



ROB BONTA
CALIFORNIA
ATTORNEY GENERAL



MATTHEW J. PLATKIN
NEW JERSEY
ATTORNEY GENERAL



LETITIA JAMES
NEW YORK
ATTORNEY GENERAL

April 20, 2023

Via Federal eRulemaking Portal

Damon Smith
General Counsel
Regulations Division
Department of Housing and Urban Development
Office of General Counsel
451 7th Street SW, Room 10276
Washington, DC 20410–0500

RE: Comments on Proposed Rule: Docket No. FR-6250-P-01; Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8516 (February 9, 2023), RIN 2529-AB05

Dear Mr. Smith:

We write on behalf of the Attorneys General of the states of California, New Jersey, New York, Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Washington (“the Attorneys General”) regarding the rule proposed by the U.S. Department of Housing and Urban Development (“HUD”) titled *Affirmatively Furthering Fair Housing*, 88 Fed. Reg. 8516 (Feb. 9, 2023) (“Proposed Rule”). The Proposed Rule strengthens HUD’s ability to satisfy its statutory mandate under the Fair Housing Act (“FHA”)¹ to affirmatively further fair housing (often referred to as “AFFH”), and also reflects the agency’s careful consideration of lessons learned from enforcing the AFFH mandate throughout the last several decades. The Attorneys General strongly support the Proposed Rule and offer suggestions to further enhance its protections against housing discrimination and segregation.

I. Background

A. The Importance of HUD’s Regulations Implementing the Agency’s Statutory Mandate to Affirmatively Further Fair Housing

The Proposed Rule is critical to fulfilling the FHA’s promise “to provide, within constitutional limitations, for fair housing throughout the United States.”² The FHA prohibits

¹ 42 U.S.C. §§ 3601–19,

² 42 U.S.C. § 3601 (1968).

discrimination in home sales or rentals and other housing-related transactions based on race, color, religion, sex, familial status, national origin, or disability.³ In a separate provision, the FHA requires HUD to “administer [its] programs and activities relating to housing and urban development in a manner affirmatively to further the policies” of the FHA.⁴ The FHA not only sought to expand housing choices for protected class members by prohibiting discrimination, but also sought to break down residential segregation by building a racially integrated country.⁵ However, in the decades immediately following the passage of the FHA, HUD and other federal agencies failed to make good on their mandates to affirmatively further fair housing and dismantle segregation across the United States. By enacting the Proposed Rule, HUD has undertaken a critical step to rectify the decades-long history of government discrimination and inaction in fair housing policy.

The Proposed Rule also fulfills the purpose of the FHA by requiring action beyond the prohibition of housing and residential discrimination. The Rule requires agencies that receive HUD funding to facilitate the integration of communities, proactively combat residential segregation, and promote equal access to housing for all. To accomplish these critical goals, the Proposed Rule contains five important features: (1) a requirement to develop an Equity Plan, which articulates strong fair housing goals supported by measurable actions and timelines for execution; (2) provisions to ensure greater transparency for the public including publishing of Equity Plans and progress reports; (3) a stronger evaluation mechanism including a requirement to submit yearly progress reports; (4) a community engagement process in which community stakeholders can raise fair housing issues and collaborate with program participants to develop goals and actions to address them; and (5) a complaint process by which community members can hold program participants accountable for their actions or inactions.⁶ These new components of the Proposed Rule provide a strong framework to effectively carry out the FHA’s AFFH mandate, while also providing for key refinements to allow for a less burdensome process.

B. HUD’s Longstanding History of AFFH Regulation

HUD failed to meet its obligation to enforce the AFFH mandate for decades after the FHA’s enactment in 1968.⁷ In the mid-1990s, HUD promulgated regulations in an effort to meet the mandate by requiring program participants to conduct an “Analysis of Impediments to Fair Housing Choice” (or “AI”), as part of a “consolidated plan” setting forth their housing

³ *Id.* §§ 3604–06.

⁴ *Id.* §§ 3604–06, 3608(e)(5). Other federal agencies are also required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing. *Id.* § 3608(d).

⁵ See 114 CONG. REC. 2,275–76 (1968) (Senator Mondale discussing the purpose of the FHA, including Congress’s commitment “to the principle of living together” and to promoting racially integrated neighborhoods).

⁶ FR–6250–P–01, Affirmatively Furthering Fair Housing, [Regulations.gov](https://www.regulations.gov)

⁷ See Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, PROPUBLICA (Jun. 25, 2015), available at [Living Apart: How the Government Betrayed a Landmark Civil Rights Law — ProPublica](https://www.propublica.org/article/living-apart).

development goals.⁸ The AI process required each HUD program participant to (1) “submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction,” (2) “take appropriate actions to overcome the effects of any impediments identified through that analysis,” and (3) “maintain records reflecting the analysis and actions in this regard.”⁹

However, the AI process proved ineffectual due to HUD’s inaction and lack of oversight. HUD provided no guidance to program participants on how to structure the AI, did not require community engagement, and, most importantly, did not review submitted AI reports.¹⁰ This last deficiency put into question whether program participants were actually complying with the AI process.¹¹ In essence, the AI process was long regarded as a perfunctory paper exercise with little to no meaningful impact.

Recognizing the shortcomings of the AI process, HUD issued the 2015 Affirmatively Furthering Fair Housing Rule (“2015 AFFH Rule”). The 2015 AFFH Rule was designed to improve upon the AI process in five major ways, by: (1) creating a standardized reporting process that HUD would systematically enforce for accuracy and completeness; (2) providing national data for consideration in the identification of fair housing goals; (3) requiring program participants to incorporate fair housing analyses and planning into other planning documents; (4) facilitating collaboration between program participants; and (5) requiring program participants conduct community meetings to gather public input as part of their assessment process.¹² Importantly, the 2015 AFFH Rule required program participants to produce an Assessment of Fair Housing (“AFH”) which evaluated fair housing issues in their geographic areas, identified contributing factors to such fair housing issues, and established fair housing goals to correct those issues.¹³ The Rule, however, was short-lived. In 2018, the Trump Administration suspended the 2015 AFFH Rule and discontinued review of pending AFHs.¹⁴

In 2020, also under the Trump Administration, HUD formally rescinded the 2015 AFFH Rule and replaced it with the 2020 Preserving Neighborhood and Community Choice Rule

⁸ 25 Consolidated Submission for Community Planning and Development Programs, 60 Fed. Reg. at 1878, 1905, 1910, 1912 (Jan. 5, 1995). In 1988, prior to these regulations, HUD issued regulations requiring Community Development Block Grants grantees to certify they were satisfying the AFFH requirement. See Community Development Block Grants, 53 Fed. Reg. 34,468 (September 6, 1988). The 1988 regulations had similar elements as the final AI Rule. *Id.* The AI Rule, however, made the above three actions requirements of certification. See 60 Fed. Reg. at 1878, 1905, 1910, 1912.

