segregation, but would be required to show the connection between their data analysis, their identification of fair housing issues, and the establishment fair housing goals. Instead, the data provided by HUD, along with local data and local knowledge, should be sufficient to drive the program participant's analysis and ultimate identification of goals and strategies. The program participant's answers should be informed by data but need not be written in that form. These improvements will make it easier for smaller program participants and those with fewer resources to complete the written analysis, and also make it easier for the community to engage in the process, understand the analysis of fair housing issues in a submitted Equity Plan, and provide additional relevant information to facilitate HUD's review. Program participants will have the opportunity to engage with HUD staff to help ensure that consultants, contractors, or complex data analysis are not required to produce an Equity Plan that can be accepted.<sup>4</sup>

This proposed rule features much greater transparency for the public to see and participate in the decisions program participants make and HUD's responses to them. HUD expects to publish all Equity Plan submissions and decisions as to whether HUD has accepted the Equity Plan on its AFFH webpage to further increase transparency and reduce burden for program participants. This transparency is intended, in part, to assist program participants with understanding how other similarly situated program participants conducted their analyses. HUD believes that by publishing this information, not only will local officials be able to learn from other jurisdictions' Equity Plans, but also the public will be more engaged in the local fair housing planning process and implementation of local fair housing goals. HUD anticipates that this approach may also lead to collaboration with other government entities as well as the private

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<sup>4</sup> HUD is aware that during implementation of the 2015 AFFH Rule, many university-based researchers (along with fair housing groups and other non-profit organizations) assisted program participants in analyzing and understanding HUD-provided data for purposes of identifying fair housing issues and establishing fair housing goals in their AFHs.

sector with respect to housing and community development activities and investments in a program participant's jurisdiction. In addition, this more robust community engagement process to discuss fair housing issues and potential fair housing goals will lead to more transparent fair housing planning and greater ability to influence equitable outcomes for members of protected class groups, including people of color, individuals with disabilities, and other underserved communities.

HUD expects that the refinements made to this proposed rule compared with the 2015 AFFH Rule will help program participants more easily identify where equity in their communities is lacking and how they can affirmatively further fair housing by advancing equity for protected class groups through the use of HUD funds, other investments, and policy decisions. HUD's commitment to be a partner in the planning process for program participants and the public alike should result in a reduction of burden and greater transparency and public participation, and result in program participants undertaking meaningful actions to fulfill the promise of the AFFH mandate established in 1968. HUD is soliciting comment on this proposed rule and also seeks comment on specific topics in Section IV of this preamble.

#### *Summary of Benefits and Costs*

As detailed in the Regulatory Impact Analysis, HUD does not expect a large aggregate change in compliance costs for program participants as a result of the proposed rule. As a result of increased emphasis on affirmatively furthering fair housing within the planning process, there may be increased compliance costs for some program participants, while for others the improved process and goal setting, combined with HUD's provision of foundational data, is likely to decrease compliance costs. Program participants are currently required to engage in outreach and collect data in order to support their certifications that they are affirmatively furthering fair

housing. As more fully addressed in the Regulatory Impact Analysis that accompanies this rule, HUD estimates that compliance with these additional planning requirements would collectively cost program participants a total of \$5.2 million to \$27 million per year, once the Equity Plan cycle is fully implemented, a sum that is offset by the societal benefits accruing to fair housing goals that decrease segregation and the lack of equal access to housing and related opportunities throughout society.

Further, HUD believes that the proposed rule has the potential for substantial benefit for program participants and the communities they serve. The proposed rule would improve the fair housing planning process by providing greater clarity regarding the steps program participants must undertake to meaningfully affirmatively further fair housing, and at the same time provide better resources for program participants to use in taking such steps, thus increasing AFFH compliance more broadly. Through this rule, HUD commits to provide states, local governments, PHAs, the communities they serve, and the general public with local and regional data, as well as assistance in understanding that data, as discussed further below. From these data, program participants should be better able to evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, set forth fair housing priorities and goals, and document these activities.

The rule covers program participants that are subject to a great diversity of local preferences and economic and social contexts across American communities and regions. For these reasons, HUD recognizes there is significant uncertainty associated with quantifying outcomes of the process, as proposed by this rule, to identify barriers to fair housing, the priorities of program participants in deciding which barriers to address, the types of policies designed to address those barriers, and the effects of those policies on protected classes. In brief,

because of the diversity of communities and regions across the Nation and the resulting uncertainty of precise outcomes of the proposed AFFH planning process, HUD cannot estimate the specific benefits and costs of policies influenced by the rule. HUD does recognize that segregation, combined with the legacy of discrimination against protected class groups and longstanding disinvestment in certain neighborhoods, has imposed and continues to impose substantial costs on members of protected classes and society in general by reducing employment, education, and homeownership opportunities as well as the costs associated with reduced health and safety in neighborhoods that have long faced disinvestment and other adverse environmental impacts.<sup>5</sup> HUD is confident, as discussed more fully below, that the rule will create a process that allows for each jurisdiction to not only undertake meaningful fair housing planning, but also build capacity and develop a thoughtful strategy to affirmatively further fair housing and make progress towards a more integrated society with more equitable access to opportunity. The benefits of undertaking meaningful actions to produce an integrated, just, and prosperous society and otherwise further fair housing objectives far outweigh the costs.

## **II. Background**

### *A. Legal Authority*

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619), enacted into law on April 11, 1968, declares that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits discrimination in the sale, rental, and

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<sup>5</sup> See Acs, Pendall, Trekson, et al., “The Cost of Segregation: National Trends and the Case of Chicago 1990-2010,” *Urban Institute and The Metropolitan Housing and Communities Policy Center* (2017), available at [https://www.urban.org/sites/default/files/publication/89201/the\\_cost\\_of\\_seggregation.pdf](https://www.urban.org/sites/default/files/publication/89201/the_cost_of_seggregation.pdf) (finding that higher levels of racial segregation were associated with lower incomes for Black residents, lower educational attainment levels for White and Black residents, and lower levels of public safety for all residents).

financing of dwellings, and in other housing-related transactions because of race, color, religion, sex, familial status, national origin, or disability. See 42 U.S.C. 3601 *et seq.* In addition to prohibiting discrimination, the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner to affirmatively further the policies of the Fair Housing Act. Section 808(d) of the Fair Housing Act (42 U.S.C. 3608(d)) directs other Federal agencies “to administer their programs . . . relating to housing and urban development . . . in a manner affirmatively to further” the policies of the Fair Housing Act, and to “cooperate with the Secretary” in this effort.

The Fair Housing Act’s provisions related to “affirmatively . . . further[ing]” fair housing, contained in sections 3608(d) and (e), require more than compliance with the Act’s anti-discrimination mandates. *NAACP, Boston Chapter v. HUD*, 817 F.2d 149 (1st Cir. 1987); see, e.g., *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970). When the Fair Housing Act was originally enacted in 1968 and amended in 1988, major portions of the statute involved the prohibition of discriminatory activities (whether undertaken with a discriminatory purpose or with a discriminatory effect) and how private litigants and the government could enforce these provisions.

In sections 3608(d) and (e) of the Fair Housing Act, however, Congress went further by mandating that “programs and activities relating to housing and urban development” be administered “in a manner affirmatively to further the purposes of this subchapter.” This is not only a mandate to refrain from discrimination but a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied. Congress has repeatedly reinforced and ratified this uncontradicted interpretation of the AFFH mandate, requiring in the Housing and Community Development Act

of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will affirmatively further fair housing. See 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16).<sup>6</sup>

Courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal funds used for housing or urban development and certain other Federal funds do more than simply not discriminate: recipients also must take actions to address segregation and related barriers for members of protected class groups, as often reflected in racially or ethnically concentrated areas of poverty. The U.S. Supreme Court, in one of the first Fair Housing Act cases it decided, acknowledged that the Act was intended to make significant change in addition to outlawing discrimination in housing, noting that “the reach of the proposed law was to replace the ghettos ‘by truly integrated and balanced living patterns.’” *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972); see also *Client’s Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir. 1983) (“Congress enacted section 3608(e)(5) to cure the widespread problem of segregation in public housing”); see also *Crow v. Brown*, 332 F. Supp. 382, 391 (N.D. Ga. 1971), *affirmed in part without op. and reversed in part without op. by Banks*

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<sup>6</sup> Section 104(b)(2) of the Housing and Community Development Act (HCD Act) (42 U.S.C. 5304(b)(2)) requires that, to receive a grant, the state or local government must certify that it will affirmatively further fair housing. Section 106(d)(7)(B) of the HCD Act (42 U.S.C. 5306(d)(7)(B)) requires a local government that receives a grant from a state to certify that it will affirmatively further fair housing. The Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) provides in section 105 (42 U.S.C. 12705) that states and local governments that receive certain grants from HUD must develop a comprehensive housing affordability strategy to identify their overall needs for affordable and supportive housing for the ensuing 5 years, including housing for persons experiencing homelessness, and outline their strategy to address those needs. As part of this comprehensive planning process, section 105(b)(15) of NAHA (42 U.S.C. 12705(b)(15)) requires that these program participants certify that they will affirmatively further fair housing. The Quality Housing and Work Responsibility Act of 1998 (QHWRA), enacted into law on October 21, 1998, substantially modified the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act), and the 1937 Act was more recently amended by the Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HERA). QHWRA introduced formal planning processes for PHAs – a 5-Year Plan and an Annual Plan. The required contents of the Annual Plan included a certification by the PHA that the PHA will, among other things, affirmatively further fair housing.



*v. Perk*, 473 F.2d 910 (6th Cir. 1973) (“It is also clear that the policy of HUD requires that public housing be dispersed outside racially compacted areas . . . and [is] part of the national housing policy.”<sup>7</sup> Indeed, relief has been granted to plaintiffs and against HUD for failing to comply with this affirmative duty to disperse public housing which is implicit in the Housing Act of 1949, the Civil Rights Act of 1964, and the Civil Rights Act of 1968.”). The Act recognized that “where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.” 114 Cong. Rec. 2276-2707 (1968). As the First Circuit has explained, section 3608(e)(5) and the legislative history of the Act show that Congress intended that “HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.” *NAACP, Boston Chapter v. HUD*, 817 F.2d at 154; see also *Otero*, 484 F.2d at 1134 (section 3608(d) requires that “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat”).

The Act itself does not define the precise scope of the affirmatively furthering fair housing obligation for HUD or HUD’s program participants. Over the years, courts have provided some guidance for this task. In the first appellate decision interpreting section 3608, for example, the U.S. Court of Appeals for the Third Circuit emphasized the importance of racial and socioeconomic data to ensure that “the agency’s judgment was an informed one” based on an institutionalized method to assess site selection and related issues. *Shannon*, 436 F.2d at 821-

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<sup>7</sup> Reflecting the era in which it was enacted, the Fair Housing Act’s legislative history and early court decisions refer to “ghettos” when discussing racially concentrated areas of poverty. In addition, much of the litigation during this period related to the siting of public housing; however, HUD notes that the holdings of these courts apply to all programs and activities administered by HUD and are not limited to the public housing program.

22. In multiple other decisions, courts have set forth that section 3608 applies to specific policies and practices of HUD program participants. *See e.g., Otero*, 484 F.2d at 1132-37; *NAACP, Boston Chapter*, 817 F.2d at 156 (“... a failure to ‘consider the effect of a HUD grant on the racial and socio-economic composition of the surrounding area’” would be inconsistent with the Fair Housing Act’s mandate); *Langlois v. Abington Hous. Auth.*, 207 F.3d 43 (1st Cir. 2000); *U.S. ex rel. Anti-Discrimination Ctr. v. Westchester Cnty.*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009). The U.S. Court of Appeals for the First Circuit, in evaluating how the AFFH mandate applies to HUD and its program participants, including the decisions made in the administration of their programs and activities, further provided that “the need for such consideration itself implies, at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess those aspects of a proposed course of action that would increase that supply. If HUD is doing so in any meaningful way, one would expect to see, over time, if not in any individual case, HUD activity that tends to increase, or at least, that does not significantly diminish the supply of open housing.” *NAACP, Boston Chapter*, 817 F.2d at 156.

More recently, in examining why regional solutions to segregation may be necessary, a United States District Court declared that “[i]t is high time that HUD live up to its statutory mandate to consider the effect of its policies on the racial and socioeconomic composition of the surrounding area . . . The Court finds it no longer appropriate for HUD, as an institution with national jurisdiction, essentially to limit its consideration of desegregative programs . . .” *Thompson v. HUD*, 348 F. Supp. 2d 398, 409 (D. Md. 2005). The court emphasized the importance of using the AFFH mandate to afford choice to individuals and families about where they live by stating that, “[i]n this regard, it is appropriate to note that there is a distinction

between telling a person that he or she may not live in [a] place because of race and giving the person a choice so long as the place in question is, in fact, available to anyone without regard to race.” *Thompson*, 398 F. Supp. 2d at 450. As recently as 2015, the U.S. Supreme Court explained that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation . . . The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.” *Tex. Dep’t of Hous. Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 546-47 (2015). As the Supreme Court held in *Inclusive Communities*, the Fair Housing Act’s broad remedial purposes cannot be accomplished simply by banning intentional discrimination today. *Id.*

In addition to the statutes and court cases emphasizing the requirement of recipients of Federal housing and urban development funds and other Federal funds to affirmatively further fair housing, executive orders have also addressed the importance of complying with this requirement.<sup>8</sup>

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<sup>8</sup> Executive Order 12892, entitled “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” issued January 17, 1994, vests primary authority in the Secretary of HUD for all Federal executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner that furthers the purposes of the Fair Housing Act. Executive Order 12898, entitled “Executive Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” issued on February 11, 1994, declares that Federal agencies shall make it part of their mission to achieve environmental justice “by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Executive Order 13985, “Advancing Racial Equity for Underserved Communities Through the Federal Government” issued on January 25, 2021, establishes that it is the policy of the Federal Government to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Executive Order 13985 makes clear that affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government, and that doing so requires a systematic approach to embedding fairness in decision making processes, and as such, executive departments and agency must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity. Furthermore, President Biden’s Memorandum to the Secretary of HUD dated January 26, 2021, titled “Memorandum on Redressing our Nation’s and the Federal Government’s History of Discriminatory Housing Practices,” obligates HUD to examine its programs and activities and empowers the Secretary to take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act’s requirements that HUD administer its programs and activities in a manner that affirmatively furthers fair housing.

*B. HUD's July 16, 2015 Final Rule, HUD's 2020 Preserving Communities and Neighborhood Choice Rule, and HUD's June 10, 2021 Interim Final Rule*

On July 16, 2015, the Department published a final AFFH regulation (2015 AFFH Rule) at 24 CFR §§ 5.150-5.180, which required program participants to conduct and submit to HUD an Assessment of Fair Housing (AFH).<sup>9</sup> The 2015 AFFH Rule reflected HUD's efforts to more fully and meaningfully effectuate the AFFH mandate of the Fair Housing Act. The promulgation of the 2015 AFFH Rule was a significant and important step toward realizing the promise of the AFFH mandate.

To implement the 2015 AFFH Rule, the Department developed and required the use of Assessment Tools for different types of program participants (which were subject to public comment through the process required under the Paperwork Reduction Act), created fact sheets and guidance to assist program participants in conducting their AFHs, and provided a data and mapping tool (AFFH-T) that remains publicly available. While the promulgation of the 2015 AFFH Rule marked a substantial improvement to HUD's implementation of the AFFH mandate with respect to certain recipients of Federal financial assistance from the Department, it was not perfect, and HUD learned important lessons about how the 2015 AFFH Rule could be improved.

The required use of Assessment Tools delayed implementation of the 2015 AFFH Rule because of the need to adhere to the Paperwork Reduction Act process, which includes publication of two *Federal Register* notices and two rounds of public comment solicitation. When implementation began, between October 2016 and December 2017, HUD received,

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<sup>9</sup> Prior to HUD's 2015 AFFH Rule, beginning in 1996, HUD required program participants to undertake an "Analysis of Impediments to Fair Housing Choice," (AI) which was the mechanism for supporting their AFFH-related certifications. HUD issued guidance in the form of the Fair Housing Planning Guide for how to conduct an AI. HUD did not require the AI to be submitted, though HUD would review AIs in connection with compliance reviews. The 2015 AFFH Rule replaced the AI process with the AFH process.

reviewed, and issued initial decisions on forty-nine AFHs. HUD's experience with the implementation of the 2015 AFFH Rule highlighted some areas for improvement, including ways in which the identification of fair housing issues could be streamlined. Furthermore, due to the complexity of the assessment required and the need to adhere to the specific format required, many program participants utilized outside contractors to complete their AFHs, others misunderstood the questions asked, and some failed to identify fair housing issues or set meaningful goals to affirmatively further fair housing. Many submissions merely recounted what the HUD-provided data showed, rather than providing an analysis of the actual fair housing issues program participants' communities were and are facing. In some instances, this resulted in goals that consisted of a program participant merely continuing with actions that would maintain existing conditions rather than advancing equity for members of protected class groups and underserved communities. Similarly, the 2015 AFFH Rule's requirement that program participants identify and prioritize factors that contribute to fair housing issues (from a list of over forty potential factors) proved confusing and, in some instances, program participants were not able to translate identified factors into meaningful goals that could be reasonably expected to result in material progress.

At the same time, the 2015 AFFH Rule demonstrated that its basic planning structure had considerable promise for assisting local communities to achieve meaningful fair housing ends that are responsive to local needs. Program participants and members of the community reported that, because program participants were required to answer specific questions regarding longstanding segregation and other fair housing issues, they had productive conversations about important issues they otherwise would not have confronted. Moreover, some AFH submissions contained creative fair housing goals, including by collaborating across different sectors (e.g.,

public housing agencies and school districts working together), to find ways to overcome disparities for protected class groups in specific geographic areas. HUD believes this demonstrates that the required focus on core fair housing topics and goal setting required by the 2015 AFFH Rule remain appropriate, even as it also heard from many stakeholders of the need for a greater emphasis on goals and outcomes tied to a streamlined analysis. As more fully explained below, this proposed rule seeks to build on these lessons learned. HUD specifically invites comment on this proposal in Section IV of this preamble.

In 2018, HUD suspended implementation of the 2015 AFFH Rule by withdrawing the operative assessment tool that program participants were required to use for conducting an AFH. See 83 FR 23927 (Jan. 5, 2018). Then, on August 7, 2020, at 85 FR 47899, HUD promulgated a final rule—Preserving Community and Neighborhood Choice (PCNC Rule)—which repealed the 2015 AFFH Rule. The PCNC Rule redefined the AFFH mandate in a manner that was a substantial and substantive departure from decades of judicial and administrative precedent interpreting the AFFH mandate in the Fair Housing Act.

On June 10, 2021, HUD promulgated an interim final rule, “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications” (AFFH IFR), in order to repeal the PCNC Rule and restore legally supportable definitions and certifications for program participants. See 86 FR 30779 (June 10, 2021). The AFFH IFR restored relevant definitions from the 2015 AFFH Rule and created a process for program participants to certify to HUD that they will affirmatively further fair housing. At that time, HUD did not reinstate other provisions from the 2015 AFFH Rule, but committed to further implementation of the AFFH mandate at a future date, which is the purpose of this proposed rule.

HUD invited and considered public comments on the AFFH IFR. HUD also undertook multiple listening sessions to inform this proposed rule. These listening sessions included a variety of stakeholders including HUD program participants, fair housing and civil rights advocates, community organizations, and other interested members of the public. These stakeholders provided their views about what worked and what did not with respect to the implementation of the 2015 AFFH Rule, recommended additional features and refinements that they believed a new rule should include, and identified certain fair housing- and equity-related issues prevalent in their communities that they hoped a proposed rule would address. HUD thanks these stakeholders for this valuable input and has taken it into account in formulating this proposed rule.

This proposed rule, as more fully described below, restores much of the structure of the 2015 AFFH Rule, but with modifications and improvements to increase transparency and accountability, and to reduce burden, while retaining flexibility for program participants to establish fair housing goals based on their local circumstances. The proposed rule generally tracks the structure of the 2015 AFFH Rule because HUD believes program participants are familiar with that structure; however, HUD is open to considering changes to this proposed regulatory scheme to effectively and meaningfully implement the Fair Housing Act's AFFH mandate. HUD specifically seeks comment on this topic in Section IV of this preamble.

*C. HUD Proposes to Restore Much of the Structure of the 2015 AFFH Rule, While Streamlining the Required Analysis for Program Participants, and Adding Features That Will Bolster the Effective Implementation of the AFFH Rule*

HUD now proposes to restore much of the structure of the 2015 AFFH Rule, while proposing modifications that HUD believes will lead to a more effective fair housing planning

process while reducing burden for program participants and providing the public more transparency and opportunities to influence both planning and implementation. HUD is responsible for ensuring that the Fair Housing Act's AFFH mandate is implemented and that it drives the change that Congress intended in 1968—the undoing of vestiges of segregation, unequal treatment, and inequitable access to opportunity that the Federal government itself helped create—and helps combat the unequal access to housing and related opportunities because of race, color, national origin, religion, sex, familial status, and disability that persists in our society today.

For change to occur throughout the Nation, HUD must help the states and localities it serves to bring it about, arming them with the relevant information and establishing a process that assists in identifying fair housing issues and then implementing meaningful actions to remedy them. To that end, the 2015 AFFH Rule created a robust and data-driven analytical scheme for program participants to use when engaging in fair housing planning and determining what actions were necessary in their local communities to affirmatively further fair housing. Under the 2015 AFFH Rule, HUD provided program participants with considerable raw data, in part through an interface known as AFFH-T that the program participants were expected to use to access data relevant to their geographic areas of analysis, and then required program participants to analyze this data in answering questions contained in the AFH Assessment Tool designed to drive the identification of fair housing issues. It was HUD's intention that the AFH Assessment Tool's User Interface would import the data from the AFFH-T. HUD now recognizes that this approach, while achieving a major step forward in fair housing planning and providing an invaluable source of publicly available data, particularly for researchers and better-resourced program participants, created some unnecessary burden and confusion particularly for



smaller program participants and those with fewer resources. For instance, HUD is aware that program participants struggled to use the AFH Assessment Tool's User Interface and perform the required data-driven analysis. Accordingly, while HUD is using the 2015 AFFH Rule as a model for this proposed rule, this proposed rule streamlines the questions in the required analysis and HUD proposes to make it more user-friendly. This would enable program participants to more readily use HUD-provided data, including during community engagement, to identify fair housing issues and set goals that will result in meaningful change. HUD continues to consider whether other changes to the structure set out in the proposed rule would further reduce burden and maximize material positive change and seeks comment to that effect in Section IV, below.

HUD notes that the proposed rule is not intended to conflict with or interfere with program participants carrying out existing programmatic responsibilities including maintenance of affordable housing. It remains a top priority for HUD to preserve and maintain the existing stock of long-term affordable rental housing, including the federally assisted stock. HUD recognizes the overwhelming need for affordable and accessible housing and the inadequate supply of HUD-assisted housing to meet that need. The most recent HUD report on Worst Case Needs for Affordable Housing (issued July 2021) found there were over 7.77 million unassisted very low-income renter households facing either severe rent burden (paying more than half their incomes for rent) or severely inadequate housing conditions, or both. This does not include persons facing homelessness, nor does it include lower income (but not very low-income) cost burdened households. HUD believes and expects that program participants can act in recognition of this urgent need to maintain and add to existing affordable and accessible housing stock consistent with the fair housing principles and requirements set forth in this proposed rule.

HUD recognizes that, notwithstanding its efforts to make refinements in this proposed rule to reduce burden and simplify the Equity Plan analysis for all program participants, some smaller program participants may benefit from additional flexibility and technical assistance. In particular, HUD is aware that small PHAs and consolidated plan participants may have significantly fewer personnel and financial resources available to complete the analysis contemplated in this proposed rule when compared to larger entities, especially if they are unable to identify another entity they can work with to submit a joint Equity Plan.

As compared to the 2015 AFFH Rule, HUD has significantly streamlined the analysis that would be required for a program participant's Equity Plan from what was required in the Assessment of Fair Housing and has eliminated the analysis of contributing factors required by the 2015 AFFH Rule. This streamlined analysis would still require program participants to assess the underlying causes of the identified fair housing issues as a basis for designing effective fair housing goals. In addition, by providing simpler, standard questions for all program participants in the regulatory text itself, HUD would not be continually revisiting those questions through revised assessment tools, which would be subject to changes under the Paperwork Reduction Act (PRA) (a Federal law discussed later in this preamble) at least every three years, thereby giving program participants long-term certainty about the analysis they would be required to undertake and reducing the burden involved in preparing subsequent Equity Plans.

Importantly, HUD has sought to design the questions, and its anticipated review of answers, such that the complexity and burden of satisfactory answers will scale based on the size of a program participant. For example, the largest PHAs (under the proposed rule, a PHA that administers 10,000 or more combined public housing and voucher units) and the largest

consolidated plan participants (under the proposed rule, a program participant that receives a total of \$100 million or more in formula grant funds) are likely to operate in large metropolitan areas with multiple local government entities, various categories of publicly supported housing and other affordable housing, many different types of community assets across the geographic area of analysis, and millions of community residents with significantly more complex demographic patterns. Conversely, the smallest PHAs and smallest consolidated plan participants are likely to operate in rural areas, newly suburban areas, or other localities with far fewer community assets, more limited public infrastructure, and more homogenous demographic patterns among significantly smaller populations (e.g., 50,000 residents). As a result, smaller program participants, though responding to the same questions, would be expected to have less to analyze and HUD anticipates that it would be acceptable for them to provide briefer answers. As described below, in rare instances and typically with smaller program participants, program participants may respond that much or all of the question is not applicable to them, as long as this response is supported by realities on the ground, including through HUD-provided data and insights drawn from local knowledge and community engagement.

During the implementation of the 2015 AFFH Rule, HUD's efforts to address the issue of burden on small program participants by requiring simplified analyses were largely unsuccessful. HUD created inserts within the Assessment Tools for small PHAs and consolidated plan program participants but found that this process still resulted in confusion. Moreover, the smaller program participants that submitted AFHs to HUD generally either did not use the inserts or submitted essentially the same analysis as would have been required by the standard questions. Nonetheless, HUD is committed to exploring ways to further reduce the burden of preparing an Equity Plan for small PHAs and small consolidated plan program participants while

ensuring that they engage in fair housing planning that is sufficient to meet their AFFH obligations. HUD solicits comment in this proposed rule on whether it should take an alternative approach for smaller program participants, including whether it should require such participants to analyze fair housing issues in a different manner.

Additionally, HUD is aware that some small PHAs (such as those that operate only Public Housing but do not participate in the Housing Choice Voucher (HCV) program, including many of those in rural areas) and some small consolidated plan participants (such as those that only receive Community Development Block Grant (CDBG) funds) may have limited ability to impact housing choice or mobility, making it harder for them to establish mobility-related goals as discussed in the definition of “balanced approach” in § 5.152. In those circumstances, a collaborative approach with other entities to address issues outside their control may be warranted and may allow them to set goals that would enable them to pursue a balanced approach. For example, HUD expects such small, public housing-only PHAs could undertake collaboration and outreach efforts with local governments, the private sector, non-profits, and other applicable governmental entities to address fair housing issues and formulate appropriate fair housing goals. Specific examples include working with a local government to address exclusionary zoning, coordinating with local or state agencies to increase public transportation options, addressing lead contamination or other environmental hazards, ensuring appropriate emergency response coverage, or partnering with an adjacent PHA or other larger PHAs that have HCV programs to increase mobility, including through portability programs. Similarly, small PHAs (and all PHAs as well) could review and make revisions to their PHA Admissions and Continued Occupancy Policy and other policies to positively impact underserved communities beyond fulfilling existing requirements, e.g., modifying preferences or doing

specific outreach to organizations that support underserved communities. Through such actions, HUD believes that even the smallest PHAs can meaningfully impact fair housing outcomes within their sphere of influence, even as it recognizes that their options and resources may be limited compared to those of larger PHAs. HUD does not propose to exempt smaller, public housing-only PHAs from efforts to use a balanced approach or their obligation to affirmatively further fair housing, but it is committed to providing guidance regarding how the AFFH obligation and the balanced approach apply when a public housing-only PHA has limited ability to directly control issues that involve mobility-related goals as discussed in the definition of balanced approach.

Nonetheless, HUD seeks comment on the extent to which smaller PHAs and consolidated plan participants can set goals that constitute a balanced approach as defined in this proposed rule, including examples of goals that such PHAs and consolidated plan participants can appropriately and reasonably set. To the extent that commenters believe some smaller PHAs and consolidated plan participants may not be able to set goals consistent with a balanced approach, HUD seeks comment on what are appropriate expectations for smaller PHAs and consolidated plan participants that ensure that meeting their regulatory planning requirements will put them on the path to comply with their affirmatively furthering fair housing obligation.

Please see specific requests for comment in Section IV of this proposed rule related to reducing burden on small program participants.

HUD is also proposing other changes to the 2015 AFFH Rule that are designed to make the fair housing planning processes more transparent to the public and responsive to local fair housing issues. For example, HUD is considering how it can better support its program participants during the community engagement process in order to ensure that representatives

from the entire community have the chance to provide their important perspectives, including members of protected class groups and underserved communities. HUD continues to consider and evaluate ways to eliminate unnecessary burden for program participants to incorporate public feedback they receive so they can develop effective goals to address local fair housing issues. HUD anticipates that the more transparent process articulated in this proposed rule for publication of Equity Plans will help reduce burden by allowing program participants to learn from and build upon the experiences of others.

HUD acknowledges that implementation of the AFFH mandate will not and cannot occur without burden for program participants, though HUD is committed to ensuring that program participants experience less burden than the 2015 AFFH Rule imposed. Under the proposed rule, program participants would continue to be required to submit certifications that they will affirmatively further fair housing in connection with documents such as their consolidated plan, annual action plan, or PHA Plan (or any plan incorporated therein), and it will continue to be HUD's responsibility to ensure that these certifications are accurate. Furthermore, HUD is committed to advancing equity for protected class groups and underserved communities, as well as assisting its program participants in doing the same. To truly honor Congress' intent, any regulation to implement the Fair Housing Act's AFFH mandate must help program participants move away from the status quo with respect to planning approaches and facilitate the development of innovative solutions to overcome decades, if not centuries, of housing-related inequality throughout American communities.

The need for change remains urgent; many of the problems the Kerner Commission Report<sup>10</sup> identified are still with us today, even as other barriers to equal access to housing

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<sup>10</sup> *Report of the National Advisory Committee on Civil Disorders*, Mar. 1, 1968, available at [https://www.hud.gov/sites/dfiles/FHEO/documents/kerner\\_commission\\_full\\_report.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/kerner_commission_full_report.pdf).

opportunities have taken on increased attention. In particular, the Nation remains highly segregated by race, communities continue to have vastly different access to critical resources because of historic disinvestment in communities of color, there is still a large wealth gap between people of color and White persons, and the lack of choice for many about where to live persists notwithstanding that the Fair Housing Act barred discrimination based on race and other protected characteristics as a formal matter more than 50 years ago. Both anecdotal evidence and empirical research continue to demonstrate that many low-income families in all protected class groups face barriers to obtaining or keeping housing in well-resourced, low-poverty areas that provide access to opportunity and community assets, such as desirable schools, parks, grocery stores, and reputable financial institutions, among others. Ample research demonstrates that ongoing discrimination and exclusionary practices, not preferences among low-income families and members of protected class groups, drives residential and income segregation today.<sup>11</sup> In addition, continued disinvestment not only in housing, but in community assets in areas that are not well-resourced perpetuates this residential and income segregation.

Research also shows that this lack of choice as to where families can live has serious consequences. Children who move to low-poverty neighborhoods have increased academic achievement, greater long-term chances of success, and less intergenerational poverty.<sup>12</sup> Children who move to low-poverty neighborhoods have also been shown to experience lower rates of hospitalization and lower hospital spending.<sup>13</sup> Meanwhile, adults given the chance to

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<sup>11</sup> See for example, Bergman, Chetty, DeLuca, Hendren, Katz, and Palmer, “Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice,” August 2019, available at [https://opportunityinsights.org/wp-content/uploads/2019/08/cmto\\_paper.pdf](https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_paper.pdf).

<sup>12</sup> Chetty, Hendren, and Katz, “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment,” *American Economic Review*, April 2016. Chetty and Hendren, “The Effects of Neighborhoods on Intergenerational Mobility I: Childhood Exposure and II: County-Level Estimates,” *Quarterly Journal of Economics*, 2018.

<sup>13</sup> Pollack, Blackford, Du, et al. “Association of Receipt of a Housing Voucher With Subsequent Hospital Utilization and Spending,” *JAMA*, 322(21):2115–2124. doi:10.1001/jama.2019.17432, 2019.

move to low-poverty neighborhoods experience reductions in extreme obesity and diabetes.<sup>14</sup> For example, the Opportunity Atlas examines a change in the way the literature has studied and measured poverty and neighborhood conditions by looking at longitudinal information rather than snapshots in time, which allows an evaluation of the root causes of long-term outcomes by looking back at where children grew up.<sup>15</sup> One finding from the Opportunity Atlas suggests that if a child moves from a “below-average to an above-average neighborhood at birth,” it could increase the child’s lifetime earnings by \$200,000.<sup>16</sup> Another study concluded with respect to income disparities that “initiatives whose impacts cross neighborhood and class lines and increase upward mobility specifically for Black men hold the greatest promise of narrowing the [B]lack-[W]hite gap. There are many promising examples of such efforts: mentoring programs for [B]lack boys, efforts to reduce racial bias among [W]hites, interventions to reduce discrimination in criminal justice, and efforts to facilitate greater interaction across racial groups.”<sup>17</sup> Furthermore, researchers have found that even low-income individuals can have an increased life expectancy if they reside in more affluent and educated cities.<sup>18</sup>

For these reasons, the proposed rule requires program participants to not only identify areas that are segregated based on race and other protected characteristics, but also areas (many of them the same ones) that lack critical community assets. Such an inquiry is vital to

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<sup>14</sup> Ludwig, Sanbonmatsu, Gennetian, et al. “Neighborhoods, obesity, and diabetes—a randomized social experiment,” *New England Journal of Medicine*; 365(16):1509–1519. doi:10.1056/NEJMsa1103216, 2011.

<sup>15</sup> Chetty, Friedman, Hendren, Jones, Porter, “The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility,” NBER Working Paper No. 25147 (Jan. 2020), available at <https://opportunityinsights.org/paper/the-opportunity-atlas/>.

<sup>16</sup> *Id.*

<sup>17</sup> Chetty, Hendren, Jones, and Porter, “Race and Economic Opportunity in the United States: An Intergenerational Perspective,” *Quarterly Journal of Economics*, Vol. 135, Issue 2, 711-783 (May 2020), available at <https://opportunityinsights.org/paper/race/>.

<sup>18</sup> Chetty, Stepner, Lin, Scuderi, Turner, Bergeron, and Cutler, “The Association Between Income and Life Expectancy in the United States, 2001-2014,” *The Journal of the American Medical Association*, 315(16): 1750-1766 (2016).



understanding how the neighborhood where someone grows up in many ways determines their life outcomes, including for example by perpetuating significant wealth gaps and health and educational disparities and limiting the overall opportunities that person may have. This is not intended to be a burdensome inquiry. In many cases, it will be clear from local knowledge (including what is gathered through community engagement) that disparities in community assets exist.

This proposed rule also recognizes that there is a need to take a balanced approach when devising ways to overcome fair housing issues. The affirmatively furthering fair housing mandate is intended to increase fair housing choice for persons of all protected class groups, including those with limited income and economic resources. HUD also recognizes that there are often economic factors affecting fair housing choice, which include rising rents and displacement from existing housing due to gentrification. Program participants, in undertaking a balanced approach to overcome fair housing issues should consider the impact of these economic factors. Affirmatively furthering fair housing can involve both bringing investments to improve the housing, infrastructure, and community assets in underserved communities as well as enabling families to seek greater opportunity by moving to areas of the community that already enjoy better community infrastructure and community assets. Therefore, HUD's proposed rule supports program participants' choice to engage in place-based activities, such as preserving affordable housing in particular neighborhoods while making complementary investments in other infrastructure and assets in those neighborhoods, as well as those choices that promote mobility, including housing mobility programs, in order to increase access to well-resourced areas and opportunity for protected class groups that have historically been housed in underserved neighborhoods.

The proposed rule calls on program participants to identify, and over time remedy, unequal access to homeownership opportunities—which is a more direct focus than was required under the 2015 AFFH Rule—because of race, color, national origin, disability, or other protected characteristics. Inequality in access to homeownership has created a ballooning wealth gap among racial and ethnic groups. Homeownership is generally the most traditional and stable way for a family to accumulate wealth; however, this advantage has primarily been made available only to White families, even today.<sup>19</sup> As one researcher described the results of a 2019 study, the median White family had eight times the wealth of the median Black family and five times the wealth of the median Latino or Hispanic family.<sup>20</sup> It is clear that eliminating discrimination from housing-related transactions today will be insufficient to reduce the wealth gap created over many years.<sup>21</sup> While some efforts are underway to remedy this wealth gap, research also shows that current programs that incentivize homeownership may not be designed in a manner that would result in a closing of the wealth gap and an increase in access to homeownership opportunities for persons of color, other protected class groups, and underserved communities.<sup>22</sup> There are myriad ways to reimagine how homeownership incentives can be created and utilized to promote these opportunities more fairly. Evaluating how homeownership can be incentivized, including through public-private partnerships, and made a reality for members of protected class groups and underserved communities may be one way that program

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<sup>19</sup> See McCargo and Choi, “Closing the Gaps: Building Black Wealth through Homeownership,” *Urban Institute* (2020), available at [https://www.urban.org/research/publication/closing-gaps-building-black-wealth-through-homeownership/view/full\\_report](https://www.urban.org/research/publication/closing-gaps-building-black-wealth-through-homeownership/view/full_report).

<sup>20</sup> Schuetz, “Rethinking Homeownership Incentives to Improve Household Financial Security and Shrink the Racial Wealth Gap,” *Brookings Blueprints for American Renewal & Prosperity* (2020), available at <https://www.brookings.edu/research/rethinking-homeownership-incentives-to-improve-household-financial-security-and-shrink-the-racial-wealth-gap/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

participants can affirmatively further fair housing, and this proposed rule explicitly creates space for them to do so.

In addition to the wealth gap, other barriers to homeownership exist for other protected class groups. For example, program participants may identify—and then set goals to remedy—a lack of accessible housing that prevents individuals with disabilities from experiencing housing choice. A 2015 analysis of 2011 American Housing Survey data found that this was a widespread challenge.<sup>23</sup>

#### *D. Summary of Proposed Changes to HUD's July 16, 2015 Final Rule*

##### a. Streamlined Analysis Will Reduce Burden

Under the 2015 AFFH Rule, program participants were required to use an Assessment Tool to conduct their Assessments of Fair Housing (AFHs). The Assessment Tool required them to address more than ninety questions and rely on HUD-provided data, local data, and local knowledge to answer all questions. The Assessment Tool also contained a list of over forty contributing factors.<sup>24</sup> The factors had to be identified and prioritized for each fair housing issue based on the responses to the questions and data analysis conducted.

While the Assessment Tool had the worthwhile goal of ensuring that program participants conducted a thorough analysis in accordance with a standardized process, HUD now proposes a modified approach that is intended to make it simpler for program participants to identify fair housing issues and thus allow them to focus more of the planning process on setting meaningful fair housing goals. While HUD continues to believe that an analysis and evaluation

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<sup>23</sup> Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS), <https://www.huduser.gov/portal/publications/mdrt/accessibility-america-housingStock.html>.

<sup>24</sup> Under the 2015 AFFH Rule, a contributing factor or fair housing contributing factor was defined as “a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues...” 24 CFR 5.152 (2015).

of current and historic circumstances in a program participant's community is necessary to determine appropriate fair housing goals, and that such analysis must be informed by data as well as local knowledge and community input, such objectives can be achieved without requiring program participants to undertake as much independent burden.

Accordingly, this proposed rule eliminates the required use of an Assessment Tool and instead, in § 5.154, sets out a streamlined analysis that program participants must follow to develop their Equity Plans. The required content, which is different for consolidated plan participants and PHAs, consists of fewer questions than the Assessment Tool, and HUD proposes to allow program participants to determine the format for responding to the questions. HUD believes these questions constitute the core of the fair housing inquiry that is required to identify fair housing issues, including what may be causing those issues, and set meaningful fair housing goals. HUD specifically solicits comment below on whether the questions in § 5.154 are easily understood to require this type of response and whether different or additional questions are needed. HUD believes that a more flexible format will allow program participants to tailor responses to local needs and priorities. The proposed rule still requires program participants to ground their analysis in HUD-provided data, local data, and local knowledge (including information obtained during the community engagement process), but does not require a program participant to provide a complete description of the data analyzed in response to each question. Instead, the written responses to the questions should describe the fair housing issues and their causes present in the program participant's geographic areas of analysis, and describe the key sources of information relied upon in fair housing issues and their causes sufficiently to ensure that responses are grounded in data and local knowledge.

