

Proposed Rule

Affirmatively Furthering Fair Housing (AFFH)

Sept. 14, 2023



TODAY'S SPEAKERS

Eric Oberdorfer

Director of Policy and Program Development

AGENDA

1. Background
2. Developing an Equity Plan
3. Public Engagement
4. Submission Requirements
5. Review of Equity Plan
6. Revising An Accepted Equity Plan
7. AFFH Certification
8. Recordkeeping
9. Compliance Procedures
10. NAHRO Thoughts on AFFH
11. Q&A



Background

WHAT IS AFFH?

The Duty to Affirmatively Further Fair Housing stems from the Fair Housing Act

- Prior to AFFH, HUD had agencies complete an Analysis of Impediments (AI) to meet their duty to AFFH
- The Act prohibits housing discrimination based on protected class and requires federal agencies to administer all federal housing and urban development programs in a manner to affirmatively further the Fair Housing Act (AFFH)

WHAT IS AFFH?

Requires recipients of HUD funds to:

- Take meaningful actions to combat discrimination and patterns of segregation
- Foster inclusive communities free from barriers that restrict access to opportunities based on race, religion, national origin, disability, familial status, sexual orientation and gender identity

WHAT IS AFFH?

Analysis of Impediments

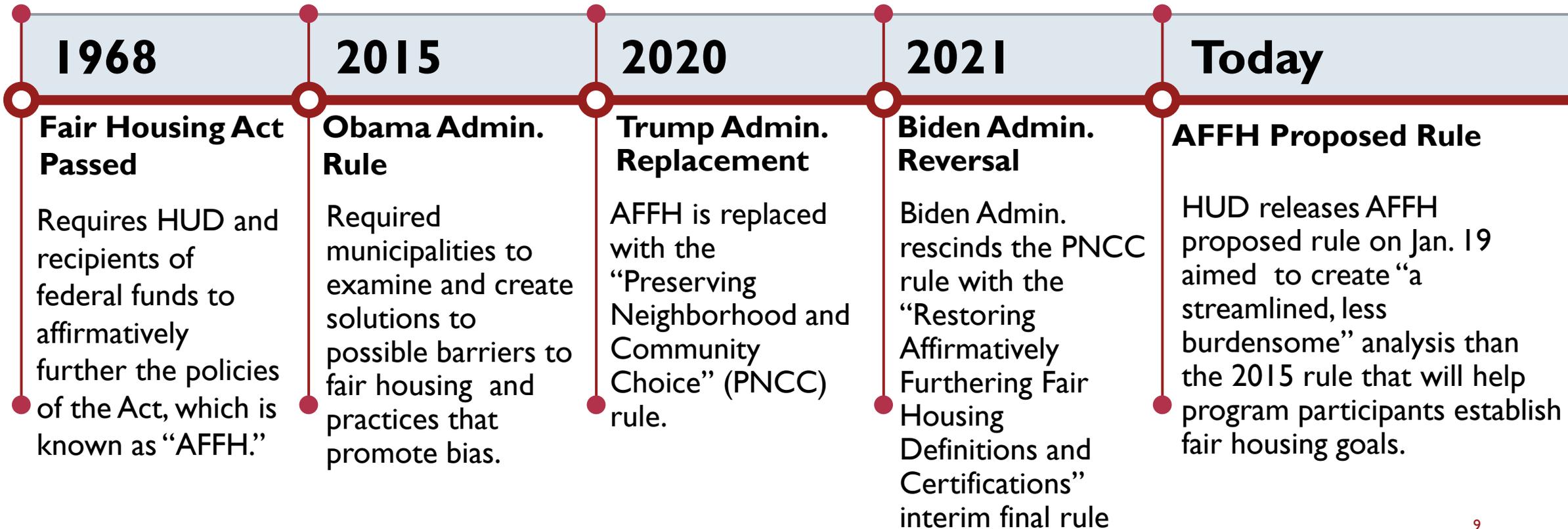
- Program participants would identify potential impediments to fair housing choice
- Take appropriate actions to overcome the effects of any impediments
- Maintain records reflecting the analysis and actions taken

WHAT IS AFFH?

2010 GAO Report

- The report found that many AIs were outdated or out of conformance with HUD Guidance
- HUD had limited regulatory requirements and oversight and enforcement approaches
- Responding to the GAO Report, Obama administration released Final AFFH Rule in 2015

HISTORY OF AFFH



2023 PROPOSED AFFH RULE

The 2023 Proposed AFFH Rule

- Released on January 19, 2023, with official publication on February 9, 2023
- Comments due April 10, 2023
- Not in effect until HUD published final rule at some point in future

2023 PROPOSED AFFH RULE

Who Must Comply with AFFH?

