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Public Interest Comment¹ on

The Department of Housing and Urban Development's Proposed Rule

Affirmatively Furthering Fair Housing

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REGULATORY STUDIES CENTER

The George Washington University Regulatory Studies Center improves regulatory policy through research, education, and outreach. As part of its mission, the Center conducts careful and independent analyses to assess rulemaking proposals from the perspective of the public interest. This comment on the Department of Housing and Urban Development's proposed rule on Affirmatively Furthering Fair Housing does not represent the views of any particular affected party or special interest, but is designed to evaluate the effect of HUD's proposal on overall public welfare.

Introduction

The Fair Housing Act, established in Title VIII of the Civil Rights Act of 1968, prohibits discrimination across a range of housing issues based on one's "race, color, religion, familial status, or national origin."³ Later amendments additionally banned discrimination based on sex and handicap status.⁴ The Fair Housing Act requires more than just prohibiting discrimination; it

¹ This comment reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at <http://regulatorystudies.columbian.gwu.edu/policy-research-integrity>.

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³ 42 U.S.C. § 3604(a).

⁴ Congressional Research Service (CRS). *The Fair Housing Act: HUD Oversight, Programs, and Activities*, p. 1, by Libby Perl. R44557, April 7, 2021. <https://crsreports.congress.gov/product/pdf/R/R44557>.

also directs “all executive departments and agencies”⁵ that administer programs related to housing to do so “in a manner affirmatively to further” fair housing.⁶ These clauses establish the Affirmatively Furthering Fair Housing (AFFH) mandate.

HUD proposed a new AFFH rule on February 9, 2023 that would reestablish regulatory requirements for HUD grant recipients and public housing authorities (“program participants”) to fulfill the AFFH mandate. This public interest comment summarizes the background of AFFH rulemaking, discusses HUD’s compliance with regulatory analysis requirements, and provides recommendations on opportunities for retrospective review and community engagement.

Background on Affirmatively Furthering Fair Housing Rulemaking

Prior to HUD’s 2015 AFFH rule, program participants fulfilled the AFFH mandate through Analyses of Impediments (AIs), described in HUD’s 1996 Fair Housing Planning Guide.⁷ To complete an AI, HUD required that program participants identify “potential impediments to fair housing choice,” develop strategies and actions to address those impediments, and keep records on their actions.⁸ HUD intended for AIs to serve as the foundation for fair housing planning in program participants’ jurisdictions,⁹ but the Government Accountability Office’s (GAO’s) 2010 report found “significant limitations” in HUD’s oversight of AIs.¹⁰ GAO discovered that nearly 30 percent of submitted AIs were out of date, and a “significant majority” of AIs that were up to date did not include deadlines for meeting their goals.¹¹ GAO recommended that HUD establish standards and a specific format for AIs; that program participants include timeframes in their goals; and that program participants routinely submit their AIs to HUD for review.¹²

HUD’s July 2015 AFFH final rule incorporated GAO’s feedback by creating an Assessment of Fair Housing (AFH). The AFH included a new fair housing assessment tool, HUD data for program participants to use when assessing fair housing issues, clarification on the purpose and importance of the AFH, guidance for how program participants should incorporate the AFH into their planning processes, and a new HUD procedure to review AFHs and provide assistance where needed.¹³ Housing policy research shows that the new process did improve on the AI system. Of

⁵ 42 U.S.C. §3608(d).

⁶ 42 U.S.C. §3608(d), (e)(5).

⁷ Congressional Research Service (CRS). *The Fair Housing Act: HUD Oversight, Programs, and Activities*, p. 22, by Libby Perl. R44557, April 7, 2021. <https://crsreports.congress.gov/product/pdf/R/R44557>.

⁸ Government Accountability Office (GAO). *HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans*, p. 1, GAO-10-905, 2010. <https://www.gao.gov/assets/gao-10-905.pdf>.

⁹ *Ibid.*, p. 5.

¹⁰ *Ibid.*, p. 22.