By streamlining the written analysis, HUD believes the proposed rule will reduce burden for program participants in conducting their Equity Plans, will result in clearer and more direct identification of fair housing issues, and will allow program participants and their communities to place greater focus on the real task at hand—setting and implementing fair housing goals that are tailored to overcome the fair housing issues they collectively face. HUD also believes that the streamlined written analysis that focuses more on identifying fair housing issues and related causes will enable more program participants to establish meaningful fair housing goals that are concrete and measurable without the need for consultants and contractors.

For similar reasons, HUD is also eliminating the need to identify and prioritize factors contributing to fair housing issues as part of the required analysis within each section of the Assessment Tool provided under the 2015 AFFH Rule. While the lists of contributing factors included in the 2015 AFFH Rule’s Assessment Tool were intended to help program participants set meaningful goals to remedy fair housing issues by first requiring them to identify the causes of those issues, HUD’s experience in implementing the 2015 AFFH Rule showed that this step led to confusion without leading to the development or implementation of meaningful fair housing goals. Program participants are still required to assess the underlying reasons for the fair housing issues they face as part of determining the best and most effective approaches for overcoming them, though HUD believes the approach taken under the 2015 AFFH Rule did not function as initially envisioned.

Ultimately, because of this proposed rule’s emphasis on outcomes, HUD believes it will be unnecessary for program participants to rely on contractors, consultants, or other experts that may be needed for a heavily data-driven written analysis. At the same time, HUD believes the

simplified analysis still requires the core fair housing analysis—including engagement with the data provided by HUD—to drive meaningful goal setting.

b. Revised Fair Housing Planning Procedures Will Simplify Implementation, Reduce Burden, and Increase Transparency

This proposed rule modifies many of the procedures for how fair housing planning is implemented by program participants and their submissions reviewed by HUD compared to the 2015 AFFH Rule based on HUD's own experiences and the feedback of stakeholders regarding their experience with the 2015 AFFH Rule worked in practice.

First, while HUD's 2015 AFFH Rule was designed to provide program participants with maximum flexibility for how to collaborate on an AFH, the two different types of collaboration (joint program participants and regionally collaborating program participants) proved unnecessarily confusing. HUD is proposing to maintain the flexibilities for program participants to collaborate on their Equity Plans, while simplifying the actual procedures for those collaborations.

Second, the 2015 AFFH Rule provided for only 60 days for HUD's initial review of a submitted AFH and required program participants to have an accepted AFH for their consolidated plan, annual action plan, or PHA Plan to be approved, which in turn meant that the failure to have an accepted AFH could result in the loss of funding for program participants and their communities. In practice, this created unnecessary pressure on HUD and program participants to ensure that an AFH was accepted in a relatively short period of time to avoid risking funding that is designed to help low-income families and underserved communities. This timing also limited the extent to which HUD could work with program participants to revise a submitted plan to ensure full compliance with the rule and put program participants on a path to

meaningful fair housing achievements. HUD has revised these procedures in several ways to allow a fuller review and revision process that ultimately results in compliant Equity Plans and meaningful actions by program participants that implement fair housing goals. HUD proposes to increase the review period for submitted plans from 60 to 100 days, providing HUD with more time to work with all program participants to improve their Equity Plans after submission to ensure the Equity Plan meets the regulatory requirements set forth in this proposed rule. The proposed rule provides that HUD can extend that review period for good cause. The proposed rule provides that if a program participant does not have an accepted Equity Plan, HUD may approve a consolidated plan or PHA Plan but only if the program participant furnishes special assurances that require the program participant to achieve an Equity Plan that meets the requirements of this proposed rule within 180 days of the end of HUD's review period for the consolidated plan or PHA Plan, as applicable, and that require the program participant to then amend the consolidated plan, annual action plan, or PHA Plan upon HUD's acceptance of the Equity Plan. As a result, HUD will have a clear mechanism to remedy noncompliance with the requirement to have an accepted Equity Plan, including the ability to take a range of actions (up to and including the cut-off of Federal funding where appropriate) against program participants who fail to provide or comply with such special assurances. HUD's expectation is that review of most Equity Plans will conclude with an acceptance, but the additional available procedures contained in this proposed rule provide mechanisms for HUD to take a progressive series of steps to obtain compliance in cases where this expectation is not met.

Third, while the 2015 AFFH Rule endeavored to align the AFH with program participants' other planning cycles, HUD recognizes that this approach led to difficulty for program participants in determining the date by which their AFHs were required to be submitted.

This proposed rule, while still generally aligning Equity Plan cycles with other program cycles, contains clearer submission deadlines to allow program participants and the public to know with certainty when an Equity Plan will be due to HUD. Furthermore, program participants will have more time to prepare and refine their Equity Plans. HUD also expects to provide more robust technical assistance throughout the planning process. Based on this, and the changes to the required analysis explained throughout this preamble, HUD believes it will be unnecessary for program participants to rely on contractors, consultants, or other experts that they may have chosen to use under the 2015 AFFH Rule. HUD is committed to building stronger partnerships with its program participants in order to fully implement the AFFH mandate.

Fourth, the 2015 AFFH Rule required program participants to report on their progress in subsequent AFHs—essentially, once every five years. HUD believes both that program participants should provide more regular progress updates and that they may need greater flexibility to adjust, revise, or reposition their fair housing goals on a more regular basis, particularly if program participants achieve their goals and need to establish new ones. HUD also believes that transparency around this progress evaluation is necessary to ensure that the community and members of the public are aware of the progress being made, including whether there are obstacles preventing progress from occurring. For this reason, HUD has included the requirement that, as part of their Equity Plans, program participants submit to HUD annual progress evaluations that summarize the status of the implementation of the fair housing goals. HUD does not anticipate that these progress evaluations will be long documents and expects many program participants could meet this requirement in a one- or two-page summary. HUD will also post these annual progress evaluations on its public AFFH webpage to maximize the transparency of the progress being made. At the same time, the proposed rule provides a



mechanism for program participants to seek revision of their established goals at these annual checkpoints.

Finally, the 2015 AFFH Rule’s review process was not transparent enough to allow the public to know why HUD accepted or did not accept an AFH. This proposed rule creates a more transparent review process, pursuant to which submitted Equity Plans will be posted on HUD’s AFFH webpage, the public will have the opportunity to comment on submitted plans (as described further below), and HUD will publish its decisions on Equity Plan submissions. HUD believes that increasing the transparency around its review of Equity Plans will promote engagement by members of the public in the fair housing planning process and will serve to keep HUD and its program participants accountable for meeting their obligation to affirmatively further fair housing. Ultimately, HUD believes that, by having a transparent process, program participants will be better positioned to implement the fair housing goals established in their Equity Plans because their communities will be better equipped to contribute and hold program participants accountable.

c. Modified Community Engagement, Consultation, and Publication Requirements Will Increase Transparency

HUD recognizes that transparency and inclusion are necessary components of implementing the AFFH rule in a manner that ensures that the people the rule is meant to help have a significant voice in shaping outcomes. In this proposed rule, HUD offers modifications to what the 2015 AFFH Rule termed “community participation”—in the now revised “community engagement” section at § 5.158—to include requirements that HUD believes are more likely to lead to broader engagement, particularly by members of protected class groups and other underserved communities who have historically been excluded from these types of discussions.

The proposed rule would also require consultation with various types of organizations, such as Fair Housing Assistance Program agencies and Fair Housing Initiative Program grantees, and other groups representing underserved communities, which include organizations that advocate on behalf of individuals with disabilities such as Centers for Independent Living, Protection & Advocacy Agencies, Aging and Disability Resource Centers, and Councils on Developmental Disabilities, among others. In addition, HUD will require program participants to hold multiple community meetings, at different times of day, and in different locations throughout the jurisdiction to account for the needs of shift workers, families requiring childcare, and individuals with disabilities, among others. Ensuring that all members of a community have a say in the identification of fair housing issues and deciding how available resources are allocated is the first step toward advancing equity for everyone.

HUD intends to maintain an AFFH webpage where all submitted Equity Plans will be posted for public view. The AFFH webpage will include public posting of whether HUD has accepted or has not accepted a plan, as well as the annual progress evaluation that program participants submit. HUD believes that creating a central public site where all of this information can be easily viewed will improve public engagement in the planning and implementation process by enabling community members to provide HUD with additional information that may be pertinent to its review, and to hold program participants accountable for implementing the fair housing goals established in their accepted Equity Plans. HUD may publish submitted Equity Plans or portions of such plans on other HUD-maintained web pages for the purposes of disseminating best practices and in a searchable information clearinghouse to benefit program participants and the general public.

d. New Complaint and Enforcement Mechanisms Will Enhance HUD's Ability to Ensure AFFH Compliance

While the proposed rule continues to focus on planning and goal setting, HUD is proposing to add a complaint and enforcement mechanism to help ensure that program participants comply with their duty to affirmatively further fair housing. This proposed rule, at §§ 5.170 through 5.174, would permit the filing of complaints, and for HUD to open a compliance review in response to a complaint or on its own initiative, about: a program participant's failure to comply with the requirements of the proposed rule; failure to comply with an Equity Plan commitment; or any action that is materially inconsistent with the obligation to affirmatively further fair housing as defined in this proposed rule. This proposed rule would set out how HUD will investigate complaints and conduct compliance reviews and the available mechanisms for HUD to enforce compliance when a program participant is found in noncompliance and voluntary resolution cannot be obtained. HUD has modeled these procedures after existing regulations that implement Federal civil rights laws, particularly those that apply to recipients of Federal financial assistance such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and therefore are familiar to program participants, all of whom are recipients of Federal financial assistance from HUD. *See* 24 CFR parts 1 (Title VI) and 8 (Section 504).

The 2015 AFFH Rule did not include any explicit mechanism for members of the public to file complaints with HUD regarding a program participant's failure to comply with the requirements of the regulation or for HUD to undertake a review of a program participant's compliance. Instead, the primary enforcement tools were HUD's ability to reject a submitted Assessment of Fair Housing or challenge a program participant's certification that it would

affirmatively further fair housing. These tools alone proved to be insufficient because they triggered drastic remedies (such as the suspension or termination of funding) that limited their practical use for ensuring compliance. HUD uses complaint and compliance review processes as one of the standard ways it ensures that program participants satisfy other civil rights obligations that attach to Federal funding and has used complaint processes in other HUD programs as a means to increase compliance. HUD proposes to establish a complaint and compliance process for AFFH, based on its experience implementing the 2015 AFFH Rule, feedback it received from stakeholders in listening sessions, the urgent need to address the systemic inequities in housing, and HUD's belief that community members are well positioned to provide important information regarding whether program participants are meeting their commitments made in the planning process and their duty to affirmatively further fair housing more generally. While HUD proposes to implement an enforcement mechanism for program participants who fail to fulfill the AFFH obligation, HUD understands that certain enforcement mechanisms such as withholding funds could have substantial impacts on consolidated plan program participants and PHAs and the people that they serve. The proposed rule would provide HUD with the ability to tailor remedies appropriately for particular circumstances. In particular, HUD does not intend to take actions that would adversely impact families participating in HUD's assisted housing programs, and is cognizant of the potential for such adverse effects from conditioning the disbursement of funds for public housing programs under Section 8 or Section 9. HUD would maintain a range of enforcement options that can ensure compliance, including finding a PHA in default of the Annual Contributions Contract if the circumstances require.

HUD does not intend this complaint and compliance review process to supplant the planning process as the principal means by which HUD and its program participants will

implement the AFFH obligation and by which the community will have input into how AFFH compliance takes place. The proposed rule provides for public input at multiple points in the planning process, including while the program participant is developing its Equity Plan and while HUD is reviewing a submitted Equity Plan. HUD expects that interested members of the public will actively participate in the community engagement process and raise concerns in that forum about a program participant's identification of fair housing issues or establishment of fair housing goals. It also expects that any concerns the public has regarding a submitted Equity Plan will be provided during HUD's review of the Equity Plan, since the proposed rule permits members of the public to submit such information at that time. HUD will not treat information submitted regarding an Equity Plan HUD is reviewing as a complaint to be investigated; rather it will consider it as additional information that may be relevant to HUD's review of whether the Equity Plan conforms to this rule's requirements. HUD anticipates that these opportunities for the public to participate in the Equity Plan process will reduce the need to resort to the complaint process.

HUD also does not intend the complaint process to be a forum to challenge program participants' day-to-day activities that have little nexus to the AFFH obligation. Program participants are on notice of the types of actions that would be materially inconsistent with their obligation to affirmatively further fair housing because of prior guidance provided by HUD (e.g., the 2015 AFFH Rule, the Fair Housing Planning Guide, the 2015 AFFH Rule Guidebook, and caselaw, including that cited above, interpreting the AFFH mandate).<sup>25</sup> HUD, nonetheless, also commits to providing further guidance as to the alleged conduct that HUD will accept as meriting an investigation. HUD's experience in administering other civil rights statutes with

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<sup>25</sup> The Fair Housing Planning Guide and 2015 AFFH Rule Guidebook are available at FHEO's AFFH webpage <https://www.hud.gov/AFFH>.

similar complaint and compliance review processes indicates that program participants will not be subject to investigations or sanctions arising from frivolous complaints regarding actions that do not actually implicate AFFH compliance. Additionally, HUD observes that the lack of an explicit administrative process that both permits the public to file complaints and authorizes HUD to investigate and take necessary corrective action has not always permitted program participants to avoid such claims. Rather, such allegations have been channeled into False Claims Act suits and other lawsuits or complaints of violations of other laws against program participants that sometimes required enforcement of AFFH in unpredictable ways. HUD has also used its authority to ensure program participant compliance with the Fair Housing Act to investigate and conciliate complaints of AFFH obligations even in the absence of an explicit process. HUD believes it will benefit program participants and the Department to have a regular and defined administrative process for its consideration of such complaints. As described below, HUD is specifically soliciting comment on how it can most effectively institute a complaint and compliance review process to provide as much notice as possible regarding the proper subjects of complaints and compliance reviews and ensure that program participants will not be subjected to frivolous complaints that are not directly tied to the program participant's obligation to affirmatively further fair housing.

e. Changes in Definitions Related to the Fair Housing Analysis Will Add Clarity to and Focus on Core Fair Housing Concepts

As described above, the proposed rule eliminates the need for a separate Assessment Tool and instead sets out the simplified fair housing analysis required of program participants. Many of the definitions in this proposed rule therefore reflect some aspects of that analysis. HUD has eliminated or modified certain definitions from the 2015 AFFH Rule in this proposed rule to

provide program participants and the public greater clarity regarding what the obligation to affirmatively further fair housing encompasses and what HUD's expectations are for its funding recipients. Additionally, HUD believes that by creating these new definitions that they will provide additional information and clarity regarding this proposed rule and the topics that program participants are expected analyze. The new definitions include:

- “*Affordable Housing Opportunities*,” which refers to whether members of protected class groups and underserved communities have equitable access to housing that is affordable to them, including with respect to where such housing is located, whether it meets the needs of families of different sizes, whether it meets the accessibility needs of individuals with disabilities, whether it affords access to opportunity, including community assets, and whether there are factors that adversely affect access to affordable housing, specifically, but not limited to, rising rents, evictions, source of income discrimination, loss of existing affordable housing;
- “*Balanced Approach*,” which refers to HUD's acknowledgement of the balancing of various approaches program participants can employ when undertaking community planning and investments, which results in the balancing of a variety of actions to eliminate the housing-related disparities that result from persistent segregation or lack of integration, the lack of affordable housing in well-resourced areas of opportunity, the lack of investment in community assets in R/ECAPs and other high-poverty areas, and the loss of affordable housing to meet the needs of underserved communities. The proposed definition would make clear that both place-based and mobility strategies are part of a balanced approach necessary to achieve positive fair housing outcomes. A program

participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely on solely place-based strategies;

- “*Community Assets*,” which refers to the types of assets that are often not equitably distributed and available within communities, such as high quality schools, equitable employment opportunities, reliable transportation services, parks and recreation facilities, community centers, community-based supportive services, law enforcement and emergency services, healthcare services, grocery stores, retail establishments, infrastructure and municipal services, libraries, and banking and financial institutions;
- “*Equity or Equitable*,” which refers to the consistent and systematically fair, just, and impartial treatment of all individuals, including individuals who are members of protected class groups or parts of underserved communities that have been denied such treatment, as well as persons otherwise adversely affected by persistent poverty or inequality;
- “*Publication*,” which refers to how HUD will maintain webpages to publicly post Equity Plan materials to enhance transparency and provide opportunities for communities to learn from one another and benefit from the innovative thinking of others;
- “*Underserved Communities*,” which refers to the remedial nature of the AFFH mandate so that groups or classes of individuals, as well as geographic communities who have historically had inequitable access to housing, education, transportation, economic, and other important opportunities, including community assets, within the program participant’s jurisdiction, and HUD would require program participants to take them into account to ensure communities overcome the systemic perpetuation of inequity.



HUD believes that building these definitions and others into the proposed rule itself more directly articulates HUD's expectations for how program participants can comply with this proposed rule and the AFFH mandate than leaving such matters to a separate assessment tool as the 2015 AFFH Rule did.

f. Conforming Amendments to Program Regulations are Necessary for Consistency with this Proposed Rule

This proposed rule contains conforming amendments to program regulations at 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 in order to ensure consistency between this proposed rule and the implementation of programmatic requirements for States, local governments, insular areas, and PHAs. Because HUD and its program participants are required to administer all programs and activities in a manner that affirmatively furthers fair housing, establishing consistent mechanisms in these regulatory provisions is necessary to ensure that program participants are positioned to fulfill this obligation.

*E. Conclusion*

The opportunity to choose where one lives free from barriers or inequities related to race, color, religion, sex, national origin, familial status, or disability is at the very heart of the Fair Housing Act's AFFH mandate. That obligation is meant to ensure that Federal money, which for too long was used to perpetuate segregation and impose discriminatory policies, is instead used to dismantle the enduring legacy of that history. This proposed rule's implementation of the Fair Housing Act's AFFH mandate requires that communities confront and commit to changing historic and ongoing discriminatory practices and policies, engage in proactive planning for the use of Federal funds to ensure funds are used equitably, and implement meaningful actions that affirmatively further fair housing. The new regulation carries forward the core planning process

of the 2015 AFFH Rule, and HUD anticipates that the plans generated by this proposed rule will drive how HUD funds will be used to advance equity and affirmatively further fair housing. The proposed rule also modifies some aspects in order to make the process more user-friendly and less burdensome for program participants, and more accessible and transparent to the public. HUD's objective in this proposed rule is to provide greater support for program participants in performing the necessary analysis and otherwise meeting their obligations, while requiring more inclusion in the planning process for communities that historically have had too little say in it; more transparency for the public as to the decisions that have been made; and more regular progress reporting and opportunity to change course to reflect changed circumstances.

HUD is committed to taking active measures to work with its program participants to develop innovative and consequential ways to affirmatively further fair housing. For those program participants that take the AFFH obligation seriously, HUD anticipates that this rule will be simpler and less burdensome to follow, and that program participants will find HUD to be a helpful partner as they engage their communities and seek creative ways to remedy fair housing issues that have too long been ignored. For those that do not, HUD proposes changes that are intended to make its review process more robust and to otherwise provide for vigorous enforcement to ensure that the AFFH mandate is implemented. Based on the lessons learned from the implementation of the 2015 AFFH Rule, this proposed rule builds on that rule's successes and offers a more streamlined, effective approach to empower program participants and their communities to make informed decisions based on local circumstances to advance equity and affirmatively further fair housing.

### **III. Summary of Proposed Rule**

This rule proposes to amend the regulations in 24 CFR parts 5, 91, 92, 93, 570, 574, 576, 903, and 983 as discussed in this section.

*Affirmatively Furthering Fair Housing Regulation*

This proposed rule would amend HUD regulations in 24 CFR part 5, subpart A, which contains generally applicable definitions and requirements that are applicable to all or almost all HUD programs. This rule proposes to replace the existing subpart A to add new §§ 5.150 through 5.180 under the undesignated heading of “Affirmatively Furthering Fair Housing.” These revised or new sections will provide the regulations that will govern how States, local governments, insular areas, and PHAs comply with their statutory obligation to affirmatively further fair housing, but reserves additional sections in subpart A for HUD to continue to provide regulations that will assist all HUD program participants in more effectively affirmatively furthering fair housing.

*Affirmatively Furthering Fair Housing: Purpose (§ 5.150).*

Revised § 5.150 states that the purpose of the AFFH mandate in the Fair Housing Act is to ensure that Federal funds are used in a manner to overcome the legacy of public and private policies and practices that intentionally or unintentionally have created segregated communities and inequities for people of color and other groups because of the characteristics the Act protects. The purpose of HUD’s AFFH regulation is to provide program participants with an effective approach to aid program participants in identifying and taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, eliminate inequities in access to housing and related opportunities caused by policies or actions that discriminated on the basis of protected class, and foster inclusive communities that are free from discrimination. The new AFFH regulation is intended to provide a straightforward approach for program

participants to advance equity in their communities using Federal financial assistance from HUD, while ensuring that HUD has a mechanism to enforce the mandate.

*Affirmatively Furthering Fair Housing: Application (§ 5.151).*

New § 5.151 provides the general applicability of AFFH requirements as it applies to all of HUD's programs and activities and makes clear that §§ 5.150 through 5.180 in subpart A also imposes a planning requirement on certain program participants.

*Definitions (§ 5.152).*

New § 5.152 provides the definitions that are used for purposes of the AFFH regulation and conforming amendments to existing program regulations. HUD has preserved and modified some of the following definitions that were included in the 2015 AFFH Rule (and in certain instances the AFFH IFR), which include “*Affirmatively Furthering Fair Housing*,” “*Community Engagement*” (formerly “*Community Participation*”), “*Data*,” “*Disability*,” “*Fair Housing Choice*,” “*Fair Housing Issue*,” “*Geographic Area*,” “*Integration*,” “*Local Knowledge*,” “*Meaningful Actions*,” “*Protected Characteristics*,” “*Protected Class*,” “*Racially or Ethnically Concentrated Areas of Poverty*,” “*Region*,” “*Segregation*,” and “*Significant Disparities in Access to Opportunity*.” New terms defined in this section include “*Affordable Housing Opportunities*,” “*Analysis of Impediments to Fair Housing Choice*,” “*Balanced Approach*,” “*Community Asset*,” “*Equity or Equitable*,” “*Equity Plan*,” “*Fair Housing Goals*,” “*Fair Housing Goal Categories*,” “*Fair Housing Strategies and Actions*,” “*Funding Decisions*,” “*Publication*,” “*Publicly Supported Housing*,” “*Responsible Civil Rights Official*,” “*Reviewing Civil Rights Official*,” “*Siting Decisions*,” “*Underserved Communities*,” and “*Well-Resourced Areas*.”

The definition of “*affirmatively furthering fair housing*” explains program participants’ obligations under the Fair Housing Act as described throughout this preamble. This definition

provides greater clarity than the definition contained in the 2015 AFFH Rule and the AFFH IFR by expressly stating that the duty to affirmatively further fair housing extends to all of a program participant's activities, services, and programs relating to housing and community development; it extends beyond a program participant's duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the pervasive segregation and disparities the Fair Housing Act was designed to redress.

The definition of "*affordable housing opportunities*" is included in this proposed rule to assist program participants in identifying whether and in which areas of their communities members of protected class groups lack access to affordable housing opportunities. The definition also includes that the housing must comply with affordability and habitability requirements. This definition also includes the broader concept of whether members of protected class groups and underserved communities have equitable access to housing that is affordable to them, including with respect to where such housing is located and whether it affords access to opportunity, including community assets. HUD anticipates that this definition, as incorporated into the analysis required by § 5.154, will provide a connection between housing affordability, protected characteristic, and access to other opportunities, such as community assets. This definition accounts for whether housing stability for protected class groups is adversely affected by various factors, including rising rents, loss of existing affordable housing, displacement due to economic pressures, evictions, source of income discrimination, or code enforcement. This definition also contemplates that individuals with disabilities who need accessible housing have affordable housing opportunities that meet their needs in areas of their community that also afford access to opportunity. HUD notes that HUD is not changing the standard for HUD-assisted housing in program regulations with the inclusion of this definition for purposes of the

Equity Plan analysis. By assessing where affordable housing is located in a community, as well as who has been successful in accessing that housing, program participants can better understand how the location of such housing, in relation to community assets, promotes integration, provides access to opportunity or is a barrier to such access, and whether there are laws, policies, or practices in their jurisdictions that may impede the provision of affordable housing in certain areas, such as well-resourced areas. With this understanding, program participants will be better positioned to set fair housing goals that can be designed and reasonably expected to result in material positive change. This definition is not intended to align with HUD's programmatic requirements, and so whether housing meets this definition does not speak to whether it complies with programmatic rules.

The definition of "*Analysis of Impediments to Fair Housing Choice*" provides context for the manner in which program participants will meet their obligations to affirmatively further fair housing until such time as they are required to submit an Equity Plan to HUD.

The definition of "*balanced approach*" is added to articulate HUD's acknowledgement that different strategies for remedying fair housing issues can be employed based on the facts and circumstances specific to a program participant's community. Where a community has been starved of investment, some may want to leave for other communities, while others will want to bring those resources to bear to improve the circumstances of where they live. Accordingly, HUD has added this definition to ensure that program participants can adopt different types of strategies that will meaningfully increase fair housing choice in their communities, including by choosing from an array of place-based strategies (e.g., the preservation of existing affordable housing or increased investments in community assets) and mobility strategies (e.g., improved housing counseling, assessing how school assignments are made, or building affordable housing

in well-resourced areas). A combination of actions will likely be necessary in most communities, which would include both place-based and mobility strategies. The proposed rule requires that a program participant's goals, taken together, meet the definition of a balanced approach. HUD provides that place-based and mobility strategies must be designed to achieve positive fair housing outcomes (including accessibility for individuals with disabilities) and that a program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely solely on place-based strategies. HUD believes that the vast majority of, if not all, program participants will be able to set goals that rely on both place-based and mobility-based strategies. HUD seeks specific comment on whether this is a reasonable requirement for every program participant and, if not, the specific circumstances under which it would not be.

The definition of "*community assets*" is added to describe the sorts of high-quality assets that are characteristic of communities that have not suffered from disinvestment and that affect the quality of housing opportunities. It is meant to be a non-exhaustive but illustrative list of assets. Consideration of the location of and access to community assets, by protected class, is an integral part of the analysis of the Equity Plan, which HUD anticipates will allow program participants to be better positioned to understand the specific fair housing issues within their local communities. HUD does not intend to require analysis of community assets to be particularly burdensome and will provide data and technical assistance to support this analysis.

The definition of "*community engagement*" is included to provide program participants with a baseline understanding of what the obligation, more specifically delineated at § 5.158, entails.

The definition of “*disability*” in this proposed rule, as in the 2015 AFFH Rule, is intended to be consistent with other Federal civil rights laws with which program participants must comply, such as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008. HUD incorporates by reference the definition of disability under Section 504 and the ADA, consistent with the Attorney General’s interpretations of that definition, see 28 CFR § 35.108, for purposes of the affirmatively furthering fair housing obligation under Section 808(e)(5) so as to provide consistency and clarity to HUD program participants, which are all already bound by the same definition under those statutes.

The definition of “*equity or equitable*,” which is consistent with Executive Order 13985, is intended to provide program participants with a framework for how to assess their communities in a manner that is fair, just, and impartial.

The definition of “*Equity Plan*” provides a less burdensome and more straightforward approach to fair housing planning and replaces the Assessment of Fair Housing that was required by the 2015 AFFH Rule. The Equity Plan consists of the content included in § 5.154, is submitted to HUD for review, and includes an annual progress evaluation. Program participants may submit an individual Equity Plan or may partner with other program participants to submit a joint Equity Plan, as provided for in § 5.160.

The definition of “*fair housing goals*” sets forth how program participants will overcome the fair housing issues identified in their Equity Plans. “*Fair housing goals*” are designed to go beyond the status quo in the program participant’s community and result in tangible, positive, and measurable fair housing outcomes. Each fair housing goal will include a description of the fair housing issue it is designed to overcome.



The definition of “*fair housing goal categories*” details the seven categories for which program participants must establish fair housing goals to overcome fair housing issues. The purpose of this definition, and related provisions, is to help focus program participants’ prioritization of which identified fair housing issues they will set goals to remedy. HUD understands that, in many cases, it will be beyond the capacity of program participants to set goals to remedy every identified issue in a single 5-year cycle. The fair housing goal categories are intended to provide program participants with a reasonable number of specific areas in which to focus their goals. Program participants may address multiple fair housing issues through a single goal, and doing so need not be difficult. Accordingly, the proposed rule does not require a goal to be set for every identified fair housing issue, but does require that a goal be set that addresses issues in each of the seven fair housing goal categories, which are outlined in § 5.154(f). HUD believes these to be at the core of the AFFH obligation.

The definition of “*fair housing issues*” is modified from the definition in the 2015 AFFH Rule and provides the substantive areas of analysis that program participants will assess in their Equity Plans before setting fair housing goals. “*Fair housing issues*” now also include such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, inequitable access to affordable housing opportunities and homeownership opportunities, laws or ordinances that impede the provision of affordable housing in well-resourced areas, evidence of discrimination or violations of civil rights law or regulations related to housing, and inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure.

The definition of “*fair housing strategies and actions*” helps clarify how program participants will implement the fair housing goals established in their Equity Plans, including with respect to the allocation of funding that may be necessary for purposes of achieving the fair housing goals.

The definitions of “*funding decisions*” and “*siting decisions*” refer to a set of decisions that program participants make about the allocation of HUD funds and other investments in their communities, decisions that have contributed to inequity and segregation in the past and that this proposed rule seeks to reorient in order to advance equity and undo patterns of segregation going forward.

The definition of “*geographic area*” delineates the specific levels of geographic areas of analysis that certain types of program participants must undertake when conducting the analysis required in the Equity Plan by § 5.154. These largely restate the geographic areas of analysis that were established by the 2015 AFFH Rule and the various Assessment Tools that implemented it. HUD flags that while the expected geographic area of analysis for State and insular areas includes the whole State or insular area, including entitlement and non-entitlement areas, this does not change existing requirements that restrict States to using CDBG and other Community Planning and Development funds only in non-entitlement areas.

The definitions of “*integration*,” “*segregation*,” “*racially or ethnically concentrated areas of poverty*,” and “*significant disparities in access to opportunity*,” are included because they are necessary components of the required analysis in order to set and implement meaningful fair housing goals. When appropriate, they identify cross-references to other legal standards that

are also relevant to how these terms apply to specific classes protected under the Fair Housing Act (e.g., integration and individuals with disabilities).<sup>26</sup>

The definition of “*homeownership opportunities*” is included in this proposed rule so that program participants, in conducting their analyses, consider whether members of protected class groups have equitable access to homeownership in their jurisdictions, and if not, to determine what barriers exist to attaining homeownership so that fair housing goals can be established.

The definition of “*publication*” encompasses the posting of the Equity Plan materials for review on a HUD-maintained webpage, which will facilitate transparency of the local decisions made and the HUD review process. The public will be able to track the status of HUD’s review and provide feedback to HUD directly, and communities will be able to learn and benefit from the innovative ideas of others.

The definition of “*publicly supported housing*” sets forth the types of assisted affordable housing that program participants will analyze. HUD is providing data regarding the location and demographics of certain types of such housing, and program participants will also rely on local data and local knowledge for other types of assisted housing operated in the jurisdiction.

The definitions of “*responsible civil rights official*” and “*reviewing civil rights official*” clarify the Departmental official with the authority to make determinations regarding a program participant’s Equity Plan and its compliance with its obligation to affirmatively further fair housing under the Fair Housing Act.

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<sup>26</sup> In 1999, the United States Supreme Court issued the landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the ADA. Following the *Olmstead* decision, there have been increased efforts across the country to assist individuals who are institutionalized or housed in other segregated settings to move to integrated, community-based settings. As a result of the *Olmstead* decision and the integration mandate of Section 504 of the Rehabilitation Act included in HUD’s Section 504 regulation at 24 CFR part 8, HUD has consistently recognized the great need for affordable, integrated housing opportunities where individuals with disabilities are able to live and interact with individuals without disabilities, while receiving the health care and long-term services and supports they need.

The definition of “*underserved communities*,” which is consistent with Executive Order 13985, includes groups or classes of individuals, as well as geographic communities that disproportionately include members of particular protected class groups, who have historically had inequitable access to housing and other community assets.

The definition of “*well-resourced areas*” is included to emphasize that program participants must assess which areas and whether the residents who reside in such areas have high-quality and well-maintained community assets (in view of local economic circumstances), as defined in § 5.152, which afford residents genuine access to opportunity (e.g., infrastructure, high performing schools, economic opportunity, etc.) as a result of public and private investments.

*Equity Plan (§ 5.154).*

New § 5.154 sets forth the substantive requirement for program participants to evaluate their communities in order to more effectively affirmatively further fair housing and advance equity. This section sets forth the seven areas of analysis, which will also serve as fair housing goal categories for which program participants must establish fair housing goals. HUD seeks comment on whether it is appropriate to require every program participant to establish goals in each of the seven categories.

The process described in this section consists of fewer questions than previously required by the 2015 AFFH Rule to which program participants must respond. The specific required questions are codified in this section, but program participants have the flexibility to conduct their Equity Plan in a manner and format that best suits their local needs, so long as the required content is submitted to HUD. HUD will provide program participants with data that include maps, tables, and may include technical assistance that aids program participants in conducting

their analysis. HUD will also continue to provide the existing mapping tools, first provided under the 2015 AFFH Rule, and is exploring ways to improve those offerings and provide additional relevant data. In addition, for purposes of the analysis related to access to affordable housing opportunities, HUD will continue to provide data to assist program participants in assessing disparities among protected class groups based on factors of cost burden, severe cost burden, overcrowding (particularly for large families), and substandard housing conditions. HUD believes this approach will better facilitate the discussions in communities around how to develop and implement meaningful fair housing goals. While HUD's approach under the 2015 AFFH Rule often yielded meaningful fair housing goals, HUD now understands that requiring all program participants to perform extensive data analysis themselves and show their work in a written submission (i.e., requiring program participants to recite back to HUD what the HUD-provided data showed) may have impeded some program participants' ability to focus on outcomes. HUD is now proposing to simplify the required analysis and assist program participants in understanding how to use the relevant data to identify fair housing issues. This will allow program participants to place a greater emphasis on developing fair housing goals, making investment and funding decisions in furtherance of those fair housing goals, and listening to members of the community who have historically lacked equitable participation in such decisions. When establishing fair housing goals, program participants may adopt a small number of goals if such goals could ultimately result in outcomes that have a significant impact toward advancing equity for protected class groups by reducing the adverse effects of fair housing issues. HUD recognizes that fair housing goals may be short-term, in that they can be achieved relatively quickly, or long-term, in that they may take more than one funding cycle, and that

program participants may set both short- and long-term goals in order to ensure that they ultimately affirmatively further fair housing.

Paragraphs (a) and (b) of § 5.154 provide the general requirement to conduct and submit an Equity Plan, including the obligation to engage the community in the development of the Equity Plan. Paragraph (b) makes clear that certain portions of the analysis may rely on local data, local knowledge, and information obtained through community engagement, particularly if HUD is unable to provide data for a specific topic required to be included as part of the analysis. Paragraph (c) provides the general content that must be included in a program participant's Equity Plan and the requirement to incorporate the Equity Plan into subsequent planning documents such as the consolidated plan, annual action plan, and PHA Plan (or any plan incorporated therein) so that program participants can appropriately allocate necessary funding for the implementation of fair housing goals. Paragraph (d) provides the specific content the Equity Plan must contain for local governments, States, and insular areas, including the questions to which these program participants must respond. The questions consist of: (1) Demographics; (2) Segregation and integration; (3) R/ECAPs; (4) Access to community assets; (5) Access to affordable housing opportunities; (6) Access to homeownership and economic opportunity; and (7) Local policies and practices impacting fair housing. Paragraph (e) provides the specific content the Equity Plan must contain for PHAs, including the questions to which PHAs must respond. The questions consist of: (1) Demographics; (2) Segregation and integration; (3) R/ECAPs; (4) Access to community assets and affordable housing opportunities; and (5) Local policies and practices impacting fair housing. As noted above, HUD welcomes comment on whether these questions should be modified for the purposes of small PHAs or if HUD should consider increased flexibilities PHAs can use to comply with the Equity Plan requirement or

alternative approaches HUD can use to ensure that small PHAs comply with their obligations to affirmatively further fair housing.

To assist program participants in conducting their Equity Plans' analysis, HUD intends to continue providing data that program participants can rely on to answer most of the questions that guide the proposed rule's required analysis. Many program participants and others, including researchers, found the raw data HUD provided under the 2015 AFFH Rule to be invaluable. HUD is committed to continuing to provide such data, to improving its current data and mapping tools (e.g., the AFFH-T Data & Mapping Tool), and to building additional tools and data products to further facilitate the fair housing analysis. For example, HUD is contemplating developing a flexible data tool for comparing the locations and demographics of publicly supported housing with patterns of segregation and R/ECAPs. A version of this tool is currently available in the AFFH-T Data & Mapping Tool, in the "Query Tool" option, and HUD would welcome feedback on potential improvements to this functionality. Additionally, as previously described, HUD is contemplating various ways to present this data to program participants outside the AFFH-T interface and to provide technical assistance, which may include explanations that assist program participants in understanding how to use the data to identify fair housing issues.

In addition, HUD intends to issue guidance and technical assistance on how to conduct an Equity Plan analysis and set appropriate goals. HUD intends to tailor this guidance to the various types of program participants, including State agencies and smaller and rural PHAs and consolidated planning agencies. HUD recognizes the wide range of different types of housing and community and economic development agencies that administer these vital programs at the

state and local level, and that many of them have unique geographies and jurisdictional boundaries as well as unique data-related needs.

Program participants will already be familiar with several of the key Equity Plan questions. For example, HUD notes that almost all program participants will already be familiar with the analysis of disparities in access to community assets and affordable housing opportunities, including for protected class groups. To the extent the proposed rule's analysis of "Affordable Housing Opportunities" overlaps with analysis already conducted for the consolidated plan, and often adopted also by PHAs, there is little additional burden on program participants in conducting this part of the analysis in the new Equity Plan. Similarly, new analysis conducted for the Equity Plan can also inform similar parts of the consolidated plan and PHA Plans. HUD recognizes that some program participants may not have direct expertise to be able to fully answer some questions in the Equity Plan analysis section, for example those asking about access to schools, transportation, or employment opportunities. HUD expects that in addition to HUD-provided data, program participants' use of local data and local knowledge, including that gathered through the community engagement process, will assist program participants with conducting these analyses.

Many of the questions are intended to be an opportunity to solicit informed feedback from the community, including local organizations that already work in these spaces, to assist the program participant in assessing disparities in access to community assets by protected class groups. HUD expects the community engagement process may be particularly helpful in consideration of certain aspects of the analysis. HUD does not anticipate that questions relying primarily on input from local data and local knowledge, which may be obtained through the community engagement process, should pose any major additional burden. As provided for in



the proposed rule's definition of "local data" in § 5.152, the proposed rule requires consideration only of such data that "can be found through a reasonable amount of search [and] are readily available at little or no cost." To provide one example, questions asking about "underserved communities" may not require a granular, data-driven analysis in order to identify fair housing issues. Rather, program participants are encouraged to actively engage with these communities in order to obtain the information necessary to conduct the analysis and to identify fair housing issues. This includes opening dialogues and engaging with individuals experiencing homelessness, survivors of domestic violence, people with criminal records, persons identifying as Lesbian, Gay, Bisexual, Transgender, Queer + (LGBTQ+), individuals with disabilities, and others who often have no established forum to inform local policymakers of their issues and needs.

Some of the proposed rule's questions, in asking about changes in demographics or economic trends, ask about a concept known to many stakeholders as "gentrification." The term is used here because of its common colloquial use to facilitate the program participant's and community's ease of understanding the concepts at issue in order to have required discussion about community trends. HUD notes the robust debate around the term "gentrification" and its impact on communities in both social science research and among communities themselves, and program participants can also consider such discussions in their review. This proposed rule does not establish a HUD definition of "gentrification," nor will program participants be required to precisely define the term.