⁹ 60 Fed. Reg. at 1878, 1905, 1910, 1912, 1916–17.

¹⁰ See NAT’L COMM’N ON FAIR HOUS. & EQUAL OPPORTUNITY, THE FUTURE OF FAIR HOUSING 10 (2008), available at [National Commission on Fair Housing and Equal Opportunity - PRRAC — Connecting Research to Advocacy](#). (“HUD requires no evidence that anything is actually being done [to affirmatively further fair housing] as a condition of funding and it does not take adverse action if jurisdictions . . . fail to [do so]”).

¹¹ *Id.*

¹² 80 Fed. Reg. at 42,273.

¹³ *Id.* at 42,272.

¹⁴ Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, 83 Fed. Reg. 683 (Jan. 5, 2018).

(“2020 Rule”).¹⁵ The 2020 Rule merely required program participants to identify three housing objectives and goals to achieve in the next five years and required no evidence or data to support those goals.¹⁶ Additionally, HUD only undertook a rational basis review of program participants’ annual submissions of housing goals.¹⁷ In practice, this meant little to no HUD oversight. The 2020 Rule also made no reference to actively combating residential segregation, effectively absolving program participants from any requirement to address racial discrimination in housing.¹⁸

Under the Biden Administration in 2021, HUD promulgated an interim final rule that repealed the 2020 Rule and restored key elements of the 2015 AFFH Rule.¹⁹

C. HUD’s Proposed Rule Is Timely in Light of Continued Housing Discrimination and Residential Segregation

Residential segregation persists today, over fifty years after the FHA’s passage. According to a study by the Othering and Belonging Institute at the University of California-Berkeley, more than eighty percent of large metropolitan areas in the United States were more segregated in 2019 than they were in 1990.²⁰ The divergence index—which measures the difference between a community’s racial composition to a larger geographic area or region—rose in seven of the nine counties of the San Francisco Bay Area between 1970 and 2010.²¹ Segregation has harmed California residents in numerous ways. For example, California census tracts with higher percentages of black and Latinx populations are the most likely in the state to be burdened with high levels of air pollution.²² Tracts with high percentages of black residents have higher rates of asthma and low birth weight.²³ Children from segregated neighborhoods are more likely to live in poverty as adults compared to children from families with similar incomes, but who lived in less segregated neighborhoods.²⁴

The Proposed Rule seeks to promote integration and further improve upon the 2015 Rule by increasing protections against unlawful discrimination and segregation while also reducing regulatory burdens on HUD program participants. First, the Proposed Rule promotes community

¹⁵ *Id.*

¹⁶ Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2056–58 (Jan. 14, 2020).

¹⁷ 85 Fed. Reg. at 2050.

¹⁸ *Id.* at 2048–50

¹⁹ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30,779 (June 10, 2021).

²⁰ Stephen Menendian, *Twenty-First Century Racial Residential Segregation in the United States*, OTHERING AND BELONGING INST. (June 21, 2021), available at <https://belonging.berkeley.edu/roots-structural-racism>.

²¹ Stephen Menendian & Richard Rothstein, *Putting Integration on the Agenda*, 28 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 147, 176, n.38 (2019) (citation omitted).

²² Raoul S. Liévanos, *Racialized Structural Vulnerability: Neighborhood Racial Composition, Concentrated Disadvantage, and Fine Particulate Matter in California*, 16 INT’L J. OF ENVTL. RESEARCH & PUBLIC HEALTH 14–15 (2019).

²³ *Id.*

²⁴ Menendian & Gales, *supra* note 24.

engagement and accountability by making Equity Plans available to the public for review and input, as well as allowing the public to hold program participants accountable through the proposed complaint and compliance review process.²⁵ Second, the Proposed Rule provides for a more streamlined analysis for program participants to identify and remedy fair housing issues.²⁶ And third, the Proposed Rule enables HUD to provide technical assistance and comprehensible data for program participants to use to identify barriers to fair housing and set specific goals to remedy those issues.²⁷ These important changes lessen burden on program participants while also providing effective accountability measures.

II. A Strong AFFH Framework Is Effective and Necessary to Undo Entrenched Segregation and Discriminatory Housing Practices

Approval of the Proposed Rule is urgent and necessary to meaningfully address the country's history of housing discrimination, which has resulted in enduring and widespread housing and residential segregation.²⁸ A renewed and robust AFFH rule is critical to ensure that both the letter and spirit of the FHA's AFFH mandate are fulfilled.

A. California's AFFH Implementation Demonstrates the Potential Success of the Proposed Rule

In 2018, California enacted its own Affirmatively Furthering Fair Housing Law to counteract the Trump Administration's anticipated repeal of the 2015 Rule.²⁹ The California law incorporated the 2015 AFFH Rule into state law and expressly required that state AFFH mandates be interpreted consistently with the federal 2015 AFFH Rule irrespective of future HUD modifications or rollback.³⁰ California's experience implementing the 2015 AFFH Rule demonstrates that the less-burdensome Proposed Rule would be both feasible and effective.

While the federal rule applied only to HUD-funding recipients, California's AFFH law applies more widely to all California public agencies. This includes municipalities, public housing authorities, and the State of California and all of its departments, boards, and

²⁵ Nicholas Tsimortos, *HUD Releases New Affirmatively Furthering Fair Housing Proposed Rule*, Nixon Peabody LLP, <https://www.nixonpeabody.com/insights/alerts/2023/01/31/hud-releases-new-affirmatively-furthering-fair-housing-proposed-rule>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Nat'l Low Income Housing Coalition, *NLIHC Statement on Proposed Affirmatively Furthering Fair Housing Rule* (Jan. 19, 2023), <https://www.nlihc.org/news/nlihc-statement-proposed-affirmatively-furthering-fair-housing-rule>.

²⁹ 2018 Cal. Legis. Serv. Ch. 958 (Assembly Bill 686). The California Legislature noted that in January 2017, Congress was considering bills that would undo the 2015 federal rule and also prevent federal funds from being used to support HUD's database of disparities within communities between racial groups and access to housing. *See Housing discrimination: affirmatively further fair housing: AB 686, Hearing Before Assembly Committee on Housing and Community Development 2018-2019* (Cal. 2018).