¹¹ *Ibid.*, p. 9.

¹² *Ibid.*, p. 32-33.

¹³ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42275 (July 16, 2015).

all the goals in AIs, just 5 percent included a new policy or a measurable objective.¹⁴ Under the AFH framework, 33 percent of goals included a new policy or a measurable objective.¹⁵ While the new framework improved the quality of fair housing planning goals, program participants faced challenges when completing their AFHs. Due to the complexity and highly specific format of the AFH, some program participants had to hire outside contractors to complete the assessment.¹⁶ Others misunderstood the questions on the AFH and failed to meet HUD’s standards for successful completion.¹⁷ This particularly burdened smaller program participants, who did not have the resources available to manage the intensive analysis required by the AFH.¹⁸

In 2018, HUD withdrew the 2015 AFFH final rule and returned to the AI process.¹⁹ HUD proposed and received comments on a proposed AFFH rule in early 2020²⁰ but never promulgated a final rule from that process.²¹ Instead, in August 2020, HUD issued a direct final rule called Preserving Community and Neighborhood Choice, which repealed both the 2015 AFH and the preceding AI requirements and established a new definition for “affirmatively furthering fair housing” that diverged from previous definitions.²² The Biden administration issued an interim final rule (IFR) in 2021 that withdrew the 2020 direct final rule and restored the “previously established understanding” of the AFFH obligation.²³ The IFR did not restore the AFH or AI obligations,²⁴ leaving new fair housing planning obligations for a new regulation.²⁵

2023 Proposed Rule

Using the 2015 AFFH rule as a starting point,²⁶ this proposed rule reestablishes a fair housing planning process in which program participants must define the major fair housing issues in their area, design solutions, and incorporate those solutions into their program plans. HUD’s rule applies

¹⁴ Justin Steil & Nicholas Kelly, “The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance,” *Housing Policy Debate* 29, no. 1 (December 2018): 93, <https://doi.org/10.1080/10511482.2018.1469527>.

¹⁵ Ibid.

¹⁶ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8523 (proposed Feb. 9, 2023).

¹⁷ Ibid.

¹⁸ Ibid., 8524.

¹⁹ Congressional Research Service (CRS). *The Fair Housing Act: HUD Oversight, Programs, and Activities*, p. 26, by Libby Perl. R44557, April 7, 2021. <https://crsreports.congress.gov/product/pdf/R/R44557>.

²⁰ Affirmatively Furthering Fair Housing, 85 Fed. Reg. 2041 (proposed Jan. 14, 2020).

²¹ Congressional Research Service (CRS). *The Fair Housing Act: HUD Oversight, Programs, and Activities*, p. 26, by Libby Perl. R44557, April 7, 2021. <https://crsreports.congress.gov/product/pdf/R/R44557>.

²² Preserving Community and Neighborhood Choice, 85 Fed. Reg. 47904 (August 7, 2020).

²³ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30786-30787 (June 10, 2021).

²⁴ Ibid., p. 30787.

²⁵ Ibid., p. 30789.

²⁶ Affirmatively Furthering Fair housing, 88 Fed. Reg. 8517 (proposed Feb. 9, 2023).

to public housing agencies and any “jurisdictions or insular areas” that must submit consolidated plans for Community Development Block Grants, Emergency Solutions Grants, the HOME Investment Partnerships, the Housing Opportunities for Persons With AIDS program, and Housing Trust Funds.²⁷ Under the proposed AFFH rule, these program participants must submit Equity Plans. Program participants may choose to submit Equity Plans for themselves, or they may collaborate with other program participants in their area to submit joint Equity Plans.²⁸

HUD expects the Equity Plans will streamline the analysis previously required under the AFH process and focus participants’ time on creating fair housing goals that will be directly linked to their fair housing planning processes.²⁹ HUD predicts the new rule would give it more flexibility in reviewing Equity Plans and working with program participants to improve Equity Plans.³⁰ The new rule would also make Equity Plans and program participants’ annual progress evaluations publicly available online. Finally, HUD’s proposed rule aims to increase fair housing accountability through establishing a civil rights complaint process.³¹