For questions that ask about "livable wage jobs," while HUD provides several data points that relate to employment, labor participation, and proximity to jobs, it acknowledges that the data may not capture the full picture. Program participants may have local data and local

knowledge that addresses this, including information obtained from local organizations that participate in the community engagement process.

As noted above, HUD does not intend for program participants to document the performance of an extensive data-driven analysis for most questions, and instead intends for program participants to focus on effective goal setting to address identified issues. The analysis in the proposed rule is intended to facilitate a balanced approach by permitting the identification of fair housing issues susceptible to being remedied through a variety of policies. For example, if disparities by protected class group are identified in the questions regarding homeownership opportunities, responsive goals could include specific policies to assist first-time homebuyers and expand availability of affordable homeownership opportunities, such as new construction of affordable single-family homes, downpayment assistance using the HOME Program, or zoning code reform. Similarly, an identified issue regarding lack of affordable housing opportunities in certain areas could be remedied through goals such as expanding rental availability through new placements of HOME, HTF, and LIHTC units, geographically targeted project-based vouchers, improved Housing Choice Voucher mobility, or addressing unnecessary regulatory barriers to affordable housing production, strengthening tenant protections, and preservation efforts.

Paragraph (f) describes how program participants must identify and prioritize the fair housing issues for each fair housing goal category. In determining how to prioritize fair housing issues within each fair housing goal category, program participants shall give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for underserved communities, taking into account that different protected class groups may be impacted by different fair housing issues. Paragraph (g) sets the requirements for fair housing goals and for including fair housing goals in the Equity Plan. This paragraph is

intended to provide program participants with greater clarity on what HUD will look for when an Equity Plan is submitted for review, including whether the fair housing goals, when taken together, are designed to overcome the effects of each prioritized fair housing issue.

Broadly, the proposed rule requires program participants to set and implement fair housing goals that are designed and can be reasonably expected to result in a material positive change relating to the fair housing issues that they are intended to address. HUD expects that, in subsequent progress reports and planning cycles, program participants will be able to point to the changes that have resulted from implementation of the goals established in their Equity Plan. For example, if a program participant has identified as an issue segregation in certain areas of its jurisdiction and has set fair housing goals to reduce that segregation, it should be able to point to ways in which implementation of the fair housing goals have resulted in or are in the process of resulting in a decrease in such segregation. This does not mean that program participants must be able to report changes that are occurring with statistically significant data.

HUD recognizes that fully remedying a fair housing issue will often take substantial time and occur in incremental steps, spanning multiple funding and Equity Plan cycles. Thus, HUD expects the fair housing goals will result in material positive change even if that change will be incremental, and it will take multiple funding cycles to fully remedy the fair housing issue. For example, a program participant might set a goal in its Equity Plan to supply 100 units of affordable housing in a well-resourced area. Completing this fair housing goal might not completely remedy the underlying fair housing issues (e.g., segregation) due to the size of the total population and existing segregated residential patterns in the jurisdiction and region. In such circumstances, if HUD accepts the program participant's Equity Plan and the program participant accomplishes its fair housing goal of building the 100 units, the program participant

will have complied with its Equity Plan obligation, but it will still be required to set additional fair housing goals in future Equity Plan submissions to continue tackling the fair housing issue of segregation.

HUD also understands that, with respect to many fair housing issues, forces other than the program participant's actions may influence the course of change. A program participant's fair housing goal can be successful on its own terms even as it fails to accomplish material positive change in terms of the underlying issue it was designed to address. For example, a program participant might identify the lack of affordable housing in well-resourced areas as an issue and set a fair housing goal to eliminate barriers to the siting of affordable housing in well-resourced areas. It might achieve that goal by eliminating the identified barriers, and yet affordable housing is not built in the areas in question for other reasons. In such circumstances, the program participant will have satisfied its obligation with respect to that fair housing goal and will not be deemed to be out of compliance with its Equity Plan obligations. The program participant will be expected to continue to set goals in subsequent planning cycles to address the still existing fair housing issue in ways that will accomplish the required material positive change.

Paragraph (h) consists of additional content that is required for the Equity Plan, including the community engagement process and the submission of certifications and assurances.

Paragraph (i) provides for program participants and their communities to engage in an evaluation of progress toward advancing equity following the acceptance of the Equity Plan. For each Equity Plan submitted following the first Equity Plan, program participants are permitted to provide their annual progress evaluations in the aggregate as part of the overarching progress evaluation required for each new Equity Plan. Paragraph (j) provides for the publication

requirement of the Equity Plan, which HUD will facilitate, in order to increase transparency and allow for program participants and the public to view all Equity Plan submissions and view the Department's decisions regarding such plans. This will allow communities to discover and consider the innovative ideas and strategies other communities may be employing to advance equity in meaningful ways. This paragraph also provides for a mechanism for the public to submit information to HUD regarding the content of a published Equity Plan.

*Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents (§ 5.156).*

New § 5.156 more closely and directly ties the fair housing goals established in the Equity Plan to the subsequent planning processes program participants are required to undertake to ensure that program participants adequately and appropriately undertake and fund programs, services, and activities in a manner that advances equity and affirmatively furthers fair housing. This will provide a more holistic approach to the implementation of the AFFH mandate by requiring program participants to embed fairness and equity into their decision-making processes.

*Community engagement (§ 5.158).*

New § 5.158 sets forth the requirements for community engagement as a key component of the development of the Equity Plan. This section, along with conforming amendments to applicable program regulations, provides program participants the flexibility to conduct this process differently from how they conduct citizen participation for the consolidated plan or annual action plan or the policies and procedures PHAs use for the PHA Plan if they so choose. Program participants' engagement with their communities in the development of the Equity Plan requires the confrontation of difficult issues, and so HUD is providing program participants with

flexibility to determine how best to facilitate those important conversations. HUD expects the community engagement process to focus on the fair housing issues facing communities, and HUD further anticipates that by providing data, guidance, and technical assistance to program participants regarding the fair housing issues demonstrated by HUD-provided data, this focus on community engagement as a source of critical information can be more easily maintained. The community engagement process is intended to be a robust discussion across all sectors of the community so that program participants can make informed choices about how to overcome existing fair housing issues, such as barriers to fair housing choice, and make equitable funding decisions. This section also provides the Federal civil rights requirements with which program participants must comply when conducting in community engagement and permits program participants to utilize the processes in their respective program regulations to undertake these activities.

*Submission requirements (§ 5.160).*

New § 5.160 provides the requirements for the submission of the Equity Plan to HUD, including how program participants may collaborate to submit a joint Equity Plan to HUD, and provides the timeframes for when a program participant's first Equity Plan will be due. The timeframes for the first Equity Plan in this section are intended to be straightforward and easily discernable so that program participants have certainty as to when their obligation to conduct and submit an Equity Plan is triggered. This section also provides for how and when annual progress evaluations will be submitted as well as subsequent Equity Plans. Further, until such time as an Equity Plan is due to HUD, program participants must ensure they are engaging in fair housing planning in a publicly transparent way and this section sets forth how to meet that obligation.

Paragraph (a) allows program participants to collaborate and conduct an Equity Plan (joint Equity Plan) with other program participants (joint program participants), which may allow program participants to pool resources in order to overcome fair housing issues that cross jurisdictional lines. This paragraph sets out the requirements for how program participants collaborate and the obligations of each collaborating participant, as well as notification to HUD of the intent to collaborate on an Equity Plan.

Paragraph (b) sets out the submission deadlines for consolidated plan program participants. These deadlines are tied to the aggregate amount of formula funding the program participant receives from HUD and then is further keyed to the program year that begins on or after a particular date. This paragraph thereby creates a tiered submission schedule, in which the first group of consolidated plan program participants that have an Equity Plan due will be all among the largest such participants. HUD anticipates that this group is better positioned to begin implementation, and the experiences of this first cohort will allow for program participants of different sizes to benefit from technical assistance from HUD during the course of implementation of this proposed rule. Likewise, paragraph (c) sets out the submission deadlines for PHAs based on the aggregate number of units and vouchers the PHA administers, which are then keyed to the program year that begins on or after a particular date. The first cohort of PHAs with an Equity Plan due will also be among the largest PHAs, and their experience will allow PHAs of different sizes to benefit from technical assistance from HUD in advance of an Equity Plan submission.

Paragraph (d) requires, until such time as a program participant must submit an Equity Plan to HUD, that the program participant engage in fair housing planning and sets forth how to

meet this obligation, including what must be submitted to HUD and when such submissions are required.

Paragraph (e) provides for the procedures that HUD will utilize in order to determine when an Equity Plan is due for new program participants. Paragraph (f) sets out the requirements for submitting annual progress evaluations as part of the Equity Plan. Paragraph (g) specifies the deadlines for subsequent Equity Plan submissions. Paragraph (h) provides that program participants must submit an Equity Plan to HUD no less frequently than every five years.

Paragraph (i) requires program participants to include certifications and assurances as part of the Equity Plan submission to HUD. These certifications and assurances are distinct from those submitted in connection with an application for Federal financial assistance.

*Review of Equity Plan (§ 5.162).*

New § 5.162 provides the procedures and standard HUD will use to review submitted Equity Plans. This provision sets forth the timing for HUD's review and what may occur as a result of HUD's review—HUD may accept the Equity Plan, extend the time for review for good cause, or provide notice to the program participant that HUD does not accept the Equity Plan and the reasons why. Specifically, HUD will have 100 calendar days from the date the Equity Plan is submitted to review the plan. HUD's acceptance of an Equity Plan is not a determination of whether the program participant has met its obligation to affirmatively further fair housing under the Fair Housing Act and means only that the program participant's submission appears to meet the requirements of this proposed regulation.

Paragraph (a) sets out the process for review and what HUD's acceptance of an Equity Plan means. Paragraph (b) sets out the standard HUD will apply when determining to accept or



not to accept an Equity Plan—HUD will not accept the Equity Plan if any portion of it is inconsistent with fair housing or civil rights requirements, which includes but is not limited to any material noncompliance with the requirements of §§ 5.150 through 5.180. This paragraph provides examples of reasons why HUD will not accept an Equity Plan. In the event an Equity Plan is not accepted, Paragraph (c) sets out the procedures for program participants to revise and resubmit their Equity Plan to HUD. Paragraph (d) provides ways HUD, at its discretion, can incentivize and support program participants that establish ambitious fair housing goals in their Equity Plans including for example assisting program participants in securing additional resources for implementing their fair housing goals and achieving positive fair housing outcomes in their communities.

Paragraph (e) explains the procedures for when a program participant does not have an accepted Equity Plan at the time their consolidated plan or PHA Plan, as applicable, must be submitted to HUD. As explained above, the proposed rule provides that a consolidated plan or PHA Plan (or any plan incorporated therein) may be accepted under such circumstances, but only if a program participant provides special assurances that it will submit an Equity Plan that meets the regulatory requirements within 180 days of the end of HUD's review period for the consolidated plan or PHA Plan. HUD notes that failure to provide such special assurances will lead to the disapproval of the applicable programmatic plan. If the Secretary determines that there has been a failure to fulfill the terms set out in the special assurances, the Secretary will initiate the termination of funding, refuse to grant or to continue to grant Federal financial assistance, or seek other appropriate remedies. In addition, paragraph (e) explains that a program participant's failure to provide or comply with special assurances can provide the Secretary a basis to challenge the validity of the program participant's AFFH certification pursuant to §

5.166. Finally, paragraph (e) specifies that the procedures HUD will follow if there is a failure to comply are at § 5.172 and that the special assurances are subject to the publication requirement and will be made available on HUD's AFFH webpage.

*Revising an accepted Equity Plan (§ 5.164).*

New § 5.164 sets out the minimum criteria for when an Equity Plan must be revised—that is, when a material change occurs, upon written notification from the Responsible Civil Rights Official (Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee) specifying a material change that requires the Equity Plan to be revised, or a program participant chooses to revise its Equity Plan. Paragraph (a)(1)(i) provides examples of what a material change would include, such as Presidentially declared disasters under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. A material change may occur because the program participant's jurisdiction receives additional Federal financial assistance, new fair housing issues emerge in the program participant's jurisdiction, significant demographic changes occur in the program participant's jurisdiction, or civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders occur. Paragraph (a)(1)(ii) specifies that the Responsible Civil Rights Official may notify program participants in writing that a material change has occurred that requires revision. Paragraph (a)(2) sets out the circumstances under which a program participant may choose to voluntarily revise its previously accepted Equity Plan, with permission from HUD. HUD intends that this provision be used by program participants who face changed circumstances that make it difficult or impossible to meet established fair housing goals or otherwise require revisions to their Equity Plans. HUD does not intend this provision to be used by program participants that simply fail to accomplish the fair housing goals they established. Paragraph (a)(3) sets out the requirements for a revised

Equity Plan. Paragraph (b) establishes the timeframes that will apply when revising an Equity Plan, paragraph (c) requires the revised Equity Plan to be submitted to HUD for review, and paragraph (d) requires that, once a revised Equity Plan has been accepted by HUD, the program participant incorporate any revised fair housing goals into their consolidated plan, annual action plan, PHA Plan or any plan incorporated therein within 12 months of the date of HUD's acceptance of the revised Equity Plan.

*AFFH certifications required for the receipt of Federal financial assistance (§ 5.166).*

New § 5.166 requires program participants to provide certifications as part of the submission of their required consolidated plan, annual action plan, or PHA Plan, or any plan incorporated therein, pursuant to 24 CFR part 91 and 24 CFR part 903, as applicable, that they will affirmatively further fair housing in order to receive Federal financial assistance from HUD.

Paragraph (a) of this section requires a certification that program participants will affirmatively further fair housing and take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended. These certifications are made in accordance with applicable program regulations, specifically 24 CFR part 91 for consolidated plan program participants and 24 CFR part 903 for PHAs.

Paragraph (b) sets out the policies and procedures for when and how the Department will challenge the validity of an AFFH certification. HUD will endeavor to voluntarily resolve any potential inaccuracy or noncompliance with an AFFH certification that could result in the disapproval of a consolidated plan, annual action plan, or PHA Plan, and it expects recipients of Federal financial assistance to work cooperatively with the Department to reach voluntary resolution when there is a potential failure to comply with an AFFH certification or the

obligation to affirmatively further fair housing. In the event this does not occur, this paragraph sets out the procedures HUD will use. This paragraph also sets forth how the process will work if there is evidence the program participant's certification is inaccurate. For example, if the noncompliance cannot be voluntarily resolved, HUD may set conditions on a grant for a consolidated planning program participant (see e.g., 2 CFR 200.208) or reject the AFFH certification. This paragraph also specifies how certifications may be challenged in the context of joint Equity Plans with respect to one program participant, but not necessarily all joint program participants.

*Recordkeeping (§ 5.168).*

New § 5.168 requires program participants to maintain sufficient records that would enable the Responsible Civil Rights Official to determine whether the program participant has complied with or is complying with their AFFH obligations. This provision permits access to records by the Responsible Civil Rights Official to make such a determination and sets out examples of the types of records program participants should maintain in order to demonstrate their compliance with this proposed rule. By providing examples of the types of records HUD would expect program participants to maintain, HUD is providing notice to program participants about how to best demonstrate their compliance to HUD.

*Compliance procedures (§ 5.170).*

New § 5.170 creates a process that allows members of the public to submit information to HUD alleging that a program participant has failed to comply with this proposed rule or its Equity Plan, or that the program participant has taken action that is materially inconsistent with its obligation to affirmatively further fair housing, as defined in this proposed rule. It then provides that, in response to such a complaint or of its own accord, HUD may initiate an

investigation to determine the program participant's compliance following procedures consistent with existing processes used for other Federal civil rights statutory and regulatory requirements accompanying the receipt of Federal financial assistance, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. *See* 24 C.F.R. parts 1 (Title VI) and 8 (Section 504).

As described above, HUD does not intend the complaint process to be used to relitigate decisions made by program participants in the planning process after opportunity for community input and HUD's acceptance of an Equity Plan. HUD specifically seeks comment on how it can effectively implement a complaint and compliance review process that works in tandem with the proposed planning process including specific regulatory text that would be in accord with these principles. HUD also seeks comment on whether and the extent to which setting out an AFFH complaint and compliance review process is likely to facilitate AFFH compliance. HUD recognizes that any investigation creates some burden on program participants and seeks comment on ways HUD can minimize the burden associated with an investigation while maintaining a mechanism for effectively enforcing the Fair Housing Act's AFFH mandate.

Paragraph (a)(1) provides for submission of complaints and describes the permissible subject matter of such complaints. A complaint must allege the failure to comply with a specified requirement of this proposed rule; a failure to meet specific commitments a program participant has undertaken in the Equity Plan; or that the program participant has acted or is acting in a manner that is materially inconsistent with its obligation to affirmatively further fair housing, as defined in this regulation. This subject matter restriction is intended to make clear that HUD does not view the complaint process as a vehicle for general complaints about the activities of HUD program participants that lack nexus to the AFFH requirement.

With respect to allegations that a program participant is failing to meet its Equity Plan commitments, HUD understands that accomplishing the goals set out in Equity Plans will not always happen immediately. Accordingly, the complaint process should not be used to attempt to micromanage the pace and manner in which they are accomplished, so long as program participants are continuing to make efforts to comply. Similarly, a program participant's inability to meet an Equity Plan commitment because of circumstances beyond its control will not be treated as a violation, though the program participant will be expected to disclose those circumstances in its annual progress evaluation and should seek to modify the relevant portion of its Equity Plan. With respect to claims that a program participant is acting in a manner that is materially inconsistent with its AFFH obligation, that standard is intended to mirror the certification that program participants make regularly that they will take no action materially inconsistent with that obligation. It is not intended to create any new substantive requirement for program participants, but rather to provide a manageable and predictable process to investigate and enforce compliance with the existing AFFH obligation in a manner that does not necessarily require HUD to challenge the validity of the certifications submitted in connection with the receipt of Federal financial assistance. There is no requirement that each individual action program participants take be in furtherance of the AFFH obligation, but rather program participants' actions must collectively affirmatively further fair housing and they may not take actions that are materially inconsistent with their obligation to affirmatively further fair housing. Therefore, it generally would be insufficient for a complainant to allege that a routine decision made or routine action taken by a program participant does not affirmatively further fair housing. HUD seeks comment on whether it should further clarify the scope of permissible complaints,

including by reference to specific examples of subject matter that would or would not be the appropriate basis of a complaint.

Paragraph (a)(2) further describes the procedures HUD will utilize when a complaint regarding a program participant's obligation to affirmatively further fair housing is received. Paragraph (a)(3) provides that complaints shall be filed within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause, such as where the complaint concerns an alleged violation that took place more than a year previously but was not disclosed to the public until more recently.

Paragraph (b) sets forth the procedures HUD will utilize when it initiates an investigation of either a complaint filed with the Department or a review initiated by the Department, in order to ascertain whether there has been a failure to comply with the program participant's obligation to affirmatively further fair housing. Paragraphs (b)(1) and (b)(2) provide that the Responsible Civil Rights Official will provide notice to the program participant of the investigation, and may conduct interviews, request records, and obtain other information required to determine whether there has been a failure to comply. Paragraph (b)(3) provides that the Responsible Civil Rights Official shall attempt informal resolution where appropriate. In doing so, HUD will be mindful that program participants may have multiple ways available to them to remedy an alleged violation. While HUD believes it is helpful to provide a program participant with suggested remedies to facilitate discussions of appropriate resolutions, it does not intend to be prescriptive about the remedy a program participant ultimately agrees to so long as it is adequate to address the alleged violation. Paragraph (b)(3) also sets out the process that will occur if an informal resolution with the program participant cannot be achieved and a violation is found—the Responsible Civil Rights Official will issue a Letter of Findings. Paragraphs (b)(4) through

(b)(6) set out the required contents of a Letter of Findings, including findings of facts and conclusions of law, a description of a remedy for each violation found, and notice of the rights and procedures under §§ 5.172 and 5.174, which include the right of the program participant or complainant (if any) to request review of the Letter of Findings within 30 calendar days from the date of issuance and the procedures for such a review.

Paragraph (c) provides that the mechanism for informal resolution of matters is through either the execution of a Voluntary Compliance Agreement between the program participant and HUD, which may occur at any stage of processing of the matter, or, in appropriate circumstances, the Responsible Civil Rights Official may seek, in lieu of a Voluntary Compliance Agreement, assurances or special assurances of compliance.

Paragraph (d) makes it a violation of this proposed rule for a program participant or other person to intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this proposed rule or the Fair Housing Act because of testimony, assistance, or participation in any manner in the filing of a complaint, an investigation, proceeding, or hearing under §§ 5.150 through 5.180. HUD takes seriously allegations of retaliation and will investigate such claims.

The provisions above are largely modeled on existing HUD regulations with respect to complaints regarding and enforcement of civil rights requirements that attach to the receipt of Federal financial assistance, such as Title VI and Section 504. HUD has used those regulations as a model because they are familiar to HUD and to program participants. HUD seeks comment on whether any modifications to these procedures are appropriate for purposes of considering alleged violations of the AFFH obligation.

*Procedures for effecting compliance (§ 5.172).*



New § 5.172 sets forth the procedures HUD will follow when informal or voluntary resolution through a Voluntary Compliance Agreement cannot be achieved. Paragraph (a) provides the non-exhaustive list of ways in which the Responsible Civil Rights Official may effect compliance, which include: a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under any law of the United States, or any assurance or contractual undertaking (which includes the assurances and certifications made in connection with grant agreements and the requirements of this proposed rule); the initiation of an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action pursuant to 24 CFR 180.415, which may seek the suspension or termination of or refusal to grant or to continue to grant Federal financial assistance along with any other appropriate relief to remedy the noncompliance with this proposed rule; the initiation of debarment proceedings pursuant to 2 CFR 2424; and any applicable proceeding under State or local law. This paragraph incorporates the familiar and longstanding mechanisms that HUD uses to effect compliance with fair housing and civil rights requirements by recipients of Federal financial assistance.

Paragraph (b) provides for the remedies that will be available to the Department if a program participant fails or refuses to furnish an assurance required under §§ 5.160(i), 5.162(e), or 5.170(c), or if the program participant otherwise fails to comply with the requirements of this proposed rule. Specifically, in these circumstances, the Department may seek to terminate, refuse to grant, or not continue Federal financial assistance. Paragraph (c) further details the predicate steps that must occur prior to an order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective. These procedures are intended to ensure that program participants', as recipients of entitlement grants from HUD, due process

rights are satisfied prior to any termination, suspension, or refusal to grant or to continue to grant Federal funds. Like those in paragraph (c), the procedures in paragraph (d) are the same procedures that exist under the other Federal civil rights statutes requiring compliance by recipients in connection with the receipt of Federal funds. As drafted in this proposed rule, these procedures are written in a manner to give program participants greater clarity as to how this process will be operationalized. Furthermore, Paragraph (d) ensures that HUD will provide appropriate and proper notice to the State or local government official when the Secretary determines that a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5318) has failed to comply with this proposed rule. This notice is intended to safeguard the due process rights of recipients and is consistent with regulatory and statutory requirements of the Community Development Block Grant program.

*Hearings (§ 5.174).*

New § 5.174 describes the procedures for administrative hearings that HUD will follow should it need to effect compliance by filing a Complaint and Proposed Notice of Adverse Action pursuant to 24 CFR 180.415 before HUD's administrative law judges. These procedures are consistent with the hearing procedures contained in other regulatory schemes implementing the Federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. They should be familiar to both HUD and program participants and are generally governed by HUD's regulation on Consolidated HUD Hearing Procedures for Civil Rights Matters at 24 CFR part 180. However, this provision is included to ensure that program participants understand the procedures that would be applicable.

*Conforming Amendments Consolidated Plan Regulations (24 CFR Part 91)*

Because the AFFH regulation in 24 CFR part 5 builds on existing consolidated plan regulations with respect to the community engagement process, the obligation to incorporate fair housing goals from the Equity Plan into subsequent planning documents, the submission of certifications, and procedures for effecting compliance with this proposed rule, conforming amendments to the consolidated plan regulations must be made to reflect the incorporation of the Equity Plan process into the consolidated planning process.

#### Applicability (§ 91.2)

This section specifies that all programs covered by the consolidated plan must comply with the requirements to affirmatively further fair housing.

#### Definitions (§ 91.5)

Section 91.5, the definition section of HUD's consolidated plan regulations, would be revised to reflect that the term "*Equity Plan*" is defined in 24 CFR part 5.

#### Consultation; Local Governments (§ 91.100)

Section 91.100 of HUD's consolidated plan regulations would be amended to account for the community engagement process and procedures required for the development of the Equity Plan pursuant to § 5.158.

Paragraph (c) of § 91.100, which requires the local government to consult with the local PHA, would be amended to provide that the jurisdiction must also consult with the PHA regarding the Equity Plan, including affirmatively furthering fair housing strategies and meaningful actions that will implement the fair housing goals from the Equity Plan.

The proposed rule adds a new paragraph (e) to § 91.100 to address the requirement to affirmatively further fair housing. Paragraph (e) provides that the local government shall consult with community- and regionally-based organizations that represent protected class members or

enforce fair housing laws, such as state or local fair housing enforcement agencies, including participants in the Fair Housing Assistance Program (FHAP), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within its jurisdiction.

As noted in paragraph (e), this consultation will help provide a better basis for the local government's Equity Plan, its certification to affirmatively further fair housing and other portions of the consolidated plan concerning affirmatively furthering fair housing. Paragraph (e) provides that the consultation required under this paragraph can occur with any organizations that have the capacity to engage with data informing the Equity Plan and are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the Equity Plan, the consolidated plan, and their implementation. A Fair Housing Advisory Council or similar group that includes community members and advocates, fair housing experts, housing and community development industry participants, and other key stakeholders can meet this critical consultation requirement.

The proposed rule requires consultation to occur throughout the fair housing planning process, meaning that the jurisdiction will consult with the organizations described in this section in the development of both the Equity Plan and the consolidated plan. The AFFH-related consultation on the consolidated plan shall specifically seek input into how the fair housing goals identified in the accepted Equity Plan will be incorporated into the consolidated plan, including funding allocations. This community input and consultation is critical to ensure that the jurisdiction is meeting the fair housing needs of the community through the implementation of the fair housing goals from the Equity Plan into the consolidated plan.

### Citizen Participation Plan; Local Governments (§ 91.105)

This section is amended to provide program participants with the option to incorporate and include the community engagement requirements from § 5.158 for the development of the Equity Plan into the requirements governing the local government's citizen participation plan, should the program participant decide to do so. While reference to the Equity Plan is made throughout § 91.105, the amendments to specifically note are as follows:

Paragraph (a)(1) distinguishes the citizen participation plan required for purposes of the consolidated plan from the community engagement requirements of § 5.158 for purposes of the Equity Plan. This paragraph provides jurisdictions with the flexibility to include the policies and procedures it will undertake for purposes of the Equity Plan in the citizen participation plan, so long as all requirements for community engagement contained in §§ 5.150 through 5.180 of this title are included in the citizen participation plan; however, this paragraph does not require program participants to amend their citizen participation plans should they choose to undertake community engagement for purposes of the Equity Plan separate from citizen participation for purposes of the consolidated plan.

Paragraph (a)(2)(i) of this section would be amended to add explicit reference to residents and other interested parties, including members of protected class groups that have historically been denied equal opportunity and underserved communities, that are encouraged to participate in the development of the Equity Plan and revisions to the Equity Plan, along with participation in the development of the consolidated plan and substantial amendments to the consolidated plan.

Paragraph (a)(2)(ii), which encourages the participation of local and regional institutions, would be amended to reflect that such participation is not only important to the consolidated plan but to the Equity Plan as well.

Paragraph (a)(2)(iii), which addresses consultation with PHAs, would be amended to include how the jurisdiction will consult with the PHA regarding the jurisdiction's Equity Plan and how the jurisdiction will affirmatively further fair housing through implementation of its fair housing goals from the Equity Plan.

Paragraph (a)(2)(iv) of this section, which encourages the jurisdiction to explore alternative techniques to encourage public engagement in the development of the consolidated plan and Equity Plan would be amended to note that, to the extent the jurisdiction includes the community engagement requirements for the Equity Plan in its citizen participation plan, the techniques described must be consistent with the requirements at § 5.158, including the nondiscrimination requirements detailed in that section.

Paragraph (a)(3) would be amended to ensure jurisdictions meet their civil rights obligations when seeking comment on proposed plans, particularly with respect to individuals with disabilities and limited English proficient (LEP) residents of the community.

Paragraph (a)(4) would be amended to set forth how the requirements of paragraph (a)(3) apply to the Equity Plan's development for purposes of providing language assistance to ensure meaningful access to participation by LEP residents.

The proposed rule adds new paragraph (a)(5) to detail for jurisdictions how to meet their obligation to ensure effective communication with persons with disabilities during the development of the consolidated plan and Equity Plan. These requirements are consistent with

those contained in the implementing regulations for Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

Paragraph (b) of § 91.105 would be amended to provide that to the extent the program participant includes the Equity Plan and the requirements of § 5.158 in their citizen participation plan, those requirements would be in addition to the requirements for the consolidated plan, which are described in paragraph (b)(1).

Paragraph (c) of § 91.105 would be amended so that the local government must specify the criteria the local government will use for determining when revisions to the Equity Plan will be appropriate, and provides that, at a minimum, the local government's criteria must include the criteria specified in 24 CFR 5.164, if the Equity Plan is included in the citizen participation plan.

Paragraph (e) of § 91.105 would be amended to address the existing requirement for the number of public hearings to hold on the jurisdiction's consolidated plan and how those requirements differ from what is required for the development of the Equity Plan pursuant to § 5.158.

Paragraphs (f), (g), (i), and (j), would each be revised to reference the Equity Plan and the applicable fair housing and civil rights requirements for conducting meetings and making documents publicly available. In addition, paragraph (j) would be amended to explain that the complaint procedures the jurisdiction establishes in the citizen participation plan are applicable to the consolidated plan and are distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170.

Consultation; States (§ 91.110)

This section would be revised to provide for the Equity Plan to be subject to the same consultation requirements as State consolidated plans. Two new subparagraphs would be added to paragraph (a) of this section.

Paragraph (a)(1) would specifically address consultation pertaining to public housing, with the objective to ensure that the PHA Plan is consistent with the consolidated plan, including with respect to the fair housing goals established in the Equity Plan.

Paragraph (a)(2) would address consultation pertaining to affirmatively furthering fair housing, with the objective to ensure that there is a meaningful Equity Plan.

Citizen Participation Plan; States (§ 91.115)

References to the Equity Plan would be added to paragraphs (a)(1) and (a)(2) of this section. The amendments to this section include the revisions to paragraph (a)(3) and (a)(4) that would require reasonable efforts to provide language assistance to LEP residents and adding new paragraph (a)(5) that requires ensuring effective communication with persons with disabilities, as required by Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, and their respective implementing regulations.

Paragraph (b) of this section, which addresses development of the consolidated plan, would be amended to address development of the Equity Plan in addition to the consolidated plan, to the extent the State decides to include the Equity Plan in its citizen participation plan.

Paragraphs (f) and (h) of this section, which address availability of information to the public's access to records, and complaints, respectively, would be amended to reference the Equity Plan. Paragraph (h) would also be revised to make clear that the complaint process in the State's citizen participation plan is distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170.



### Strategic Plan (§ 91.215)

This section of the consolidated plan regulations describes the prescribed content of the local government's strategic plan. This proposed rule adds to this section a new paragraph (a)(5) that requires the jurisdiction's consolidated plan to describe how the priorities and specific objectives of the jurisdiction will affirmatively further fair housing, and that the description should be done by setting forth strategies and actions consistent with the goals and other elements identified in an Equity Plan conducted in accordance with § 5.154. New paragraph (a)(5) provides that for issues not addressed by these priorities and objectives, the plan must identify how these goals have been incorporated into the plan consistent with the requirements of §§ 5.150 through 5.180.

### Action Plan (§ 91.220)

This section of the consolidated plan regulations lists the items that comprise a local government's action plan. Paragraph (k) of § 91.220 is divided into two subparagraphs. Paragraph (k)(1) requires the action plan to address the actions that the local government plans to take during the next year to address fair housing issues identified in the Equity Plan. Paragraph (k)(2) addresses the existing provision of paragraph (k), which is the requirement of the local government to list the actions that it plans to take to address, among other things, obstacles to meeting underserved needs, and fostering and maintaining affordable housing.

Paragraph (l) of this section, which sets forth the program-specific requirements, would be revised to include references to the Equity Plan and the fair housing goals incorporated from the Equity Plan for purposes of how they relate to each program covered by the Action Plan.

### Certifications (§ 91.225)

The proposed rule would amend paragraph (a)(1) of this section to require the local government's certification that it will affirmatively further fair housing and it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

#### Monitoring (§ 91.230)

The proposed rule revises this section to provide that a local government's monitoring of its activities carried out in furtherance of the consolidated plan, must include monitoring of strategies and actions that address the fair housing issues identified in the Equity Plan.

#### Special Case: Abbreviated Consolidated Plan (§ 91.235)

Paragraph (c) of this section, which defines what is an abbreviated plan, is revised to provide that the abbreviated plan must describe how the jurisdiction will affirmatively further fair housing by addressing issues identified in an Equity Plan conducted in accordance with 24 CFR 5.154.

#### Housing and Homeless Needs Assessment (§ 91.305)

The proposed rule would amend § 91.305, which requires States to provide a concise summary of the estimated housing needs projected for the ensuing 5-year period, would be revised in paragraph (b), which requires a description of the persons affected under the plan, in order to allow States to utilize the analysis contained in the Equity Plan relating to affordable housing opportunities pursuant to §§ 5.152 and 5.154 to satisfy this requirement, to the extent the Equity Plan already contains such information.

#### Strategic Plan (§ 91.315)

This section of the consolidated plan regulations describes the prescribed content of the State government's strategic plan. The changes made to this section mirror the changes made to

## § 91.215.

### Action Plan (§ 91.320)

This section of the consolidated plan regulations describes the prescribed content of the State government's action plan. The changes made to this section mirror the changes made to § 91.220, but are found in paragraph (j) of § 91.320. In addition, paragraph (k) of this section, which describes the program-specific requirements, would be revised to distinguish any activities or procedures applicable for programmatic requirements from those relating to fair housing and civil rights requirements, including the obligation to affirmatively further fair housing.

### Certifications (§ 91.325)

Similar to the amendment to § 91.225, the proposed rule would amend paragraph (a)(1) of § 91.325 to require the State's certification that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

### Monitoring (§ 91.330)

This section of the consolidated plan regulations describes the State's monitoring of its activities carried out in furtherance of the consolidated plan. The changes made to this section mirror the changes made to § 91.230.

### Strategic Plan (§ 91.415)

This section of the consolidated plan regulations describes the prescribed content of a consortium's strategic plan. This section requires a consortium to comply with the provisions of § 91.215, which is proposed to be revised by this rule to incorporate the Equity Plan in the strategic plan. The change that would be made to § 91.415 by this rule is to require the consortium to set forth, in its strategic plan, strategies and actions consistent with the fair

housing goals identified in an Equity Plan conducted in accordance with new §§ 5.150 through 5.180.

#### Action Plan (§ 91.420)

This section of the consolidated plan regulations describes the prescribed content of a consortium's action plan. Paragraph (b) of § 91.420 is revised to provide that the action plan must include actions that the consortium plans to take during the next year that will address fair housing issues identified in the consortium's Equity Plan.

#### Certifications (§ 91.425)

As with the amendments to §§ 9.225 and 91.325, the proposed rule would amend paragraph (a)(1) of this section to require the consortium's certification that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

#### Monitoring (§ 91.430)

This section of the consolidated plan regulations describes the consortium's monitoring of its activities carried out in furtherance of the consolidated plan. The changes made to this section mirror the changes made to § 91.230.

#### HUD Approval Action (§ 91.500)

This section of the consolidated plan regulations sets out, among others, the standards by which HUD will review a submitted consolidated plan. Paragraph (b) of this section would be revised to make clear for program participants that the standards set forth in this section are for purposes of the consolidated plan and are distinct from the standards at § 5.162 for purposes of the Equity Plan.

#### Amendments to the Consolidated Plan (§ 91.505)

This section lists the criteria and procedures by which a jurisdiction must amend its approved consolidated plan. The proposed rule adds a new paragraph (a)(4) to allow amendments to the plan to make necessary changes to account for any revisions to an Equity Plan that is accepted or revised pursuant to § 5.164 after a consolidated plan is in effect.

#### *HOME Investment Partnerships (HOME) Program Regulations (24 CFR Part 92)*

##### Definitions (§ 92.2)

Section 92.2, the definitions section of HUD's HOME regulation, would be revised to reflect that the terms Affirmatively Furthering Fair Housing and Equity Plan are defined in 24 CFR part 5.

##### Affirmatively Furthering Fair Housing (§92.5)

This section specifies that all participating jurisdictions must comply with the requirements to affirmatively further fair housing.

##### Program Description (§ 92.61)

This section sets forth how a recipient will structure its use of HOME funds. Paragraph (c)(5) of this section specifies the certifications required for insular areas and would be amended to account for an insular area's obligation to affirmatively further fair housing and conduct its Federally funded programs and activities in a manner that is consistent with Federal fair housing and civil rights requirements.

##### Submission of a Consolidated Plan and Equity Plan (§ 92.104)

This section of the HOME program regulations which addresses the responsibility of a participating jurisdiction to submit its consolidated plan to HUD is revised to provide that the

jurisdiction must also submit its Equity Plan to HUD in accordance with the AFFH regulations in 24 CFR part 5, subpart A.

#### Eligible Administrative and Planning costs (§ 92.207)

This section sets forth the eligible administrative and planning costs for the HOME program. Paragraph (d) of this section specifically allows for activities relating to fair housing and the obligation to affirmatively further fair housing, and would be amended to cross reference certifications under section 5.166.

#### Other Federal Requirements and Nondiscrimination (§ 92.350)

This section requires participating jurisdictions to comply with Federal requirements, including nondiscrimination requirements. Paragraph (a) of this section would be amended to include the obligation to affirmatively further fair housing.

#### Affirmative Marketing; Minority Outreach Program (§ 92.351)

This section requires each participating jurisdiction to adopt and follow affirmative marketing procedures and requirements. Paragraph (a) would be amended for consistency with the obligation to affirmatively further fair housing and to better clarify a recipient's affirmative marketing obligations.

#### Recordkeeping (§ 92.508)

The proposed rule would amend the recordkeeping requirements of the HOME program to provide in paragraph (a)(7)(i)(B) of this section to require as part of the documentation that the participating jurisdiction has taken actions to affirmatively further fair housing, including documentation relating to the participating jurisdiction's Equity Plan and the requirements at § 5.168, as well as documentation relating to the participating jurisdiction's AFFH certification.

#### *Housing Trust Fund (HTF) Regulations (24 CFR Part 93)*

#### Definitions (§ 93.2)

Section 93.2, the definitions section of HUD's HTF regulation, would be revised to include introductory text to reflect that the terms Affirmatively Furthering Fair Housing and Equity Plan are defined in 24 CFR part 5.

#### Affirmatively Furthering Fair Housing (§93.4)

This section specifies that all recipients of HTF funds must comply with the requirements to affirmatively further fair housing.

#### Participation and Submission Requirements (§ 93.100)

Section 93.100 requires a grantee to submit a consolidated plan in order to receive HTF grants. The proposed rule would amend this section, at paragraph (b), to also include the requirement to submit an Equity Plan.

#### Eligible Activities; General (§ 93.200)

This section of the HTF regulation details the general activities that are eligible to be funded using the HTF grant. Paragraph (a)(1) would be amended by this proposed rule, for consistency with other program regulations for which a consolidated plan is required, to clarify that to the extent the activities in question otherwise are eligible, one potential use of HTF funds may be to implement fair housing goals from an Equity Plan developed pursuant to §§ 5.150 through 5.180.

#### Eligible Administrative and Planning Costs (§ 93.202)

This section of the HTF regulation describes the eligible administrative and planning costs for administering the HTF program. The changes made to this section mirror the changes made to § 92.207.

#### Other Federal Requirements and Nondiscrimination; Affirmative Marketing (§ 93.350)

This section sets forth the generally applicable nondiscrimination and affirmative marketing requirements for purposes of the HTF program. The changes made to this section are substantially similar to the changes made to § 92.351.

#### Recordkeeping (§ 93.407)

This section requires HTF grantees to maintain records relating to the implementation of its HTF program. This proposed rule would add new paragraph (a)(1)(vii), which would require grantees to maintain records documenting the actions the grantee has taken to affirmatively further fair housing, including documentation related to the grantee's Equity Plan described at § 5.168.