³⁰ Cal. Gov.'t Code § 8899.50(c).

commissions.³¹ The law mandates that public agencies administer their programs and activities relating to housing and community development “in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to do so.”³² This requirement applies to *all* of an agency’s activities relating to housing and community development.³³

In addition to applying the AFFH duty to a larger subset of government agencies, California also requires every city and county to include a comprehensive program to affirmatively further fair housing in its planning documents. Every eight years, municipalities in California plan for their housing needs by creating a housing element as part of their broader comprehensive general plans.³⁴ Housing elements must outline housing-related goals, obstacles, and plans to address the local population’s housing needs.³⁵ California’s AFFH law requires housing elements to include significant provisions for outreach, identification of contributing factors to key AFFH issues, and the creation of AFFH goals, quantified objectives, and actions. Housing elements must include an inventory of sites suitable for housing development including an analysis of the relationship of the sites to the jurisdiction’s AFFH duty.³⁶ They must include trends of both the jurisdiction and the region.³⁷ Moreover, California’s AFFH also requires that jurisdictions incorporate the landmark feature of the 2015 federal rule, the Assessment of Fair Housing, into their respective housing elements.³⁸

In 2021, the California Department of Housing and Community Development (CDHCD), the state agency responsible for overseeing the housing element process, issued a detailed Guidance entitled, “Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements.”³⁹ The Guidance includes step-by-step instructions for jurisdictions to meet their AFFH obligations, and also includes compliance checklists, formulas to be used to generate key data points, and examples of contributing factors to AFFH issues.⁴⁰

B. State and Early-Level Federal Data Demonstrate the Effectiveness of a Robust AFFH Planning Process

California’s rigorous framework to affirmatively further fair housing at all levels of state and local government, implemented through CDHCD’s technical assistance to ensure the adequacy of the AFFH components of jurisdictions’ housing elements, has proven to be highly

³¹ *Id.* § (a)(2).

³² *Id.* § (b).

³³ *Id.*

³⁴ *Id.* § 65588(e)(3)(A).

³⁵ *Id.* § 65583, *et seq.*

³⁶ *Id.* §§ (c)(5), (c)(10).

³⁷ *Id.* § (c)(10)(A)(ii).

³⁸ *Id.* § (c)(10)(A)(i)-(v).

³⁹ CAL DEP’T OF HOUS. & CMTY DEV., *Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements* (April 2021), available at: https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

⁴⁰ *Id.*

effective. The CDHCD has required jurisdictions to amend housing elements to include specific commitments, metrics, and milestones to address local fair housing issues. It has also provided specific feedback on programs to jurisdictions to ensure fair housing compliance. CDHCD reviews have included commenting that a housing element's programs for anti-displacement and new housing in high opportunity areas were inadequate to address the described fair housing issues; that a housing element's "goals, actions, and metrics must be modified based on the outcomes of a more complete fair housing and site analysis;" and that a County was required to revise and expand several fair housing programs to demonstrate how the programs specifically addressed fair housing issues, including metrics and milestones for evaluating progress on programs, actions, and fair housing results. Because of this technical assistance process, jurisdictions throughout California have revised and amended their housing elements to conform to CDHCD's AFFH guidance and directives.

Indeed, the result of CDHCD's ongoing, detailed review and approval process has been the creation of innovative and ambitious fair housing programs with built-in accountability systems that include deadlines, benchmarks, and metrics of success. And California's early success in ensuring strong fair housing planning is consistent with data at the federal level under the 2015 Rule. A study comparing the 28 AFHs submitted to HUD between October 2016 and July 2017 to the 27 AIs previously submitted by the same program participants found that AFH submissions had "significantly more goals with measurable objectives or goals representing new policies" as compared to the AI submissions.⁴¹ Another study of the first 49 AFH submissions under the 2015 Rule observed that HUD provided "detailed and constructive" feedback to AFH submissions it initially rejected.⁴² The study concluded that the 2015 Rule was effective in helping program participants meet their AFFH obligations:

Over the first year and a half of enforcement, HUD has engaged in intensive and thorough enforcement to ensure that the majority of issues of noncompliance are identified, and has employed a collaborative strategy to remedy them. The majority of the AFHs that were initially not accepted were promptly revised and accepted, suggesting that this approach has been working.⁴³

California and HUD's experience with implementation of the 2015 Rule demonstrate that a mandatory AFFH planning and analysis process is both doable and effective. The 2023 Proposed Rule contains many of the same or similar detailed requirements and procedures as

⁴¹ See Justin Steil & Nicholas Kelly, *The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance* (Sept. 15, 2017) (unpublished working paper) available at <https://furtheringfairhousing.mit.edu/sites/default/files/documents/Steil%20Kelly%20Fairest%20of%20the%20All%202018%2005%2008.pdf>; see also Olatunde C.A. Johnson, *Unjust Cities? Gentrification, Integration, and the Fair Housing Act*, 53 U. RICH. L. REV. 835, 869 (2019).

⁴² Justin Steil & Nicholas Kelly, *Survival of the Fairest: Examining HUD Reviews of Assessments of Fair Housing*, 29 HOUSING POLICY DEBATE 736, 748 (2019), available at <https://furtheringfairhousing.mit.edu/sites/default/files/documents/Steil%20Kelly%202019%20Survival%20of%20the%20Fairest%20Examining%20HUD%20AFFH%20Reviews.pdf>.

⁴³ *Id.*

California’s AFFH law. Like California, the new Rule will accordingly be poised to deliver innovative and effective fair housing planning nationwide.

III. The Attorneys General Support HUD’s Proposed Equity Plan as an Effective Measure to Ensure Program Participants Affirmatively Further Fair Housing, and Offer Suggested Modifications

HUD has a duty to ensure that program participants affirmatively further fair housing, and the proposed Equity Plan process provides a strong and enforceable framework for participants to meaningfully fulfill that duty.⁴⁴ Through the proposed Equity Plan, program participants will identify fair housing issues in their communities, set goals to remedy them, and implement plans to achieve those goals. Importantly, the Equity Plan contains accountability and transparency measures, including HUD review of Equity Plans for sufficiency as well as continued accountability in the form of a complaint process. These provisions remedy a fundamental flaw recognized in the prior Analysis of Impediments process—namely, the lack of accountability for participants that failed to submit, abide by, or even create their own fair housing plans.⁴⁵

We also commend HUD for striking a balance in its proposed Equity Plan between supporting a thorough analysis of fair housing issues and avoiding burden on program participants. The Attorneys General fully support HUD’s proposed Equity Plan and offer the suggestions below to strengthen the Equity Plan process.