Equity Plans are HUD’s new mechanism for fair housing analysis, based on the 2015 AFHs. They aim to streamline the analysis required under the AFH mechanism so program participants can complete their Equity Plans in-house, without consultants or contractors.³² HUD’s proposal would require study over seven categories of fair housing issues,³³ analysis to uncover which fair housing issues present the greatest barrier to fair housing choice,³⁴ and the creation of goals to overcome the fair housing issues identified during the development of the Equity Plan.³⁵ HUD also requires community engagement throughout the development of Equity Plans to ensure “meaningful input from the community” on the fair housing issues identified and the goals set in the Equity Plan.³⁶ HUD proposes minimum requirements for community engagement, including at least three public

²⁷ Proposed 24 §5.152, found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8560 (proposed Feb. 9, 2023).

²⁸ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8537 (proposed Feb. 9, 2023).

²⁹ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8517-8521 (proposed Feb. 9, 2023).

³⁰ *Ibid.*, p. 8519.

³¹ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8517-8521 (proposed Feb. 9, 2023).

³² *Ibid.*, p. 8528.

³³ Proposed 24 §5.154(c)(3), found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8562 (proposed Feb. 9, 2023). The seven areas for study include: segregation and integration; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; inequitable access to affordable housing and homeownership opportunities; impediments to the provision of affordable housing in well-resourced areas of opportunity; inequitable distribution of local resources; and discrimination or violations of civil rights law.

³⁴ Proposed 24 §5.154(f)(1), found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8565-8566 (proposed Feb. 9, 2023).

³⁵ Proposed 24 §5.154(g)(1), found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8566 (proposed Feb. 9, 2023).

³⁶ Proposed 24 §5.158(a)(1), found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8568 (proposed Feb. 9, 2023).

meetings during the development of the Equity Plan, for program participants to connect with local community leaders, and to make their fair housing data publicly available.³⁷

Compliance with Regulatory Analysis Requirements

Executive Order 12866 establishes expectations for regulatory bodies, namely that:

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.³⁸

HUD is clear about the “compelling public need” underpinning this proposed rule. The preamble opens with a discussion of the numerous ways access to fair housing affects American life, and how segregation that was “historically sanctioned...by Federal, State, and local law,” has harmed communities of color, disabled communities, and other underserved communities by limiting their access to the same resources as other Americans.³⁹ The proposed AFFH rule seeks to require local and regional entities to affirmatively further fair housing, while providing them the resources to do so, to “overcome centuries of separate and unequal access to housing opportunity.”⁴⁰

The standards proposed by HUD are a step in the right direction for mitigating fair housing impediments. This proposed AFFH rule simplifies the AFH process from the 2015 rule into new Equity Plans, which have simpler questions and less intensive data analysis.⁴¹ Despite its challenges for smaller program participants, the 2015 AFH assessment yielded higher quality goals and proposed policies overall compared to the prior AI process.⁴² Equity Plans may be a more accessible solution for establishing meaningful fair housing goals, particularly for smaller jurisdictions.

³⁷ Proposed 24 §5.158(d)(1)-(4), found in *Affirmatively Furthering Fair Housing*, 88 Fed. Reg. 8569 (proposed Feb. 9, 2023).

³⁸ Exec. Order No. 12866, *Regulatory Planning and Review*, §1(a).

³⁹ *Affirmatively Furthering Fair Housing*, 88 Fed. Reg. 8516-8517 (proposed Feb. 9, 2023).

⁴⁰ *Ibid.*, p. 8517.

⁴¹ *Ibid.*, p. 8525.

⁴² Justin Steil & Nicholas Kelly, “The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance,” *Housing Policy Debate* 29, no. 1 (December 2018): 93, <https://doi.org/10.1080/10511482.2018.1469527>.