#### *Community Development Block Grant (CDBG) Regulations (24 CFR Part 570)*

#### Definitions (§ 570.3)

Section 570.3, the definitions section of HUD's CDBG regulation, would be revised to reflect that the terms Affirmatively Furthering Fair Housing and Equity Plan are defined in 24 CFR part 5.

#### Affirmatively Furthering Fair Housing (570.6)

This section specifies that all programs covered by this part must comply with the requirements to affirmatively further fair housing.

#### Eligible Planning, Urban Environmental Design, and Policy Planning Management—Capacity Building Activities (§ 570.205)

This section which lists policy planning and capacity building activities would add new paragraph (a)(4)(viii) to reference the Equity Plan. In paragraph (a)(6) of this section, references to the implementation of fair housing goals from the Equity Plan would be added throughout.

#### Program Administrative Costs (§ 570.206)



This section sets forth the permissible program administrative costs for the CDBG program and paragraph (c) specifically lists fair housing activities as covered by this section.

This proposed rule would revise paragraph (c) to update terminology that is outdated.

#### Citizen Participation—Insular Areas (§ 570.441)

The amendments to this section include inserting references to the Equity Plan.

#### Other Applicable Laws and Related Program Requirements (§ 570.487)

Paragraph (b) of this section, which addresses the requirement to affirmatively further fair housing, provides that a State is required to certify to HUD's satisfaction that it will affirmatively further fair housing consistent with the requirements of §§ 5.150 through 5.180 and will take no action that is inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended. Similarly, this paragraph would provide that each unit of general local government is also required to make such a certification.

#### Recordkeeping Requirements (§ 570.490)

This section sets forth that States and local governments that receive CDBG funds must maintain records and have requirements for maintaining records of the administration of CDBG funds. Paragraphs (a) and (b) of this section would be revised to include records relating to the use of CDBG funds for purposes of affirmatively furthering fair housing and the grantee's Equity Plan, in accordance with § 5.168.

#### Records to be Maintained (§ 570.506)

Similar to the amendment to § 570.490, the proposed rule would amend this section to provide in paragraph (g)(1) that documentation related to the grantee's Equity Plan is required pursuant to § 5.168.

Public Law 88-352 and Public Law 90-284; Affirmatively Furthering Fair Housing; Equal Opportunity; Executive Order 11063 (§ 570.601)

The title of this section would be revised to include a reference to “equal opportunity,” and Paragraph (a)(2) of this section would be amended to provide that the program participant’s responsibility to undertake fair housing planning includes taking meaningful actions to further the fair housing goals identified in an Equity Plan that is developed in accordance with the requirements of §§ 5.150 through 5.180 and that it will take no action that is inconsistent with fair housing and civil rights requirements.

Equal Opportunity and Fair Housing Review Criteria (§ 570.904)

Paragraph (c)(2) clarifies that the review undertaken pursuant to this section is distinct from the procedures set forth at 24 CFR parts 1, 3, 5, 6, 8, or 146 or 28 CFR part 35 conducted by the Responsible Civil Rights Official, which are reviews for purposes of determining a grantee’s compliance with Federal fair housing and civil rights requirements, including the grantee’s obligation to affirmatively further fair housing.

*Housing Opportunities for Persons With AIDS (HOPWA) Regulations (24 CFR Part 574)*

Definitions (§ 574.3)

Section 574.3, the definitions section of HUD’s HOWPA regulation, would be revised to reflect that the term Affirmatively Furthering Fair Housing is defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 574.4)

This section specifies that all grantees must comply with the requirements to affirmatively further fair housing.

Recordkeeping (§ 574.530)

The proposed rule would amend this section of the HOPWA regulations to include documentation of a program participant's Equity Plan, consistent with § 5.168.

*Emergency Solutions Grants Program (ESG) Regulations (24 CFR Part 576)*

Definitions (§ 576.2)

Section 576.2, the definitions section of HUD's ESG regulation, would be revised to include introductory text to reflect that the term Affirmatively Furthering Fair Housing is defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (576.4)

This section specifies that all recipients of ESG funds must comply with the requirements to affirmatively further fair housing.

Recordkeeping and Reporting Requirements (§ 576.500)

The proposed rule would amend paragraph (s)(1)(ii) of this section to provide that documentation related to its Equity Plan, consistent with § 5.168, must be maintained.

*Public Housing Agency Plans (24 CFR Part 903)*

What is the Purpose of this Subpart? (§ 903.1)

The proposed rule would amend this section to account for the PHA's obligation to affirmatively further fair housing and comply with the requirements set forth at §§ 5.150 through 5.180.

What are the Public Housing Agency Plans? (§ 903.4)

The proposed rule would add new paragraph (a)(3) to this section to explain that the plans described in this section also include the incorporation of the fair housing goals established in the PHA's Equity Plan pursuant to § 5.156.

What Information Must a PHA Provide in the 5-Year Plan (§ 903.6)

The proposed rule would add new paragraph (a)(4) to this section to account for the requirement that the 5-year plan include the PHA's fair housing strategies and meaningful actions it intends to undertake in order to implement the fair housing goals incorporated from the PHA's Equity Plan pursuant to § 5.156.

Paragraph (b)(2), which requires the PHA to account for progress made in meeting the goals and objectives in the PHA's previous 5-year plan, would be revised to permit PHAs to rely on the annual progress evaluations required for the Equity Plan, conducted pursuant to §§ 5.152, 5.154(i) and (j), 5.156(d), and 5.160(f) and (i) for purposes of meeting this requirement as it relates to the PHA's fair housing goals. This means PHAs would not be required to compile new reports on the same information multiple times.

#### What Information Must a PHA Provide in the Annual Plan? (§ 903.7)

The proposed rule would revise § 903.7, to account for the requirement to develop an Equity Plan and incorporate the fair housing goals from the Equity Plan into the PHA Plan. Paragraph (a)(1)(iii) would be revised to permit the PHA, once it has submitted an Equity Plan pursuant to the submission schedule at § 5.160, to rely on its analysis of affordable housing opportunities and the analysis conducted pursuant to § 5.154(e) in connection with its Equity Plan, to the extent applicable, for purposes of the PHA's Annual Plan.

Paragraph (b) of this section would be revised to require that the PHA's deconcentration and other policies that govern eligibility, selection, and admission be consistent with the PHA's obligation to affirmatively further fair housing and the PHA's Equity Plan.

Paragraph (o) of this section would be revised to indicate that each PHA must certify, among other things, that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the

period for which Federal financial assistance is extended pursuant to § 5.166. These revisions relate to the 5-Year Plan and the Annual Plan.

What is a Resident Advisory Board and What is the Role in Development of the Annual Plan? (§ 903.13)

This section specifies the requirements for the Resident Advisory Board, and the proposed rule would revise paragraphs (a) and (c) to account for any community engagement activities relating to the Equity Plan pursuant to § 5.158, as well as other consultation requirements relating to the development of the Equity Plan and the incorporation of the fair housing goals from the PHA's Equity Plan into the PHA Plan. The revisions to paragraph (c) also distinguish the different complaint processes as they relate to complaints about the PHA Plan as opposed to complaints relating to the Equity Plan or the PHA's obligation to affirmatively further fair housing.

What is the Relationship of PHA Plan to the Consolidated Plan and a PHA's Fair Housing and Civil Rights Requirements? (§ 903.15)

The proposed rule would revise the title of this section to include "civil rights," as PHAs are subject to requirements beyond the Fair Housing Act. The proposed rule would revise § 903.15 in paragraph (a) to indicate that the PHA Plan must be consistent with any applicable Equity Plan incorporated into the applicable consolidated plan pursuant to § 5.156.

Paragraphs (b) and (c) would be revised to reference the Equity Plan. Paragraph (c) would also be revised to reflect the applicable nondiscrimination requirements and the obligation to affirmatively further fair housing. Paragraph (c) is also amended to clarify the certification the PHA must make pursuant to § 903.7(o), and the procedures HUD will follow if HUD challenges the validity of a PHA's certification.

What is the Process for Obtaining Public Comment Process on PHA Plans? (§ 903.17)

The proposed rule would amend this section to account for the Equity Plan, including the community engagement requirements under § 5.158 and the obligation to incorporate the Equity Plan's fair housing goals into the PHA Plan pursuant to § 5.156.

When is the 5-Year Plan or Annual Plan Ready for Submission to HUD? (§ 903.19)

The proposed rule would add new paragraph (d) to § 903.19 to clarify for PHAs that the plan is not ready for submission to HUD until the PHA has incorporated the fair housing goals from its Equity Plan.

What is the Process by which HUD Reviews, Approves, and Disapproves an Annual Plan? (§ 903.23)

The proposed rule would amend paragraph (f) of § 903.23 to require PHAs to maintain records relating to its Equity Plan, consistent with § 5.168, and records relating to the PHA's AFFH certification.

How does HUD ensure PHA compliance with its PHA Plan? (§ 903.25)

The proposed rule would amend this section to clarify that the procedures HUD will use for the PHA Plan are different from those HUD will use for the Equity Plan, and specifies that the procedures for the Equity Plan are set forth at §§ 5.162, 5.170, 5.172, and 5.174.

*Project-Based Voucher (PBV) (24 CFR Part 983)*

Site Selection Standards (§ 983.57)

The proposed rule would amend paragraph (b)(1) of § 983.57 to reference the PHA's Equity Plan and to remove paragraph (b)(1)(iii) from this section.

#### **IV. Questions for Comments**

HUD welcomes comments on all aspects of the proposal. In addition, HUD specifically requests comments on the following topics:

1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?

2. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?

3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH-T, which is available at <https://egis.hud.gov/affht/>, while exploring possible improvements to the existing AFFH-T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants' data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

a. This notice of proposed rulemaking describes potential HUD-provided data, data and mapping tools, guidance, and technical assistance that may highlight some of the key takeaways from the HUD-provided data and help program participants identify likely fair housing issues. Should HUD also provide static data packages that include some of the data included in the AFFH-T and a narrative description of those data? If so, what data would be

most helpful to include in these data packages and narrative descriptions? For which program participants would data packages and narrative descriptions be most useful?

b. What additional data and tools could HUD provide to facilitate a regional analysis?

c. What types of data relating to homeownership opportunities should HUD consider providing? In addition to data on homeownership rates, which already are available in the consolidated planning data (CHAS) (which can be accessed at <https://www.huduser.gov/portal/datasets/cp.html>), including by protected class, what other data sources are reflective of disparities in homeownership opportunity?

d. What other data sources should HUD provide for program participants to better identify the various types of inequity experienced by members of protected class groups that are the subject of the proposed rule's required analysis?

e. Are there specific functions that could be included in the AFFH-T to allow the data to be more usable, more clearly displayed, or otherwise easier to interpret? If so, please provide a description of such functionality.

f. Should HUD consider providing data that are not nationally uniform if they are available for certain program participants even if such data are not available for all program participants? If so, please provide examples of data that would be useful to provide for which there is not nationally uniform data and the reasons why it would be useful for HUD to provide these data.

g. Are there additional data sets HUD could provide or require to be used for purposes of conducting a fair housing analysis that relate to eviction, neighborhood features



(access to parks, green space, trees), zoning and land use, and housing-related costs (like transportation)?

4. Are there different or additional regulatory changes HUD could make to the proposed rule that would be more effective in affirmatively furthering fair housing, including ways to improve access to community assets and other housing-related opportunities for members of protected class groups, including historically underserved communities, individuals with disabilities, and other vulnerable populations?

5. In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of? HUD specifically seeks feedback on the following:

a. Should HUD require that a minimum number of meetings be held at various times of day and various accessible locations to ensure that all members of a community have an opportunity to be heard? Should HUD require that at least one meeting be held virtually?

b. Should HUD provide different requirements for community engagement based on the type of geographic area the program participant serves (e.g., rural, urban, suburban, statewide, etc.) and if so, why should requirements differ based on type of geography?

c. Should HUD require program participants to utilize different technology to conduct outreach and engagement? If so, which technologies have proven to be successful tools for community engagement? Are these technologies usable by individuals with disabilities, including those who utilize assistive technology or require reasonable accommodations such as real-time captioning or sign-language interpreters?

d. Has HUD sufficiently distinguished the differences between community engagement and citizen participation or resident participation such that program participants understand that HUD expects a more robust engagement process for purposes of the development of the Equity Plan than has previously been required for purposes of programmatic planning? How can HUD ensure that these important conversations are fully had within communities while not significantly increasing the burden on program participants and the communities themselves? Are there ways in which HUD can reduce any unnecessary burden resulting from separate requirements to conduct community engagement and citizen participation (for consolidated plan program participants) or resident participation (for PHAs)?

e. Are there specific types of technical assistance that HUD can provide to assist program participants in conducting robust community engagement, including how community engagement can inform goal setting, implementation of goals, and progress evaluations? If so, please specify the types of technical assistance that would be most useful.

f. Should HUD require the community engagement process to afford a minimum amount of time for different types of engagement activities (e.g., public comments on proposed Equity Plans, notice before public meetings)? If so, what should the minimum amount of time be in order to afford members of the community an equal and fair opportunity to participate in the development of the Equity Plan?

6. HUD seeks comments on whether the definition of “*Affordable Housing Opportunities*” is sufficiently clear. HUD also seeks comment on whether the definition should apply to both rental and owner-occupied units. Are there other categories of affordable housing that should be explicitly referenced in this definition?

7. HUD has provided a new definition of “*Geographic Area of Analysis*,” which is intended to provide program participants and the public a clear understanding of the types and levels of analysis that are needed by different types of program participants. Does this definition clearly articulate the geographic areas of analysis for each type of program participant and are the levels of analyses for the types of program participants appropriate to ensure Equity Plans are developed and implemented in a manner that advances equity?

8. HUD requests commenters provide feedback on new § 5.154, which sets out the content of the Equity Plan. HUD specifically requests comment on the following:

a. Are the questions in this proposed rule at § 5.154 effective for purposes of how to assess where equity is lacking and to facilitate the development of meaningful goals that are designed and can be reasonably expected to overcome the effects of past or current policies that have contributed to a systemic lack of equity? Put differently, do the proposed questions clearly elicit from program participants an assessment of the fair housing issues that exist and their causes so that goals can be appropriately tailored to address the identified fair housing issues?

b. Does the analysis in proposed § 5.154 lend itself to identifying fair housing issues for each of the following protected class groups: race, color, national origin, sex, religion, familial status, and disability? If not, how can HUD improve this aspect of the analysis to better serve this purpose? Are there additional data sources that would assist in facilitating this analysis?

c. What additional areas of analysis, if any, should HUD include in § 5.154 that are not currently included in this proposed rule?

d. Should the section on Fair Housing Goals (§ 5.154(g)) be modified, improved, or streamlined so that program participants can set appropriate goals for overcoming systemic issues impacting their communities?

e. This proposed rule does not currently identify which specific maps and tables contained in the HUD-provided data program participants should rely on in answering specific questions provided at § 5.154. Should HUD require the use of specific data sets when responding to these questions in § 5.154, and if so, what benefit would that have? How can HUD ensure that program participants, in using the HUD-provided data, identify the fair housing issues and underlying reasons for what the data show in order to assess where equity is truly lacking in their geographic areas of analysis?

f. What is the proper regional analysis program participants should undertake in order to identify fair housing issues and set meaningful fair housing goals? Should different program participants have different required regional analyses (e.g., States vs. local governments; non-statewide PHAs)?

g. Does HUD need to more specifically explain the required level of geographic analysis, whether in this rule itself or in sub-regulatory guidance, for purposes of the development of the Equity Plan, including how different levels of geographic analysis would facilitate the setting of fair housing goals that would result in material positive change that advances equity within communities? For example, should HUD require certain types of program participants to conduct an analysis at the following levels of geography for each fair housing issue: Core-Based Statistical Area, Metropolitan Statistical Areas, Block Groups, Census Tracts, and counties?

h. Are there different or additional questions that HUD should pose to rural areas to assist such areas in meeting their obligations to affirmatively further fair housing? If so, how should the analysis for rural areas differ from the required analysis in proposed § 5.154?

i. Has HUD sufficiently explained how to prioritize fair housing issues within fair housing goal categories for purposes of establishing meaningful fair housing goals? What additional clarification is needed, if any?

j. In new § 5.154(e), the required analysis for Public Housing Agencies (PHAs), has HUD sufficiently tailored the analysis required for these entities, in particular for small or rural PHAs, while still ensuring the PHA's Equity Plan is developed and implemented in a manner that advances equity for members of protected class groups, particularly those the PHAs serves or who are eligible to be served by the PHA? How can HUD continue to streamline the required analysis for PHAs while also ensuring an appropriate fair housing analysis is conducted and meaningful fair housing goals are established and implemented?

k. Are there areas of analysis that HUD should include for PHAs that it has not included in this proposed rule that would better assist PHAs in meeting their obligation to affirmatively further fair housing? This may include analysis addressed to PHA-specific programs, such as public housing, vouchers, Moving To Work, or other PHA programs, as well as by type of PHA, such as troubled or qualified PHAs.<sup>27</sup>

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<sup>27</sup> Section 2702 of title II of the Housing and Economic Recovery Act (HERA) introduced a definition of "qualified PHAs" to exempt such PHAs, that is, PHAs that have a combined total of 550 or fewer public housing units and Section 8 vouchers, are not designated as troubled under section 6(j)(2) of the 1937 Act, and do not have a failing score under the Section Eight Management Assessment Program (SEMAP) during the prior 12 months, from the burden of preparing and submitting an annual PHA Plan. See Public Law 110-289, 122 Stat. 2654, approved July 30, 2008, see 122 Stat. 2863.

l. Are there additional ways HUD could incentivize PHAs to collaborate with consolidated plan program participants in conducting an Equity Plan such that they can pool resources and develop broader solutions to fair housing issues?

m. Since HUD has removed the requirement to identify and prioritize contributing factors, as was required by the Assessment Tool under the 2015 AFFH Rule, do the questions in § 5.154 appropriately solicit responses that would include the underlying causes of the fair housing issues identified?

n. Are there specific questions HUD should ask that it has not proposed in § 5.154 of this proposed rule?

9. In order to reduce burden on program participants, and based on the lessons learned from the implementation of the 2015 AFFH Rule, HUD requests comments on how Equity Plans should be submitted to the Department (e.g., through a secure portal, via email, through a webpage that allows uploads, etc.) and whether HUD should mandate the file format the Equity Plan is submitted in (e.g., MS Word, PDF, etc.).

10. HUD has included several new definitions in this proposed rule and requests feedback on whether they should be drafted differently, whether there may be additional definitions that are not included that would be useful, and whether any definitions included in this proposed rule are unnecessary.

11. Has HUD appropriately captured the types of populations—based on the characteristics protected by the Fair Housing Act—that have historically been underserved and continue to be underserved today in communities in the new definition of “*Underserved Communities*,” and if not, which additional types of populations or groups should HUD consider adding to this definition?

12. HUD requests feedback on whether including the definition of “*Balanced Approach*” is helpful in understanding how to connect funding decisions to advancing equity within communities and how this definition can be modified or improved in order to more clearly make that connection.

13. HUD has changed the way submission deadlines are determined from the way submission deadlines were established under the 2015 AFFH Rule and requests feedback on whether the new submission deadlines provided in § 5.160 are clearer and are the appropriate way to create tiers for the submission by entities of different sizes. HUD welcomes feedback on different cutoffs for this section that are accompanied by explanations of why different cut offs should be used instead of those in this proposed rule. HUD also welcomes comment on whether the timeframes set out in § 5.162 are appropriate and what, if any, obstacles might these new timeframes present with respect to the development of the Equity Plan and compliance with other programmatic requirements?

14. HUD seeks comment on whether it should require new program participants to engage in any specific planning process or other actions to meet their obligation to affirmatively further fair housing prior to the submission of their first Equity Plan.

15. HUD requests specific feedback on new sections §§ 5.170 through 5.174 and whether the compliance procedures and procedures for effecting compliance can be further clarified and improved.

16. This proposed rule provides a stronger link between the regulatory requirements for implementing the AFFH mandate and program participants’ subsequent planning processes in order to better ensure that all programs and activities are administered in a manner that affirmatively furthers fair housing, including by taking into account how to allocate funding to

effectuate that obligation. HUD requests comments on how HUD can further ensure that program participants are adequately planning to carry out activities necessary to advance equity in their communities. Specifically, are certifications and assurances requirements in this proposed rule, along with the new regulatory provision at § 5.166 sufficient to achieve this objective, and if not, what additional regulatory language can be added that would achieve this objective?

17. Has HUD adequately incorporated the need to assess any lack of homeownership opportunities for protected class groups in this proposed rule? If not, in what ways should access to homeownership be further incorporated? Is there specific data that HUD could provide to further facilitate this analysis?

18. Are there other types of “*Community Assets*,” that should be included in the new definition and the analysis of disparities in access to opportunity for purposes of the Equity Plan? If so, which assets should be included that are not currently included in this proposed rule?

19. How can HUD best facilitate receiving feedback on Equity Plans submitted for its review from members of the public in order to inform the review process and how should HUD consider such feedback? HUD seeks comment on whether changes to the regulatory text are necessary, and specifically whether the new definition of “*Publication*” at § 5.152 and the provisions in § 5.160 achieve this objective.

20. Are there ways that HUD could better clarify how the fair housing goals from an Equity Plan are incorporated into subsequent planning processes? If so, how can HUD clarify this requirement such that program participants will be able to implement their fair housing goals and achieve positive fair housing outcomes in their communities?



21. What forms of technical assistance could HUD provide that would better position program participants and their communities to develop their Equity Plans and ultimately implement and achieve the fair housing outcomes set therein?

22. HUD specifically solicits comment on the proposal to publish submitted plans that it is reviewing but has not yet accepted or non-accepted. HUD seeks comment on both the benefits of this proposal and concerns with it.

23. HUD specifically asks for input on the following proposals for reducing burden on small program participants:

a. HUD notes that some pieces of the analysis may not always be relevant to some small program participants, depending on the local circumstances. If specific parts of the proposed analysis are not applicable to a small program participant's local circumstances, should HUD permit the program participant to respond to that specific piece of the analysis with "not applicable"? If so, please identify the specific parts of the analysis that might not always be applicable and the circumstances under which it would not be applicable. If HUD were to permit this, are there procedures it should follow to ensure that program participants still conduct an appropriate fair housing analysis, such as requiring an explanation of why the piece of the analysis is not applicable, with reference to HUD-provided data, local data, and local knowledge, including information gained from community engagement? HUD seeks comment on the extent to which it can achieve significant burden reduction for smaller program participants (and in particular small PHAs) by clarifying expectations in this manner rather than altering the proposed questions. In responding to this request for comment, to the extent a commenter contends that a particular program participant can or cannot reasonably conduct the analysis set forth in the proposed rule, please describe the relevant local circumstances for the program

participant, including any demographic patterns, number of units or consolidated plan program allocations, and local infrastructure, as well as the analysis the commenter believes the question is requiring.

b. HUD intends that the burden of analysis for many of the questions in the proposed rule will be lower for smaller program participants that have fewer people, places, and geographic areas to analyze and seeks comment on this topic. Do the questions proposed in § 5.154 appropriately scale with the size and complexity of a program participant, such that it would be easier for smaller program participants to complete the analysis than larger program participants? For example, does the fact that smaller program participants often operate in smaller communities with fewer people, fewer community assets, and less public infrastructure make the analysis easier to complete? If so, how can HUD make explicit that the same question is expected to result in a less burdensome analysis for smaller or less complex program participants? What other mechanisms could be utilized to minimize the burden for all program participants, but particularly smaller program participants, while ensuring an appropriate analysis is conducted to meet the proposed requirements in this rule?

c. Are there other ways in which HUD can alter the required analysis for small program participants that meaningfully reduce burden while ensuring an appropriate AFFH analysis such that these program participants can establish meaningful fair housing goals?

d. To what extent, if any, should small program participants have modified community engagement requirements, such as requiring fewer in-person meetings and allowing different formats for meetings? Are there other ways this proposed rule could modify community engagement requirements to reduce burden on small program participants, while ensuring that underserved communities and groups who have historically not participated in this

type of engagement have the opportunity to be part of the process? For purposes of small program participants, are there other ways they may be able to receive equivalent input from the community, aside from those contemplated in the community engagement process set forth in the proposed rule, that would reduce their burden in obtaining local data and local knowledge, while still ensuring they have the necessary information to produce a well-informed and meaningful analysis?

e. Would it be appropriate to modify the goal-setting requirements for smaller PHAs and consolidated plan participants and, if so, what modification would be appropriate? The proposed rule does not specify the number of goals that program participants must set. It does provide that program participants must set goals that collectively address each of the seven fair housing goal categories (which may require fewer than seven goals, since a goal can address more than one category), unless no fair housing issue is identified for any category, in which case no goal is required to address that category. HUD seeks comment on whether any modification of this requirement is appropriate for smaller entities.

24. One way small program participants can reduce the burden of completing the required analysis is to complete joint Equity Plans with other program participants. HUD seeks comment on how it can further encourage small program participants to complete joint Equity Plans.

25. HUD seeks comment on whether it is necessary to establish a definition of “small PHA” or “small consolidated plan participant” and, if so, how HUD should define these terms.

26. Program participants who collaborate and conduct a joint Equity Plan may benefit from pooling resources to overcome fair housing issues. Are there further incentives HUD should or could offer to program participants that submit joint Equity Plans to HUD?

27. Proposed § 5.164 sets out the minimum criteria for when an Equity Plan must be revised. HUD seeks comment on whether the proposed § 5.164 properly captures the circumstances under which a program participant should revise its Equity Plan, and in particular on the circumstances under which a disaster should or should not trigger the need for such revision.

28. With respect to the proposed AFFH enforcement scheme, proposed § 5.170 would provide that complaints alleging the failure of a program participant to affirmatively further fair housing must be filed with HUD within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause. While noting that the proposed inclusion of a good cause exception reflects HUD's intent to be consistent with the regulations and practices of Federal agencies with respect to enforcement of various civil rights statutes, HUD specifically seeks comment on the following:

a. Is 365 days an appropriate time limit? Are there specific considerations that argue for a longer or shorter time limit?

b. What specific circumstances might constitute "good cause," under which the Responsible Civil Rights Official might be justified in extending the proposed 365-day deadline (e.g., the conduct constituting the alleged violation was not known or made public within the 365-day period)? Are there specific concerns that mitigate against a good cause exception (e.g., a concern about inconsistent application)?

29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (e.g.,

urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.

a. How can States encourage broader fair housing strategies at the State level and in localities, and what changes, if any, are needed to the proposed rule that could improve its effectiveness as a tool for States to further fair housing goals?

b. Are there data that HUD could provide to States to assist and facilitate the fair housing analysis required by § 5.154?

c. Is there additional information HUD could provide to States, such as, for example, identifying regional issues where metropolitan areas cross State borders?

d. How can HUD best display or provide data to States given their varied sizes and geographies in order to facilitate the analysis required by § 5.154?

e. Given the unique role that States play, does the analysis and content required in the Equity Plan provide States with sufficient opportunities to coordinate both within the State (e.g., across various departments, offices, or agencies as well as with local jurisdictions) and, as appropriate, with neighboring States?

30. HUD seeks comment on whether the conforming amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 are adequate to ensure that programmatic requirements are consistent with program participants' implementation of this proposed rule's requirements. Specifically, HUD seeks comment on whether the specific provisions amended are sufficient or whether additional amendments should be made. Are there specific ways in which HUD can further clarify the conforming amendments to assist program participants in understanding and fulfilling their obligations to affirmatively further fair housing?

31. Certain definitions in this proposed rule contain language explaining how the defined term applies to the analysis required by § 5.154 and the type of analysis that HUD expects to be included in an Equity Plan. HUD seeks comment on whether the inclusion of this type of language in the regulations is helpful and provides additional clarity regarding how the defined term should be used for purposes of developing an Equity Plan.

32. As explained in this preamble, the proposed rule would take a different approach than the 2015 AFFH Rule did as it relates to circumstances in which HUD has not accepted a program participant's fair housing plan prior to the date HUD must accept or reject its programmatic plan (i.e., consolidated plan or PHA Plan). Under the 2015 AFFH Rule, HUD was required to disapprove a program participant's programmatic plan under such circumstances, putting the program participant's continued funding at risk. This meant HUD had only two options: (a) accept a fair housing plan despite deficiencies or (b) terminate the program participant's funding. In practice, although HUD rejected some program participants' fair housing plans on initial review and required them to be revised and resubmitted, HUD then accepted every resubmitted plan before the program plan was due, and thus never invoked the only available remedy of rejecting a programmatic plan. In this proposed rule, HUD sets out a more flexible framework that would enable HUD to take additional steps that do not put funding immediately at risk but give a program participant a reasonable opportunity to address deficiencies and submit an acceptable fair housing plan. Under the proposed framework, HUD can reject a program participant's Equity Plan but accept its programmatic plan, allowing funding to continue so long as the program participant signs special assurances prepared by the Responsible Civil Rights Official that require the program participant to submit and obtain HUD acceptance of an Equity Plan by a specific date. The proposed rule provides that the program

participant must commit to achieving an Equity Plan that meets regulatory requirements within 180 days of the end of the HUD review period for the programmatic plan and to amend its programmatic plans to reflect the Equity Plan's fair housing goals within 180 days of HUD's acceptance of the Equity Plan in order to continue to receive Federal financial assistance from HUD. A program participant's failure to enter into special assurances will result in disapproval of its funding plan. Those program participants that submit special assurances but do not fulfill them within the timeline provided will face enforcement action that includes the initiation of fund termination and a refusal to grant or to continue to grant Federal financial assistance.

Consistent with the increased transparency this proposed rule provides, HUD will publicly post all executed special assurances, and subsequently publicly post Equity Plans submitted pursuant to the special assurances and HUD's decision to accept the plans or not. HUD requests specific feedback on this special assurance framework in general and on revisions that would better effectuate the purposes expressed here and throughout this preamble. In particular, HUD asks:

a. Does the special assurance framework, which would make program participants that enter into special assurances subject to the remedies set out in §§ 5.172 and 5.174, provide sufficient incentive for program participants to develop and submit compliant Equity Plans in a timely manner? Are there changes that can be made to this proposed rule that would further incentivize timely and sufficient submissions?

b. Are the remedies available to HUD under this framework sufficient? Does HUD need to set forth with greater specificity the remedies that a program participant could face for failing to provide an acceptable Equity Plan by the time its programmatic plan must be accepted? In particular, should the final rule specify the circumstances under which a program participant necessarily will lose funding, and if so, what are those circumstances?

## V. Findings and Certifications

### *Regulatory Planning and Review – Executive Orders 12866 and 13563*

Under Executive Order 12866,<sup>28</sup> the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB.

This proposed action is “significant” and therefore subject to review by OMB under section 3(f)(4) of Executive Order 12866. The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs.

The Department has also reviewed these proposed regulations under Executive Order 13563,<sup>29</sup> which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

The Department is issuing the proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. HUD completed a Regulatory

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<sup>28</sup> *Exec. Order on Regulatory Planning and Review*, Exec. Order. 12866, 58 FR 190 (Oct. 4, 1993), [https://www.reginfo.gov/public/jsp/Utilities/EO\\_12866.pdf](https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf).

<sup>29</sup> *Exec. Order on Improving Regulation and Regulatory Review*, Exec. Order 13563, 76 FR 3821 (Jan. 18, 2011), <https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.



Impact Analysis for this proposal. This section summarizes the findings of that analysis and explains why the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

The Department also has determined that this regulatory action would not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

## **1. NEED FOR REGULATORY ACTION**

The segregation and disparities in access to opportunity that prompted the Fair Housing Act's drafters to codify the AFFH obligation persist. This Nation's failure to engage in a concerted and systematic effort to redress its history of housing discrimination has further perpetuated barriers to opportunity, compounding the damage done and heightening the need for regulatory action. This rule operationalizes the statutory obligation to AFFH by creating a streamlined structure for program participants to engage in fair housing planning, in the form of an Equity Plan, calculated to satisfy the AFFH mandate by prompting program participants to take meaningful actions to achieve outcomes that remedy the pervasive segregation and disparities in access to opportunity that the Fair Housing Act was designed to redress.

This rule is necessary to establish an effective approach to implement the AFFH mandate. HUD is currently implementing the obligation to AFFH by requiring that HUD program participants certify that they will affirmatively further fair housing in their programs and activities. The current framework, established by the AFFH IFR, provides program participants with flexibility to choose the method of fair housing planning that they undertake to support their certification. However, the current regulatory regime would benefit from a standardized mechanism to promote compliance with the statutory obligation. This proposed rule restores the planning structure associated with the 2015 AFFH Rule, but with substantial improvements that

increase transparency and accountability, while retaining flexibility for program participants to establish fair housing goals based on local circumstances.

This rule creates a guided inquiry to enable program participants to engage in fair housing planning that empowers them to advance equity for members of protected class groups and underserved communities in their jurisdictions and set meaningful goals that effectuate positive fair housing outcomes. In addition, the rule establishes a direct connection between fair housing goals and subsequent planning processes in the consolidated plan, annual action plan, or PHA Plan, thus supporting program participants in embedding equity throughout their decision-making and planning processes as directed by Executive Order 13985.

Without such a guided inquiry, program participants will be greatly hindered in their efforts to redress inequities in their policies, activities, services, and programs that serve as barriers to opportunity and fair housing choice. The rule also provides both HUD and the public with enhanced transparency over, and participation in, a program participant's fair housing planning. This proposed rule would also address HUD's current lack of a mechanism to engage in oversight and enforcement to ensure that program participants comply with their AFFH obligations.

The baseline situation would reflect a similar landscape as HUD's implementation of the AFFH obligation prior to the promulgation of the 2015 AFFH Rule. Prior to that rule, without a formal regulatory planning scheme in place, HUD's implementation of the AFFH obligation was reliant on providing program participants with guidance, mainly in the form of the Fair Housing Planning Guide, to support a broadly permissive approach to fair housing planning which did not require submission of fair housing planning documents to HUD for review. However, as noted by advocates, stakeholders, and community members, and reinforced by the U.S Government

Accountability Office in its report, “HUD Needs to Enhance Its Requirements and Oversight of Jurisdiction’s Fair Housing Plans,”<sup>30</sup> such an approach failed to ensure that program participants consistently embedded the required fair housing considerations in their decision-making processes. This approach also prevented HUD from engaging in effective oversight of fair housing planning.

HUD’s recently published AFFH IFR was intended to be an interim measure, necessary to expeditiously repeal the PCNC Rule and restore legally supportable definitions and certifications for program participants. This proposed rule would reinstate an effective and meaningful regulatory scheme to implement the AFFH mandate, enhanced by efficiencies derived from lessons learned from the implementation of the 2015 AFFH Rule.

With appropriate planning, guided by the Equity Plan framework laid out in this rule, program participants can be more intentional and strategic in their work to take meaningful actions that overcome patterns of segregation and foster inclusive communities. This proposed rule offers a more streamlined approach to better ensure that tangible fair housing outcomes are achieved. This rule also commits HUD to helping program participants more easily identify where equity in their communities is lacking and how they can advance equity for protected class groups using HUD funds and other investments.

## **2. SUMMARY DISCUSSION OF COSTS, BENEFITS**

HUD has analyzed the costs and benefits of complying with this proposed regulation. HUD firmly believes that the benefits of this rule justify the costs of compliance. While program participants will incur costs associated with compliance, including in the development of the Equity Plan, HUD believes such costs are justified by the benefits to society and to individuals of

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<sup>30</sup> GAO-10-905, Sept. 14, 2010, *available at* <https://www.gao.gov/products/gao-10-905>.

not having to endure the costs of racial and other forms of inequity. Additionally, as noted, the approach here reduces prior burdens associated with fair housing planning imposed by the 2015 AFFH Rule, greatly alleviating the compliance costs that were associated with the 2015 AFFH Rule.

### **3. BENEFITS OF THE PROPOSED REGULATIONS**

HUD has analyzed the benefits of complying with the proposed regulations. Executive Order 13985 begins with an acknowledgement that equal opportunity is the bedrock of our democracy. Yet because of our country's legacy of segregation, systemic racism, and other forms of injustice against protected groups, far too many have been denied equal opportunity. This rule directly implements this Executive Order's command of affirmatively advancing equity, requiring that program participants, with the support of HUD, identify and address housing-related disparities and other significant disparities in access to opportunity. This rule would specifically provide substantial benefits directly to groups protected by the Act by requiring HUD program participants to expand fair housing choice and improve access to opportunity. By enhancing such opportunity for these groups, implementation of this proposed rule will also promote a more just and equal society.

Current patterns of residential segregation are largely reflective of this Nation's legacy of racially discriminatory housing, ableism, and other policies. As noted earlier in this preamble, these vestiges of discrimination, as well as the corresponding inequitable access to opportunity, persist to this day. This proposed rule requires program participants to redress these injustices. Program participants will be required to promote fair housing choice, enhancing the opportunity for protected groups to live where they choose by addressing the variety of barriers that inhibit such access. For many program participants, expanding access to fair housing choice will

necessitate both preserving and expanding accessible and affordable housing opportunities, a critical and urgent need for this country. In particular, this rule requires an analysis of barriers to affordable housing, representing a key opportunity for program participants to identify the policies and practices, such as land use and zoning ordinances, that impede the development and maintenance of affordable housing commensurate with need.

Increasing access to homeownership opportunities based on race can begin to address the racial wealth gap, enabling families of color to accumulate wealth and develop financial security.<sup>31</sup> Individuals with disabilities will also greatly benefit from enhanced access to accessible and affordable housing opportunities, particularly where expanded affordable housing enables individuals with disabilities to access supportive services in a community-based setting.

This rule creates a clearer definition of a balanced approach. A balanced approach entails the balancing of place-based strategies that target investment in areas that have historically been denied critical resources along with strategies designed to combat segregation and promote integration of protected class groups. There is a thorough and growing body of social science research documenting the enhanced quality of life outcomes based on living in well-resourced areas of opportunity.<sup>32</sup> As noted above, growing up in neighborhoods with lower levels of poverty improves children's long-term prospects, through a combination of a variety of factors, including through greater access to quality schools and lower exposure to environmental and other health hazards. This research furnishes strong empirical support for the proposition that where one lives has a profound impact on their trajectory in life. By facilitating moves to areas of opportunity on a substantial scale, as well as place-based transformation of existing areas to

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<sup>31</sup> See *supra* note 16, McCargo and Choi; note 17, Schuetz.

<sup>32</sup> See *supra* notes 8, 9, 10, 11, 12, 15.

areas with opportunity, this rule has the capacity to improve the quality of life of many individuals.<sup>33</sup>

The concept of community assets, embedded as a critical focus in the Equity Plan framework used by the rule, acknowledges that residential segregation did not simply act to produce racially homogenous neighborhoods. Rather, segregation also acted to deprive people of color of access to high-quality features that enhance equality of opportunity and quality of life.<sup>34</sup> Disparities in access to community assets overlap significantly with enduring patterns of residential segregation. By directly requiring that program participants consider community assets in their fair housing planning, this rule will prompt greater access for underserved populations to, among other features, environmentally healthy neighborhoods, grocery stores, employment opportunities that pay a living wage, and reliable transportation services.

For example, the rule critically identifies “high quality schools” as an example of a community asset that is not often equitably distributed and available within communities. In 1954, the Supreme Court in *Brown v. Board of Education* found that separate educational facilities are inherently unequal.<sup>35</sup> Yet students of color across the Nation are still disproportionately confined to racially and economically segregated, underfunded schools.<sup>36</sup> Disparities in access to equal educational opportunity continue to persist based on protected class group, largely because where a child lives often dictates their ability to attend a high-quality school. Research has shown that most schools’ racial composition is relatively similar to that of their surrounding neighborhoods due to existing school boundaries, which has perpetuated

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<sup>33</sup> Id.; see also *infra* note 12.

<sup>34</sup> See, e.g., Troustine, *Segregation by Design: Local Politics and Inequality in American Cities*, November 2018.

<sup>35</sup> *Brown v. Bd. of Educ. of Topeka* (No. 1.), 347 U.S. 483, 495 (1954).