A. Require Submissions to be Searchable

HUD requests comments on how Equity Plans should be submitted to the Department and whether HUD should mandate the file format through which the Equity Plan is submitted (e.g., MS Word, PDF, etc.). While we do not endorse any particular file format, we recommend that uploaded documents be searchable so that program participants can easily find information related to other jurisdictions.

B. Strengthen the Language in the Balanced Approach Definition

HUD requested feedback on new definitions in the Proposed Rule, including the definition of “Balanced Approach,” which refers to the balancing of different means to eliminate housing-related disparities resulting from persistent lack of integration. The proposed definition allows for both place-based strategies (that increase investment in low-resource communities) and mobility strategies (that allow for integration of higher resource areas) to implement AFFH. In its definition of “Balanced Approach,” HUD states, “[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

⁴⁴ See 42 U.S. §§ 3601, 3604–06, 3608(d), (e)(5).

⁴⁵ See Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, PROPUBLICA (June 25, 2015), available at <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law>

a balanced approach.”⁴⁶ We fully support emphasis on mobility-based strategies. Many studies have confirmed the advantages of providing housing in areas of opportunity, and relying predominately on place-based strategies does not provide housing choice in areas of opportunity.⁴⁷ We would recommend strengthening the language on mobility-based strategies to replace “*should* not rely solely on place-based strategies” with “*shall* not rely solely on place-based strategies.”

C. Require Program Participants to Consider a Wider Range of Factors Contributing to Fair Housing Issues

Under the Proposed Rule, each Equity Plan must contain a fair housing analysis that addresses a list of questions about the state of applicable demographics, segregation and integration, racially or ethnically concentrated areas of poverty, access to community assets, access to affordable housing opportunities, and access to homeownership and economic opportunity. For each of these listed categories, HUD asks participants to describe “[w]hat public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described above.”⁴⁸ Additionally, HUD asks state and local participants to describe local and state policies and practices that impact fair housing. In contrast to the 2015 Rule, which required participants to consider and respond to forty contributing factors for each fair housing issue identified, the Proposed Rule asks for a substantially less granular analysis of the factors causing fair housing issues.

The Attorneys General appreciate HUD’s efforts to reduce the burden on participants who are completing these analyses. However, the proposed prompt asking participants to identify factors that cause fair housing issues in their jurisdictions may be too general to guide participants to determine all relevant factors. This could lead participants to neglect influential factors. Moreover, because the AFFH requirement targets entrenched patterns of discrimination, it is likely that program participants will need to be encouraged to think critically and evaluate unfamiliar and previously unconsidered factors. The Attorneys General encourage HUD to provide participants with a broader and more detailed range of factors for consideration in their analyses.⁴⁹

Additionally, the Attorneys General suggest explicitly requiring each program participant to consider multiple types of contributing factors, as opposed to the current language that suggests program participants consider some types of factors but not others. For example, the

⁴⁶ Proposed 24 C.F.R § 5.152.

⁴⁷ See, e.g., Peter Lawrence, *New Research Analyzes Affordable Rental Housing in High Opportunity Areas*, BROOKINGS INST. (Oct. 7, 2019), <https://www.novoco.com/notes-from-novogradac/new-research-analyzes-affordable-rental-housing-high-opportunity-areas> (finding that young children who move to areas deemed “high opportunity” grow up with a better quality of life in adulthood in the form of better health, education, and economic outcomes).

⁴⁸ *Id.* at 8563.

⁴⁹ See, e.g., CAL. DEP’T OF HOUS. & CMTY DEV. at pp. 68-70, where CADHCD provides jurisdictions with a list of examples of contributing factors to consider for development of jurisdiction’s housing elements and corresponding Assessments of Fair Housing.

rule could ask participants to consider public *and* private policies or practices *and* demographic shifts *and* economic trends. The Attorneys General encourage HUD to include more specific examples of the types of factors participants should consider either in the regulation or in guidance documents.

At the same time, the analysis outlined in the Proposed Rule may be repetitive, because the same factors may contribute to multiple categories of fair housing issues. To streamline this analysis and avoid the burdensome requirements of the 2015 Rule, it may be appropriate for participants to combine their description of factors that contribute to demographics, segregation and integration, racially or ethnically concentrated areas of poverty, access to community assets, access to affordable housing opportunities, and access to homeownership and economic opportunity, rather than describing each separately.

D. Require Program Participants to Also Consider Racially Concentrated Areas of Affluence

While the Equity Plan does require examination of racially or ethnically concentrated areas of poverty, HUD should require program participants to also consider racially concentrated areas of affluence (RCAs). The University of Minnesota Humphrey School of Public Affairs has created a metric for tracking RCAs, which are defined as census tracts where 1) 80 percent or more of the population is white, and 2) the median household income is \$125,000 or greater (slightly more than double the national the median household income in 2016).⁵⁰ This metric was developed in recognition “that economic segregation is increasing at both extremes of the wealth distribution and that the segregation of Whites in the United States exceeds that of any other racial group.”⁵¹ Moreover, the University of Michigan study noted that an analysis of RCAs is important to understand both whether RCAs have emerged due to exclusionary and discriminatory land use practices and whether the distribution of public policy benefits is equitable across communities.⁵² An analysis of RCAs accordingly provides a much larger picture and additional data points about the root causes of and trends in segregation in communities.⁵³

E. Improve Measurability of Fair Housing Goals

The Attorneys General commend HUD’s requirement that program participants create fair housing goals with measurable results. To make it easier for program participants to succeed in these efforts, the Attorneys General recommend providing illustrations in the Final Rule of what metrics HUD will use to measure success. When reviewing Equity Plans, HUD should then ensure that program participants’ goals follow these metrics. For example, the Proposed Rule

⁵⁰ Goetz, E. G., Damiano, A., & Williams, R. A., *Racially Concentrated Areas of Affluence: A Preliminary Investigation*. CITYSCAPE: A JOURNAL OF POLICY DEVELOPMENT AND RESEARCH, 21(1), 99–124 (2019).

⁵¹ *Id.* at 102.

⁵² *Id.* at 117–18.