- HUD program participants:
 - PHAs
 - Jurisdictions and insular areas that must submit consolidated plans due to:
 - CDBG funding
 - Emergency Solutions Grants (ESG)
 - Housing Opportunities for Persons with AIDS (HOPWA)
 - Housing Trust Fund (HTF) funding

2023 PROPOSED AFFH RULE

The new AFFH proposed rule requires program participants to:

1. Develop an Equity Plan
2. Include robust public engagement
3. Submit to HUD
4. Remain in compliance of the Equity Plan



Developing an Equity Plan

ANALYSIS OF THE EQUITY PLAN

- The Equity Plan is the document that:
 - Identifies fair housing issues through data analysis
 - Prioritizes which fair housing issues to overcome in the next three to five years
 - Contains the fair housing goals program participants will implement

ANALYSIS OF THE EQUITY PLAN

- Program participants must:
 - Submit Equity Plan to HUD
 - Incorporate fair housing goals into planning documents
 - Conduct and submit annual progress evaluations to HUD

ANALYSIS OF THE EQUITY PLAN

- Program participants must conduct an analysis of their jurisdiction and region to help shape the goals created and prioritized in the Equity Plan
- To develop an analysis, participants should use HUD-provided data, local data, and local knowledge of their area
- HUD will also provide maps
 - AFFH-T Data & Mapping Tool

CONSIDERATION OF HUD QUESTIONS

- **Approximately 60 questions** should be considered by program participants in developing their Equity Plan
 - These are grouped into 7 broad areas for consolidated plan recipients and 5 broad areas for PHAs
- HUD expects program participants to answer all questions
- Some questions may have clear answers through the data, others may require additional analysis

CONSIDERATION OF HUD QUESTIONS

Questions from HUD focus on the following topics:

- Demographics
- Segregation and integration
- R/ECAPs
- Access to community assets
- Access to affordable housing opportunities
- Access to homeownership and economic opportunity (*entities submitting consolidated plans*)
- Local and State policies and practices impacting fair housing

CONSIDERATION OF HUD QUESTIONS – EXAMPLE #1

- **Demographics**

- 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)?
- 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?

CONSIDERATION OF HUD QUESTIONS – EXAMPLE #2

- **Access to Community Assets**
 - Describe which protected class groups experience significant disparities in access to the following community assets:
 - Education
 - Employment
 - Transportation
 - Low-poverty neighborhoods
 - Environmentally healthy neighborhoods
 - Other community assets

FAIR HOUSING GOALS

Program participants must:

- Develop an Equity Plan that focuses on at least **7 or 5 areas of core fair housing goal categories**
- Identify fair housing issues they plan to address in the next three to five years
- Prioritize short-term and long-term goals

(HUD recognizes that all goals may not be fully achieved in the first five-year cycle)

FAIR HOUSING GOALS

Fair housing goal categories include:

1. Policies and practices that impede affordable housing in areas of opportunity, including housing for those with disabilities
2. Inequitable distribution of local resources, which may include municipal services and investments in infrastructure
3. Discrimination or violations of civil rights law related to housing or community assets
4. Segregation and integration
5. R/ECAPs
6. Disparities in access to opportunity
7. Access to affordable housing and homeownership opportunities



Public Engagement

DURING DEVELOPMENT OF AN EQUITY PLAN

- Program participants must engage with the public before and after
- Must hold at least 3 public meetings in various accessible locations at different times
- At least one meeting must be held in an underserved community within a program participant's jurisdiction
- Feedback should be taken from underserved populations who do not live in underserved neighborhoods

COMBINED ENGAGEMENT

Engagement can be combined with:

- Other community, resident, or citizen participation affiliated with HUD programs
- Applicable citizen participation plan requirements (for those with a consolidated plan)
- Efforts to obtain Resident Advisory Board and community feedback, and address complaints for its PHA Plan (for PHAs)

WHILE AN EQUITY PLAN IS IN EFFECT

- Program participants must engage with their communities on an annual basis
- Must hold at least 2 public meetings in various accessible locations at different times
- Should make data and information of fair housing issues available to the public

PARTICIPANTS WITH A JOINT EQUITY PLAN

- Engagement can be conducted together or separately
- Some requirements govern when and how program participants may collaborate



Submission Requirements

SUBMISSION DEADLINES OF FIRST EQUITY PLAN

- Submission deadlines for **consolidated plan program participants** vary by how much grant funding a program participant receives
- Submission deadlines for **PHAs** vary by the number of combined public housing and voucher units and agency has
- **WILL ALSO DEPEND UPON PUBLICATION OF FINAL RULE**

DEADLINES FOR PHAS

PHAs with 50,000 or more total units: Must submit first Equity Plan no later than 24 months after the effective date of the regulation or 365 days before the date for which a new five-year plan is due following the start of the fiscal year that begins on or after Jan. 1, 2024, whichever is earlier

DEADLINES FOR PHAS

PHAs with 10,000-49,999 total units: Must submit first Equity Plan no later than 365 days prior to the date for which a new five-year plan is due following the start of the fiscal year that begins on or after Jan. 1, 2025

DEADLINES FOR PHAS

PHAs with 1,000-9,999 total units: Must submit first Equity Plan no later than 365 days prior to the date for which a new five-year plan is due following the start of the fiscal year that begins on or after Jan. 1, 2026

DEADLINES FOR PHAS

PHAs with < 1,000 total units: Must submit first Equity Plan no later than 365 days prior to the date for which a new five-year plan is due following the start of the fiscal year that begins on or after Jan. 1, 2027