Regulatory Analysis

HUD expects the primary costs of this proposed rule to come from compliance costs related to the proposed fair housing planning process. HUD estimates that aggregate compliance costs could range from about \$25.8 million per five-year fair housing planning cycle on the low end⁴³ to \$136 million per five-year planning cycle on the high end.⁴⁴ A few key factors contribute to the uncertainty in the topline number: how many program participants collaborate on joint Equity Plans; how long it takes program participants to complete joint Equity Plans; how many program participants hire external consultants to complete their plans, rather than completing them in-house; and how many program participants incorporate the required community engagement under this proposed rule into other existing community engagement requirements.⁴⁵ These factors may also affect the cost to individual program participants. HUD predicts program participants will face lower costs if they already have robust fair housing planning operations and can complete the required analysis in-house, and if they can collaborate with other jurisdictions on a joint Equity Plan.⁴⁶

HUD's regulatory impact analysis (RIA) only assesses cost in terms of costs for program participants to comply with the fair housing planning requirements. To some extent, this makes sense. The current framework for fulfilling the AFFH mandate allows program participants to choose any method of fair housing planning to certify that they are affirmatively furthering fair housing.⁴⁷ The Equity Plan framework takes a more prescriptive approach to fair housing planning by requiring program participants to complete standard analysis, goal setting, and community engagement pieces.⁴⁸ However, only assessing compliance costs neglects other costs and unintended consequences of the proposed rule. For instance, some voucher holders who move to low-poverty, primarily homeownership neighborhoods may face stigma and be excluded from accessing community resources in their new neighborhood—the whole point of moving in the first place.⁴⁹

Retrospective Review

Given the wide range of estimated costs HUD provides in its Regulatory Impact Analysis, HUD should consider how it plans to retrospectively review this rule. Executive Order 13563

⁴³ Ibid., p. 16

⁴⁴ Ibid., p. 14.

⁴⁵ Affirmatively Furthering Fair Housing Regulatory Impact Analysis (Feb. 16, 2023), retrieved from <https://www.regulations.gov/document/HUD-2023-0009-0014>.

⁴⁶ Ibid., p. 16-17.

⁴⁷ Ibid., p. 7.

⁴⁸ Ibid., p. 8

⁴⁹ Eva Rosen, *The Voucher Promise: "Section 8" and the Fate of an American Neighborhood* (Princeton: 2020), p. 168.

recommends retrospective analysis, particularly when rules “may be outmoded, ineffective, insufficient, or excessively burdensome.”⁵⁰ Below are three recommendations for retrospective review of the proposed AFFH rule.

HUD anticipates that benefits of the proposed rule will vary widely based on each program participant’s unique circumstances, but it expects that the rule will benefit “protected class groups across a variety of quality-of-life metrics.”⁵¹ It is reasonable to assume that the benefits of the proposed rule will differ from region to region, but there are steps HUD can take to quantitatively measure benefits from this rule at the national level. HUD should identify the quality-of-life metrics it predicts will be most affected by the rule’s implementation and develop a plan for gathering data on those metrics both before and after Equity Plans are implemented. HUD could collaborate on this data collection with program participants collecting data on the ground, as well as the Census Bureau and the EPA for socioeconomic and health data on the federal level. Especially since the 2015 AFH assessment was revoked just three years into the program, HUD should prioritize assessing family-level outcomes from Equity Plan implementation to establish whether this approach to fair housing planning generates desirable outcomes.

Recommendation 1: HUD should identify the quality-of-life metrics it believes will change with the implementation of this proposed rule and assess them at the family level after the first planning cycle is complete.

One of HUD’s motivations for simplifying Equity Plans compared to AFHs is to reduce the reliance of program participants on external contractors or consultants. HUD should consider reviewing Equity Plan submissions after the first planning cycle to see how many program participants relied on external assistance, and at what cost, and compare that number to the 2015 AFH process. If a similar proportion of program participants had to use external contractors for Equity Plans, HUD could consider revising their questions or providing additional technical assistance for the next planning cycle.