<sup>36</sup> “Closing America’s Education Funding Gaps,” The Century Foundation (July 22, 2020), <https://tcf.org/content/report/closing-americas-education-funding/>.

school segregation.<sup>37</sup> This rule acknowledges the direct link between housing opportunities and access to equal educational opportunity and prompts program participants to address and eliminate discriminatory housing policies that lead to segregation among schools.<sup>38</sup>

Recent research has identified the extent to which modification of a single school's boundary can upend entrenched patterns of residential and corresponding school segregation.<sup>39</sup> This research highlights the dramatic degree to which school attendance boundaries demarcate racially and ethnically unequal schools, with corresponding data identifying the extent to which these schools are also unequal in terms of student achievement, staffing, academic offerings, and discipline rates.<sup>40</sup> In turn, unequal schools further perpetuate both racial and ethnic segregation.<sup>41</sup> This research simultaneously illuminates the depth of this persistent problem while also showcasing the extent to which the housing-school segregation relationship can be disrupted through meaningful yet realistic actions by program participants within their control. In addition to perpetuating the racial achievement gap, such segregation often denies equal educational opportunity to many students with disabilities, who lack access to well-resourced special education programs and related services.

The proposed rule also offers healthcare services as another example of a community asset. Disparities in access to healthcare services, particularly for individuals of color, have been

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<sup>37</sup> Richard V. Reeves, Nathan Joo, and Grover J. "Russ" Whitehurst, "How school district boundaries can create more segregated schools," Brookings (November 20, 2017), <https://www.brookings.edu/blog/social-mobility-memos/2017/11/20/how-school-district-boundaries-can-create-more-segregated-schools/>.

<sup>38</sup> See also Executive Order on White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans (October 19, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/19/executive-order-on-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-black-americans/>.

<sup>39</sup> Tomas Monarrez & Carina Chien, "Dividing Lines: Racially Unequal School Boundaries in US Public School Systems," Urban Institute (September 2021), <https://www.urban.org/research/publication/dividing-lines-racially-unequal-school-boundaries-us-public-school-systems>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

widely documented. The Centers for Disease Control has highlighted the extent to which the COVID-19 pandemic has unequally affected many racial and ethnic minority groups, placing them at higher risk of getting sick and dying from COVID-19.<sup>42</sup> The American Medical Association explains that racial and ethnic minorities experience a lower quality of health care, are less likely to receive routine medical care, and face higher rates of morbidity and mortality than nonminorities.<sup>43</sup> By asking program participants to consider inequities in access to healthcare services that are driven by lack of fair housing choice, this proposed rule would seek to expand critical access for racial minorities and other protected class groups to quality healthcare services.

Finally, the proposed rule also implements a more transparent process, allowing the public to have access to all submitted Equity Plans. This will afford the public an opportunity to provide comments to HUD on Equity plan submissions, allowing the public to provide the Department with information relating to a submission that may be useful to HUD in its review of the Equity Plan. The rule also creates a mechanism for HUD to engage in oversight and enforcement of the obligation to affirmatively further fair housing, increasing the likelihood that program participants achieve tangible outcomes that advance equity and increase opportunity for protected groups.

### *Quantifiable Benefits*

There will be substantial benefits associated with the promulgation of this rule. The precise manner in which program participants will comply with this obligation will vary substantially based on the unique local fair housing issues of each program participant.

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<sup>42</sup> CDC, Health Equity Considerations and Racial and Ethnic Minority Groups, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

<sup>43</sup> See Reducing Disparities in Health Care, American Medical Association, available at <https://www.ama-assn.org/delivering-care/patient-support-advocacy/reducing-disparities-health-care>.



Therefore, it is not possible to quantify many of these benefits with precision. However, once implemented, HUD expects this rule will greatly enhance the welfare of members of protected class groups across a variety of quality-of-life metrics.

*Benefits that Cannot be Quantified*

In acknowledging the limitations of assessing proposed regulations exclusively based on those benefits that can be quantified, Executive Order 12866 and Executive Order 13563 require that agencies include qualitative consideration of benefits. This principle, recently affirmed by the White House's Memorandum on Modernizing Regulatory Review, acknowledges that many of the benefits associated with an agency's rulemaking, including equity, justice, and human dignity, are difficult or impossible to quantify.

This rule would promote social welfare, racial justice, human dignity, and equity, essential values not susceptible to quantification. By requiring that program participants effectuate positive fair housing outcomes by reducing longstanding inequities faced by people of color, persons with disabilities, and other protected class groups, this rule would greatly advance racial justice and begin to redress our Nation's history of discriminatory housing policies and practices. It is not enough for governments of all levels to acknowledge the role they played in systematically declining to invest in communities. They must take meaningful actions to overcome the effects of past and current injustices, which HUD is requiring in this rule.

Individuals with disabilities have historically faced discrimination that has limited their opportunity to live independently in community-based settings, resulting in them unnecessarily living in institutions or other segregated settings that limit their autonomy and ability to enjoy the freedom of expression and association that is part of everyday life in the United States. Preventing unnecessary institutionalization and enabling an individual with a disability to live

independently and access affordable accessible housing and supportive services in their community is invaluable. Additionally, by improving access to efficient and accessible transportation for this group, individuals with disabilities are more likely to enjoy the independence and dignity associated with employment that pays a living wage.

This rule will also spur program participants to take actions to ensure that other underserved communities have equitable access to affordable housing opportunities, including for LGBTQ+ persons and survivors of domestic violence who face discrimination because of their protected characteristics. Facilitating access to housing can serve as a critical lifeline for these populations that have long been denied equal access in many aspects of American life. While the precise fair housing goals will vary based on the program participant, in the aggregate, these benefits will likely be realized after implementation of this rule. Although the Department cannot, at this time, entirely quantify the economic impacts of the benefits outlined above, the Department believes that they are substantial and outweigh the estimated costs of the proposed regulations.

#### **4. COSTS OF THE PROPOSED REGULATIONS**

HUD does not expect a large change in compliance cost as a result of the rule, as States, local governments, and PHAs are already required to engage in fair housing planning to support their certifications. As discussed more fully in the Regulatory Impact Analysis, HUD estimates a low-end collective compliance cost impact of \$21.4 million per 5-year planning cycle for program participants, or about \$4.3 million per year. HUD estimates the high-end collective compliance cost to be \$135 million per 5-year planning cycle for program participants, or about \$27 million per year. The aggregate cost of complying with the planning requirements in this

proposed rule is not uniformly distributed among the 5,000 program participants that would bear the costs. Costs would vary among program participants due to several factors.

Given the many uncertainties in the precise cost program participants will incur in complying with the planning processes proposed in this rule, HUD requests public comment on the accuracy of the assumptions contained in estimates in the Regulatory Impact Analysis. As explained above, HUD is committed to mitigating compliance costs for these entities by providing technical assistance, including related to the HUD-provided data, particularly so that the required analysis and planning can be completed without the need to hire external consultants and contractors.

HUD also notes that the goal of this rule is to establish a regulatory framework by which program participants may more effectively meet an existing statutory obligation; one that has applied to all recipients of Federal financial assistance for over 50 years. HUD intends for the streamlined analysis proposed in this rule to enhance the efficacy of the fair housing process while lightening the burden faced by program participants in complying with the statutory requirement.

#### **4.A SELECTED CHANGES IN THE PROPOSED REGULATION NOT ESTIMATED TO HAVE COSTS**

HUD does not anticipate that most of the provisions in this proposed rule would generate costs for program participants. Program participants are currently required to certify compliance with a definition of AFFH that is substantially similar to the definition proposed in this rule. Thus, to support this certification, program participants must currently incur some costs to comply. While this rule would reduce some of the currently provided flexibility in fair housing planning, given the streamlined nature of the Equity Plan, HUD anticipates that program

participants can accomplish the requirements of this rule by using their existing fair housing planning infrastructure.

As noted earlier in the preamble, this proposed rule refocuses fair housing planning toward the development of meaningful fair housing goals through the Equity Plan framework, which will make the fair housing planning process simpler, while also improving the likelihood of success for program participants. This proposed rule contains substantially fewer questions compared to the requirements of the 2015 AFFH Rule for program participants to answer to determine how best to advance equity for members of protected class groups and underserved communities in their jurisdictions. To the extent program participants were using a process analogous to the 2015 AFFH Rule to support their fair housing planning, this proposed rule would reduce much of that analysis.

HUD has further committed to providing program participants with a data analysis to inform fair housing planning, which, when supplemented with local knowledge, will streamline the identification of fair housing issues. The Department will also provide robust technical assistance and feedback to program participants during the Equity Plan process. Taken together, these process improvements are likely to reduce the compliance costs associated with this rule, let alone impose additional costs over current compliance costs.

#### *Distributional Impacts*

As noted, HUD believes that the benefits of this rule will exceed the costs associated with compliance. Even if the aggregate costs associated with compliance with this rule exceeded the net benefits, the rule would still be justified due to its distributional impacts. Under applicable Executive Orders governing agency rulemaking, as well as OMB Circular A-4, agencies are required to consider the distributional impacts associated with any rulemaking to ensure that the

regulation appropriately benefits, and does not inappropriately burden, disadvantaged, vulnerable, or marginalized communities.

By design and definition, this rule will distribute substantial benefits to groups that lack equitable access to fair housing opportunities, often because they have historically experienced disadvantage. The benefits of this rule will be accrued primarily by protected groups as defined by the Fair Housing Act. These are groups that have been and continue to be denied fair housing choice, isolated in racially or ethnically concentrated areas of poverty or other segregated settings, and subjected to disparities in access to opportunity. HUD also does not believe that this rule places any burden on these groups. In light of the modest anticipated compliance costs associated with the rule, HUD believes that the substantial distributional benefits justify the promulgation of this rule.

## **5. REGULATORY ALTERNATIVES CONSIDERED**

The Department considered the following alternatives to the proposed regulations (1) leaving the current regulations in place without issuing the proposed regulations and (2) repromulgating the 2015 AFFH Rule. The Department rejected alternative (1) for the reasons expressed in the preamble. The current regime, while providing substantial flexibility, lacks a standardized mechanism to promote compliance with the statutory obligation. Under the current framework, HUD also lacks the ability to engage in effective oversight and enforcement of program participants' fair housing planning. Alternative (2) was also rejected for reasons expressed in the preamble. This proposed rule provides a more transparent and streamlined approach than the one HUD implemented in 2015 to help guide communities in taking meaningful actions to achieve tangible fair housing outcomes. After careful consideration of these alternatives, the Department believes that the proposed regulations represent the most

effective way to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act.

#### *Environmental Impact*

This proposed rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(13), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule proposes to strengthen the way in which HUD and its program participants meet the requirement under the Fair Housing Act to take affirmative steps to further fair housing. The preamble identifies the statutes, executive orders, and judicial precedent that address this requirement and that place responsibility directly on certain HUD program participants, specifically local governments, States, insular areas, and PHAs, underscoring that the use of Federal funds must promote fair housing choice and open communities. Although local governments, States, insular areas, and PHAs must affirmatively further fair housing independent of any regulatory requirement imposed by HUD, HUD recognizes its responsibility to provide leadership and direction in this area, while preserving local determination of fair housing needs and strategies.

This rule primarily focuses on establishing a regulatory framework by which program participants may more effectively meet their statutory obligation to affirmatively further fair housing. The statutory obligation to affirmatively further fair housing applies to all program participants, large and small. The statutory obligation requires program participants to develop strategies to affirmatively further fair housing as part of statutorily imposed plans that address the use of HUD funds and that must be submitted to HUD for review and approval. This proposed rule builds on the statutory requirements to affirmatively further fair housing in conjunction with the development of consolidated plans for States, insular areas, and local governments, and PHA Plans for PHAs, and, in doing so, provides for all program participants to comply with their statutory requirements in a cost-efficient, yet meaningful and effective manner.

The current statutory requirement imposed on States, insular areas, local governments, and PHAs requires the program participant to certify that it is affirmatively furthering fair housing. While that certification is a simple and brief document submitted to HUD, it nevertheless represents the attestation of the program participant that it will take meaningful actions to affirmatively further fair housing. While the certification is an important component of a program participant's statutory obligation to affirmatively further fair housing, even more important are the specific actions the program participant takes to affirmatively further fair housing. Because the Fair Housing Act requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Fair Housing Act, it is important for HUD to review the plans that delineate how HUD programs will be implemented so that the Secretary can be assured that HUD program participants are in fact affirmatively

furthering fair housing. The proposed rule, therefore, provides for program participants to submit an Equity Plan to HUD.

The rule proposes to reduce administrative burden on program participants in preparing and submitting an Equity Plan to HUD as compared to the prior AI or AFH processes because HUD has proposed to codify, in this proposed rule, the precise and direct questions to which program participants must respond and will assist program participants by providing data, guidance, and technical assistance. HUD will continue to provide local and regional data on access to community assets, such as education, transportation, employment, low-poverty exposure, as well as patterns of integration and segregation, and the demographics of particular types of housing. By responding to the questions in this proposed rule, engaging with their communities, and bringing to bear the knowledge they already have, along with relying on the HUD-provided data, program participants will engage in a more meaningful evaluation of who has access to equity in their communities. This more straightforward and direct analysis will allow program participants to more clearly identify how HUD funds can be used to promote equity, overcome patterns of segregation, and increase access to opportunity and community assets for underserved communities. HUD will also be available to provide technical assistance to program participants in the development of their Equity Plans and implementation of meaningful fair housing strategies and actions. It is HUD's position that this more streamlined approach will reduce burden for program participants, large and small, in meeting their statutory obligation to affirmatively further fair housing, relative to the 2015 AFFH Rule. Nonetheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. HUD commits to provide guidance to small entities on how the Equity Plan's direct questions may be answered without



the need for consultants, contractors, statisticians, or other experts and how they may still establish meaningful and achievable fair housing goals that result in a material positive change.

*Executive Order, 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

The proposed rule will assist program participants of HUD funds to satisfactorily fulfill the statutory obligation to affirmatively further fair housing. As HUD has noted in the preceding section discussing the Regulatory Flexibility Act, and in the Background section of this preamble, the obligation to affirmatively further fair housing is imposed by statute directly on local governments, States, insular areas, and PHAs. As the agency charged with administering the Fair Housing Act, HUD is responsible for overseeing that its programs are administered in a manner that affirmatively furthers the fair housing and civil rights-related purposes and policies of the entities receiving HUD funds and that they fulfill their affirmatively furthering fair housing obligation.

The approach taken by HUD in this proposed rule is to help local governments, States, insular areas, and PHAs meet this obligation in a way that is meaningful, but without undue burden. As noted throughout this preamble, HUD proposes to provide local and regional data on patterns of integration and segregation and access to community assets such as education,

transportation, employment, and other important community amenities. This approach, in which HUD offers data, clear standards and required areas of analysis, guidance, and technical assistance, is anticipated to reduce burden and costs that have historically been involved in regulatory schemes governing affirmatively furthering fair housing. Since Federal law requires States, insular areas, local governments, and PHAs to affirmatively further fair housing, there is no preemption, by this rule, of State law.

*Paperwork Reduction Act*

The information collection requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Currently, States, local governments, and PHAs are encouraged to prepare written plans to affirmatively further fair housing, undertake activities to overcome identified barriers to fair housing choice, and maintain records of the activities and their impact consistent with their planning documents and certification. This burden is generally accounted for in the Consolidated Planning and PHA Plan Information Collection Requests (ICRs). OMB Control No. 2506-0117 (Consolidated Plan, Annual Action Plan & Annual Performance Report) estimates 1,234 Localities spend 305 hours annually on their planning and 50 States spend 741 hours annually on their planning. OMB Control No. 2577-0226 (PHA Plans) estimates that 3,780 PHAs will spend 37.88 hours annually on their planning.

These currently approved collections do not account for the specific burden for the affirmatively furthering fair housing activities addressed in this Notice of Proposed

Rulemaking. HUD proposes that the burden of these ICRs would be reduced by accounting for the burden of the affirmatively furthering fair housing planning process provided for in this new ICR. HUD estimates that the burden reduction for the existing collection would be 5%, which HUD would update in future revisions to ICR 2506-0117 and ICR 2577-0226. HUD estimates that the burden hours to develop an Equity Plan will be on a sliding scale from the largest program participants to the smallest considering that the number of factors to consider in an Equity Plan also scales to the size of the program participant. As detailed more fully below, for example, HUD estimates it would take 150 hours for the largest program participants to develop an Equity Plan, i.e., those consolidated planning program participants receiving more than \$100 million in annual entitlement allocations and PHAs with 50,000 or more combined public housing and HCV units, as compared to 50 hours for the smallest consolidated planning and PHA program participants, i.e., those consolidated planning program participants receiving less than \$1 million in annual entitlement allocations and PHAs with 1,000 or fewer public housing and HCV units.

HUD provides these sliding scale estimates for several reasons. HUD proposes significant changes in this proposed rule from the final 2015 AFFH Rule in order to reduce burden. In particular, HUD is proposing to codify the analysis questions for all program participants rather than having separate assessment tools subject to change through PRA every three years. Because larger program participants tend to operate in larger geographic areas with larger populations, in particular, large metropolitan areas, States, and insular areas, these larger program participants will have more content to analyze. Conversely, smaller program participants tend to operate in less densely populated areas and tend to have fewer community assets. The questions proposed are expected to scale with the size of the jurisdiction of the

program participant. In addition, HUD has eliminated various components of the 2015 AFFH Rule's AFH analysis, including, for example, the contributing factors analysis. HUD anticipates that the more streamlined Equity Plan analysis, which will not change every three years pursuant to PRA, will provide a significantly reduced burden. HUD also bases these estimates, including the sliding scale, on the burden hours estimated for AFH preparation during implementation of the 2015 AFFH Rule. Smaller program participants took significantly less time to prepare AFHs than did the larger program participants, and the AFHs were similarly less extensive. These combined factors led to HUD's estimate of 150 hours for the largest program participants, which is 50 hours less than the expected burden for the preparation of all AFHs under the 2015 AFFH Rule.

HUD notes that while these burdens are listed as annual obligations, the majority of any burden will happen for most program participants once every five years. Based on HUD's experience implementing its 2015 AFFH Rule, HUD estimates that 50% of plans will be joint Equity Plans, whereby burden is significantly reduced for program participants. HUD estimates that such joint Equity Plans will, on average, include four joint program participants, and the program participant burden will be reduced to 50 hours per program participant.

In certain circumstances, program participants will be required to revise their Equity Plans. HUD anticipates that 5% of program participants would be required to or voluntarily would revise their Equity Plan, and the revised planning process would take an additional 50 hours per participant. As part of the Equity Plan and revising such plan, program participants will have to complete community engagement activities and maintain records of these activities. HUD estimates that recordkeeping under the proposed rule will be 5 hours per program participant. In support of their progress under the Equity Plan, program participants must

complete and provide to HUD annual progress evaluations which are estimated for each program participant to take 10 hours.

As a part of this rulemaking, HUD is providing a process whereby individuals can submit complaints related to the program participant's obligations to affirmatively further fair housing, and HUD anticipates 100 complaints to be received each year, with an estimated total processing burden time of 10 hours for program participants.

The burden of the information collections in this proposed rule is estimated as follows:

#### REPORTING AND RECORDKEEPING BURDEN:

| Section Reference   | Number of Parties   | Number of Responses Per Party | Estimated Average Time for Requirement (hours) | Total Estimated Annual Burden (hours) |
|---|---------------------|-------------------------------|--|---------------------------------------|
| §§ 5.154, 5.168(a)(1) and (3)<br>Equity Plan – Analysis, Fair Housing Goals, Meaningful Actions |                     |                               |  |                                       |
| Consolidated Plan Program Participant (States, Insular Areas, Local Governments, and Consortia) | 1,250 <sup>44</sup> | 1                             |  |                                       |
| \$100 Million or More   | 10                  | 1                             | 150  | 2,700                                 |
| \$30-99 Million   | 40                  | 1                             | 125  | 6,000                                 |
| \$1-29 Million  | 660                 | 1                             | 100  | 63,800                                |
| Less than \$1 Million   | 540                 | 1                             | 50   | 24,150                                |
| Total Consolidated Plan Program Participant Burden  |                     |                               |  | 96,650                                |
| All PHAs  | 3,835 <sup>45</sup> | 1                             |  |                                       |
| 50,000 or More Public Housing and Voucher Unit PHAs   | 5                   | 1                             | 150  | 600                                   |
| 10,000-49,999 Public Housing and Voucher Unit PHAs  | 50                  | 1                             | 125  | 6,125                                 |

<sup>44</sup> Based on FY2021 data.

<sup>45</sup> Based on FY2022 data.

|   |       |   |     |   |
|---|-------|---|-----|---|
| 1,000-9,999 Public Housing and Voucher Unit PHAs                              | 610   | 1 | 100 | 61,000  |
| Fewer than 1,000 Public Housing and Voucher Unit PHAs                         | 3,170 | 1 | 50  | 158,600   |
| Total PHA Plan Program Participant Burden                                     |       |   |     | 226,325   |
| Joint Equity Plans (Total Burden for All Joint Program Participants Combined) | 2,511 | 1 | 50  | 125,550   |
| Cumulative Total Burden Hours for Equity Plans and Joint Equity Plans         | 5,022 |   |     | 287,038<br>(Con Plan + PHA)/2 + Joint Equity Plan |
| §§ 5.158, 5.168 Recordkeeping for Community Engagement and Other Activities   | 5,022 | 1 | 5   | 25,110  |
| § 5.160(f) Annual progress evaluations  | 5,022 | 1 | 10  | 50,220  |
| § 5.170 Complaints  | 100   | 1 | 10  | 1,000   |
| §§ 5.162(c) and 5.164 Revisions of Equity Plans                               | 251   | 1 | 50  | 12,550  |
| Total Burden  |       |   |     | 375,918   |

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5593-P-01) and must be sent to:

HUD Desk Officer  
Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax: (202) 395-6947

And

Reports Liaison Officer  
Office of Public and Indian Housing  
Department of Housing and Urban Development, Room  
451 7th Street, SW,  
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

## List of Subjects

### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

### *24 CFR Part 91*

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

### *24 CFR Part 92*

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

### *24 CFR Part 93*

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

### *24 CFR Part 570*

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs--education, Grant programs--housing and community development, Guam, Indians, Lead poisoning, Loan programs--housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust



Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

*24 CFR Part 574*

Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Non profit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 576*

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

*24 CFR Part 903*

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 983*

Grant programs—housing and community development, Grant programs—Indians, Indians, Public Housing, Rent subsidies, Reporting and recordkeeping requirements.

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

1. The authority citation for part 5 continues to read as follows:

Authority: 29 U.S.C. 794, 42 U.S.C. 1437a, 1437c, 1437c-1(d), 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109-115, 119 Stat. 2936; 42 U.S.C. 3600-3620; 42 U.S.C. 5304(b); 42 U.S.C. 12101 *et seq.*; 42 U.S.C. 12704-12708; E.O. 11063, 27 FR 11527, 3 CFR, 1958-1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

## **Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers**

2. Subpart A is amended by adding a Table of Contents and revising §§ 5.150-5.180 under the undesignated heading “Affirmatively Furthering Fair Housing” to read as follows:

### AFFIRMATIVELY FURTHERING FAIR HOUSING

#### Sec.

#### **5.150 Affirmatively Furthering Fair Housing: Purpose.**

#### **5.151 Affirmatively Furthering Fair Housing: Application.**

#### **5.152 Definitions.**

#### **5.154 Equity Plan.**

#### **5.156 Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents.**

#### **5.158 Community engagement.**

#### **5.160 Submission requirements.**

#### **5.162 Review of Equity Plan.**

#### **5.164 Revising an Accepted Equity Plan.**

#### **5.166 AFFH certifications.**

#### **5.168 Recordkeeping.**

#### **5.170 Compliance information.**

#### **5.172 Procedures for effecting compliance.**

#### **5.174 Hearings.**

#### **5.176-5.180 [Reserved]**

### AFFIRMATIVELY FURTHERING FAIR HOUSING

#### **§ 5.150 Affirmatively Furthering Fair Housing: Purpose.**

This regulation implements the Fair Housing Act’s affirmatively furthering fair housing mandate, which requires Federal housing and urban development programs and activities to be administered in a manner that not only avoids and eliminates discrimination today, but also remedies the legacy of public and private policies and practices that have created segregated communities and enduring inequities in housing and related opportunities throughout the Nation. This regulation is intended to ensure that HUD program participants, while making local decisions responsive to local circumstances, commit to and implement concrete actions that will meaningfully remedy persistent segregation, limitations on fair housing choice, and unequal

access to community assets and related economic opportunities. This regulation aims to provide publicly transparent processes, to provide flexibility and avoid unnecessary burden and confusion for program participants, and to create accountability mechanisms that ensure HUD, program participants, and the public at large, all can play a part in meeting the urgent need to ensure that local fair housing issues are fully identified and meaningfully addressed.

To further these aims, this regulation sets out a process under which program participants, after robust engagement with their communities, will conduct a focused analysis of the fair housing issues in their areas, establish fair housing goals to overcome them, and submit their analysis and commitments for HUD review, with the public having an opportunity to submit comments for consideration during HUD's review. Program participants will submit annual progress evaluations, made available to the public, on their accomplishments under each goal they commit to achieve, and will be able to amend or adjust goals that cannot be met or that may require additional time. This regulation provides procedures for the public to file complaints alleging violations of this regulation or the duty to affirmatively further fair housing, as well as for HUD to conduct investigations and take any actions necessary to ensure compliance.

Ultimately, this regulation seeks to further implement the AFFH statutory mandate by requiring and assisting HUD program participants to embed fairness and equity in their decision-making processes, particularly with respect to the use of Federal financial assistance and resources, as they recognize and redress inequities in their policies, activities, services, and programs that serve as barriers to equal opportunity in housing. This regulation seeks to expand equitable access to housing and related opportunities across all protected classes, including race,

color, national origin, religion, sex (including gender identity, sexual orientation, and nonconformance with gender stereotypes), disability, and familial status.

#### **§ 5.151 Affirmatively Furthering Fair Housing: Application.**

All programs and activities relating to housing and urban development must comply with the obligation to affirmatively further fair housing. Sections 5.150 through 5.180 of this Subpart A also include specific planning requirements for program participants, as defined in § 5.152.

#### **§ 5.152 Definitions.**

For purposes of §§ 5.150 through 5.180, the terms “consolidated plan,” “consortium,” “unit of general local government,” “jurisdiction,” and “State” are defined in 24 CFR part 91. For PHAs, “jurisdiction” is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.180 and related amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983.

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation, eliminate inequities in housing and related community assets, 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, reduce or end 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 well-resourced areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws and requirements. The duty to

affirmatively further fair housing extends to all of a program participant's activities, services, and programs relating to housing and community development; it extends beyond a program participant's duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination the Fair Housing Act was designed to redress.

Affordable Housing Opportunities means

(1) Housing that:

(i) Is affordable to low- and moderate-income households;

(ii) Has a sufficient number of bedrooms to meet the needs of families of various sizes, particularly large families; and

(iii) Meets basic habitability requirements.

(2) Affordable housing includes publicly supported housing as well as housing that is otherwise affordable to low-income households. For publicly supported housing, such housing must comply with applicable program requirements for affordability and habitability.

(3)(i) The term "affordable housing opportunities" includes the location of such housing, including proximity to community assets, locations that promote integration, and locations that provide access to opportunity and well-resourced areas.

(ii) Affordable housing opportunities also includes housing that is accessible to individuals with disabilities, including by providing necessary accessibility features.

(iii) Affordable housing opportunities also includes housing stability for protected class groups, which may be adversely affected by factors such as, but not limited to, rising rents, loss of existing affordable housing, and displacement due to economic pressures, evictions, source of income discrimination, or code enforcement.

Analysis of Impediments to Fair Housing Choice means the analysis described in the Fair Housing Planning Guide (FHPG) originally published by the Department in 1996 or in any subsequent update to the FHPG that HUD may make available.

Balanced Approach means and refers to an approach to community planning and investment that balances a variety of actions to eliminate the housing-related disparities that result from segregation, racially or ethnically concentrated areas of poverty (R/ECAPs), the lack of affordable housing in well-resourced areas of opportunity, the lack of investment in community assets in R/ECAPs and other high-poverty areas, and the loss of affordable housing to meet the needs of underserved communities. A balanced approach includes a combination of actions designed to address all these disparities. For example, place-based strategies include actions and investment to substantially improve living conditions and community assets in high-poverty neighborhoods while preserving existing affordable housing stock to meet the needs of underserved communities and address inequitable access to affordable rental and homeownership opportunities. Mobility strategies, on the other hand, focus on the removal of barriers that prevent people from accessing affordable housing, for example in well-resourced areas of opportunity that have historically lacked such housing and effective housing mobility programs and services. To achieve a balanced approach, community planning and investment would need to balance place-based strategies with mobility strategies. Both place-based and mobility strategies that are part of a balanced approach must be designed to achieve positive fair housing outcomes. A program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely on solely place-based strategies consistent with a balanced approach.

Community assets means programs, infrastructure, and facilities that provide opportunity and a desirable environment. Examples of community assets include: high performing schools (as well as quality daycare and childhood educational services), desirable employment opportunities, efficient transportation services, safe and well-maintained parks and recreation facilities, well-resourced libraries and community centers, community-based supportive services for individuals with disabilities, responsive emergency services (including law enforcement), healthcare services, environmentally healthy neighborhoods (including clean air, clean water, access to healthy food), grocery stores, retail establishments, infrastructure and municipal services, banking and financial institutions, and other assets that meet the needs of residents throughout the community.

Community engagement, as required by § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, consideration of the views and recommendations received, and a process for incorporating such views and recommendations into planning processes, decisions, and outcomes.

Consolidated plan program participant. See definition of “program participant” in this section.

Data. The term “data” collectively refers to:

(1) HUD-provided data. The term “HUD-provided data” refers to metrics, statistics, and other quantified information, including data sets specific to each program participant, provided by HUD, that program participants are required to use in preparing an Equity Plan. HUD-provided data will not only be provided to program participants but will also be posted on HUD’s website for public availability; and

(2) Local data. The term “local data” refers to metrics, statistics, and other quantified information, subject to a determination of reliability or statistical validity by HUD, relevant to the program participant’s geographic areas of analysis, that program participants can find through a reasonable amount of search, are readily available at little or no cost, including the location of publicly supported housing, and are necessary for the completion of the Equity Plan.

Days means calendar days.

Disability (1) The term “disability” means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment.

(2) The term “disability” as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008. This definition does not change the definition of “disability” or “disabled person” adopted pursuant to a HUD program statute for purposes of determining an individual’s eligibility to participate in a housing program that serves a specified population.

Equity or Equitable means the consistent and systematic fair, just, and nondiscriminatory treatment of all individuals, regardless of protected characteristic, including concerted actions to overcome past discrimination against underserved communities that have been denied equal opportunity or otherwise adversely affected because of their protected characteristics by public and private policies and practices that have perpetuated inequality, segregation, and poverty.

Equity Plan means the plan prepared by program participants, pursuant to § 5.154, to advance local equity in housing, community development programs, and access to well-



resourced areas, opportunity, and community assets. The Equity Plan includes two distinct parts: (1) the analysis of fair housing data and identification of fair housing issues required by the fair housing goal category; and (2) the establishment and commitment to undertake fair housing goals, strategies, and meaningful actions for each fair housing goal category, which program participants shall incorporate into subsequent planning documents that identify how the program participant will use funds or take actions to affirmatively further fair housing. Program participants submit their Equity Plan to HUD for review. The Equity Plan may be conducted and submitted by an individual program participant (individual Equity Plan) or may be a single Equity Plan that is jointly conducted and submitted by two or more program participants (joint Equity Plan). The Equity Plan includes program participants' submission of annual progress evaluations, which will be published on HUD maintained webpages.

Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose, including in well-resourced areas, without unlawful discrimination and other barriers related to race, color, religion, sex (including sexual orientation gender identity, and nonconformance with gender stereotypes), familial status, national origin, or disability. Fair housing choice encompasses:

(1) Actual choice, which means the existence of realistic housing options (e.g., those that are affordable and attainable), including but not limited to homeownership options;

(2) Protected choice, which means housing that can be accessed without discrimination;  
and

(3) Enabled choice, which means realistic access to sufficient information, services, and other options regarding both rental housing and homeownership so that any choice is informed.

For persons with disabilities, fair housing choice includes a realistic opportunity to obtain and maintain housing with accessibility features meeting the individual's disability-related needs, housing provided in the most integrated setting appropriate to an individual's needs, and housing where community assets are accessible to individuals with disabilities, including voluntary disability-related services that an individual needs to live in such housing.

Fair housing goals means the goals developed by program participants that are based on the analysis conducted in the Equity Plan and are designed and can be reasonably expected to overcome circumstances that cause, increase, contribute to, maintain, or perpetuate fair housing issues in the program participant's geographic areas of analysis. Fair housing goals include a description of progress-oriented, specific measurable steps, including timeframes for achievement, and a description of the amount of and potential sources of funds (if any) needed to implement the goal. Fair housing goals may be short-term, in that they can be achieved relatively quickly, or more ambitious, long-term goals, in that they may take more than a single funding cycle to be fulfilled. Fair housing goals are designed to achieve tangible, positive, and measurable fair housing outcomes for each of the seven fair housing goal categories in the program participant's community. A program participant's fair housing goals must work together to overcome fair housing issues identified in the program participant's Equity Plan. To ensure program participants affirmatively further fair housing, if program participants establish ambitious goals that are contingent upon funding or other actions that are not entirely within their control, program participants also must establish fair housing goals that will achieve positive fair housing outcomes in each goal category without reliance on contingencies that may not be fulfilled. Each fair housing goal includes a description of the key fair housing issue(s) it

is designed to remedy or overcome. When achieved, fair housing goals must result in a material positive change toward overcoming fair housing issues.

Fair housing goal categories means the following categories for which program participants must establish fair housing goals to overcome identified fair housing issues: (1) integration and segregation; (2) racially or ethnically concentrated areas of poverty (R/ECAPs); (3) significant disparities in access to opportunity; (4) inequitable access to affordable housing and homeownership opportunities; (5) laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities; (6) inequitable distribution of local resources, which may include State or municipal services, emergency services, community-based supportive services, and investments in infrastructure; and (7) discrimination or violations of civil rights law or regulations related to housing and access to community assets.

Fair housing issue means a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity and community assets. Examples of such conditions include but are not limited to: ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, inequitable access to affordable housing opportunities and homeownership opportunities, laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced neighborhoods of opportunity, inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure, and discrimination or violations of civil rights law or regulations related to housing or access to community assets. Participation in "housing programs serving specified populations," as defined in this section,

does not present a fair housing issue of segregation, provided that such programs are administered by program participants so that the programs comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and other Federal civil rights statutes and regulations.

Fair housing strategies and actions means the specific policies and actions intended to implement fair housing goals established in an Equity Plan that are incorporated into the program participant's subsequent planning documents (e.g., consolidated plan, annual action plan, PHA Plan, and other plans relating to education, transportation, infrastructure, and environmental protection, including those required in connection with the receipt of Federal financial assistance from any Executive Agency or Department). Fair housing strategies and actions describe how the funds that are the subject of the particular planning document will be used to affirmatively further fair housing in the program participant's jurisdiction consistent with the Equity Plan.

Funding decisions means decisions made to allocate resources, including Federal financial assistance, State or local funds, bond financing, and the administration, utilization, and allocation of low-income housing tax credits by States, local governments, public housing agencies (as applicable), or other entities.

Geographic area, geographic area of analysis, or area means the areas, including a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or other applicable area (e.g., census tract, neighborhood, Zip code, block group, housing development, or portion thereof) relevant to the analysis required by § 5.154. The geographic areas of analysis for the different types of program participants are as follows:

(1) For States or Insular Areas, the expected geographic area of analysis includes the whole State or Insular Area pursuant to 24 CFR 91.5, including entitlement and non-entitlement areas, on a county-by-county basis (not neighborhood-by-neighborhood), and, where necessary to identify fair housing issues, lower levels of geography, while also including any analysis of circumstances outside the State that impact fair housing issues within the State;

(2) For local governments, the expected geographic area of analysis includes the whole jurisdiction of the local government pursuant to 24 CFR 91.5, the CBSA, and where necessary to identify fair housing issues, lower levels of geography such as neighborhoods, Zip codes, census tracts, block groups, housing developments, or portions thereof, while also including any analysis of circumstances outside the jurisdiction that impact fair housing issues within the jurisdiction; and

(3)(i) For PHAs that operate below the State level, the expected geographic area of analysis includes the PHA's whole service area (e.g., the area where a public housing agency is authorized to operate), the CBSA, and where necessary to identify fair housing issues, includes lower levels of geography such as neighborhoods, Zip codes, census tracts, block groups, housing developments, or portions thereof, along with locations where vouchers administered by the PHA are or could be utilized, while also including any analysis of circumstances outside the service area that impact fair housing issues within the service area.

(ii) For PHAs that operate within an entire State, the PHA's expected geographic area of analysis includes the areas of analysis for States as referenced in § (3)(i) of this definition along with the areas in which the PHA owns, operates, and administers housing programs, and where necessary to identify fair housing issues, includes lower levels of geography.

Homeownership opportunity means that one has the actual choice to own, sell, buy, and finance a home, without discrimination based on a protected characteristic.

Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:

(1) Serve specific identified populations; and

(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and other Federal civil rights statutes and regulations.

Insular area has the same meaning as provided in 24 CFR 570.405.

Integration means a condition, within the program participant's geographic area of analysis, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. Racial integration means that people of different racial groups generally are not highly concentrated in distinct geographic areas within a community (e.g., census tract or block group). For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent

with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (2010) (addressing 28 CFR 35.130 and providing guidance on the Americans with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

Joint program participants means two or more program participants that are jointly conducting and submitting a single Equity Plan (a joint Equity Plan), in accordance with § 5.156 and 24 CFR 903.15(a)(1) and (2), as applicable. Joint program participants pool resources to work together to solve cross-jurisdictional fair housing issues.

Local knowledge means information not provided by HUD that relates to the program participant's geographic areas of analysis, is relevant to the identification of fair housing issues in the program participant's Equity Plan and for setting of fair housing goals to overcome the effects of identified fair housing issues pursuant to § 5.154, is known or becomes known to the program participant, and is necessary for the completion of the Equity Plan. Local knowledge includes, but is not limited to:

(1) Historical information on why current conditions within the geographic areas of analysis exist and persist, which may include State or local laws, ordinances, or policies that cause, perpetuate, increase the severity of, or maintain fair housing issues;

(2) Information provided to the program participant during the community engagement process that draws attention to the existence or cause of one or more fair housing issues; and

(3) Information that assists the program participant in identifying the causes of their local fair housing issues along with appropriate solutions.

Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, decreasing segregation and increasing integration, increasing fair housing choice, or decreasing disparities in access to opportunity in the program participant's jurisdiction.

Program participants means:

(1) Jurisdictions and Insular Areas that are required to submit consolidated plans for the following programs:

(i) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D, F, and I);

(ii) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(iii) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92);

(iv) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574); and

(v) The Housing Trust Fund (HTF) program (see 24 CFR part 93).

(2) Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C.1437g).

Protected characteristics are race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, having a disability, and having a type of disability.

Protected class means a group of persons who have the same protected characteristic; e.g., a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.



Publication means the public online posting of the Equity Plans and annual progress evaluations submitted to HUD for review on HUD-maintained webpages. These webpages will include, among other things, a dashboard to track the status of a program participant's AFFH planning and implementation-related activities and access to Equity Plan submissions, annual progress evaluation reports, and related notifications from the Department.

Publicly supported housing means affordable housing assisted with funding through Federal, State, or local agencies or programs as well as affordable housing financed or administered by or through any such agencies or programs. Examples of publicly supported housing for purposes of the analysis required by § 5.154 include: public housing; Project-Based Section 8; Other HUD Multifamily Housing (e.g., Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities); housing financed with Low-Income Housing Tax Credits (LIHTC); housing financed through loan guarantees (Section 108); and housing subsidized with Housing Choice Vouchers. Other publicly supported housing includes housing funded through the U.S. Department of Agriculture and the U.S. Department of Veterans Affairs, or other HUD-funded housing, such as affordable multifamily housing financed using HOME Investment Partnerships funds, housing financed through the Housing Trust Fund, and housing converted under the Rental Assistance Demonstration.

Racially or ethnically concentrated areas of poverty or R/ECAPs means a geographic area with both significant concentrations of poverty and segregation of racial or ethnic populations.

Region means the larger geographic area that a jurisdiction lies within. Regions may vary in size, scope, and relevance based on the nature of the jurisdiction and the fair housing issues present. Regions, which include areas outside the program participant's jurisdiction that are identified in HUD-provided data and supplemented based on local data and local knowledge,

and that impact fair housing issues in the jurisdiction. For local government or PHA program participants' jurisdictions that are adjacent to but not located within a Core-Based Statistical Area (CBSA), the region includes the CBSA. For local government or PHA program participants' jurisdictions that are located within CBSAs, the region includes but is not necessarily limited to the other portions of the CBSA.

