



April 19, 2023

U.S. Department of Housing and Urban Development  
Office of General Counsel  
451 7th Street, S.W.  
Washington, D.C. 20410-0500

Re: Docket No. FR-6250-P-01 RIN 2529-AB05

To Whom It May Concern:

I write in response to the U.S. Department of Housing and Urban Development's (HUD) Notice of Proposed Rulemaking published in the Federal Register on February 9, 2023, titled *Affirmatively Furthering Fair Housing* (AFFH). The proposed rule clarifies the process by which jurisdictions should collect data, plan, and implement AFFH, and determine how they will be held accountable. Nearly 55 years after the Fair Housing Act (P.L. 88-352) became law, its requirement to combat discrimination and affirmatively further fair housing has yet to be fully implemented. This rule is an important step in fulfilling this nation's commitment to fair housing in Latino and other communities of color.

NALCAB, the National Association for Latino Community Asset Builders, is a U.S. Treasury-certified Community Development Financial Institution (CDFI) that represents and serves over 200 diverse nonprofit community development and asset-building organizations across the country. Over half of our members are lenders, more than 50 of which are certified CDFIs. These organizations uplift Latino communities by strengthening access to quality affordable housing, safe financial products and services and the ability to start and grow successful businesses. Many of the people served by the NALCAB Network are low- to moderate-income individuals who are first- or second-generation immigrants. For decades, NALCAB members have increased access to affordable housing and economic opportunities in the neighborhoods they serve.

The strength and future competitiveness of the U.S. economy relies on achieving broader financial inclusion and economic mobility. Ensuring fair housing choice for everyone in our country is a critical element of achieving this goal. According to the U.S. Census, our nation's Latino population is over 62 million, making up nearly 20% of the U.S. population in 2021 and is projected to comprise 28% by 2060.<sup>1</sup> That said, Hispanics have significantly fewer assets, lower income, and less access to fair housing choice than the non-Hispanic White population. Failure to address this challenge across diverse demographic segments and geographic regions will cost the United States in terms of economic growth and global economic competitiveness.

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<sup>1</sup> [https://latino.ucla.edu/research/latino-population-2000-2020/#:~:text=By%202060%2C%20the%20Latino%20population,population%20\(see%20Figure%201\)](https://latino.ucla.edu/research/latino-population-2000-2020/#:~:text=By%202060%2C%20the%20Latino%20population,population%20(see%20Figure%201))



Where you live impacts access to key asset building resources such as affordable financial services, education, employment, and healthcare. As a result of decades of discriminatory housing policy, many people of color and other historically marginalized groups have been pushed out or left out of high opportunity neighborhoods or, in some cases, housing altogether. On average, 58% of U.S. Latino children live in low or very low opportunity neighborhoods, compared to 65% of white children that live in high- or very high-opportunity neighborhoods. Hispanic children are 5.3 times more likely to live in very low-opportunity neighborhoods than white children.<sup>2</sup> By eliminating bias from our markets, we can ensure that they function fairly, and we all share in our nation’s collective economic growth and prosperity. The housing sector is one of the largest and most important drivers of the U.S. economy, representing roughly 18% of our GDP. By supporting equitable housing and expanding fair housing opportunities, we can boost our economic progress in all communities.

## **Background**

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions on the basis of race, color, gender, religion, familial status (i.e., households with children), national origin, or disability (the “protected classes”). The AFFH provision required any entity receiving HUD funds to proactively address patterns of poverty and disinvestment in communities of color. While the AFFH mandate is sound policy - it is only as good as its implementation and enforcement. For decades cities were not held accountable for failing to carry out this mandate but that changed in 2015 when a strong AFFH rule helped address racial disparities in cities across the country.

This proposed rule would amend HUD regulations in [24 CFR part 5, subpart A](#), which contains definitions and requirements that are applicable to all or almost all HUD programs. This rule proposes to amend existing subpart A by adding 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 compliance to affirmatively further fair housing.

NALCAB is encouraged that the Biden administration’s proposed rule improves upon the 2015 rule and we offer the following comments;

## **Equity Plan**

The 2023 proposed AFFH rule establishes an Equity Plan (formerly known as the Assessment of Fair Housing). The Equity Plan includes the program participant’s goals that advance equity in housing, community development programs, and access to well-resourced areas, opportunity, and community assets. This plan would be developed with the input of the community and consists of

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<sup>2</sup> [Report Shows Most White Children Live in Neighborhoods of Opportunity, Most Black and Hispanic Children Live in Neighborhoods with Low Opportunity | National Low Income Housing Coalition \(nlihc.org\)](#)



an analysis of fair housing data and issues, a prioritization of the issues that would be addressed, and the establishment of and commitment to undertake fair housing goals.

The 2015 Rule required HUD to either accept or reject 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 the plan, but the agency had limited time and/or capacity to provide detailed feedback to ensure a successful resubmission. By providing HUD 100 days with the ability to extend that time to review a submitted Equity Plan the proposed rule provides for more feedback and guidance from HUD to achieve a plan that meets the requirements. At the forefront of any Equity Plan should be "choice". Those impacted get to choose if they want to stay in place or if they want to move (and benefit from the sale of their assets). People and businesses should not be forced to leave their community - choice should be driving these equity plans. We also urge the prioritization of the disposition of publicly owned land for preserving and expanding affordable housing as part of the Equity Plan. Land is a scarce resource and land prices continue to rise, which is often a counterargument for affordable housing. Local entities should prioritize an equitable process for selling public owned land and properties with expiring affordability covenants.