⁵³ *See, e.g.*, CAL. DEP’T OF HOUS. & CMTY DEV. at 15, 33-34, 45, 48, CDHCD requires an analysis of RCAs in municipalities’ housing elements, and cites the University of Michigan study.

provides that program participants may wish to make sure underserved communities have equitable access to affordable housing opportunities, a goal which may be met through amending local laws that limit access to affordable housing based on these communities' characteristics.⁵⁴ Program participants that identify this fair housing goal should specify which local laws they plan to target in their Equity Plans. In progress reports, program participants should identify the steps they have taken to change the identified laws. More specificity in this area will increase accountability and make it easier for both program participants and HUD to develop and track successful goal setting.

F. Program Participants Should be Required to Analyze Available Eviction Data

HUD requested specific feedback on whether it should provide or require the use of additional data sets. The Attorneys General recommend that program participants consider available data on evictions to ensure that particular demographics are not losing housing opportunities. Eviction has a profound impact, especially on children and families.⁵⁵ Program participants should be able to identify trends in eviction rates and target these housing losses in their goal-setting process. Additionally, public housing authorities should be required to analyze their own practices for terminating housing assistance and analyze the demographics of individuals and families whose assistance has been terminated to ensure that practices match AFFH goals and that particular demographics are not being disproportionately impacted by eviction.

G. Clarify the Definition of Sex to Include Gender Identity and Sexual Orientation Throughout the Proposed Rule

We commend HUD for including gender identity and sexual orientation under sex in the protected characteristics definition.⁵⁶ But in other parts of the Proposed Rule, sex is not expressly defined as encompassing gender identity and sexual orientation.⁵⁷ A precise definition in all parts of the Rule will be helpful to ensure consistency and prevent misinterpretation. This is particularly important in light of well-documented housing discrimination based on sexual orientation and gender identity, and certain jurisdictions may see increased transgender discrimination in housing due to the current politicization of gender identity.

IV. The Transparency Components of the Proposed Rule Will Lessen Burden and Encourage Cross-Jurisdictional Learning

The Proposed Rule provides for transparency in the acceptance, revisions, and implementations of Equity Plans. We support these changes, as we believe they will lessen the burden on program participants in their development of Equity Plans under the Proposed Rule.

⁵⁴ *Id.* at 8566.

⁵⁵ Barbara Shelly, *Children will bear the brunt of a looming eviction crisis*, HECHINGER REPORT (Aug. 6, 2020), available at <https://hechingerreport.org/children-will-bear-the-brunt-of-a-looming-eviction-crisis/>.

⁵⁶ Proposed 24 C.F.R. § 5.152.

⁵⁷ *See, e.g., Id.* §§ 5.154(d)(1)(i); 5.152 (definition of Integration); 903.15.

The 2015 Rule strengthened enforcement of the obligation to affirmatively further fair housing by mandating program participants use data-driven analyses of the fair housing obstacles unique to their jurisdiction.⁵⁸ However, despite HUD's commitment to providing data, assessment tools, and other resources to support program participants, the resources demanded by that rule's Assessment of Fair Housing proved overly burdensome, particularly for programs in smaller jurisdictions and jurisdictions without substantial resources available to invest in data analysis.⁵⁹

As provided in the definition of "Publication" in Section 5.152, HUD intends to make all Equity Plans, as well as annual progress evaluations submitted to HUD, available to the public. Public access to Equity Plans will be critical for cross-jurisdictional learning and sharing. The public availability of Equity Plans will allow program participants to consider approaches other localities have taken to further fair housing. Likewise, program participants will have ready access to other Equity Plans within their region, encouraging collaboration among neighboring jurisdictions. Program participants will also be able to view annual progress evaluations, further allowing participants to assess the efficacy of strategies that they may be considering for their own communities. Moreover, access to Equity Plans will be particularly helpful for participants from smaller jurisdictions with limited resources, participants submitting Equity Plans for the first time, and participants facing changing demographics or economic circumstances.

The Attorneys General recommend that HUD require publication of draft Equity Plans in addition to approved Equity Plans, and also that the plans be published on participant websites as well as HUD's website.

A. Require Publication of Draft Equity Plans

The publication of all Equity Plans prior to full review and approval will be generally beneficial as a matter of transparency, even though the draft Equity Plans may not be reliable models for other program participants. Requiring the publication of draft Equity Plans will enhance the community engagement process, as it will allow the public to provide better informed recommendations regarding the content of draft plans to both program participants and HUD.⁶⁰

If the draft plans are posted, it will be important to clarify that HUD has not yet completed its review of a draft Equity Plan, so that program participants will be aware of the risk of relying on an un-reviewed plan as a sample. In addition, we do not recommend posting interim notices of non-acceptance and related communications. This could hinder the iterative process that takes place on a compressed schedule and may also deter program participants from

⁵⁸ HUD Final Rule, Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 *et seq.* (July 16, 2015).

⁵⁹ *Id.* at 42,355 (noting that "HUD-provided data will need to be supplemented with local data, which is subject to a HUD determination of statistical validity and relevance to the program participant's geographic areas of analysis."). *See also Nat'l Fair Hous. Alliance v. Carson*, 330 F. Supp. 3d 14, 35–36 (D.D.C. 2018) (describing Plaintiffs' participation in the development of AFHs under the 2015 Rule).

⁶⁰ 88 Fed. Reg. at 8,567 (§ 5.154(j)).

incorporating novel or creative strategies in their initial plan submissions. We therefore think it would suffice to publish the initial submissions, notifications of final approval, and any special assurances made after the initial iterative process has failed.⁶¹

B. Require Jurisdictions to Post Equity Plans on Their Own Websites

HUD will post all Equity Plans on a HUD-maintained website.⁶² To enhance transparency, the Attorneys General recommend that HUD require jurisdictions also post their Equity Plans on their own websites in an easy-to-access, clear, user-friendly manner. This will ensure greater access to the plans, including for individuals who may not be aware of or know how to navigate to HUD's website.

V. The Attorneys General Support HUD's Proposals for Ongoing Evaluation and Progress Monitoring

The 2015 AFFH Rule required program participants to report progress in subsequent Assessments of Fair Housing. Practically speaking, this meant that progress was only reported once every five years. By contrast, HUD's Proposed Rule requires that participants conduct annual progress evaluations regarding the status of each Equity Plan goal.⁶³ The Proposed Rule also allows a program participant to modify or set new goals if circumstances change, with HUD's authorization.⁶⁴ As outlined below, the Attorneys General believe that these changes provide accountability while allowing the flexibility necessary to support strong fair housing planning.