FAIR HOUSING PLANS

- Program Participants must engage in fair housing planning prior to submitting their Equity Plan
- **Modes of Fair Housing Planning:** Analysis of Impediments to Fair Housing and or Assessment of Fair Housing
- Fair Housing Plans should be updated every **5 years** and sent to HUD for review
- This should continue until an Equity Plan is required to be submitted to HUD

NEW PROGRAM PARTICIPANTS

- Program Participants that have not submitted a consolidated plan or PHA plan **30 days** after the effective date will receive a new date
- They will have **at least 24 months** after the date to submit

PROGRESS EVALUATIONS

- Participants must submit **annual progress evaluations** after their Equity Plan is approved by HUD

SECOND AND SUBSEQUENT EQUITY PLANS

- Shall submit within a year from the date for which new consolidated plans or PHA plans are due
- All plans shall be submitted at least once every **5 years**
- All participants must certify that their submissions are true and accurate



Review of Equity Plan

60-DAY REVIEW PERIOD

- After the submission of an Equity Plan HUD will publish the submittal and conduct a review within **60 days**
- The public may submit comments during this process

ACCEPTED EQUITY PLANS

- Unless rejected or comments are extended HUD will accept the Equity Plan within **100 days**
- Plans may be accepted, but not reviewed
- Therefore, participants can have HUD accepted plans while not being in compliance with AFFH

REJECTED EQUITY PLANS

- HUD will provide a notice explaining why a plan is rejected
- The notice will include revision procedures and may be published
- Participants will have **60 days** from the notice to resubmit
- Review by HUD may last up to **75 calendar days** from when it is received
- If still not accepted, the same revision procedures will begin again

REJECTED EQUITY PLANS

Reasons for Rejection:

- Not complying with the AFFH rule
- Violations of civil rights laws
- Does not identify fair housing issues
- Goals do not result in meaningful change
- Does not contain required certifications
- Goals only focus on compliance of nondiscrimination laws
- No community engagement
- Contradicting data or evidence
- Does not acknowledge fair housing issues

REJECTED EQUITY PLANS

- Special assurances must be made with HUD if an Equity Plan is not accepted by the submission date of the consolidated plan or PHA plan
- Funding to a program participant may be in jeopardy if special assurances with HUD are not executed



Revising An Accepted Equity Plan

REVISING AN ACCEPTED EQUITY PLAN

- Accepted Plans must be revised when a material change occurs
- Participants may have the option to revise in scenarios where their analysis changes, impacting steps to achieve AFFH
- Those with an originally rejected Equity Plan that have been resubmitted and accepted may revise their plan within 120 days of submitting



AFFH Certifications

AFFH CERTIFICATIONS

- Program Participants must be certified that they will affirmatively further fair housing
- Proposed rule details procedures for challenging the validity of the AFFH certification



Recordkeeping

RECORDKEEPING

- Program participants must establish and maintain sufficient records to determine their compliance of AFFH



Compliance Procedures

COMPLIANCE PROCEDURES

- Complaints may be made by an individual, association, or other organization to HUD if a program participant fails to comply with the proposed rule
- Complaints will be investigated by HUD and a voluntary resolution will be sought
- Absent a voluntary resolution, a Letter of Findings will be issued

LETTER OF FINDINGS

The Letter will include:

- Findings of fact and conclusions of law
- A remedy for each violation
- A notice of rights and procedures
- A notice for the letter to be reviewed within 30 days

LETTER OF FINDINGS

- Upon request, review will occur within **120 days**
- Absent a request for review, the Letter of Findings will be the formal determination

PROCEDURES FOR EFFECTING COMPLIANCE AND HEARINGS

If voluntary compliance does not occur HUD may:

- Send a referral to the Department of Justice
- Initiate administrative proceedings
- Initiate debarment
- Move forward with other applicable proceeding under state or local law
- Cut Funding



NAHRO Thoughts

NAHRO THOUGHTS ON AFFH

- NAHRO strongly supports the Fair Housing Act and the Duty to Affirmatively Further Fair Housing
- Additional funding is needed to complete equity plans
- The AFFH rule should have different requirements for entities of different sizes
- There should be a safe harbor such that HUD certifies entities that make a good faith effort to comply with the rule are in compliance

NAHRO THOUGHTS ON AFFH

- Entities should not be forced to complete analyses on factors falling outside the scope of their operations (E.g., PHAs should not be forced to complete analyses transportation, education, employment, etc.)
- Entities should not be responsible for outcomes outside of their control
- Maps and other HUD-provided should be clearer
- PHAs should not be required to hire consultants to complete analyses



QUESTIONS?

CONTACT INFORMATION

Eric Oberdorfer

**Director of Policy and
Program Development**

eoberdorfer@nahro.org

Tess Hembree

**Director of Legislative
Affairs**

thembree@nahro.org

Tushar Gurjal

Senior Policy Advisor

tgurjal@nahro.org

Andrew Van Horn

Policy Analyst

avanhorn@nahro.org

Steven Molinari

Policy Analyst

smolinari@nahro.org



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