NALCAB supports proposed changes to increase flexibility, time and support given to program participants in submitting an approved plan. We also believe that allowing program participants to complete joint Equity Plans with other program participants will help smaller limited capacity organizations.

### **Community Engagement**

We appreciate the meaningful focus placed on community engagement in this rule and the reflection it provides of the importance HUD places on community involvement. HUD asks for feedback on a number of components to community engagement including the minimum number of meetings and if they should be held at various times of the day and various accessible locations and whether one meeting should be held virtually, among other things.

Effective and robust community engagement can be achieved differently in different communities depending on the population, geographic area, access to community assets available like broadband and translation services, among other things. We recommend that HUD allow for flexibility on the number and format of required community engagement meetings and allow program participants the ability to determine and explain how community engagement is achieved best in their local communities and why. HUD should ensure program participants provide the option for hybrid or virtual meetings to account for individuals who have barriers to in-person participation, such as childcare or eldercare or lack of transportation. We also recommend that information about public input sessions be distributed through broad and appropriate channels, allowing for flexibility for the program participants to explain what those are and why. Additionally all notices and materials distributed should be in the languages spoken in the local community.



The rule states that all aspects of community engagement must be conducted in compliance with fair housing and civil rights requirements, including title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. NALCAB urges HUD to include providing language assistance to ensure meaningful access to participation by Limited English proficient (LEP) residents.

### **Data and Technical Assistance**

Under HUD's 2015 AFFH Rule, program participants were required to use an Assessment Tool – HUD provided data and then they were required to conduct extensive analysis in response to approximately 100 questions that they were required to answer in a prescribed format, in addition to forty contributing factors that program participants were required to consider for each fair housing issue identified. This is a time-intensive process and disproportionately burdens smaller organizations with limited staff, capacity, and relevant expertise. As HUD has noted, for smaller organizations this is challenging if not impossible to complete and often requires hiring consultant support.

NALCAB commends the Administration for recognizing this inequity and appreciates that under the proposed rule, program participants will conduct fair housing analyses 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. We support HUD's proposal to reduce burden for program participants by providing 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.

In terms of the quality of data HUD must acknowledge that census data lags current market conditions and on its own, is not an accurate tool for examining equity in the near to short-term. We encourage HUD to standardize the templates with more recent and private data. Program participants should be encouraged to use additional data sets that can provide insight to where and how future/planned development could impact a community. Additionally, we recommend that these factors be encouraged in appropriate Equity Plans to best provide a full analysis of factors affecting fair housing –

- Impact of catalytic investments, public/private partnerships (park improvements; creek restorations; Transportation oriented Development, etc.)
- Impact of new investment into a historically disinvested community (major employer, hospital, and university expansions)
- Comparison of the median rent and median house prices to the median household incomes (and by industry) in a neighborhood and assess changes over time to monitor affordability.
- Concentration of eligible public subsidies (fee waivers, CDBG and HOME eligible census tracts; opportunity zones, LIHTC, NMTC, etc.) - public dollars are designed to attract and leverage private



capital. When the same community is eligible to receive these various types of investment, which is often needed, if not planned in an equitable manner, multiple actors who are trying to do good in their individual endeavors end up contributing to future neighborhood change if no one is looking at the bigger picture with an equity lens.

As noted by HUD under the 2015 rule some participants 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. HUD also acknowledges that fair housing analysis 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. For that reason, we urge that Community Compass TA providers be included in the eligible technical assistance entities for the AFFH equity plans.

## **Definitions**

We appreciate the clarification of and new emphasis on the need for a “balanced approach” to affirmatively furthering fair housing, an approach that recognizes the need to both invest in disinvested neighborhoods and preserve existing affordable housing as well as to take actions that enable protected class residents to move to areas that already have better community infrastructure and assets.

That said, the proposed rule frequently uses the phrase “affordable housing” and offers a definition of “affordable housing opportunities,” which it does define as 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. The proposed rule does not, however, define “affordable housing”. NALCAB urges HUD to define “affordable housing” as housing that requires a household to spend no more than 30% of its adjusted income on housing expenses (rent or mortgage payments) and utilities (this definition is known as the “Brooke Rule”).

## **Outreach and Enforcement**

The rule includes two fair housing goal categories related to local policies - “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” and “discrimination or violations of civil rights law or regulations related to housing and access to community assets.” Under the 2015 AFFH rule, grantees were required to also consider “the jurisdiction's fair housing enforcement and fair housing outreach capacity.” (See §5.154(d)). This analysis is very important for understanding the full local fair housing infrastructure and ensuring that any critical gaps are flagged and addressed. We urge HUD to include this as an additional fair housing goal category in the final AFFH rule.



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## Closing

Strong and effective fair housing laws are essential for building prosperity. This rule can help connect all residents to the resources they need to succeed by increasing investment in under-resourced neighborhoods and connecting those in disinvested neighborhoods to opportunities and vital resources. By helping to connect Latino and low-income families to areas of greater opportunity, the rule will help spur inclusive economic growth. We applaud HUD for issuing a rule that will fight discrimination in the housing market; address segregation, displacement, and evictions in marginalized communities and add more affordable housing choices in neighborhoods with jobs, good schools, and access to responsible banking services and other essentials. NALCAB looks forward to working with HUD to ensure access to affordable housing options for this nation's 65 million Latinos.

Sincerely,

Clarinda Landeros  
Director of Public Policy