A. Yearly Progress Reporting Will Facilitate Organized Fair Housing Planning and Provide a Key Accountability Measure

HUD has indicated in its Proposed Rule that it will require Equity Plans to delineate specific, measurable goals.⁶⁵ Ongoing progress monitoring is a practical way for program participants to keep track of under-performance or even over-performance on established goals. Furthermore, this real-time evaluation is especially important because HUD contemplates that program participants will collaborate with the social services sector, interest groups, other government agencies, and representatives from traditionally marginalized communities in order to achieve Equity Plan goals.⁶⁶ Program participants can thus use ongoing progress monitoring as a commonsense project management tool, particularly when a project or goal involves a number of entities and community members.

In addition, annual progress reports are a vital accountability measure that will allow HUD to determine compliance with the Proposed Rule's mandates. It is foreseeable that some jurisdictions will need heavy technical assistance, or even accountability measures, in order to

⁶¹ See Proposed 24 C.F.R. § 5.162.

⁶² 88 Fed. Reg. at 8518, 8561.

⁶³ Proposed 24 C.F.R. § 5.154(a)(6)-(7).

⁶⁴ *Id.*

⁶⁵ 88 Fed. Reg. at 8533, 8559.

⁶⁶ *Id.* at 8525; Proposed 24 C.F.R. § 91.105(a)(2)(ii).

make meaningful progress on their fair housing goals. Yearly progress reports will allow HUD to efficiently monitor program participants' compliance with the new rule's directives.

B. HUD Should Require Progress Reports to Include Information About Any Deviation from Timeframes Established in Fair Housing Goals

The Proposed Rule requires that fair housing goals include a “description of progress-oriented, measurable steps, including timeframes for achievement ... needed to implement the goal.”⁶⁷ Progress reports should also include a description of whether program participants are meeting the timeframes established for specific goals in their Equity Plans. Similarly, program participants should explain deviations from established fair housing goal timeframes. These additional progress report requirements will increase the likelihood that the commitments set forth in Equity Plans are actualized, while also providing further clarity to HUD and community members about the status of fair housing goals.

C. HUD Should Require Program Participants to Post Progress Reports on Their Own Websites

The Attorneys General support the provisions of the Rule requiring program participants' annual progress reports to be posted online on a HUD-maintained website.⁶⁸ Public posting of progress reports will allow communities to understand their respective jurisdictions' progress toward Equity Plan goals. Furthermore, without transparent information about program participant progress on goals, the complaint processes proposed in the Rule may lose their efficacy—it would be far harder for the public to understand the status of Equity Plan goals if program participants do not publicly provide regular status updates.

To ensure greater accessibility, the Attorneys General recommend that HUD require program participants to post progress reports in a clear, user-friendly manner on their own websites. This will ensure that more of the public will actually see the reports, as many members of the public may not know to access this information on HUD's website.

VI. Further Clarification, Guidance and Technical Support will Strengthen the Proposed Community Engagement Requirements

The Proposed Rule rightly reinstates and augments the mandate for public engagement. Input from community stakeholders is crucial to identifying fair housing issues and developing and prioritizing goals that adequately respond to local challenges.⁶⁹ It is particularly important to engage and communicate with underserved communities and protected classes that may be most harmed by segregation, disproportionate housing needs, and other housing-related disparities, yet

⁶⁷ 88 Fed. Reg. at 8559.

⁶⁸ 88 Fed. Reg. at 8561.

⁶⁹ 88 Fed. Reg. at 8,517; *see also* HUD, *AFFH Rule Guidebook*, Version 1, at § 3.4 (Dec. 31, 2015) (“Community participation can have many benefits, including cost-effectiveness, instilling ownership and support of fair housing planning in the broader community, and building trust and relationships throughout the community.”).

lack the forum or access to provide such input. We support these goals and the emphasis placed on incorporating community input in the Equity Plan process.

The Proposed Rule provides the flexibility necessary to achieve these aims by largely allowing program participants to choose what methods are most effective in engaging their communities. However, more clarification and technical support would strengthen program participants' outreach efforts. As outlined below, the Proposed Rule should (a) expressly allow some public meetings to be held virtually; (b) encourage outreach to persons living outside a jurisdiction who may be seeking entry to, but have been historically excluded from, that jurisdiction; (c) provide samples of effective outreach methods.

A. Require Virtual Meetings

To ensure broad engagement, the Proposed Rule directs program participants to employ diverse means of outreach both before and during the Equity Plan development, while requiring only the most basic means to be used: public meetings that occur with a minimum frequency, in different locations, including at least one in an underserved community within the jurisdiction. We agree that the Proposed Rule should not dictate what form public meetings should take. However, given its reference to "locations," the Rule as proposed is unclear as to whether and to what extent a program participant can hold a public meeting virtually.

Virtual meetings should be encouraged to fulfill some of the public meetings requirement. Remote formats have become more prevalent due to the COVID-19 pandemic and have granted access to people previously excluded due to physical distance, childcare commitments, impaired mobility, and other barriers to in-person attendance. Videoconference software may offer real-time captioning, call-in options, and other accessibility features unavailable at in-person meetings. These forums may also be more cost-effective for program participants that may not have the financial resources to organize several in-person gatherings. Virtual meetings therefore may serve as comparable, and in some cases superior, substitutes for in-person meetings. To accommodate those without ready access to the technology needed to attend virtual meetings, at least one of the required meetings should be held in person and in an underserved community. Otherwise, program participants should be allowed to determine what format—whether in-person, virtual, or hybrid—will be likely to garner the most participation.

B. Solicit Input from Historically Excluded Regional Communities

Program participants should be encouraged to solicit input from individuals and communities who have been excluded from a jurisdiction due to fair housing issues. The Proposed Rule implicitly, and understandably, limits the geographic scope of the "community" that a program participant must engage as those who reside in its jurisdiction. In identifying underserved neighborhoods, that definition is explicit.⁷⁰ However, interest holders may include individuals who reside outside the jurisdiction because of barriers to accessing housing in the jurisdiction. The Proposed Rule should acknowledge the value of such input and, in making

⁷⁰ 88 Fed. Reg. at 8,569 (5.158(d)(1)) (requiring at least one public meeting be held "in a location *in the jurisdiction* in which underserved communities disproportionately reside.").