Responsible Civil Rights Official means the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or his or her designee;

Reviewing Civil Rights Official means the FHEO official with the designated authority to carry out the actions described in §§ 5.170 and 5.172.

Segregation means a condition within the program participant's geographic areas of analysis in which there is a significant concentration of persons of a particular race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a different or broader geographic area. Racial segregation includes a concentration of persons of the same race regardless of whether that race is the majority or minority of the population in the geographic area of analysis. For example, in a community where persons of one race (e.g., White) are concentrated in one neighborhood and persons of another race (e.g., African American) are concentrated in a different neighborhood, racial segregation exists in each of the neighborhoods. For persons with disabilities, segregation includes a condition in which available housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (2010) (addressing 28 CFR 35.130). Participation

in “housing programs serving specified populations” as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and other Federal civil rights statutes and regulations.

Significant disparities in access to opportunity means substantial and measurable differences in access to and quality of housing, education, transportation, economic, and other important opportunities in a community, including community assets, based on protected class and related to where individuals of a particular protected class reside in the program participant’s geographic areas of analysis.

Siting decisions means decisions made by State or local entities, including cities, counties, or general units of local government regarding where and where not in a jurisdiction to locate, build, finance, rehabilitate, develop, or permit the development of affordable housing.

Underserved communities means groups or classes of individuals (i.e., underserved populations), that are protected classes or who share a particular characteristic, disproportionately include members of protected class groups, and have not received equitable treatment, as well as geographic communities (i.e., underserved geographic areas) where members of protected class groups do not enjoy equitable access to housing, education, transportation, economic, and other important housing and community-related opportunities, including well-resourced areas and community assets. Examples of underserved communities include: communities of color, individuals experiencing homelessness, Lesbian, Gay, Bisexual,

Transgender, Queer, + persons (LGBTQ+), low-income communities or neighborhoods, survivors of domestic violence, persons with criminal records, and rural communities.

Well-resourced areas means areas within the program participant's geographic area of analysis that have high-quality and well-maintained community assets (in view of local economic circumstances), as defined in § 5.152, which afford residents genuine access to opportunity (e.g., transportation, infrastructure, high performing schools, economic opportunity, etc.) as a result of public and private investments.

### **§ 5.154 Equity Plan.**

#### *(a) General.*

(1) Program participants must develop an Equity Plan in accordance with this section. To develop an Equity Plan that is successful in overcoming local fair housing issues, program participants must first conduct an analysis—informed by community engagement, HUD-provided data, and local data and local knowledge—to identify the fair housing issues in their geographic area of analysis as well as the circumstances and factors that cause, increase, contribute to, maintain, or perpetuate those fair housing issues. Program participants' analysis will focus, at minimum, on seven areas of inquiry specified in this section. These seven areas are the core fair housing goal categories for which program participants must establish fair housing goals for identified fair housing issues.

(2) After engaging with the community in accordance with § 5.158, conducting the analysis, and identifying fair housing issues, circumstances, and factors, program participants must then prioritize the identified fair housing issues in accordance with paragraph (f)(2) of this

section for purposes of setting one or more fair housing goal(s) for each fair housing goal category.

(3) After prioritizing fair housing issues, program participants must then establish one or more fair housing goal(s) to overcome the prioritized fair housing issues for each fair housing goal category. A well-designed fair housing goal may be effective in overcoming more than one fair housing issue, including fair housing issues in more than one fair housing goal category.

(4) After the program participant has established fair housing goals, the program participant must submit the Equity Plan to HUD for review in accordance with § 5.160.

(5) Once a program participant's Equity Plan has been reviewed and accepted by HUD in accordance with § 5.162, the program participant must incorporate the fair housing goals from its Equity Plan, along with the fair housing strategies and actions that are necessary to implement the goals, into its planning documents that are required by Federal statutes or regulations as described in § 5.156.

(6) On an annual basis following the acceptance of a program participant's Equity Plan, the program participant must prepare and submit to HUD for review an annual progress evaluation that describes the program participant's progress toward achieving each fair housing goal in the Equity Plan, any changed circumstances that are likely to affect the program participant's ability to achieve any of its established fair housing goals, and any proposed adjustments to the program participant's fair housing goals that are necessary to ensure that the program participant will be able to achieve the fair housing goals in its Equity Plan and comply with the requirements of this subpart.

(7) Following the submission of a program participant's annual progress evaluation, HUD will accept the proposed adjustment to any fair housing goal(s) or provide feedback to the

program participant describing how the fair housing goals may be adjusted so HUD can accept them. The fair housing goals of an Equity Plan that has been accepted by HUD will remain in effect unless a program participant's adjusted goal has been accepted by HUD.

*(b) Development of the Equity Plan.*

Aided by training, technical assistance, and HUD-provided data as well as local knowledge, local data, and information from engaging with their communities and other agencies or government entities in their geographic area of analysis, program participants will develop the Equity Plan and submit to HUD for review. Certain portions of the analysis required for the development of an Equity Plan may rely on local data, local knowledge, or information obtained through community engagement to supplement HUD-provided data or in lieu of HUD-provided data if HUD is unable to provide data.

*(c) Content of Equity Plan.*

(1) General. Each program participant shall prepare an Equity Plan for the purpose of developing fair housing goals, strategies, and meaningful actions that are designed and can be reasonably expected to overcome identified fair housing issues in each fair housing goal category and advance equity based on protected characteristics in its geographic area of analysis with respect to its programs, services, and activities, including funding and siting decisions.

(2) Fair Housing Goals. Fair housing goals established by the program participant in the Equity Plan shall include strategies and meaningful actions. The fair housing goals, strategies, and meaningful actions shall be incorporated, pursuant to § 5.156 of this subpart, into the program participant's consolidated plans, annual action plans, PHA Plans, and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environment and climate related plans, including those required in connection

with the receipt of Federal financial assistance from any Federal Executive Agency or Department.

(3) Scope of Analysis. The Equity Plan’s analysis, identification of fair housing issues, and establishment of goals must address, at minimum, the following fair housing goal categories:

- (i) Segregation and integration;
- (ii) Racially or ethnically concentrated areas of poverty (R/ECAPs);
- (iii) Disparities in access to opportunity;
- (iv) Inequitable access to affordable housing opportunities and homeownership opportunities;
- (v) Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities;
- (vi) Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services and investments in infrastructure; and
- (vii) Discrimination or violations of civil rights law or regulations related to housing or access to community assets based on race, color, national origin, religion, sex, familial status, and disability.

(4) Conducting the Analysis. In conducting the Equity Plan’s analysis, the program participant must evaluate the jurisdiction’s local policies and practices impacting fair housing to determine whether changes are necessary in order to affirmatively further fair housing. The analysis required will depend on whether the program participant is a local government, State, insular area, or a PHA.

*(d) Content: Analysis—Local Governments, States, and Insular Areas.*

At minimum, using HUD-provided data, local data, and local knowledge, including information obtained through community engagement required by § 5.158, the Equity Plan shall respond to the following questions with respect to the program participant's jurisdiction and region:

(1) Demographics.

(i) What are the current demographics of the geographic area of analysis by protected class group (race, color, national origin, religion, sex, familial status, and disability) and how have demographics changed over time (e.g., since 1990 or the three last decennial censuses, whichever is shorter)?

(ii) What are the current demographics of residents of different categories of publicly supported housing in the jurisdiction and how have those demographics changed over time?

(2) Segregation and integration.

(i)(A) Which areas within the geographic area of analysis have significant concentrations of particular protected class groups, including racial/color/ethnic groups, national origin groups, particular limited English proficient (LEP) groups, individuals with disabilities, and other protected class groups?

(B) Which, if any, of these geographic areas extend beyond the boundaries of the jurisdiction? Please note that depending on the geographic areas used in this analysis, the jurisdiction's analysis may need to include areas that go beyond the jurisdiction's specific boundaries.

(ii) How have patterns of segregation and integration in particular geographic areas, as defined in § 5.152, changed over time in the jurisdiction and region?



(iii)(A) Compare the locations of publicly supported housing with the areas of concentration (identified in paragraph (d)(2)(i) above).

(B) How do the demographics of publicly supported housing compare to the demographics of areas where the housing is located (identified in paragraph (d)(2)(i) above)?

(C) How have siting decisions of private or publicly supported housing or the location of residents using Housing Choice Vouchers impacted the overall patterns of concentration (identified in paragraph (d)(2)(i) above)?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(3) R/ECAPs.

(i)(A) Identify and describe R/ECAPs, including their location.

(B) What are the demographic groups living in R/ECAPs by protected class?

(C) Which protected class groups predominantly reside in R/ECAPs? To the extent that data is available, what percentage of each protected class group in the jurisdiction or region resides in R/ECAPs?

(ii) How have the demographics and location of R/ECAPs changed over time? For example, has there been an expansion or decrease in the number of R/ECAPs in the geographic area of analysis? Has concentration of protected class groups within each R/ECAP increased or decreased?

(iii)(A) How do R/ECAPs in the geographic area of analysis align with the location of publicly supported housing?

(B) What are the demographics of residents of publicly supported housing residing in R/ECAPs, including by program category, in comparison to the demographics of R/ECAPs?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(4) Access to community assets.

(i) Describe which protected class groups experience significant disparities in access to the following community assets:

- (A) Education;
- (B) Employment;
- (C) Transportation;
- (D) Low-poverty neighborhoods;
- (E) Environmentally healthy neighborhoods; and
- (F) Other Community Assets as defined in § 5.152?

(ii)(A) Are there locations in the geographic areas of analysis in which protected class groups experience significant disparities in access to community assets listed above in (d)(4)(i)?

(B) If so, which protected class groups experience lack of access and where?

(C) Describe whether there is a difference in whether residents of segregated areas and R/ECAPs, identified above, have access to each of the community assets listed in this paragraph (d)(4)(i) compared to the jurisdiction as a whole?

(iii) Describe the barriers that deny individuals with disabilities access to opportunity and community assets in your geographic area of analysis with regard to the following:

- (A) Accessible and affordable housing;
- (B) Accessible government facilities and websites;
- (C) Accessible public infrastructure (sidewalks, pedestrian crossings, parks and recreation, libraries);

(D) Reliable and accessible transportation;

(E) Accessible schools and educational programs, and, in particular, high-performing schools and educational programs;

(F) Employment; and

(G) Community-Based Supportive Services.

(iv)(A) In what ways do residents of publicly supported housing, by protected class group, experience disparities in access to opportunity and community assets described in paragraphs (d)(4)(i)-(iii) of this section?

(B) In what ways do underserved communities experience such disparities?

(v) Is there a disproportionate need in underserved communities for place-based community or economic development, such as assistance for small businesses and microenterprises, infrastructure, commercial redevelopment, job creation or retention and job training? If so, note the type of issues identified by program participants or residents.

(vi) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(5) Access to affordable housing opportunities.

(i) Describe the availability of affordable housing opportunities that are affordable to families, by protected class group, at various income levels and where such housing is located in the geographic area of analysis, including whether such housing affords access to community assets and well-resourced areas. This assessment includes an evaluation of whether different protected class groups at various income levels have fair housing choice in their ability to access affordable housing in particular areas in the jurisdiction.

(ii) Describe the housing cost burden (e.g., more than 30 percent of monthly income) and severe housing cost burden (e.g., more than 50 percent of monthly income) and overcrowding (particularly for large families) experienced by protected class groups and indicate whether such burden aligns with previously identified segregated or integrated areas, or R/ECAP or non-R/ECAP areas.

(iii) Describe disparities in housing quality (i.e., substandard housing conditions) by protected class group and indicate whether such disparities align with previously identified segregated or integrated areas, or R/ECAP or non-R/ECAP areas.

(iv) Which protected class groups, in the geographic area of analysis, disproportionately face housing instability due to rising rents, loss of existing affordable housing, and displacement due to economic pressures, eviction, source of income discrimination, or code enforcement?

(v) Describe how access to affordable housing opportunities has changed in the geographic area of analysis over time. Describe how this change has affected patterns of segregation and integration or the expansion or contraction of R/ECAP and non-R/ECAP areas in the geographic area of analysis.

(vi) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(6) Access to homeownership and economic opportunity.

(i)(A) Which protected class groups experience significant disparities in access to homeownership opportunities?

(B) What are the homeownership rates by protected class?

(ii) Are there protected class groups that experience significant disparities in access to other economic opportunities, which may include but are not limited to:

- (A) Access to livable-wage jobs;
- (B) Access to services of reputable mortgage lenders and other financial institutions;
- (C) Access to fair and affordable credit;
- (D) Access to reputable financial counseling services; and
- (E) Fair residential real estate appraisals and valuations?

If so, which protected class groups experience lack of access?

(iii) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(7) Local and State policies and practices impacting fair housing.

(i) How do local laws, policies, ordinances, and other practices impede or promote the siting or location of affordable housing in well-resourced neighborhoods? What is the relationship between those laws, policies, ordinances, and other practices and the segregated or integrated areas and R/ECAP or non-R/ECAP areas identified above?

(ii) How do local laws, policies, ordinances, and other practices impede or promote equitable access to homeownership and other asset building and economic opportunities by protected class group?

(iii) How have existing zoning and land use policies or ordinances, the presence or lack of source of income anti-discrimination laws, eviction policies and practices, and other State and local policies or practices contributed to the patterns of segregation, integration, and R/ECAPs identified above, as well as access to affordable housing opportunities in well-resourced areas throughout the geographic area of analysis for protected class groups?

(iii) Describe the efforts and activities undertaken by the program participant to work, collaborate, or partner with other offices, departments, agencies, or entities within the program participant's jurisdiction that aim to advance equity.

(iv) What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments in which the program participant has been a party related to fair housing or other civil rights laws in the jurisdiction?

(v) What efforts does the program participant take to increase fair housing compliance and enforcement capacity, and to ensure compliance with existing fair housing and civil rights laws and regulations, in its geographic area?

*(e) Content: Analysis—Public Housing Agencies.*

PHAs must include in their Equity Plan an analysis of the area in which the PHA operates, whether the PHA operates in all parts of its authorized service area, and the PHA's programs. PHAs may rely on relevant aspects of the analysis contained in an accepted Equity Plan of the jurisdiction within which it operates to ensure consistency with the jurisdiction's consolidated plan, to the extent the accepted Equity Plan covers the PHA's service area or region. PHAs may rely on the jurisdiction's analysis with respect to general demographics, areas of segregation and integration, the location of R/ECAPs, and where certain opportunities exist or do not exist, but must perform its own analysis of how those background circumstances affect equity in its own programs, activities, and services. Similarly, PHAs that conduct a joint Equity Plan with a local government, State, or insular area may rely on the analysis provided by the other joint program participants with respect to certain aspects of the analysis (so long as the analysis is sufficient for the PHA to meet its own obligations with respect to this section), such as general demographics, areas of segregation and integration, the location of R/ECAPs, and

where certain opportunities exist or do not exist within the PHA's service area and region. Using HUD-provided data, local data, and local knowledge, including information obtained through community engagement required by § 5.158, the Equity Plan shall respond to the following questions with respect to the PHA's service area and region:

(1) Demographics.

(i) What are the current demographics of the geographic area of analysis by protected class group (race, color, national origin, religion, sex, familial status, and disability) and how have those demographics changed over time (e.g., since 1990 or the three last decennial censuses, whichever is shorter)?

(ii)(A) What are the current demographics of the different categories of PHA owned or administered housing, and how have those demographics changed over time?

(B) What are the current demographics of the different categories of other publicly supported housing in the PHA's geographic area of analysis, and how have those demographics changed over time?

(2) Segregation and integration.

(i) Which areas within the geographic area of analysis have significant concentrations of particular protected class groups, including racial/color/ethnic groups, national origin groups, particular limited English proficient (LEP) groups, individuals with disabilities, and other protected class groups? Which, if any, of these areas extend beyond the boundaries of the service area?

(ii) How have patterns of segregation and integration in particular geographic areas changed over time?

(iii)(A) How do patterns of segregation and integration in the geographic area of analysis align with the demographics and location of publicly supported housing developments?

(B) Since 1990 or the three last decennial censuses, whichever is shorter, how have publicly supported housing siting decisions resulted in an increase or decrease of patterns of segregation or integration in the area, or have no such changes related to publicly supported housing siting decisions been experienced?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(3) R/ECAPs.

(i)(A) Identify and describe R/ECAPs, including their location.

(B) What are the demographic groups (by protected class) living in R/ECAPs?

(C) What percentage of each protected class group in the jurisdiction or region resides in R/ECAPs?

(ii)(A) How have the demographics and location of R/ECAPs changed over time? For example, has there been an expansion or decrease in the number of R/ECAPs in the geographic area of analysis? Has concentration of protected class groups within each R/ECAP increased or decreased?

(B) Describe the conditions in R/ECAPs that limit access to opportunity for the residents who live there, including housing costs and cost burden, housing quality, housing instability, displacement, source of income discrimination, and eviction risk. How have these conditions changed over time?

(iii)(A) How many of the PHAs' public housing developments are located in R/ECAPs?



(B) Compare the demographics and location of the residents of public housing with the demographics and location of the R/ECAP.

(iv)(A) What proportion of the PHA's vouchers are inside R/ECAPs compared to those outside R/ECAPs?

(B) What are the demographics (by protected class) of the PHA's Housing Choice Voucher assisted households residing inside R/ECAPs compared to those outside R/ECAPs?

(C) Compare the locations of the Housing Choice Vouchers in the service area (including other PHAs' Housing Choice Vouchers) to the location of R/ECAPs described in paragraph (e)(3)(i).

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(4) Access to community assets and affordable housing opportunities.

(i)(A) Describe which protected class groups have a disproportionately greater need for affordable housing opportunities. How do these groups compare to the PHA's current assisted resident demographics?

(B) Are there other underserved communities or groups (e.g., persons experiencing homelessness) that also have a disproportionately greater need for affordable housing opportunities?

(ii)(A) Of PHA participants, describe which protected class groups experience significant disparities in access to the following community assets:

- (1) Education;
- (2) Employment;
- (3) Transportation;

- (4) Low-poverty neighborhoods;
- (5) Environmentally healthy neighborhoods;
- (6) Affordable housing opportunities and homeownership opportunities; and
- (7) Other Community Assets as defined in § 5.152.

(B) Which protected class groups on the PHA's waiting list or who want to be on the PHA's waiting list experience significant disparities in access to the above community assets based on available local data and local knowledge?

(iii)(A) Compare locations of the PHA's public housing and Housing Choice Vouchers and the demographics of voucher assisted households with areas that have greater access or that lack access to these community assets identified in paragraph (e)(4)(i)(A).

(B) Using this comparison, together with the analysis above on segregation ((e)(2)(i)) and R/ECAPs ((e)(3)(i)), is there a lack of affordable rental opportunities in more well-resourced areas, including units affordable for housing choice vouchers and for improved voucher mobility outcomes?

(C) How has access to community assets changed for the PHA's residents based on the PHA's funding and siting decisions?

(iv) Are there developments in the PHA's stock or residents of the PHA's publicly supported housing in particular neighborhoods in the PHA's service area that do not have the same access to the community assets compared to other residents located in the PHA's service area? Assets in this question refer to those described in paragraph (e)(4)(i) as well as other infrastructure and municipal services (e.g., potable drinking water, sewer and drainage systems, trash collection, snow removal, sidewalks, etc.).

(v) Describe any differences, based on local data and local knowledge, in the quality of the PHA's housing for residents residing in:

(A) R/ECAPs compared to the housing the PHA offers residents residing in other parts of the PHA's service area; and

(B) Elderly-designated housing or housing disproportionately serving older adults (whether or not specifically authorized to do so) compared to housing serving families.

(vi) Describe whether individuals with disabilities who participate in or who are eligible to participate in the PHA's programs, services, and activities experience barriers that deny individuals with disabilities access to opportunity and community assets in the geographic areas of analysis with regard to the following:

(A) Accessible and affordable housing;

(B) Accessible government facilities and websites;

(C) Accessible public infrastructure;

(D) Reliable and accessible transportation;

(E) Accessible schools and educational programs, and in particular, high-performing schools and educational programs;

(F) Employment; and

(G) Community-Based Supportive Services.

(vii) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above?

(5) Local policies and practices impacting fair housing.

(i) How do local laws, policies, ordinances, and other practices impede or promote the siting of affordable housing and use of Housing Choice Vouchers in well-resourced areas of

opportunity? This analysis shall include both policies of the kind that are under the PHA's direct control (for example, preferences, types of housing designations, creation and retention of units for large families) and municipal or State policies, such as zoning and land use policies, ordinances, or regulations, eviction policies and procedures, or the lack of laws banning source of income discrimination, that are known to the PHA that impact the siting of affordable housing and voucher mobility.

(A) Describe the boundaries of the PHA's service area;

(B) Describe the PHA's mobility and portability policies and activities; is there a need for additional mobility services, landlord incentives, policies related to portability policies or to payment standards and fair market rents, or other policies that might improve housing choice voucher mobility outcomes?

(C) Is there a need for services, improved access to economic opportunity, or place-based investments to assist the PHA's assisted residents or the neighborhoods where its housing developments or Housing Choice Vouchers are located? Examples could include a need for services for residents, job training and placement, service coordinators, health access, after-school programs or tutors, broadband access, access to reputable and affordable financial services?

(ii) Describe the efforts and activities undertaken by the PHA to work, collaborate, or partner with other offices, departments, agencies, or entities within the program participant's jurisdiction that aim to advance equity.

(iii) What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments involving the PHA related to fair housing or other civil rights laws?

(iv) What specific steps does the PHA take to ensure compliance with existing fair housing and civil rights laws and regulations, including the implementation of discretionary policies and practices (e.g., policies related to preferences, portability, reasonable accommodations, unit tenanting, including designated accessible units, evictions)?

*(f) Content: Description and prioritization of fair housing issues.*

(1) For each program participant, the Equity Plans shall include a description of the fair housing issues identified during the analysis conducted for each fair housing goal category. The description of a fair housing issue shall include the specific conditions that constitute the fair housing issue and the protected class groups that are adversely affected by the issue. Program participants are expected to identify all fair housing issues. They must also identify those that present the greatest barriers to fair housing choice and deny equitable access to community assets for protected class groups.

(2) For purposes of establishing the Equity Plan's fair housing goals, program participants must prioritize the identified fair housing issues in each fair housing goal category. When prioritizing fair housing issues, program participants must give consideration to fair housing issues faced by underserved communities that have historically been denied fair housing choice, isolated in racially or ethnically concentrated areas of poverty or other segregated settings, and subjected to disparities in access to opportunity, including the opportunity to live in well-resourced areas, the opportunity to enjoy equal access to community assets, and access to homeownership opportunities. In determining how to prioritize fair housing issues within each fair housing goal category, program participants shall give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for

underserved communities, taking into account that different protected class groups may be impacted by different fair housing issues.

*(g) Content: Fair housing goals.*

(1) For each program participant, the Equity Plan shall include the establishment of fair housing goals that are designed and can be reasonably expected to overcome the fair housing issues identified through the analysis conducted pursuant to paragraphs (d) and (e) of this section. Program participants are not required to set fair housing goals for fair housing goal categories that do not have identified fair housing issues. While HUD expects to see progress toward the achievement of each goal by the time of the program participant's next Equity Plan, HUD recognizes that all goals may not be fully achieved during a single five-year cycle.

(2) Fair housing goals, when taken together, must be designed to overcome prioritized fair housing issues in each fair housing goal category and must be designed and reasonably expected to result in material positive change and consistent with a balanced approach.

(3) A program participant's goals may consist of short-term goals such that material positive change is readily achieved, as well as long-term goals such that material positive change occurs within the jurisdiction over a prolonged but reasonable period of time. When establishing fair housing goals, program participants may adopt a small number of goals if such goals could ultimately result in outcomes that have a significant impact toward advancing equity for protected class groups by reducing the adverse effects of fair housing issues. Program participants' consideration of the reach and breadth of their own authority and spheres of influence must be taken into account when determining which goals to set. A program participant may prioritize implementation of particular goals over others but must ensure that any prioritization will result in meaningful actions that affirmatively further fair housing. So long as

a program participant meets these requirements, the program participant has discretion to set goals that can reasonably be expected to address local fair housing issues and to specify actions necessary to implement those goals. The following are examples of some goals that may be appropriate depending on the circumstances facing the jurisdiction; these examples are not the only types of goals program participants may set nor are program participants required to set these specific goals if they would not address the fair housing issues in their communities.

(A) A fair housing goal to overcome segregation in specific neighborhoods in the jurisdiction could consist of (1) siting development of future affordable housing outside of segregated areas and (2) eliminating barriers to homeownership for members of protected class groups that have historically been denied an equal opportunity to become homeowners;

(B) A fair housing goal to overcome segregation in specific neighborhoods and promote integration and fair housing choice in others could consist of expanding mobility programs to provide more housing opportunities in well-resourced areas of opportunity for individuals or families that utilize housing vouchers;

(C) A fair housing goal to overcome disparities in access to affordable housing could consist of a PHA's revision of its own policies to provide more flexibility in admission criteria (for example, with respect to those who have previously faced eviction due to financial hardship or individuals who have been denied access to housing due to prior involvement in the justice system), efforts to combat source of income discrimination, and any necessary revisions to a PHA's eviction policies so individuals from protected class groups are not excluded from the PHA's programs or activities;

(D) A fair housing goal to overcome inequitable access to high-performing schools could consist of realignment of school district boundaries, school zones, or school feeder patterns and

increasing the funding for schools in R/ECAPs to ensure that members of historically underserved protected class groups have equitable access to educational opportunities regardless of where they live; such a goal could require multiple parts of the jurisdiction to work together to advance equity and may require leaders in the community to provide the political will for such a goal to be established and implemented.

(E) A fair housing goal to increase housing and neighborhood access could consist of reducing land use and zoning restrictions that limit housing supply and increase housing costs in order to ensure that members of historically underserved communities and protected class groups have equitable access to affordable housing opportunities in well-resourced areas throughout the jurisdiction.

(F) A fair housing goal to ensure that underserved communities have equitable access to affordable housing opportunities, homeownership, and community assets may include amending local laws to include additional protections for certain underserved populations, such as LGBTQ+ persons or survivors of domestic violence, and may include the removal of barriers that exist in local laws such as nuisance or crime free ordinances, which may limit access to affordable housing because of protected characteristics.

(G) A fair housing goal to overcome the fair housing issues of segregation and disparities in access to opportunity for individuals with disabilities due to a lack of accessible, affordable housing could include the incorporation of the provision of enhanced accessibility features (e.g., features that provide greater accessibility than the minimum features required by accessibility standards) in new construction and rehabilitation of affordable housing to create greater access to integrated housing opportunities for individuals with disabilities.



(H) A fair housing goal to enact source of income anti-discrimination laws, and/or to develop better enforcement strategies around such laws to ensure that underserved communities have equitable access to housing assistance programs, affordable housing opportunities, and community assets.

(4) Though program participants may not have direct or sole control over certain issues within their communities, HUD expects program participants to work closely with entities that have control of such issues to achieve fair housing outcomes. With respect to identified fair housing issues over which the program participant has limited control, the program participant must consider the types of goals it can achieve that would ameliorate the effects of prioritized fair housing issues using the authority, tools, and influence it does have, including by collaborating with other program participants.

(5) Fair housing goals in the Equity Plan must not result in policies or practices that discriminate in violation of the Fair Housing Act or other Federal civil rights laws. Fair housing goals also may not require residents of racially or ethnically concentrated areas of poverty to move away from those areas if they prefer to stay in those areas as a matter of fair housing choice.

(6) In addition, fair housing goals must:

(i) Identify the fair housing issue(s) the goal is designed to address—for instance, where segregation in a development or geographic area is determined to be a fair housing issue, HUD expects the Equity Plan to establish one or more goals to reduce the segregation;

(ii) Explain how the goal, alone or in concert with other goals, will overcome the fair housing issue(s) it is designed to address;

(iii) Set timeframes for achievement of the goal, including metrics and milestones for how achievement of the goal will be measured; and

(iv) Describe the specific steps or actions that need to be taken to achieve the goal and the amount of funding that will be needed in order to fully achieve the goal.

*(h) Additional Content.*

(1) Program participants must include the following additional content as part of their Equity Plan submitted to HUD:

(i) A summary of the community engagement activities undertaken pursuant to § 5.158;

(ii) A description of how the program participant addressed the comments received through the community engagement process required by § 5.158;

(iii) As an attachment, all written comments received and transcripts or audio or video recordings of hearings held during the development of the Equity Plan; and

(iv) Signed certifications and assurances, as required by § 5.160.

(2) Program participants may include an executive summary or any other information the program participant believes relevant to the Equity Plan.

*(i) Progress evaluation.*

(1) Program participants should engage in continual evaluation of their progress, but must do so no less frequently than once per year, to determine whether any changes, adjustments, or new information requires a revision to the Equity Plan or a subsequent planning document.

(2) Program participants must conduct and submit annual progress evaluations to HUD in a manner specified by the Responsible Civil Rights Official. The annual progress evaluation shall include the program participant's report on progress achieved under each fair housing goal, including whether goals have been fully achieved, and assessment of whether the fair housing

goals established in the Equity Plan require adjustment because of changed circumstances or because they are unlikely to result in material positive change in overcoming fair housing issues. The program participants' annual progress evaluation must be accompanied by the signed certifications and assurances required by § 5.160 and shall be published on HUD-maintained webpages.

(3) For each Equity Plan submitted after the first Equity Plan submission, the program participant shall provide a summary of the progress achieved in meeting the fair housing goals set in the prior Equity Plan. This summary progress evaluation shall be part of the subsequent Equity Plan (and is distinct from the annual progress evaluations required by paragraphs (i)(1) and (2) of this section, but may include a compilation of those progress evaluations) subject to community engagement as part of the subsequent Equity Plan's development.

(4) All progress evaluations (i.e., annual progress evaluations and summaries for purposes of subsequent Equity Plans) shall include, at minimum:

(i) An evaluation of the progress on each goal established in the prior Equity Plan, including whether the goal was achieved, some progress toward achieving the goal was made, or no progress toward achieving the goal was made;

(ii) An identification of any barriers that impeded the progress or achievement of the fair housing goals in the prior Equity Plan;

(iii) A description of any changes or adjustments to the goals undertaken during the prior Equity Plan cycle and how those changes or adjustments impacted the progress toward achievement of the goal;

(iv) A description of HUD funds or other Federal, State, local funds, or philanthropic support that were used toward achievement of the goal; and

(v) An explanation of the outcomes based on the achievement of the goal. For example, this explanation may include any results with respect to the reduction of segregation in a particular geographic area, increased access to opportunity by protected class groups, or other material positive change observed, including how the program participant advanced equity for members of protected class groups and underserved communities since the goal was implemented.

*(j) Publication.*

The Equity Plan, progress evaluations, and HUD notifications related to Equity Plans shall be public documents. (1) Program participants shall make drafts of the Equity Plan available pursuant to § 5.158 for purposes of community engagement.

(2) Upon submission of the Equity Plan to HUD, HUD will publish the submitted Equity Plan on a HUD-maintained webpage and will update this webpage to reflect the status of the Equity Plan pursuant to § 5.162. In particular, this webpage will reflect whether an Equity Plan has been accepted and if an accepted Equity Plan differs from the initially submitted version. HUD may publish final Equity Plans or portions of such plans on other HUD-maintained web pages for the purposes of disseminating best practices and in a searchable information clearinghouse to benefit program participants and the general public. Program participants are also encouraged to post their HUD-reviewed Equity Plans on their official websites, in formats that satisfy civil rights requirements including title VI of the Civil Rights Act of 1964 and the regulation at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulation at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

(3) HUD will accept information from the public during its review of the submitted Equity Plan, consistent with § 5.162, relating to whether the Equity Plan was developed in accordance with the required community engagement, whether the content of a published Equity Plan is deficient, including whether fair housing issues were appropriately identified, whether the information provided during the community engagement process required by § 5.158 was appropriately incorporated into the Equity Plan, whether fair housing issues were appropriately prioritized, and whether the fair housing goals are appropriate, meaning that they are designed and can be reasonably expected to overcome the effects of the identified fair housing issues.

**§ 5.156 Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents.**

(a) General. It is the Department's policy to ensure that program funding is used to eliminate disparities resulting from Federal, State, and local laws, policies, and practices that have perpetuated segregation or denied equal opportunity because of a protected characteristic. Accordingly, any policies or practices adopted through program participants' planning documents or as part of program participants' implementation of programs, activities, and services shall be consistent with the commitments program participants have made in their Equity Plans, this part, and the AFFH mandate. By incorporating their fair housing goals, strategies, and actions into their planning documents, program participants will be better positioned to build equity and fairness into their decision-making processes for the use of resources and other investments, live up to the commitments they have made in Equity Plans, and ultimately fulfill their obligations to affirmatively further fair housing. A program participant must incorporate its implementation of these concepts and commitments in its Equity

Plan into other planning documents, such as the consolidated plan, annual action plan, PHA Plan, disaster plan, or any plan incorporated therein.

(b) Strategies and meaningful actions. To implement the fair housing goals from the Equity Plan, program participants must include strategies and meaningful actions in their consolidated plans, annual action plans, and PHA Plans (including any plans incorporated therein). Program participants are only required to include the implementation of fair housing goals that are intended to be undertaken or funded in a particular program year in their annual action plans, though all fair housing goals must be incorporated into their 3-5-year consolidated or PHA Plans. Strategies and meaningful actions must affirmatively further fair housing and identify specific expected allocation of funding by program year for the use of HUD and other funds to implement each fair housing goal (if funding is necessary). Strategies and meaningful actions may include, but are not limited to: elimination of local laws or ordinances that are barriers to equitable access to homeownership or other affordable housing opportunities; enactment of local laws or ordinances that remove barriers or increase access to homeownership or other affordable housing opportunities; build strong fair housing and civil rights protections into State and local laws; enhancing mobility strategies and encouraging development of new affordable housing in well-resourced areas of opportunity; and place-based strategies and meaningful actions that are a part of a balanced approach, including preservation of existing HUD-assisted and other affordable housing.

(c) Other planning activities or processes. Program participants must incorporate the fair housing goals from their Equity Plans into planning documents required in connection with the receipt of Federal financial assistance from any other Federal Executive Department or Agency. This incorporation shall include the allocation of resources necessary for achievement of the

goal. The program participant's progress evaluation includes an evaluation of the goals incorporated into these other planning documents as required pursuant to § 5.154.

(d) Meaning of approval or acceptance of planning documents. Approval by HUD or any other agency of a planning document that must be approved or accepted by the Department or any other agency for purposes of program administration does not mean that the program participant has complied with the incorporation requirements set forth in this section § 5.156 or has otherwise complied with its obligation to affirmatively further fair housing or any other Federal fair housing and civil rights requirements.

(e) Failure to incorporate fair housing goals into planning documents. A program participant must incorporate the fair housing goals from its Equity Plan into its consolidated plan or PHA Plan in order to allocate funding for implementation of such goals as strategies and meaningful actions. Upon a determination by HUD that fair housing goals from the Equity Plan have not been incorporated into subsequent plans, and following notification to the program participant and opportunity for the program participant to respond and cure any deficiency, the Secretary may condition a grant (see e.g., 2 CFR 200.208), obtain an assurance that the program participant will revise the plan to comply with the requirements of §§ 5.150 through 5.180 by a specified date, or may disapprove a consolidated plan or reject a PHA Plan consistent with 24 CFR 91.500 for consolidated plans and 24 CFR 903.23 for PHA Plans, or may take the actions set forth at §§ 5.170 and 5.172.

### **§ 5.158 Community Engagement.**

(a) General. (1) To ensure that the Equity Plan is informed by meaningful input from the community, program participants must engage with the public during the development of the

Equity Plan, including with respect to both the identification of fair housing issues (including inequities faced by members of protected class groups and underserved communities) and the setting of fair housing goals to remedy the identified fair housing issues. Community engagement includes program participants' consideration of the views and recommendations received from members of the community and other interested parties.

(2) Program participants must proactively facilitate community engagement to ensure they receive and address information from the community regarding the effects of historical decisions and practices, current conditions, and other concerns relating to fair housing choice, equitable provision of services, access to opportunity, and specific fair housing issues. Members of the community are in a unique position to provide the program participant with perspectives on the impact of fair housing issues facing the community.

(3) To the extent practicable, program participants are permitted to combine this engagement with other community, resident, or citizen participation required for purposes of other HUD programs and planning processes; however, program participants are required to explain the Fair Housing Act's affirmatively furthering fair housing duty and ensure the engagement regarding the Equity Plan meets all the criteria set forth in this section.

(4) In addition, and in accordance with program regulations, the public shall have reasonable opportunity for involvement in the incorporation of the fair housing goals as strategies and meaningful actions into the consolidated plan, annual action plan, PHA Plan (and any plans incorporated therein), and other required planning documents.

(5) Program participants must employ communication methods designed to reach the broadest possible audience and should make efforts to reach members of protected class groups that have historically been denied equal opportunity and underserved communities. Such



communications may include but are not limited to publishing a summary of each document on the program participant's official government website and one or more newspapers of general circulation, and by making copies of each document available on the Internet (including free web-based social bulletin boards and platforms), and as well at libraries, government offices, and public places.

(6) In order to comply with the obligation to affirmatively further fair housing, program participants must actively engage with a wide variety of diverse perspectives within their communities and use the information available in a manner that promotes the setting of meaningful fair housing goals that will lead to material positive change.

(7) Program participants must ensure that all aspects of community engagement are conducted in accordance with fair housing and civil rights requirements, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

(8) A program participant may, if practicable, combine the requirements of this section with applicable public participation requirements of consolidated plan program participants and PHAs, subject to the following requirements:

(i) Consolidated plan program participants. The consolidated plan program participant may, if practical, combine the requirements of this section with its applicable citizen participation plan requirements, adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401). However, the community engagement for purposes of developing an Equity Plan must allow for sufficient opportunity for the community to have the in-depth discussions about fair housing issues required by this section. Therefore, to the extent the citizen

participation plan does not provide for this opportunity, program participants must undertake separate engagement activities.

(ii) PHAs. To the extent practicable, PHAs may combine the requirements of this section when implementing the procedures described in 24 CFR 903.13, 903.15, 903.17, and 903.19 in the process of developing the Equity Plan, obtaining Resident Advisory Board and community feedback, and addressing complaints. The community engagement for purposes of developing an Equity Plan must allow for sufficient opportunity for the community to have the in-depth discussions about fair housing issues required by this section. Accordingly, to the extent the regulations at Part 903 do not provide for this opportunity, PHAs must undertake separate engagement activities or incorporate such activities into the implementation of the specific, applicable program regulations.

(b) Coordination. (1) To the extent practicable, program participants submitting a joint Equity Plan may fulfill their community engagement responsibilities by combining efforts with other program participants by:

(i) Jointly conducting community engagement activities with a consolidated plan program participant;

(ii) Jointly conducting community engagement activities with one or more PHAs; or

(iii) Separately conducting community engagement activities.

(2) Joint program participants are encouraged to enter into Memoranda of Understanding (MOUs) to clearly define the functions, level of member participation, method of dispute resolution, and decision-making process of the program participants, for purposes of engaging with the community as well as in the development of the Equity Plan.

(c) Frequency. (1) Program participants must engage with their communities prior to and during the development of an Equity Plan.

(2) While the Equity Plan is in effect, program participants must engage with their communities on at least an annual basis. To the extent practicable, this engagement may be combined with any citizen participation or resident participation for purposes of developing annual plans pursuant to program requirements. The purpose of such annual engagement shall be to receive community input as to whether the program participant is taking effective and necessary actions to implement the Equity Plan's fair housing goals, whether adjustments to goals need to be made, and whether a change in circumstance may require a revision of the Equity Plan pursuant to § 5.164, including the formulation of additional goals.

(d) Methods. Program participants may choose any methods that are effective in engaging their communities, but at minimum must employ the following methods:

(1) For the development of an Equity Plan, hold at least three (3) public meetings, at various accessible locations and at different times to ensure that members of protected class groups and underserved communities are afforded opportunities to provide input. At least one such meeting shall be held in a location in the jurisdiction in which underserved communities disproportionately reside and efforts to obtain input from underserved populations who do not live in underserved neighborhoods shall also be employed;

(2) For the annual engagement, hold at least two (2) public meetings, at different locations, one of which shall be located in an area of the jurisdiction in which underserved communities predominantly reside;

(3) Connect with and provide information about fair housing planning to local community leaders, which may include, but are not limited to advocates, community-based

organizations, clergy, healthcare professionals, educational leaders or teachers, and other service providers such as social workers and case managers to provide and solicit the views of the communities they serve; and

(4) Make available to the public data and information demonstrating the existence of fair housing issues (including segregated areas).