“efforts to obtain input from underserved populations who do not live in underserved neighborhoods,” program participants should endeavor to include individuals in the region where fair housing barriers may have precluded access to the jurisdiction.⁷¹

C. Include Additional Forums for Outreach

The Proposed Rule’s regulation governing community engagement requires participants to “employ communication methods designed to reach the broadest possible audience.”⁷² HUD indicates that those communications may include:

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.⁷³

In this list of examples, HUD should include communications through local TV and radio stations, including Spanish-language or other linguistically diverse radio stations, and social media platforms. Advertising community outreach events through these additional media will assist program participants to reach a broader cross-section of their local populations.

D. Provide More Specific Guidance on Outreach to Individuals with Limited English Proficiency

The Attorneys General commend HUD for including specific requirements with respect to language assistance for individuals with limited English proficiency.⁷⁴ However, given the complexities of providing meaningful language services, HUD could provide further guidance on best practices with respect to language assistance in the community engagement process. For instance, HUD could recommend proactive identification of language needs in advance of community engagement events, and inclusion of specific information regarding the availability of language support on flyers or other marketing materials promoting Equity Plan outreach. HUD could also provide further guidance on the use of qualified, trained interpreters, as well as the appropriate technology necessary to facilitate language access, at community outreach events, including recommended equipment with transmitters and receivers from onsite events and simultaneous interpreting video conferencing platforms for remote events. Similarly, HUD could provide further guidance on the translation of outreach materials to ensure that linguistically diverse communities can access program participants’ events to discuss the development and/or status of the Equity Plans.

⁷¹ *Id.*

⁷² *Id.* at 8,568–69

⁷³ *Id.*

⁷⁴ 88 Fed. Reg. § 8541

E. Provide More Specific Guidance on Outreach to and Accessibility for People with Disabilities

The Proposed Rule requires community engagement be conducted in accordance with fair housing and civil rights requirements including Title VI of the Civil Rights Act of 1964, and the regulations 24 C.F.R. part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 C.F.R. part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36.⁷⁵ As outlined below, the Attorneys General believe more guidance on accessibility measures for people with disabilities will ensure greater compliance with the aforementioned laws.

1. Physical Accessibility

The Proposed Rule should indicate that all public meetings must be held in physically accessible locations.⁷⁶ For example, a building where an Equity Plan outreach meeting is being held may have architectural barriers, such as an inaccessible path of travel into or through the facility, inaccessible meeting areas, inaccessible restrooms, or inaccessible parking (if provided), which may prevent persons who use wheelchairs or other assistive devices from participating in the meeting.⁷⁷ HUD should provide guidance that holding a meeting in any such facility is a violation of federal law.⁷⁸

2. Accessibility to Information Conveyed at Outreach Meetings

The Proposed Rule should include guidance on accessibility to information communicated at community outreach meetings. This includes additional specification that any written materials distributed to members of the public—such as the agenda and other materials distributed at a public meeting—are subject to the requirement that communication be equally effective for persons with disabilities.⁷⁹ For instance, HUD should clarify that program participants should comply with specific requests to provide written information in other forms.⁸⁰ HUD could provide more information about alternative formats to provide such accessibility, including screen-readable files loaded on a USB flash drive, audio recordings, large print, or Braille.⁸¹ HUD should also clarify that program participants may need to provide

⁷⁵ *Id.* § 8569.

⁷⁶ The California Department of Rehabilitation (CDOR) provides several examples of how public meetings can be made accessible. (See CDOR, Planning Accessible Public Meetings (Apr. 2009) [as of May 20, 2022].) The United States Department of Justice (U.S. DOJ) also provides guidance on meeting accessibility, including accessible meeting locations, arrangement of meeting room furniture, and how the meeting information is communicated. (See U.S. DOJ, Accessible Information Exchange: Meeting on a Level Playing Field [as of May 20, 2022].) *see also*, U.S. Access Board, Uniform Federal Accessibility Standards (UFAS) (1984), available at <https://archive.ada.gov/business/accessiblemtg.pdf>.

⁷⁷ U.S. DOJ, at 8-16.

⁷⁸ *Id.*

⁷⁹ U.S. DOJ, ADA, Title II Technical Assistance Manual (TAM) §7.1000 at <https://www.ada.gov/taman2.html>.

⁸⁰ *Id.*

⁸¹ *See* footnote 9, U.S. DOJ, § II-7.0000.

auxiliary aids and services to individuals with disabilities to allow full participation in the public meeting.⁸² These include sign language interpreters, audio recordings, assistive listening devices, real-time transcription, open or closed captioning, and caption decoders for videos.⁸³

Finally, HUD should clarify that if a program participant provides an opportunity for the general public to comment at an in-person meeting on the Equity Plan, it should make reasonable accommodations to enable individuals with disabilities to comment through equivalent means.⁸⁴

A. Provide Sample Outreach Materials

HUD should also consider providing additional tools to aid program participants in effectively obtaining input, such as an appendix of sample documents that may be used for outreach. Samples could include meeting agendas, surveys, and questionnaires for focus groups. In addition, program participants may reach the widest swath of stakeholders by allowing for written submissions.

VII. The Attorneys General Support HUD’s Proposed Review and Complaint Processes as Ensuring Program Participant Accountability

The Attorneys General fully support the Proposed Rule’s review and complaint processes to promote accountability for AFFH. Increased accountability is essential to implementing an effective AFFH rule, and HUD’s prior experience demonstrates the need for accountability. In 2010, the U.S. Government Accountability Office (“GAO”) published a study identifying critical deficiencies in the AI process.⁸⁵ GAO found decades-old AIs, missing AIs, and AIs lacking in fair housing content.⁸⁶ The Equity Plan implements GAO’s advice that “HUD require grantees to update their AIs periodically, follow a specific format, and submit them for review.”⁸⁷ HUD’s review of Equity Plan sufficiency, as well as the potential for ongoing monitoring through the complaint process, provides accountability that will ensure program participants create and implement plans to address fair housing issues. The suggestions below are intended to support and strengthen HUD’s proposed accountability measures.

⁸² 28 C.F.R. § 35.160(b).

⁸³ 28 C.F.R. § 35.104(1)-(2).

⁸⁴ See, 28 C.F.R. §§ 35.130, 35.149-35.150, 35.160; *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996).

⁸⁵ U.S. Gov’t Accountability Office, *Housing & Community Grants: HUD Needs To Enhance Its Requirements And Oversight Of Jurisdictions’ Fair Housing Plans* (2010), (“GAO Study”), available at <https://www.gao.gov/assets/gao-10-905.pdf>.

⁸⁶ *Id.* (GAO estimated that 29% of all AIs were at least 6 years old, and that at least 11% were created in the 1990s. GAO did not receive any AIs from 25 grantees and several grantees provided documents that did not appear to be AIs, suggesting that some grantees may not have maintained the required AI documents.).

⁸⁷ *Id.*

A. Publish Guidance on Complaint Investigations

In HUD's Notice of Proposed Rulemaking, HUD commits to providing further guidance regarding the complaint process to clarify the alleged conduct that HUD will accept as meriting an investigation. Clearer guidance on both minimum requirements for complaints as well as criteria for complaint dismissal can offset concerns regarding complaint process abuse and also streamline the complaint process. The Attorneys General recommend that HUD issue guidance on the complaint process including that:

- A complaint will be dismissed if the complaint fails to state a claim (i.e., the complaint would not, if true, be a violation of the program participant's AFFH obligations).
- A complaint that is duplicative of another complaint will be joined and treated as related complaints, allowing for efficiencies where there is overlap.

B. Include Equity Plan Schedule to Complainants

Community participation in the Equity Plan may also ease the burden of the complaint process by being more responsive to the community's fair housing concerns prior to submission. To help promote that participation, when HUD issues a notice to a complainant regarding their complaint, HUD should also provide information to the complainant on when the Equity Plan is scheduled for renewal (either for a new five-year plan, or the annual review that allows for modifications within a plan term), and encourage complainants to also provide feedback at those times.

C. Publish Complaint Documents to Increase Transparency

HUD can increase transparency by publishing its final Letters of Finding. HUD should also publish all Voluntary Compliance Agreements, written assurances, and special assurances of compliance described in Sec. 5.170, as those modify the Equity Plan. This transparency will give the public necessary context regarding how jurisdictions may have modified their Equity Plans in response to resolution of complaints.

D. Provide Continuing Oversight and Terminate Funding in Circumstances of Repeated Malfeasance

In the Proposed Rule, HUD has identified a practical limitation of the 2015 Rule in failing to hold program participants accountable for insufficient Fair Housing Assessments. HUD explains that the failure to have an accepted Fair Housing Assessment "triggered drastic remedies (such as the suspension or termination of funding) that limited their practical use for ensuring compliance." To ameliorate this concern, HUD has extended the time period to address any insufficiencies with the Equity Plan with the program participant, and will use special assurances to move Equity Plans forward.

The Attorneys General support a wide breadth of graduated remedies to address insufficiencies. One remedy that HUD lists in its proposed complaint process is “conditioning the use of Federal financial assistance.”⁸⁸ We support this remedy, and offer the following additional suggestions:

- HUD could condition the use of funding on changes to the participant’s policies and practices;
- HUD could tier funding to specific programmatic commitments, execution of a program, or to other actions;
- For grants that are funded through reimbursements, HUD could tie reimbursements for expenses or projects to Equity Plan compliance;
- HUD could make program participants ineligible for other funds outside of the AFFH planning process.

HUD also asks for feedback on whether it should identify circumstances under which a program participant necessarily will lose funding.⁸⁹ While circumstances are likely to be unique, the Attorneys General believe it would be appropriate to terminate funding if a program participant (after all extensions) willfully refuses to adopt a compliant Equity Plan, fails to submit an Equity Plan, or ultimately refuses to adopt changes HUD requires. While termination of funds would be an unfortunate last resort, the most serious malfeasance by program participants should be met with commensurate consequences.

Finally, while malfeasance should be met with strong action, we realize that there may be situations where a program participant is struggling to meet its obligations for a variety of reasons despite best intentions. For those participants, supportive measures should be available to match the specific barriers to full compliance. For example, if a participant lacks or has lost personnel who are trained to draft and/or comply with a compliant Equity Plan, that participant should be able to communicate quickly through a dedicated link to explain the issues and obtain guidance and resources from HUD to remedy the problem. Recognizing that not all program participants have the same level of resources and expertise, HUD should assist program participants, acting in good faith, to come into and remain in compliance.

VIII. Conclusion

A strong and enforceable federal-level AFFH framework is imperative. As the Supreme Court noted, “[d]e jure residential segregation by race was declared unconstitutional almost a century ago, but its vestiges remain . . . , intertwined with the country’s economic and social life.”⁹⁰ This enduring dynamic creates segregated communities of concentrated poverty that lack

⁸⁸ Proposed 24 C.F.R. § 5.172.

⁸⁹ 88 Fed. Reg. at 8549.

⁹⁰ *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 528(2015) (citing *Buchanan v. Warley*, 245 U.S. 60 (1917)).

the educational and economic opportunities available in other communities, resulting in severe intergenerational consequences for the most disadvantaged members of society. Far too many of our country's children face challenges that are predetermined by their zip codes. These painful realities demand more action to ensure that the country's land use and housing practices do not continue to perpetuate pernicious legacies of racial, ethnic, and income-based segregation. The proposed AFFH Rule provides a vital framework to ensure that we collectively work to dismantle discriminatory housing practices, and build a better, more equitable future for all our nation's people.

For all of these reasons, the undersigned Attorneys General strongly support the Proposed Rule, and offer the above suggestions to strengthen it further.

Sincerely,



ROB BONTA
California Attorney General



MATTHEW J. PLATKIN
New Jersey Attorney General



LETITIA JAMES
New York Attorney General



WILLIAM TONG
Connecticut Attorney General



BRIAN L. SCHWALB
District of Columbia Attorney General



ANNE E. LOPEZ
Hawaii Attorney General



KWAME RAOUL
Illinois Attorney General



AARON M. FREY
Maine Attorney General



ANTHONY G. BROWN
Maryland Attorney General



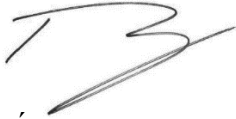
ANDREA JOY CAMPBELL
Massachusetts Attorney General



KEITH ELLISON
Minnesota Attorney General



AARON D. FORD
Nevada Attorney General



RAÚL TORREZ
New Mexico Attorney General



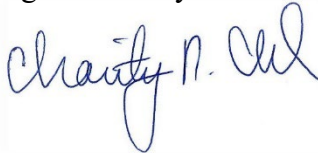
JOSH STEIN
North Carolina Attorney General



ELLEN F. ROSENBLUM
Oregon Attorney General



PETER F. NERONHA
Rhode Island Attorney General



CHARITY R. CLARK
Vermont Attorney General



BOB FERGUSON
Washington Attorney General