### **§ 5.160 Submission requirements.**

(a) General. Program participants must submit an Equity Plan to HUD for review pursuant to the schedule set forth in this section. Program participants may submit an individual Equity Plan or may collaborate with other program participants (joint program participants) to submit a joint Equity Plan.

(1) Goals in an individual Equity Plan may contemplate and include coordination or collaboration with other program participants or other public or private entities even if those entities are not part of a joint Equity Plan.

(2) Program participants are encouraged to collaborate to conduct and submit a single Equity Plan (i.e., a joint Equity Plan) for the purpose of sharing resources and developing partnerships to address fair housing issues. When collaborating to submit a joint Equity Plan, joint program participants may divide work as they choose, but all program participants are accountable for any joint analysis and any joint fair housing goals. Program participants are accountable for their individual analysis and fair housing goals included in the joint Equity Plan. Participation in a joint Equity Plan does not relieve each program participant from its obligation to analyze and address fair housing issues by setting goals and implementing strategies and meaningful actions to overcome the effects of any identified fair housing issues. Each program

participant must sign the joint Equity Plan and associated certifications and assurances submitted to HUD.

(i) Program participants that are either not located within the same CBSA or that are not located within the same State that seek to collaborate on a joint Equity Plan must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The written request must be submitted not less than 180 days before the start of the development of the joint Equity Plan. The joint Equity Plan may not proceed until such time as the Responsible Civil Rights Official approves the collaboration.

(ii) All other joint Equity Plan program participants must promptly notify HUD of their intent to collaborate, but need not obtain HUD approval prior to conducting the joint Equity Plan. The notification to HUD must include a copy of their written agreement.

(iii) Program participants must designate, through express written consent, one program participant to serve as the lead entity to oversee the submission of the joint Equity Plan. The notification to HUD of the collaboration shall include the identification of the lead entity.

(iv) The submission schedule for the joint Equity Plan shall be the schedule that ordinarily would apply to the joint Equity Plan's lead entity unless the Responsible Civil Rights Official determines that an earlier submission is required for good cause, in which case the Responsible Civil Rights Official will designate an earlier submission date that provides the collaborating program participants a reasonable amount of time to develop and submit a joint Equity Plan.

(v) Program participants conducting a joint Equity Plan must have a plan for community engagement that complies with the requirements of §§ 5.150 through 5.180, and must include the jurisdictions of each program participant, not just that of the lead entity. A material change that

requires the revision of an Equity Plan pursuant to § 5.164 for any program participant that is part of a joint Equity Plan will trigger a requirement to revise the joint Equity Plan, including any necessary community engagement.

(vi) Program participants conducting a joint Equity Plan may determine that it would be practicable to align program and fiscal years according to the procedures set forth at 24 CFR 91.10 and 24 CFR part 903, as applicable for purposes of the submission schedule set forth in this section. To the extent that alignment of program and fiscal years is not practicable, a program participant may be required by the Secretary to make appropriate revisions to its full consolidated plan or PHA Plan, or any plan incorporated therein, that was approved by HUD prior to the submission and HUD review of the joint Equity Plan in order to appropriately incorporate strategies and meaningful actions to implement the fair housing goals from the joint Equity Plan.

(vii) A program participant that, for any reason, decides to withdraw from a previously arranged joint Equity Plan must promptly notify HUD of the withdrawal. HUD will work with the withdrawing program participant, as well as the remaining program participants conducting the joint Equity Plan, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date for the program participant's individual Equity Plan that is as close as feasible to the originally intended submission date and is no later than the original submission date for the joint Equity Plan, unless good cause for an extension is shown, as determined by the Responsible Civil Rights Official.

(b) Submission of first Equity Plan—consolidated plan program participants. (1) For each program participant that receives a total of \$100 million or more in formula grant funds

from programs that are subject to the consolidated plan requirements for the program year that begins on or after January 1, 2024, the first Equity Plan shall be submitted by 24 months after the effective date of this regulation or 365 calendar days prior to the date for which a new consolidated plan is due, whichever is earlier.

(2) For each program participant that receives a total of \$30-99 million in formula grant funds for the program year that begins on or after January 1, 2025, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(3) For each program participant that receives a total of \$1-29 million in formula grant funds for the program year that begins on or after January 1, 2026, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(4) For each program participant that receives a total of less than \$1 million in formula grant funds for the program year that begins on or after January 1, 2027, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(c) Submission of first Equity Plan—public housing agencies (PHAs). For purposes of determining the PHA's total number of public housing units and vouchers, the inventory shall be determined as of the date on which this rule becomes effective.

(1) For each PHA with a combined total number of public housing units and vouchers of 50,000 or more, the first Equity Plan shall be submitted no later than 24 months after the effective date of this regulation or 365 calendar days prior to the date for which a new 5-year

plan is due following the start of the fiscal year that begins on or after January 1, 2024, whichever is earlier.

(2) For each PHA with a combined total number of public housing units and vouchers between 10,000 and 49,999, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2025.

(3) For each PHA with a combined total number of public housing units and vouchers between 1,000 and 9,999 or PHAs that operate statewide, which includes certain Qualified PHAs, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2026.

(4) For each PHA with a combined total number of public housing units and vouchers that is less than 1,000, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2027.

(d) How to comply with AFFH planning and certification requirements until first Equity Plan submission. (1) Except as provided in paragraph (e) of this section, until such time as a program participant submits or is required to submit an Equity Plan, the program participant shall engage in fair housing planning (e.g., prepare an Analysis of Impediments to Fair Housing Choice, Assessment of Fair Housing, or other fair housing plan). Program participants that have not conducted or updated their fair housing plans for more than three years prior to the effective date of this regulation and who are not required to submit an Equity Plan pursuant to paragraphs (b) or (c) of this section within twenty-four months of the effective date of this regulation shall



either conduct or update their fair housing plans (i.e., Analysis of Impediments to Fair Housing Choice, Assessment of Fair Housing, or other fair housing plan) and submit such plan to HUD for publication and potential review no later than 365 days from the effective date of this regulation. Program participants that have conducted or updated their fair housing plans during the three years prior to the effective date of this regulation are not required to undertake additional updates pursuant to this paragraph, but must submit their existing fair housing plan to the Department for publication and potential review no later than 120 days from the effective date of this regulation. Program participants may, alternatively, conduct an Equity Plan in advance of when such plan would otherwise be due for submission to HUD pursuant to paragraphs (b) or (c) of this section. The Responsible Civil Rights Official may review and provide feedback on a program participant's submitted fair housing plan. If the Secretary determines there is evidence that challenges the accuracy of the program participant's certification that it will affirmatively further fair housing, the Secretary will provide written notification to the program participant of such a determination consistent with 24 CFR 91.500 for consolidated plans and 24 CFR 903.23 for PHA Plans and § 5.162. The Responsible Civil Rights Official's review of a fair housing plan under this provision may also provide reason for the initiation of a compliance review pursuant to § 5.170.

(2) Program participants shall continue to update their fair housing plans at least every five years and submit updated plans to HUD for publication and potential review until such time as the program participant is required to begin preparing its Equity Plan for submission to HUD.

(e) New program participants. For a new program participant that has not submitted a consolidated plan or PHA Plan as of **[Insert date 30 days after date of publication in the Federal Register]**, HUD will provide the new program participant with a deadline for

submission of its first Equity Plan, which shall be at least 24 months after the date for which the program participant's first consolidated plan or PHA Plan is due. Prior to the submission of its first Equity Plan, new program participants are required to affirmatively further fair housing and engage in fair housing planning during the development of its first consolidated or PHA Plan.

(f) Annual progress evaluations. Program participants shall, in accordance with § 5.154(h), submit annual progress evaluations to the Responsible Civil Rights Official, which shall be accompanied by the certifications and assurances in § 5.160(i). The first annual progress evaluation shall be submitted for publication and review no later than 365 days from the date of HUD's notification that the Equity Plan is accepted, and subsequent progress evaluations shall be submitted for publication and review no later than 365 days from the date of the last progress evaluation submitted.

(g) Second and subsequent Equity Plans. Following the first Equity Plan, for all program participants, subsequent Equity Plans shall be submitted for publication and review 365 days before the date for which a new 3- to 5-year consolidated plan or PHA Plan is due (as applicable).

(h) Frequency. All program participants shall submit an Equity Plan no less frequently than once every 5 years, or at such time agreed upon in writing by the Responsible Civil Rights Official and the program participant, as necessary to remedy or avoid noncompliance with Federal fair housing and civil rights requirements.

(i) Equity Plan certifications and assurances. Each program participant, including program participants submitting a joint Equity Plan, must include the following certifications and assurances with each Equity Plan and annual progress evaluation submitted to HUD:

(1) The program participant's statements and information contained in the Equity Plan submitted to HUD are true, accurate, and complete and that the program participant developed the Equity Plan in compliance with the requirements of §§ 5.150 through 5.180.

(2) The program participant will take meaningful actions to implement the goals established in its Equity Plan conducted in accordance with the requirements of §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable, which require that the program participant will affirmatively further fair housing. In addition, the program participant will take no action that is materially inconsistent with the duty to affirmatively further fair housing.

(3) The program participant shall submit, in conjunction with the Equity Plan submitted to HUD, an assurance to HUD that its programs, activities, and services are operated in compliance with the requirements of §§ 5.150 through 5.180 and in a manner that affirmatively furthers fair housing, as well as that its programs, activities, and services are operated in compliance with Federal fair housing and civil rights nondiscrimination requirements. The assurance shall obligate the program participant to comply with §§ 5.150 through 5.180 for the full period during which Federal financial assistance is extended.

### **§ 5.162 Review of Equity Plan.**

(a) HUD Review of Submitted Equity Plan—(1) General. HUD's review of an Equity Plan is to determine whether the program participant has developed an Equity Plan that includes the required analysis, identification of fair housing issues, and establishment of fair housing goals, as set forth in § 5.154. HUD will promptly publish each submitted Equity Plan on HUD-maintained webpages. Members of the public may submit comments regarding the submitted

Equity Plan to HUD in a manner specified by the Responsible Civil Rights Official during the timeframe for HUD's review and should do so no later than 60 days from the date the Equity Plan is submitted to HUD. The timeframe for submission of comments may be extended for good cause by the Responsible Civil Rights Official. Providing comments on a submitted Equity Plan pursuant to this paragraph (a)(1) is distinct from the filing of complaints pursuant to § 5.170.

(2) Within 100 calendar days after the date HUD receives the Equity Plan, HUD will accept the Equity Plan unless on or before that date the Responsible Civil Rights Official provides the program participant notification that the date is extended for good cause or that HUD does not accept the Equity Plan. If HUD does not accept the Equity Plan, in its notification, HUD will inform the program participant in writing of the reasons why HUD has not accepted the Equity Plan and actions the program participant may take to resolve the nonacceptance. HUD will publish any written feedback that it provides on accepted Equity Plans, as well as notifications of non-acceptance, and related notifications and communications on HUD-maintained webpages. HUD ordinarily will review an Equity Plan before acceptance, though an Equity Plan may be accepted without HUD review due to infeasibility or other exigent circumstances beyond HUD's control.

(3) Meaning of HUD acceptance of an Equity Plan. HUD's acceptance of an Equity Plan means only that, for purposes of administering HUD program funding, HUD has not found that the program participant has failed to comply with the required elements, as set forth in § 5.154. HUD's acceptance of an Equity Plan does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and

regulations. HUD's acceptance of an Equity Plan also does not limit HUD's ability to undertake an investigation pursuant to § 5.170.

(b) Nonacceptance of an Equity Plan. (1) The Responsible Civil Rights Official will not accept an Equity Plan if the Equity Plan or a portion of the Equity Plan is inconsistent with fair housing or civil rights requirements, which includes but is not limited to any material noncompliance with the requirements of §§ 5.150 through 5.180. In connection with a joint Equity Plan, HUD's determination to not accept the Equity Plan with respect to one program participant does not necessarily affect the status of the Equity Plan with respect to another program participant. The following are non-exclusive examples of an Equity Plan that is inconsistent with fair housing and civil rights requirements:

(i) HUD determines that the analysis of fair housing issues and fair housing goals contained in the Equity Plan would result in policies or practices that would operate to discriminate in violation of the Fair Housing Act or other civil rights laws;

(ii) The Equity Plan does not identify local policies or practices as fair housing issues when such policies or practices pose a barrier to equity;

(iii) The fair housing goals contained in the Equity Plan are not designed and cannot be reasonably expected to result in a material positive change with respect to one or more identified and prioritized fair housing issues;

(iv) The fair housing goals contained in the Equity Plan merely consist of actions already required to comply with nondiscrimination requirements (e.g., establishing a process for reviewing, making, and documenting decisions on reasonable accommodation requests received by the program participant);

(v) The Equity Plan was developed without the required community engagement;

(vi) The Equity Plan contains an analysis in which the identification of fair housing issues or the established fair housing goals are materially inconsistent with the data or other evidence available to the program participant, or in which fair housing goals are not designed to overcome the effects of identified fair housing issues as required by §§ 5.150 through 5.180;

(vii) The Equity Plan fails to acknowledge the existence of a fair housing issue identified during community engagement; or

(viii) The Equity Plan does not contain the required certifications and assurances pursuant to § 5.160.

(2) HUD will provide written notification to the program participant, including each program participant involved in a joint Equity Plan, explaining HUD's decision to accept or not accept the Equity Plan. For Equity Plans that are not accepted, the written notification will provide guidance on how a non-accepted Equity Plan may be revised to achieve acceptance and how a program participant may request reconsideration by the Reviewing Civil Rights Official of HUD's non-acceptance of an Equity Plan, including by submitting clarifying information that may be sufficient to address the concerns raised in HUD's notification of non-acceptance. HUD will provide a decision on the request for reconsideration in advance of the deadline to resubmit a revised Equity Plan. To provide transparency regarding the status of program participants' Equity Plans, HUD will publish all such notifications on HUD-maintained webpages.

(c) Revisions and resubmission. In HUD's notification of non-acceptance, HUD will provide a program participant, including each program participant involved in a joint Equity Plan, with a reasonable time period to revise and resubmit the Equity Plan. All revisions or resubmissions, and any HUD notifications relating to revisions and resubmissions, shall be published on HUD-maintained webpages.

(1) If HUD does not accept the Equity Plan, HUD will provide written notification to the program participant and shall provide no more than 60 calendar days after the date of HUD's notification to revise and resubmit the Equity Plan. HUD may extend this date for good cause.

(2) The revised Equity Plan will be reviewed by HUD within 75 calendar days of the date by which HUD receives the revised Equity Plan. HUD may provide notification that HUD does not accept the revised Equity Plan on or before that date. If HUD does not accept the revision, the procedures set forth in this section will continue to apply until such time as the program participant's revised Equity Plan has been accepted by HUD or the Responsible Civil Rights Official instead determines that a different procedure is necessary to ensure compliance, such as the procedures set forth at § 5.172.

(3) If a program participant's Equity Plan is accepted by HUD and the program participant voluntarily revises its Equity Plan in response to feedback contained in HUD's notification of acceptance, the revised Plan shall be submitted no later than 120 days following the date of HUD's notification of acceptance of the Equity Plan. If the revised Equity Plan does not meet the requirements set forth in §§ 5.150 through 5.180, HUD will not accept the revision, and the previously accepted Equity Plan will remain in effect. If HUD determines a revision is necessary pursuant to the requirements of this section, the procedures set forth in this section will continue to apply until such time as the program participant's revised Equity Plan has been accepted by HUD or the Responsible Civil Rights Official instead determines that a different procedure is necessary to ensure compliance, such as the procedures set forth at § 5.172.

(d) Incentives. At its discretion and consistent with applicable laws and program objectives, HUD may establish incentives or other ways to recognize program participants that set ambitious goals that are designed and can be reasonably expected to overcome challenging

fair housing issues. These incentives may include HUD recognizing the value of relevant, effective fair housing goals when HUD establishes the criteria for evaluating applications for discretionary funding. Program participants are encouraged to include implementation of fair housing goals from their Equity Plans in subsequent applications to HUD for discretionary funding for purposes of securing additional resources to implement such goals.

(e) Failure to have an accepted Equity Plan at the time of submission of the consolidated plan or PHA Plan. (1) At the time a program participant submits its consolidated plan or PHA Plan, as applicable, the program participant must have either a current, accepted Equity Plan or must have executed special assurances that require the program participant to submit and obtain HUD's acceptance of its Equity Plan by a specified date following the end of HUD's review period for the consolidated plan or PHA Plan. A program participant's failure to provide the required special assurances will lead to the disapproval of a consolidated plan or PHA Plan, and a program participant's failure to provide or comply with special assurances will jeopardize funding in accordance with §§ 5.172 and 5.174. Failure to provide or comply with special assurances may constitute evidence that a program participant's AFFH certification is inaccurate pursuant to 24 CFR 91.500 or that the program participant's AFFH certification appears inaccurate pursuant to 24 CFR 903.15, providing the Secretary a basis to challenge the validity of the AFFH certification pursuant to § 5.166.

(i) If a consolidated plan program participant does not have an Equity Plan that has been accepted by HUD as provided by § 5.160 at the time the program participant submits its consolidated plan, the Responsible Civil Rights Official shall obtain special assurances prior to the date the consolidated plan must be disapproved pursuant to 24 CFR 91.500 (i.e., within 45 days of the date the consolidated plan is submitted to HUD); if a program participant fails to



provide such special assurances, HUD will initiate the disapproval of the consolidated plan. The special assurances shall:

(A) Require the program participant to achieve an accepted Equity Plan that meets the requirements of §§ 5.150 through 5.180 no later than 180 days following the end of HUD's 45-day review period for the consolidated plan;

(B) Set out a date, consistent with that deadline, by which the program participant shall submit its Equity Plan to HUD for review; and

(C) Require the program participant to amend its consolidated plan to incorporate the fair housing goals of the accepted Equity Plan no later than 180 days from the date the Equity Plan is accepted by HUD.

(ii) If a PHA does not have an Equity Plan that has been accepted by HUD as provided by § 5.160 at the time the program participant submits its PHA Plan, the Responsible Civil Rights Official shall obtain special assurances prior to the date the PHA Plan must be disapproved pursuant to 24 CFR 903.23 (i.e., 75 days from the date the PHA Plan is submitted to HUD); if a program participant fails to provide such special assurances, HUD will disapprove the PHA Plan. The special assurances shall:

(A) Require the program participant to achieve an accepted Equity Plan that meets the requirements of §§ 5.150 through 5.180 no later than 180 days following the end of HUD's 75-day review period for the PHA Plan;

(B) Set out a date, consistent with that deadline, by which the program participant shall submit its Equity Plan to HUD for review; and

(C) Require the program participant to amend its PHA Plan to incorporate the fair housing goals of the accepted Equity Plan no later than 180 days from the date the Equity Plan is accepted by HUD.

(2) Upon a determination by the Secretary that the program participant has failed to submit an Equity Plan that meets the requirements of §§ 5.150 through 5.180, and after the 180-day period described in any applicable special assurance has expired, the following shall apply.

(i) With respect to a consolidated plan program participant:

(A) The Secretary shall promptly initiate termination of funding;

(B) The Secretary shall refuse to grant or not continue granting applicable Federal financial assistance until such time as the program participant comes into compliance; and

(C) The Secretary shall follow the procedures at § 5.172 to effect these remedies.

(ii) With respect to a PHA:

(A) The Secretary shall notify the PHA that it is in substantial default;

(B) The Secretary shall take any other action authorized by law to effect compliance; and

(C) The Secretary shall follow the procedures at § 5.172 to effect these remedies.

(3) Special assurances and any submission of an Equity Plan, including HUD's decision to accept or not accept the Equity Plan shall be subject to the publication requirement at § 5.154(j). Such publication shall indicate whether the special assurances have been satisfied as part of HUD's decision to accept the Equity Plan.

#### **§ 5.164 Revising an Accepted Equity Plan.**

(a) General—Circumstances for revising an Equity Plan.

(1) An Equity Plan previously accepted by HUD must be revised and submitted to HUD for review under the following circumstances:

(i) A material change occurs. A material change is a change in circumstances in a program participant's jurisdiction that affects the information on which the Equity Plan is based to the extent that the analysis and fair housing goals of the Equity Plan no longer reflect actual circumstances. An Equity Plan must be revised in the event of a Presidentially declared disaster that impacts a program participant's jurisdiction and is expected to result in additional Federal financial assistance for the jurisdiction, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(ii) Upon the Responsible Civil Rights Official's written notification specifying a material change that requires the revision.

(2) An Equity Plan previously accepted by HUD may be revised and submitted to HUD for review under the following circumstances:

(i) If there are changes in the program participant's geographic area of analysis that significantly impact the steps a program participant may need to take to affirmatively further fair housing;

(ii) A fair housing goal established in the Equity Plan cannot be achieved;

(iii) Significant demographic changes occur;

(iv) New fair housing issues emerge in the jurisdiction;

(v) Short-term fair housing goals have been achieved;

(vi) Civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders are entered; or

(vii) The program participant advises HUD of a change that similarly may merit the program participant's submission of a revised Equity Plan, and HUD grants the program participant permission to submit a revised Equity Plan by a specific date for HUD review.

(3) Requirements for Revisions of an Equity Plan. A revision pursuant to paragraph (a)(1) or (a)(2) of this section consists of preparing any necessary amended analyses and fair housing goals that take into account the change, including any new fair housing issues. A revision may not necessarily require the submission of an entirely new Equity Plan and a program participant may focus only on the change and the appropriate and necessary adjustments to the analysis and fair housing goals, but any revision shall trigger the program participant's obligation to conduct community engagement on the amended portions of the Equity Plan pursuant to the requirements at § 5.158.

(b) Timeframe for required revisions. (1) Where a revision is undertaken pursuant to paragraph (a)(1)(i) of this section, such revision shall be submitted within 12 months of the onset of the material change, or at such later date as the Responsible Civil Rights Official may provide. When the material change is the result of a Presidentially declared disaster, such time shall be automatically extended to the date that is 2 years after the date upon which the disaster declaration is made, and the Responsible Civil Rights Official may extend such deadline, upon request, for good cause shown.

(2)(i) When a revision is required under paragraph (a)(1)(ii) of this section, the Responsible Civil Rights Official will specify a date by which the program participant must submit the revision of the Equity Plan to HUD, considering the material change and the need for a valid Equity Plan to guide planning activities. The Responsible Civil Rights Official may

extend the due date upon written request by the program participant that describes the reasons the program participant is unable to satisfy the deadline for submitting a revised Equity Plan.

(ii) On or before 30 calendar days following the date of HUD's written notification under paragraph (a)(1)(ii) of this section, the program participant may advise the Responsible Civil Rights Official in writing of its belief that a revision to the Equity Plan is not required. The program participant must state with specificity the reasons for its belief that a revision is not required. The Responsible Civil Rights Official will take into account any such response and issue to the program participant in writing a determination as to whether the program participant must proceed with the revision. The Responsible Civil Rights Official may establish a new due date that is later than the date specified in the original notification.

(c) Submission of the revised Equity Plan. Upon completion, any revision to the Equity Plan must be submitted to HUD and will be published in accordance with § 5.154(j). The revised Equity Plan will follow the same procedures for HUD review at § 5.162.

(d) Incorporation of revised fair housing goals into subsequent planning documents. Upon HUD's notice that the revised Equity Plan has been accepted, the program participant shall, within 12 months, incorporate any revised fair housing goals into its consolidated plan, annual action plan, or PHA Plan, or any plan incorporated therein.

#### **§ 5.166 AFFH certifications required for the receipt of Federal financial assistance.**

(a) Certifications. Prior to the receipt of Federal financial assistance, program participants must certify that they will affirmatively further fair housing, which means engaging in fair housing planning and taking meaningful actions in accordance with the requirements of §§ 5.150 through 5.180 and 24 CFR 91.225, 91.325, 91.425, 570.487, 570.601, 903.7, and 903.15,

and take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended. Such certifications must be made in accordance with applicable program regulations, specifically 24 CFR part 91 for consolidated plan program participants and 24 CFR part 903 for PHAs.

(b) Procedures for challenging the validity of an AFFH certification. (1) Consolidated Plan Program Participants. If HUD has evidence that could be used to challenge the accuracy of a program participant's AFFH certification, the Secretary may provide written notice of the intent to reject the program participant's AFFH certification as inaccurate. The notice will include the evidence challenging the accuracy of the AFFH certification and provide the program participant an opportunity to comment and submit additional evidence to the Secretary in support of the AFFH certification. The notice may include other actions the program participant may take for the Secretary to accept the AFFH certification, including conditions (see e.g., 2 CFR 200.208). The failure to comply with the conditions established by the Secretary may trigger the procedures set forth in § 5.172. The notice will also provide a date by which the program participant must respond. After consideration of the evidence and any other actions taken by the program participant, if the Secretary determines that the AFFH certification is inaccurate, the Secretary may reject the certification consistent with 24 CFR 91.500.

(2) PHAs. If, consistent with the criteria at 24 CFR 903.15, HUD challenges the validity of a PHA's certification, HUD will do so in writing, specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations and has adopted policies and undertaken actions to affirmatively further fair housing, including but not limited to, providing a full range of housing

opportunities to applicants and tenants and taking affirmative steps as described in 24 CFR 903.15(c)(2) in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA, including those designed to affirmatively further fair housing. If the PHA has not resolved the identified deficiencies, the Secretary may pursue any other appropriate remedies under law, including:

(i) Requiring the PHA to revise and resubmit its PHA Plan and corresponding certifications in a manner that would demonstrate the PHA's certifications are valid;

(ii) Requiring the execution of a Voluntary Compliance Agreement that permits the Secretary to determine the PHA's certifications are valid; or

(iii) Finding the PHA in substantial default on an Annual Contributions Contract.

(3) Joint Equity Plans. In the case of a joint Equity Plan, if the Secretary rejects the AFFH certification for one program participant's consolidated plan, annual action plan, or PHA Plan, this rejection shall not affect the certifications of the other joint program participants unless the Secretary provides written notification to each program participant. The Secretary shall employ the procedures set forth in paragraphs (b)(1) or (b)(2), depending on whether the program participant is a consolidated plan program participant or a PHA.

#### **§ 5.168 Recordkeeping.**

(a) General. Each program participant must establish and maintain sufficient records to enable the Responsible Civil Rights Official to determine whether the program participant has complied with or is complying with the requirements of this subpart. A PHA not preparing its own Equity Plan in accordance with 24 CFR 903.15(a)(3) must maintain a copy of the applicable Equity Plan and records reflecting actions to affirmatively further fair housing as described in 24 CFR 903.7(o). All program participants shall permit access by the Responsible Civil Rights Official during normal business hours to its electronically stored information, books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with §§ 5.150 through 5.180. Where any information required of a program participant is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the program participant shall so certify to the Responsible Civil Rights Official and set forth what efforts the program participant made to obtain the information. At a minimum, the following records, which may be maintained and provided in electronic format, are needed for each consolidated plan program participant and each PHA that prepares its own Equity Plan:

(1) Information and records relating to the program participant's Equity Plan and any significant revisions to the Equity Plan, including, but not limited to, statistical data, studies, and other diagnostic tools used by the jurisdiction; and any policies, procedures, or other documents relating to the analysis or preparation of the Equity Plan;

(2) Records demonstrating compliance with the community engagement requirements of §§ 5.150 through 5.180, including the names of organizations involved in the development of the Equity Plan, summaries or transcripts of public meetings or hearings, written public comments, public notices and other correspondence, distribution lists, surveys, or interviews (as applicable);



(3) Records demonstrating the meaningful actions the program participant has taken to affirmatively further fair housing, including activities carried out in furtherance of the Equity Plan; the program participant's fair housing goals set forth in its Equity Plan, and strategies and meaningful actions, including funding allocations in its consolidated plan, or PHA Plan, and any plan incorporated therein; and the actions the program participant has carried out to implement the fair housing goals identified in accordance with § 5.154 during the preceding 5 years;

(4) Where a court or an agency of the United States Government or of a State government has found that the program participant has violated any applicable nondiscrimination and equal opportunity requirement set forth in § 5.105(a) or any applicable civil rights-related program requirement, documentation related to the underlying judicial or administrative finding and affirmative measures that the program participant has taken in response;

(5) Documentation relating to the program participant's efforts to ensure that housing and community development activities (including those assisted under programs administered by HUD) are in compliance with applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) and applicable civil rights related program requirements;

(6) Records demonstrating that consortium members, units of general local government receiving allocations from a State, or units of general local government participating in an urban county have conducted their own or contributed to the jurisdiction's Equity Plan (as applicable) and documents demonstrating their meaningful actions to affirmatively further fair housing;

(7) Evidence of the program participant's or its subrecipients' certifications and assurances of compliance in accordance with §§ 5.160 and 5.162(e), or any other civil rights-related certifications and assurances required in connection with the receipt of Federal financial assistance; and

(8) Any other evidence relied upon by the program participant to support its affirmatively furthering fair housing certifications and assurances.

**§ 5.170 Compliance Procedures.**

(a) Complaints. (1) Complaints may be submitted by an individual, association, or other organization that alleges that a program participant has failed to comply with this subpart, noncompliance with the program participant's commitments made under this subpart, or that the program participant has taken action that is materially inconsistent with the obligation to affirmatively further fair housing, as defined in this regulation.

(2) Complaints related to the Equity Plan, the requirements of §§ 5.150 through 5.180, and the AFFH obligation may be submitted to the Responsible Civil Rights Official. The Responsible Civil Rights Official shall process the complaint in accordance with the procedures set forth in this section and, upon the acceptance of a complaint, the Responsible Civil Rights Official will provide notification to the complainant and the program participant. If the Responsible Civil Rights Official determines a complaint does not contain sufficient information, the Responsible Civil Rights Official will notify the complainant and specify the additional information needed to complete the complaint. If the complainant fails to complete this complaint within a timeframe established by the Responsible Civil Rights Official, the Responsible Civil Rights Official will close the complaint without prejudice.

(3) Complaints shall be filed within 365 days of date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause shown.

(b) Investigations and compliance reviews. (1) The Responsible Civil Rights Official shall investigate complaints and may periodically conduct reviews of program participants in order to ascertain whether there has been a failure to comply with this subpart or the program participant's obligation to affirmatively further fair housing under the Fair Housing Act. If the investigation implicates an alleged failure to comply with any other Federal civil rights law for which HUD has jurisdiction, the notification provided pursuant to paragraph (a)(2) of this section shall include notification that the investigation will also involve a review under those laws.

(2) The Responsible Civil Rights Official may conduct interviews, request records, and obtain other information required to be maintained by the program participant pursuant to § 5.168 in furtherance of the investigation and in order to determine whether there has been noncompliance with §§ 5.150 through 5.180 or the program participant's obligation to affirmatively further fair housing.

(3) Where appropriate, the Responsible Civil Rights Official shall attempt informal resolution of any matter being investigated under this section. If voluntary resolution is not achieved and a violation is found, the Responsible Civil Rights Official shall issue a Letter of Findings to the program participant and complainant, if any.

(4) The Letter of Findings shall include:

- (i) Findings of fact and conclusions of law;
- (ii) A description of a remedy for each violation found;
- (iii) Notice of the rights and procedures under this paragraph and §§ 5.172 and 5.174; and
- (iv) Notice of the right of the program participant or complainant, if any, to request review of the Letter of Findings not later than 30 calendar days from the date of issuance of the Letter of Findings by mailing or delivering to the Reviewing Civil Rights Official, Office of Fair

Housing and Equal Opportunity, Washington, D.C. 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information provided by the program participant or complainant, if any.

(5) Upon receipt of a request for review of the Letter of Findings, the Reviewing Civil Rights Official shall either sustain or modify the Letter of Findings, which will occur within 120 days, subject to extension for good cause as determined by the Reviewing Civil Rights Official. The Reviewing Civil Rights Official's decision shall constitute the formal determination.

(6) If no request for review is submitted to the Reviewing Civil Rights Official under paragraph (b)(4)(iv) of this section, the Letter of Findings shall constitute the formal determination.

(c) Voluntary compliance. (1) It is the policy of the Department to encourage the informal resolution of matters. Additionally, it is the policy of the Department to ensure appropriate actions are taken to remedy noncompliance and prevent future noncompliance in an effort to avoid more severe corrective actions. In attempting informal resolution, the Responsible Civil Rights Official shall attempt to achieve a just resolution of the matter that will satisfactorily remedy any violations of §§ 5.150 through 5.180 or the program participant's obligation to affirmatively further fair housing. The Responsible Civil Rights Official may require in any Voluntary Compliance Agreement that the program participant will take certain actions with respect to any aggrieved individual or class of individuals. The Responsible Civil Rights Official, in appropriate circumstances, may seek, in lieu of a Voluntary Compliance Agreement, assurances or special assurances of compliance. Any informal resolution shall include actions that will prevent the occurrence of such violations in the future. The Responsible Civil Rights Official may attempt to resolve a matter through informal means at any stage of

processing. A matter may be resolved by informal means through entry into a Voluntary Compliance Agreement at any time. If a Letter of Findings of Noncompliance is issued, the Responsible Civil Rights Official or Reviewing Civil Rights Official shall attempt to resolve the matter by informal means, as applicable.

(2) In the event a program participant fails to comply with the terms of a Voluntary Compliance Agreement or assurance, the Responsible Civil Rights Official shall provide prompt notice to the program participant of its failure to comply and provide the program participant with a timeframe to cure the noncompliance. If the Responsible Civil Rights Official determines the program participant has failed to cure the noncompliance within the specified timeframe, any remedy provided by law may be used, including the procedures set forth in § 5.172.

(d) Intimidatory or retaliatory acts prohibited. No program participant or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with HUD's administration of §§ 5.150 through 5.180 or the Fair Housing Act, or because he, she, or they have testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under §§ 5.150 through 5.180 or the Fair Housing Act.

### **§ 5.172 Procedures for effecting compliance.**

(a) General. If the Responsible Civil Rights Official determines that compliance cannot be secured by voluntary means and ten days have elapsed since the determination of noncompliance was issued pursuant to § 5.170(b)(5)-(6), compliance with §§ 5.150 through 5.180 or the obligation to affirmatively further fair housing under the Fair Housing Act may be effected through such actions, which may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action pursuant to 24 CFR 180.415 seeking suspension or termination of or refusal to grant or to continue to grant Federal financial assistance and any other appropriate relief necessary to remedy the non-compliance, including but not limited to conditioning the use of Federal financial assistance, and other declaratory, injunctive, or monetary relief;

(3) The initiation of debarment proceedings pursuant to 2 CFR 2424; and

(4) Any applicable proceeding under State or local law.

(b) Noncompliance with §§ 5.160(i), 5.162(e), or 5.170(c). If a program participant fails or refuses to furnish an assurance required under §§ 5.160(i), 5.162(e), or 5.170(c), or otherwise fails or refuses to comply with the requirements imposed by §§ 5.150 through 5.180, Federal financial assistance may be refused under paragraph (c) of this section. HUD is not required to provide assistance during the pendency of the administrative proceeding under paragraphs (a)(2) or (c) of this section.

(c) Termination of or refusal to grant or to continue to grant Federal financial assistance. Should HUD seek to terminate, refuse to grant or to not continue granting Federal financial assistance through an action initiated pursuant to paragraph (a)(2) of this section, no order suspending, terminating, or refusing to grant or to continue to grant Federal financial assistance shall become effective until:

(1) The Responsible Civil Rights Official has advised the program participant of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after an opportunity for a hearing, of a failure by the program participant to comply with the requirements of §§ 5.150 through 5.180 or its obligation to affirmatively further fair housing under the Fair Housing Act;

(3) The action has been approved by the Secretary; and

(4) Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or the particular program participant as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found.

(d) Notice to State or local government. Whenever the Secretary determines that a State or local government that is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5318) has failed to comply with a requirement of §§ 5.150 through 5.180 or its obligation to affirmatively further fair housing under the Fair Housing Act, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer secure compliance. Such notification may be satisfied through the procedures set forth in § 5.170(c). The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or to continue to grant Federal financial assistance becomes effective under paragraphs (a)(2) or (c) of this section; or

(2) Any other action to effect compliance is taken under paragraph (a) of this section.

#### **§ 5.174 Hearings.**

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 5.172 (a)(2) or (c), notice shall be given by certified mail, return receipt requested, to the affected program participant. This notice, pursuant to 24 CFR 180.415, shall advise the program participant of the action proposed to be taken, the specific provisions under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. This notice shall accompany service of a complaint filed pursuant to 24 CFR part 180. The notice shall:

(1) Fix a date not less than twenty days after the date of the notice for the program participant to request the administrative law judge schedule a hearing; or

(2) Advise the program participant that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. A program participant may waive a hearing and submit written information and argument for the record. The failure of a program participant to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 5.172(a)(2) or (c) and consent to the making of a decision on the basis of available information.

(b) Hearing procedures. Hearings shall be conducted in accordance with 24 CFR part 180.

§§ 5.175-5.180 [Reserved]

**PART 91 – CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND  
DEVELOPMENT PROGRAMS**

3. The authority citation for part 91 continues to read as follows:



Authority: 42 U.S.C. 3535(d), 3601-3619, 5301-5315, 11331-11388, 12701-12711, 12741-12756, and 12901-12912.

4. In § 91.2 paragraph (e) is added to read as follows:

**§ 91.2 Applicability.**

\* \* \* \* \*

(e) All programs covered by the consolidated plan must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

5. In § 91.5, the introductory text is revised to read as follows:

**§ 91.5 Definitions.**

The terms *Affirmatively Furthering Fair Housing*, *elderly person*, *Equity Plan*, and *HUD* are defined in 24 CFR part 5.

\* \* \* \* \*

6. In § 91.100, paragraph (c) is revised and paragraph (e) is added to read as follows:

**§ 91.100 Consultation; local governments.**

\* \* \* \* \*

(c) Public housing agencies (PHAs). (1) The jurisdiction shall consult with local PHAs operating in the jurisdiction regarding consideration of public housing needs, planned programs and activities, and the fair housing strategies and meaningful actions that will implement the fair housing goals from the Equity Plan consistent with § 5.156 of this title. This consultation will help provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the local government's description of its strategy for affirmatively furthering fair housing and the manner in which it will address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to

a troubled PHA to improve the PHA's operations and remove the designation of troubled, as well as obtaining PHA input on addressing fair housing issues in the Public Housing and Housing Choice Voucher programs.

(2) This consultation will also help ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, those funded under a PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to implement the fair housing goals from the jurisdiction's and PHA's Equity Plan, achieve comprehensive community development goals, and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the local jurisdiction should work with or consult with the PHA, as appropriate, to identify actions the jurisdiction may take, if any, to assist the PHA in implementing the required remedies.

\* \* \* \* \*

(e) Affirmatively Furthering Fair Housing. (1) For the Equity plan, the jurisdiction shall follow the community engagement requirements at 24 CFR 5.158. For the consolidated plan, the jurisdiction shall consult with community-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws, such as State or local fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiatives Program (FHIP), and other public and private fair housing service agencies, to the extent that such entities operate within its jurisdiction. This consultation will help provide a better basis for the jurisdiction's Equity Plan, its certification to

affirmatively furthering fair housing, and other portions of the consolidated plan concerning affirmatively further fair housing.

(2) This consultation must occur with any organizations that have relevant knowledge or data to inform the Equity Plan and that are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the Equity Plan and its implementation.

(3) Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (e) in the development of both the Equity Plan and the consolidated plan.

Consultation on the consolidated plan shall specifically seek input into how the fair housing goals identified in an accepted Equity Plan will be achieved through the priorities and objectives of the consolidated plan.

7. In § 91.105, paragraphs (a), (b), (c), (e)(1)(i), (e)(2) through (4), (f), (g), (i), and (j), are revised to read as follows:

**§ 91.105 Citizen participation plan; local governments.**

(a) Applicability and adoption of the citizen participation plan. (1) The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation for purposes of the consolidated plan. The citizen participation plan may include the community engagement procedures for development of the Equity Plan, which shall be consistent with the requirements set forth at § 5.158 of this title.

(2) Encouragement of citizen participation. (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the Equity Plan, any revisions to the Equity Plan, the consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to

encourage participation by low- and moderate-income persons, particularly those persons living in areas designated by the jurisdiction as a revitalization area or in a slum and blighted area and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction, as well as members of protected class groups that have historically been denied equal opportunity, and underserved communities. A jurisdiction must take appropriate actions to encourage the participation of all its residents, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities, as provided in paragraph (a)(5) of this section.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, Continuums of Care, and other organizations (including businesses, developers, non-profit organizations, philanthropic organizations, metropolitan planning organizations, and community-based and faith-based organizations) in the process of developing and implementing the Equity Plan and consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations) in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the PHA about how the jurisdiction will affirmatively furthering fair housing through implementation of its fair housing goals from the Equity Plan, and other consolidated plan activities related to the PHA's developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.

(iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; e.g., use of focus groups, the Internet, and social media. To the extent the jurisdiction includes the community engagement requirements for the Equity Plan in its citizen participation plan, the techniques described in this paragraph that are utilized for purposes of community engagement pursuant to § 5.158 of this title shall be consistent with the requirements of that section, including the nondiscrimination requirements described at § 5.158(a)(7) of this title.

(3) Citizen comment on the citizen participation plan and amendments. The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (a)(5) of this section.

(4) The citizen participation plan shall describe the jurisdiction's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the community in the development of the consolidated plan.

(5) The citizen participation plan shall describe the jurisdiction's procedures for ensuring effective communication with persons with disabilities, consistent with the jurisdiction's obligations under section 504 of the Rehabilitation Act and HUD's implementing regulation at 24 CFR part 8 and Title II of the Americans with Disabilities Act and the implementing

regulation at 28 CFR part 35. At minimum, the citizen participation plan shall include the requirement that the jurisdiction furnish appropriate auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in the development of the consolidated plan.

(b) Development of the consolidated plan. The citizen participation plan must include the following minimum requirements for the development of the consolidated plan:

(1)(i) The citizen participation plan must require that at or as soon as feasible after the start of the public participation process the jurisdiction will make the HUD-provided data and any other supplemental information the jurisdiction plans to incorporate into its Equity Plan or consolidated plan available to its residents, public agencies, and other interested parties.

(ii) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to residents, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.

(iii) The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords its residents, public agencies, and other interested

parties a reasonable opportunity to examine its content and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine each document's content. The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the jurisdiction's official government website and pages on social media, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the consolidated plan and must include a list of the locations where copies of the entire proposed documents may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plans to residents and groups that request them.

(3) The citizen participation plan must provide for at least one public hearing during the development of the consolidated plan. See paragraph (e) of this section for public hearing requirements, generally. See § 5.158(d) of this title for public hearing requirements for purposes of the Equity Plan.

(4) The citizen participation plan must provide a period, not less than 30 calendar days, to receive comments from residents of the community on the consolidated plan. This timing is distinct from the required community engagement for purposes of the Equity Plan set forth at § 5.158(a)(8)(i) of this title.

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at the public hearings, in preparing the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the final consolidated

plan. See § 5.154(h) of this title for the content requirements for purposes of the Equity Plan's community engagement process.

(c) Consolidated plan amendments and Equity Plan revisions. (1) The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria for a substantial amendment, changes in the use of CDBG funds from one eligible activity to another. If the jurisdiction includes the Equity Plan in its citizen participation plan, then the citizen participation plan shall specify the criteria for revisions of the Equity Plan, which shall, at minimum, be consistent with § 5.164 of this title.

(2) The citizen participation plan must provide community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment before the consolidated plan substantial amendment is implemented. If the citizen participation plan includes the Equity Plan, it shall be consistent with the requirements at § 5.164(a)(3) of this title.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan. If the jurisdiction includes the



Equity Plan in the citizen participation plan, it shall be consistent with the requirements set forth at § 5.154(h) and § 5.158 of this title.

\* \* \* \* \*

(e) Public hearings. (1)(i) Consolidated plan. The citizen participation plan must provide, for purposes of the consolidated plan, for at least two public hearings per year to obtain residents' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, proposed fair housing strategies and meaningful actions for affirmatively furthering fair housing based on the fair housing goals from the Equity Plan consistent with § 5.156 of this title, and a review of program performance. If the jurisdiction has included the community engagement procedures for development of the Equity Plan in its citizen participation plan, the requirements at § 5.158 of this title shall apply.

\* \* \* \* \*

(2) The citizen participation plan must state how and when adequate advance notice will be given to citizens of each hearing on the consolidated plan, with sufficient information published about the subject of the hearing to permit informed comment (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.).

(3) The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and accessible to persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(4) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(f) Meetings. The citizen participation plan, for purposes of the consolidated plan, must provide residents of the community with reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements, in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable. If the Equity Plan is included in the jurisdiction's citizen participation plan, the requirements for meetings set forth at § 5.158 of this title shall apply.

(g) Availability to the public. The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (a)(5) of this section. The citizen participation plan must state how these documents will be available to the public.

\* \* \* \* \*

(i) Technical Assistance. The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in commenting on the Equity Plan and in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) Complaints. The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, amendments, revisions, and the performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient). This procedure is distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170 of this title.

\* \* \* \* \*

8. In § 91.110, paragraph (a) is revised to read as follows:

**§ 91.110 Consultation; States.**

(a) When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any State housing agency administering public housing), health services, and social and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, including persons with HIV/AIDS and their families, and homeless persons). For the Equity Plan, the jurisdiction shall follow the community engagement requirements at § 5.158 of this title.

(1) With respect to public housing or Housing Choice Voucher programs, the State shall consult with any housing agency administering public housing or the section 8 program on a Statewide basis as well as PHAs that certify consistency with the State's consolidated plan. State consultation with these entities may consider public housing needs, planned programs and activities, the Equity Plan strategies for affirmatively furthering fair housing and proposed actions to affirmatively further fair housing. This consultation helps provide a better basis for

the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the State's description of its strategy to affirmatively further fair housing, and the manner in which the State will address the needs of public housing and, where applicable, the manner in which the State may provide financial or other assistance to a troubled PHA to improve its operations and remove such designation, as well as in obtaining PHA input on addressing fair housing issues in public housing and the Housing Choice Voucher programs. This consultation also helps ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the State should consult with the PHA and identify actions the State may take, if any, to assist the PHA in implementing the required remedies.

(2) The State shall consult with State-based and regionally-based organizations that represent protected class groups, including underserved communities, and organizations that enforce fair housing laws, such as State fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiatives Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within the State. This consultation will help provide a better basis for the State's Equity Plan, its certification that it is affirmatively furthering fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing. This consultation should occur with organizations that have the capacity to engage with data informing the Equity Plan

and be sufficiently independent and representative to provide meaningful feedback on the Equity Plan, the consolidated plan, and their implementation. Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (a)(2) in the development of both the Equity Plan and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the fair housing goals established in the Equity Plan will be incorporated into the priorities and objectives of the consolidated plan.

\* \* \* \* \*

9. In § 91.115, paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), the introductory text of paragraph (b), paragraphs (b)(1), and (b)(2), the introductory text of paragraph (b)(3), and paragraphs (b)(4), (b)(5), (f), and (h) are revised and paragraph (a)(5) is added to read as follows:

**§ 91.115 Citizen participation plan; States.**

(a) \* \* \*

(1) When citizen participation plan must be amended. The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation for purposes of the consolidated plan. The citizen participation plan may include the community engagement procedures for development of the Equity Plan, which shall be consistent with the requirements set forth at § 5.158 of this title.

(2) Encouragement of citizen participation. (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the Equity Plan, any revisions to the Equity Plan, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum

and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods. A State must take appropriate actions to encourage the participation of all its residents, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities, as provided in paragraph (a)(5) of this section.

(ii) The State shall encourage the participation of Statewide and regional institutions, Continuums of Care, and other organizations (including businesses, developers, non-profit organizations, philanthropic organizations, metropolitan planning organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan in the process of developing and implementing the Equity Plan and consolidated plan. Commencing with consolidated plans submitted in or after January 1, 2018, the State shall also encourage the participation of public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan. For purposes of the development of the Equity Plan, this obligation shall commence following **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]**.

\* \* \* \* \*

(3) Citizen and local government comment on the citizen participation plan and amendments. The State must provide citizens and units of general local government a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public.

The citizen participation plan must be in a format accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (a)(5) of this section.

(4) Language assistance for those with limited English proficiency. The citizen participation plan shall describe the State's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require the State to make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons in the development of the consolidated plan.

(5) Accessibility for persons with disabilities. The citizen participation plan shall describe the jurisdiction's procedures for ensuring effective communication with persons with disabilities, consistent with the jurisdiction's obligations under section 504 of the Rehabilitation Act and HUD's implementing regulation at 24 CFR part 8 and Title II of the Americans with Disabilities Act and the implementing regulation at 28 CFR part 35. At minimum, the citizen participation plan shall include the requirement that the jurisdiction furnish appropriate auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in the development of the consolidated plan.

(b) Development of the Equity Plan and consolidated plan. The citizen participation plan must include the following minimum requirements for the development of the Equity Plan and consolidated plan:

(1) The citizen participation plan must require that, before the State adopts a consolidated plan, the State will make available to its residents, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of

activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The State will also provide the amount of any assistance that will benefit protected class groups and underserved communities that have historically been denied access to opportunity. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed Equity Plan and the proposed consolidated plan in a manner that affords residents, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine the document's content and to submit comments. The citizen participation plan must set forth how the State will make publicly available the proposed Equity Plan and proposed consolidated plan and give reasonable opportunity to examine each document's content. To ensure that the Equity Plan, consolidated plan, and the PHA Plan are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. Such communications may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the internet, on the grantee's official government website and its pages on social media, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the Equity Plan and consolidated plan, and must include a list of the locations where copies of the entire proposed document(s) may be examined. In addition, the State must provide a reasonable number of free copies of the plans to its residents and groups that request a copy of the plan.



(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs before the proposed consolidated plan is published for comment. See § 5.158(d) of this title for public hearing requirements for purposes of the Equity Plan.

\* \* \* \* \*

(4) The citizen participation plan must, for purposes of the consolidated plan, provide a period of not less than 30 calendar days, to receive comments from residents and units of general local government on the consolidated plan. This timing is distinct from the required community engagement for purposes of the Equity Plan set forth at § 5.158(a)(8)(i) of this title.

(5) The citizen participation plan shall require the State to consider any comments or views of its residents and units of general local government received in writing, or orally at the public hearings, in preparing the final Equity Plan or consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final consolidated plan (as applicable). See § 5.154(h) of this title for the content requirements for purposes of the Equity Plan's community engagement process.

\* \* \* \* \*

(f) Availability to the public. The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (a)(5) of this section. The citizen participation plan must state how these documents will be available to the public.

\* \* \* \* \*

(h) Complaints. The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, consolidated plan amendments, and the performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient). This procedure is distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170 of this title.

\* \* \* \* \*

10. In § 91.215, paragraph (a)(5) is added to read as follows:

**§ 91.215 Strategic Plan.**

(a) \* \* \*

(5)(i) Describe how the priorities and specific objectives of the jurisdiction under paragraph (a)(4) of this section will affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan conducted in accordance with §§ 5.150 through 5.180 of this title.

(ii) For any fair housing goals from the Equity Plan not addressed by these priorities and objectives, identify how these goals have been incorporated into the plan consistent with the requirements of § 5.156.

\* \* \* \* \*

11. In § 91.220, paragraphs (k), (l)(1)(iv), and (l)(3) are revised to read as follows:

**§ 91.220 Action plan.**

\* \* \* \* \*

(k)(1) Affirmatively furthering fair housing. Actions the jurisdiction plans to take during the next year to implement the fair housing goals established in the Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title or other actions to address fair housing issues consistent with the jurisdiction's obligation to affirmatively further fair housing.

(2) Other actions. Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies (see § 91.215(a), (b), (i), (j), (k), and (l)).

(l) Program-specific requirements.—(1) CDBG. \* \* \*

(iv) The plan shall identify the estimated amount of CDBG funds that will be used for activities that benefit persons of low- and moderate-income. The information about activities shall be in sufficient detail, including location, to allow residents to determine the degree to which they are affected. The information about activities shall also include whether the activities are for purposes of implementing any fair housing goals from the Equity Plan incorporated pursuant to § 5.156 of this title.

\* \* \* \* \*

(3) HOPWA. For HOPWA funds, the jurisdiction must specify one-year goals for the number of households to be provided housing through the use of HOPWA activities for: short-term rent, mortgage, and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased, or operated with HOPWA funds and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community

organizations). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals, from the Equity Plan.

\* \* \* \* \*

12. In § 91.225, paragraph (a)(1) is revised to read as follows:

**§ 91.225 Certifications.**

(a) \* \* \*

(1) Affirmatively furthering fair housing. Each jurisdiction is required to submit a certification that they will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

\* \* \* \* \*

13. Section § 91.230 is revised to read as follows:

**§ 91.230 Monitoring.**

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the Equity Plan and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

14. In Section 91.235, paragraphs (c)(1) and (4) are revised to read as follows:

**§ 91.235 Special case; abbreviated consolidated plan.**

\* \* \* \* \*

(c) What is an abbreviated plan?—(1) Assessment of needs, resources, and planned activities. An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD. The jurisdiction must describe how the jurisdiction will affirmatively further fair housing by implementing the fair housing goals established in the Equity Plan developed in accordance with §§ 5.150 through 5.180 of this title.

\* \* \*

(4) Submissions, certifications, amendments, and performance reports. An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of § 570.440 of this title. This includes the certification that the grantee will affirmatively further fair housing, which means that it will take meaningful actions to implement the goals identified in the Equity Plan in accordance with the requirements of §§ 5.150 through 5.180 of this title and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

15. In § 91.305, paragraph (b)(1)(ii) is revised to read as follows:

**§ 91.305 Housing and homeless needs assessment.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and

middle-income renters and owners compared to the State as a whole. (The State must define in its consolidated plan the terms “standard condition” and “substandard condition but suitable for rehabilitation.”) The State may utilize the analysis contained in the Equity Plan relating to affordable housing opportunities pursuant to §§ 5.152 and 5.154 of this title to satisfy this requirement.

\* \* \* \* \*

16. In § 91.315, paragraph (a)(5) is added to read as follows:

**§ 91.315 Strategic Plan.**

(a) \* \* \*

(5)(i) Describe how the priorities and specific objectives of the State under paragraph (a)(4) of this section affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan conducted in accordance with §§ 5.150 through 5.180 of this title.

(ii) For any fair housing goals from the Equity Plan not addressed by these priorities and objectives, identify how these goals have been incorporated into the plan consistent with the requirements of §§ 5.150 through 5.180.

\* \* \* \* \*

17. In § 91.320, paragraphs (j), (k)(3)(iv), (k)(4), the introductory text of (k)(5), and (k)(5)(ii) are revised to read as follows:

**§ 91.320 Action plan.**

\* \* \* \* \*

(j)(1) Affirmatively furthering fair housing. Actions it plans to take during the next year that implement fair housing goals established in the Equity Plan.

(2) Other actions. Actions it plans to take during the next year to implement its strategic plan and address obstacles to meeting underserved needs, foster and maintain affordable housing (including allocation plans and policies governing the use of Low-Income Housing Credits under 26 U.S.C. 42, which are more commonly referred to as Low-Income Housing Tax Credits), evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, enhance coordination between public and private housing and social service agencies, address the needs of public housing (including providing financial or other assistance to troubled PHAs), and encourage public housing residents to become more involved in management and participate in homeownership.

\* \* \* \* \*

(k) Program-specific requirements. \* \* \*

(3) ESG. \* \* \*

(iv) The State must describe the performance standards for evaluating ESG activities, which includes implementation of the fair housing goals from the Equity Plan.

(4) HOPWA. For HOPWA funds, the State must specify one-year goals for the number of households to be provided housing through the use of HOPWA activities for short-term rent; mortgage and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased or operated with HOPWA funds, and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community-based organizations). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals from the Equity Plan.

(5) Housing Trust Fund. The action plan must include the HTF allocation plan that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. The plan must also establish the State's maximum per-unit development subsidy limit for housing assisted with HTF funds. If the HTF funds will be used for first-time homebuyers, it must state the guidelines for resale and recapture as required in 24 CFR 93.304. The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients. If the State is selecting applications submitted by eligible recipients, the plan must include the following:

\* \* \* \* \*

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 93.200) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 93.2). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals from the Equity Plan.

\* \* \* \* \*

18. In § 91.325, paragraph (a)(1) is revised as follows:

**§ 91.325 Certifications.**

(a) \* \* \*

(1) Affirmatively furthering fair housing. Each State is required to submit a certification that it will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180,



and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

\* \* \* \* \*

19. Section § 91.330 is revised to read as follows:

**§ 91.330 Monitoring.**

The consolidated plan must describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan including strategies and actions that address the fair housing issues and goals identified in the Equity Plan and that the State will use to ensure long-term compliance with the programs involved including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

20. Section § 91.415 is revised to read as follows:

**§ 91.415 Strategic Plan.**

Strategies and priority needs must be described in the consolidated plan, in accordance with the provisions of § 91.215, for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members of the consortium. The consortium must set forth its priorities for allocating housing resources (including CDBG and ESG, where applicable) geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), setting forth fair housing strategies and meaningful actions to implement the fair housing goals of the Equity Plan

developed pursuant to §§ 5.150 through 5.180, describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

21. In § 91.420, paragraph (b) is revised to read as follows:

**§ 91.420 Action plan.**

\* \* \* \* \*

(b) Description of resources and activities. The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan, including actions the consortium intends to undertake in the next year to address fair housing issues identified in the Equity Plan. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

22. In § 91.425, paragraph (a)(1)(i) is revised to read as follows:

**§ 91.425 Certifications.**

(a) \* \* \*

(1)(i) Affirmatively furthering fair housing. Each consortium must certify that it will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180, of this title and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

23. Section § 91.430 is revised to read as follows:

**§ 91.430 Monitoring.**

The consolidated plan must describe the standards and procedures that the consortium will use to monitor activities carried out in furtherance of the plan, including strategies and

actions that address the fair housing issues and goals identified in the Equity Plan and that the consortium will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

24. In § 91.500, the introductory text in paragraph (b) is revised to read as follows:

**§ 91.500 HUD approval action.**

\* \* \* \* \*

(b) Standard of review. The standards in this section apply to the consolidated plan. The standards for HUD’s review of the Equity Plan at § 5.162 of this title are distinct from the actions described in this section. HUD may disapprove a consolidated plan or a portion of a consolidated plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or, in the case of certifications applicable to the CDBG program under §§ 91.225 (a) and (b) or 91.325 (a) and (b), if it is not satisfactory to the Secretary in accordance with §§ 570.304, 570.429(g), or 570.485(c) of this title, as applicable. The following are examples of consolidated plans that are substantially incomplete:

\* \* \* \* \*

25. Amend § 91.505 to remove the word “or” at the end of paragraph (a)(2), replace the period at the end of paragraph (a)(3) with “; or”, and add paragraph (a)(4) to reads as follows:

**§ 91.505 Amendments to the consolidated plan.**

(a) \* \* \*

(4) To incorporate fair housing goals when an Equity Plan is accepted or revised after a consolidated plan is in effect.

**PART 92 – HOME INVESTMENT PARTNERSHIP PROGRAM**

26. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

27. In § 92.2, the introductory text is revised to read as follows:

**§ 92.2 Definitions.**

The terms 1937 Act, Affirmatively Furthering Fair Housing, ALJ, Equity Plan, Fair Housing Act, HUD, Indian Housing Authority (IHA), Public housing, Public Housing Agency (PHA), and Secretary are defined in 24 CFR part 5.

\* \* \* \* \*

28. Section 92.5 is added to read as follows:

**§ 92.5 Affirmatively Furthering Fair Housing.**

All participating jurisdictions must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

29. In § 92.61, paragraph (c)(5) is revised to read as follows:

**§ 92.61 Program description.**

\* \* \* \* \*

(c) \* \* \*

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part, including the insular area’s obligation to affirmatively further fair housing and conduct its Federally funded programs and activities in a manner that is consistent with Federal fair housing and civil rights requirements;

\* \* \* \* \*

30. Section § 92.104 is revised to read as follows:

**§ 92.104 Submission of a consolidated plan.**

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 calendar days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91 and submit an Equity Plan in accordance with §§ 5.150 through 5.180 of this title.

31. In § 92.207, paragraph (d) is revised to read as follows:

**§ 92.207 Eligible administrative and planning costs.**

\* \* \* \* \*

(d) Fair Housing, civil rights, and equal opportunity. Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under § 5.166 and part 91 of this title.

\* \* \* \* \*

32. In § 92.350, paragraph (a) is revised to read as follows:

**§ 92.350 Other Federal requirements and nondiscrimination.**

(a) The Federal requirements set forth in 24 CFR part 5, subpart A are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; affirmatively furthering fair housing; disclosure requirements; debarred, suspended or ineligible contractors; drug-free work; and housing counseling.

\* \* \* \* \*

33. In § 92.351, paragraph (a)(1) is revised to read as follows:

**§ 92.351 Affirmative marketing; minority outreach program.**

(a) Affirmatively marketing. (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing

five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide effective information and otherwise attract and provide access to the available housing throughout the housing market area regardless of race, color, national origin, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), religion, familial status, or disability. If participating jurisdiction’s written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

\* \* \* \* \*

34. In § 92.508, paragraph (a)(7)(i)(B) is revised to read as follows:

**§ 92.508 Recordkeeping.**

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

(B) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing, including documentation related to the participating jurisdiction’s Equity Plan as described at § 5.168 of this title.

**PART 93 – HOUSING TRUST FUND**

35. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

36. In § 93.2, introductory text is added to read as follows:

**§ 93.2 Definitions.**

The terms Affirmatively Furthering Fair Housing and Equity Plan are defined in 24 CFR part 5.

\* \* \* \* \*

37. Section 93.4 is added to read as follows:

**§ 93.4 Affirmatively Furthering Fair Housing.**

All recipients of HTF funds must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

38. In § 93.100, paragraph (b) is revised to read as follows:

**§ 93.100 Participation and submission requirements.**

\* \* \* \* \*

(b) Submission requirement. To receive its HTF grant, the grantee must submit a consolidated plan in accordance with 24 CFR part 91 and an Equity Plan pursuant to §§ 5.150 through 5.180 of this title.

\* \* \* \* \*

39. In § 93.200, paragraph (a)(1) is revised to read as follows:

**§ 93.200 Eligible activities; General.**

(a)(1) HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs,

relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Not more than one third of each annual grant may be used for operating cost assistance and operating cost assistance reserves. Operating cost assistance and operating cost assistance reserves may be provided only to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. Not more than 10 percent of the annual grant shall be used for housing for homeownership. HTF-assisted housing must be permanent housing. The specific eligible costs for these activities are found in §§ 93.201 and 93.202. The activities and costs are eligible only if the housing meets the property standards in § 93.301, as applicable, upon project completion. HTF Funds may be used for any activity otherwise eligible under this part that implements goals from an Equity Plan pursuant to §§ 5.150 through 5.180 of this part.

\* \* \* \* \*

40. In § 93.202, paragraph (e) is revised to read as follows:

**§ 93.202 Eligible administrative and planning costs.**

\* \* \* \* \*

(e) Fair Housing, civil rights, and equal opportunity. Activities to affirmatively further fair housing in accordance with the grantee's certification under § 5.166 and part 91 of this title.

\* \* \* \* \*

41. In § 93.350, paragraphs (a) and (b)(1) are revised to read as follows:

**§ 93.350 Other Federal requirements and nondiscrimination; affirmative marketing.**

(a) General. The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity, affirmatively furthering fair housing; disclosure



requirements; debarred, suspended, or ineligible contractors; drug-free work; and housing counseling.

(b) Affirmative marketing. (1) Each grantee must adopt and follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. Affirmative marketing steps consist of actions to provide effective information and otherwise attract and provide access to the available housing throughout the housing market area regardless of race, color, national origin, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

\* \* \* \* \*

42. In § 93.407, paragraph (a)(1)(vii) is added to read as follows:

**§ 93.407 Recordkeeping.**

(a) \* \* \*

(1) \* \* \*

(vii) Records documenting the actions the grantee has taken to affirmatively further fair housing, including documentation relating to the grantee's Equity plan described at § 5.168 of this title.

\* \* \* \* \*

**PART 570 – COMMUNITY DEVELOPMENT BLOCK GRANTS**

43. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

44. In § 570.3, revise the introductory text to read as follows:

**§ 570.3 Definitions.**

The terms Affirmatively Furthering Fair Housing, Equity Plan, HUD and Secretary are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census or the American Community Survey.

\* \* \* \* \*

45. Section 570.6 is added to read as follows:

**§ 570.6 Affirmatively Furthering Fair Housing**

All programs covered by this part must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

46. Amend § 570.205 to remove the word “and” at the end of paragraph (a)(4)(vi), replace the period at the end of paragraph (a)(4)(vii) with “; and”, add paragraph (a)(4)(viii), and revise paragraph (a)(6) to read as follows:

**§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.**

(a) \* \* \*

(4) \* \* \*

(viii) The Equity Plan.

\* \* \* \* \*

(6) Policy - planning - management - capacity building activities which will enable the recipient to:

- (i) Determine its needs;
- (ii) Set long-term goals and short-term objectives, including those related to urban environmental design and implementation of fair housing goals from the Equity Plan;
- (iii) Devise programs and activities to meet these goals and objectives, including implementation of fair housing goals from the Equity plan;
- (iv) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
- (v) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, including with respect to any fair housing goals from the Equity Plan, but excluding the costs necessary to implement such plans.

47. In § 570.206, paragraph (c) is revised to read:

**§ 570.206 Program administrative costs.**

\* \* \* \* \*

(c) Fair housing activities. Provision of fair housing services designed to affirmatively further the purposes of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex (including gender identity, sexual orientation, and nonconformance with gender stereotypes), national origin, familial status, or disability, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further fair housing.

\* \* \* \* \*

48. In § 570.441, paragraphs (b)(1)(ii) and(d) are revised to read as follows:

**§ 570.441 Citizen participation – insular areas.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The range of activities that may be undertaken with those funds which may include Equity Plan fair housing goals incorporated pursuant to § 5.156 of this title;

\* \* \* \* \*

(d) Preparation of the final statement. An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction shall consider comments and views received relating to the proposed document and may, if appropriate, modify the final document. To the extent comments or views were received that relate to the incorporation of the Equity Plan pursuant to § 5.156, the jurisdiction shall specifically note how the document was modified in response, and if not, the reasons why. The final statement shall be made available to the public. The final statement shall include the community development objectives, projected use of funds, and the community development activities.

\* \* \* \* \*

49. In § 570.487, paragraph (b) is revised to read as follows:

**§ 570.487 Other applicable laws and related program requirements.**

\* \* \* \* \*

(b) Affirmatively furthering fair housing. The requirements set forth at 24 CFR part 5, subpart A are applicable to CDBG grantees. Each jurisdiction is required to submit a certification that they will affirmatively further fair housing which means engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through and 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively fair housing throughout the period for which Federal financial

assistance is extended. Each unit of general local government is required to certify that it will affirmatively further fair housing, in accordance with the requirements of §§ 5.150 through and 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

\* \* \* \* \*

50. In § 570.490, paragraphs (a)(1) and (b) are revised to read as follows:

**§ 570.490 Recordkeeping requirements.**

(a) State records. (1) The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.493. The content of records maintained by the State shall be as jointly agreed upon by HUD and the States and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, whereas such data is already being collected and where applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. Such records shall include documentation relating to the State's Equity Plan as described at § 5.168 of this title. The records shall also permit audit of the States in accordance with 2 CFR part 200.

\* \* \* \* \*

(b) Unit of general local government's record. The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, whereas such data is already being

collected and where applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. Such records shall include documentation related to the State's Equity Plan as described at § 5.168 of this title.

\* \* \* \* \*

51. in § 570.506, paragraph (g)(1) is revised to read as follows:

**§ 570.506 Records to be maintained.**

\* \* \* \* \*

(g) Fair housing and equal opportunity records containing:

(1) Documentation of the actions the recipient has taken to affirmatively further fair housing, including documentation related to the recipient's Equity Plan described at § 5.168 of this title.

\* \* \* \* \*

52. In § 570.601, paragraph (a)(2) is revised to read as follows:

**§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; equal opportunity; Executive Order 11063.**

(a) \* \* \*

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. The affirmatively furthering fair housing requirements set forth in 24 CFR part 5, subpart A are applicable to CDBG grantees. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a

grant under subpart D of this part, the certification, that the grantee will affirmatively further fair housing, shall specifically require the grantee to take meaningful actions to further the fair housing goals established in the Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing.

\* \* \* \* \*

53. In § 570.904, paragraph (c)(2) is revised to read as follows:

**§ 570.904 Equal opportunity and fair housing review criteria.**

\* \* \* \* \*

(c) \* \* \*

\* \* \*

(2) Affirmatively furthering fair housing. HUD will review a recipient's performance to determine if it has administered all programs and activities related to housing and urban development in accordance with § 570.601(a)(2) for purposes of administration of CDBG funds, which sets forth the grantee's responsibility to affirmatively further fair housing. The review undertaken pursuant to this section is distinct from the procedures set forth at 24 CFR parts 1, 3, 5, 6, 8, or 146 or 28 CFR part 35 conducted by the Responsible Civil Rights Official, which are reviews for purposes of determining a grantee's compliance with Federal fair housing and civil rights requirements, including the grantee's obligation to affirmatively further fair housing.

\* \* \* \* \*

**PART 574 – HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

54. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

55. In § 574.3, the introductory text is revised to read as follows:

**§ 574.3 Definitions.**

The terms Affirmatively Furthering Fair Housing, Grantee, and Secretary are defined in 24 CFR part 5.

\* \* \* \* \*

56. Section 574.4 is added to read as follows:

**§ 574.4 Affirmatively Furthering Fair Housing.**

All grantees must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

57. In § 574.530, paragraph (b) is revised to read as follows:

**§ 574.530 Recordkeeping.**

\* \* \* \* \*

(b) Documentation of the actions the grantee has taken to affirmatively further fair housing pursuant to §§5.150 through 5.180 of this title.

\* \* \* \* \*

**PART 576 – EMERGENCY SOLUTIONS GRANTS PROGRAM**

58. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 et seq., 42 U.S.C. 3535(d).

59. In § 576.2, the introductory text is added to read as follows:

**§ 576.2 Definitions.**

The term Affirmatively Furthering Fair Housing is defined in 24 CFR part 5.

\* \* \* \* \*

60. Section 576.4 is added to read as follows:



**§ 576.4 Affirmatively Furthering Fair Housing**

All recipients of ESG funds must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

61. In § 576.500, paragraph (s)(1)(ii) is revised to read as follows:

**§ 576.500 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(s) \* \* \*

(1) \* \* \*

(ii) Documentation of the actions that the recipient has taken to affirmatively further fair housing pursuant to §§ 5.150 through 5.180 of this title.

\* \* \* \* \*

**PART 903 – PUBLIC HOUSING AGENCY PLANS**

62. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 1437c-1; Pub. L. 110-289; 42 U.S.C. 3535d.

63. Section 903.1 is revised to read as follows:

**§ 903.1 What is the purpose of this subpart?**

The purpose of this subpart is to specify the process which a Public Housing Agency, as part of its annual planning process and development of an admissions policy, must follow in order to develop and apply a policy that provides for deconcentration of poverty and income mixing in certain public housing developments. This subpart also includes requirements for the PHA’s obligation to affirmatively further fair housing and comply with the requirements set forth at §§ 5.150 through 5.180 of this title.

64. In § 903.4, add paragraph (a)(3) to read as follows:

#### **§ 903.4 What are public housing agency plans?**

(a) \* \* \*

(3) The plans described in this section include the incorporation, pursuant to § 5.156 of this title, of the fair housing goals established in the PHA's Equity Plan.

\* \* \* \* \*

65. In § 903.6, paragraph (a)(4) is added and paragraph (b)(2) is revised to read as follows:

#### **§ 903.6 What information must a PHA provide in the 5-Year Plan?**

(a) \* \* \*

(4) The PHA's fair housing strategies and meaningful actions it intends to undertake in order to implement the fair housing goals incorporated from the PHA's Equity Plan pursuant to § 5.156 of this title.

(b) \* \* \*

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan. For purposes of this requirement as it relates to the PHA's fair housing goals, the PHA may rely on the progress evaluations required for purposes of the Equity Plan, conducted pursuant to §§ 5.152, 5.154(i) and (j), 5.156(d), and 5.160(f) and (i) of this title.

66. In § 903.7, the introductory language and paragraphs (a)(1)(iii), (b), and (c) are revised to read as follows:

#### **§ 903.7 What information must a PHA provide in the Annual Plan?**

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information described in this

section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan and the PHA's Equity Plan once an Equity Plan is required by §§ 5.150 through 5.180 of this title.

(a) \* \* \*

(1) \* \* \*

(iii) Households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting list. Once the PHA has submitted its Equity Plan pursuant to the submission schedule at § 5.160 of this title, the PHA may rely on its analysis of affordable housing opportunities and the analysis conducted pursuant to § 5.154(e) of this title in connection with its Equity Plan, to the extent applicable and still up-to-date and relevant, for purposes of the PHA's Annual Plan.

\* \* \* \* \*

(b) A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions. This statement must describe the PHA's policies that govern resident or tenant eligibility, selection, and admission and shall be consistent with the PHA's obligation to affirmatively further fair housing and the PHA's Equity Plan developed pursuant to §§ 5.150

through 5.180 of this title. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

\* \* \* \* \*

(o) Civil rights certification. (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and other applicable Federal civil rights laws. The PHA must also certify that it will affirmatively further fair housing, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended pursuant to § 5.166 of this title.

(2) The certification is applicable to the 5-Year Plan and the Annual Plan, and any plan incorporated therein.

(3) The PHA shall demonstrate compliance with the certification requirement to affirmatively further fair housing by fulfilling the requirements of this paragraph (o) and § 903.15 by engaging in the following:

(i) Examines its programs and activities or proposed programs and activities consistent with the requirements of §§ 5.150 through 5.180 of this title;

(ii) Identifies fair housing issues in its programs and activities or proposed programs and activities, in accordance with § 5.154 of this title;

(iii) Specifies fair housing strategies and meaningful actions to address fair housing issues and implement fair housing goals established in the PHA's Equity Plan, consistent with § 5.154 of this title;

(iv) Works with the jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement;

(v) Operates its programs and activities in a manner consistent with the PHA's obligation to affirmatively further fair housing and consistent with any applicable consolidated plan under 24 CFR part 91, and consistent with any order or agreement to comply with the authorities specified in paragraph (o)(1) of this section;

(vi) Complies with the community engagement requirements set forth at § 5.158 of this title for purposes of developing the PHA's Equity Plan and the incorporation of the Equity Plan's fair housing goals pursuant to § 5.156 of this title;

(vii) Maintains records, in accordance with § 5.168 of this title, reflecting the PHA's efforts to affirmatively further fair housing; and

(viii) Takes appropriate actions, to the satisfaction of the Responsible Civil Rights Official, to remedy known fair housing or civil rights violations.

\* \* \* \* \*

67. In § 903.13, paragraphs (a)(1), (a)(2), and (c) are revised to read as follows:

**§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?**

(a) \* \* \*

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the Equity Plan in accordance with §

5.158 of this title, the PHA plan, and any significant amendment or modification to the PHA plan, including based on any revision to an Equity Plan pursuant to § 5.164 of this title.

(2) The PHA shall allocate reasonable resources to ensure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the Equity Plan pursuant to §§ 5.150 through 5.180 of this title, the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

\* \* \* \* \*

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Equity Plan pursuant to §§ 5.150 through 5.180 of this title, the final Annual Plan, and any significant amendment or modification to the Annual Plan, including based on any revision to an Equity Plan pursuant to § 5.164 of this title, and as provided in § 903.21 of this title.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations. For purposes of any fair housing goals incorporated into the final plan submitted to HUD for approval, the PHA shall comply with the requirements set forth at §§ 5.154(h) and 5.158 of this title.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice

and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan. The Resident Advisory Board's claims pursuant to this paragraph (c)(2) are distinct from any complaint filed with HUD pursuant to § 5.170 of this title.

68. In § 903.15, the introductory text or paragraphs (a), and paragraphs (b) and (c) are revised to read as follows:

**§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's Fair Housing and Civil Rights Requirements?**

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located, including any applicable Equity Plan incorporated into the applicable Consolidated Plan pursuant to § 5.156 of this title.

\* \* \* \* \*

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Equity Plan pursuant to § 5.160(a) of this title, the Consolidated Plan process, or by the State or local officials, as applicable.

(c) Fair housing and civil rights requirements. A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing, including the PHA's Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) Nondiscrimination. The PHA must carry out its Equity Plan and PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act, including the PHA's obligation to affirmatively further fair housing. A PHA may not assign housing to persons in a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status, or national origin for purposes of segregating populations.

(2) Affirmatively furthering fair housing. A PHA's policies should be designed to reduce the concentration of tenants and other assisted persons by race, color, national origin, religion, sex, familial status, and disability. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) All PHAs must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title, including where those regulations impose different or greater requirements than this part.

(ii) HUD regulations provide that PHAs must take steps to affirmatively further fair housing. PHAs shall develop an Equity Plan pursuant to §§ 5.150 through 5.180 of this title. PHA policies, consistent with the analysis and fair housing goals established in the Equity Plan, shall include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation of persons because of their race, color, national origin, religion, sex, familial status, or disability.

(iii) Such affirmative steps may include, but are not limited to, marketing efforts, use of nondiscriminatory tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, including mobility counseling, services, and assistance in



identifying affordable housing opportunities in well-resourced areas, provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community), and engagement in ongoing coordination with State and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and to connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

(3) Validity of certification. (i) A PHA's certification under § 903.7(o) will be subject to challenge by HUD where it appears that a PHA:

(A) Fails to meet the requirements set forth at §§ 5.150 through 5.180 of this title;

(B) Takes action that is materially inconsistent with the duty to affirmatively further fair housing; or

(C) Fails to comply with the fair housing, civil rights, and affirmatively furthering fair housing requirements in 24 CFR 903.7(o).

(ii) If HUD challenges the validity of a PHA's certification, HUD will do so in writing specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations, or has remedied violations of fair housing and civil rights laws and regulations, and has adopted policies and undertaken actions to affirmatively further fair housing, including, but not limited to, providing a full range of housing opportunities to applicants and tenants in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available

under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances relevant to the specified deficiencies, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA. For purposes of the PHA's fair housing and civil rights certification pursuant to § 903.7(o) and § 5.166 of this title, the procedures set forth at § 5.166(b) shall apply.

69. In § 903.17, paragraph (a), the introductory text of paragraph (b), and paragraph (c) are revised to read as follows:

**§ 903.17 What is the process for obtaining public comment on the plans?**

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA. For purposes of the incorporation of the Equity Plan required by § 5.156 of this title, the community engagement requirements of § 5.158 shall apply.

(b) For purposes of the PHA's 5-Year Plan and Annual Plan, and notwithstanding the requirements set forth at § 5.158 of this title for purposes of the Equity Plan's incorporation into such plans pursuant to § 5.156 of this title, not later than 45 days before the public hearing is to take place, the PHA must:

\* \* \* \* \*

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans. This outreach is for purposes of the 5-Year Plan and Annual Plan. The requirements of § 5.158 of this title shall apply for purposes of the Equity Plan.

70. In § 903.19, paragraph (d) is added to read as follows:

**§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?**

\* \* \* \* \*

(d) The PHA has incorporated the fair housing goals from its Equity Plan pursuant to § 5.156 of this title.

71. In § 903.23, paragraph (f) is revised to read as follows:

**§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

\* \* \* \* \*

(f) PHAs must maintain records reflecting actions the PHA has taken to affirmatively further fair housing, including documentation related to the PHA's Equity Plan described at § 5.168 of this title, and documentation relating to the PHA's certifications made pursuant to §§ 5.166 and 903.7(o) of this title.

72. Section 903.25 is revised to read as follows:

**§ 903.25 How does HUD ensure PHA compliance with its PHA plan?**

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate. For purposes

of the PHA's Equity Plan, the procedures set forth at §§ 5.162, 5.170, 5.172, and 5.174 shall apply.

**PART 983 – PROJECT-BASED VOUCHER (PBV) PROGRAM**

73. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

74. Amend § 983.57 to revise the introductory text of paragraph (b)(1), remove paragraph (b)(1)(iii) and redesignate existing paragraphs (b)(1)(iv) through (vii) as (iii) through (vi), respectively. The revision reads as follows:

**§ 983.57 Site selection standards.**

\* \* \* \* \*

(b) \* \* \*

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903, the PHA Administrative Plan, and the PHA's Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

\* \* \* \* \*

\_\_\_\_\_  
/s/  
**Marcia L. Fudge**  
Secretary

**Billing Code: 4210–67**