Recommendation 2: HUD should study the proportion of program participants relying on external contractors or consultants to complete Equity Plans and compare that to the proportion that required external assistance under the AFH system.

HUD expects that program participants completing joint Equity Plans would face lower costs than those completing an Equity Plan on their own, since groups can share the burden of completing the analysis, issue identification, and goal setting.⁵² Under the 2015 rule, HUD found that fewer program participants than expected took advantage of the opportunity to collaborate on joint fair

⁵⁰ Exec. Order No. 13563, Improving Regulation and Regulatory Review, §6(a).

⁵¹ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8552 (proposed Feb. 9, 2023).

⁵² Affirmatively Furthering Fair Housing Regulatory Impact Analysis (Feb. 16, 2023), page 11, retrieved from <https://www.regulations.gov/document/HUD-2023-0009-0014>.

housing plans.⁵³ HUD predicts that 50 percent of program participants will submit joint Equity Plans during this cycle.⁵⁴ After all program participants have submitted an Equity Plan for the first planning cycle, HUD should assess if their assumption about the number completing joint Equity Plans was correct. If it was correct, HUD should further assess how much completing joint Equity Plans saved on compliance costs. If its assumption was incorrect, HUD should assess how much additional money organizations spent in compliance costs, and it should engage program participants to discuss what, if anything, would incentivize them to complete joint Equity Plans for future planning cycles.

Recommendation 3: HUD should study the proportion of program participants that complete joint Equity Plans and enumerate the cost savings that result from completing a joint plan.

Community Engagement Recommendations

HUD's proposed rule is a thoughtful evolution of the 2015 AFFH rule. It seeks to expand on the best parts of the original rule and simplify the pieces that made the 2015 rule challenging for participants. The following recommendations focus on ways HUD can support program participants in the community engagement portions of Equity Plans, specifically addressing questions 5 and 5A.

In its Questions for Comments section, Question 5 asks:

In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of?⁵⁵

HUD's community engagement requirements are a good start. HUD's proposed language states that program participants may choose any effective methods for engaging their community, but at a minimum must hold at least three public meetings during the Equity Plan's development, and at least two public meetings annually while the Equity Plan is in effect.⁵⁶ HUD requires that at least

⁵³ Affirmatively Furthering Fair Housing Regulatory Impact Analysis (Feb. 16, 2023), page 14, retrieved from <https://www.regulations.gov/document/HUD-2023-0009-0014>.

⁵⁴ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8555 (Feb. 9, 2023).

⁵⁵ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8546, no. 5 (proposed Feb. 9, 2023).

⁵⁶ Proposed 24 §5.158(d)(1)-(2), found in Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8568 (proposed Feb. 9, 2023).

one of those meetings must be held in an area where “underserved communities disproportionately reside” to get input from residents of those communities.⁵⁷

In order to best assist program participants, HUD should provide resources for program participants to explore newer or more creative community engagement strategies. Traditional public meetings may not facilitate the type of engagement program participants need to get the information they seek from local residents. Public participation scholars Innes & Booher posit that legally required types of public participation, like public hearings, “tend to be formalistic, one-way communication” from the public to elected leaders, frequently on plans or decisions that have already been proposed in detail.⁵⁸ Sherry Arnstein, in her classic essay “A Ladder of Citizen Participation,” classifies traditional methods of public engagement like “attitude surveys, neighborhood meetings, and public hearings” as forms of “consultation” that only grant the public token participation in the process.⁵⁹ When these types of engagement are used alone, community members have no guarantee that those in power will incorporate their ideas into the final product.⁶⁰

Other participation research discusses the importance of doing participation right. If community members—particularly members of traditionally underserved communities—have a negative experience with the policy process and see that their involvement made little or no difference in policy outcomes, they may disengage from future policy conversations.⁶¹ Several themes for effective community engagement emerge from the literature: using engagement as a means for building trust and social capital;⁶² the importance of a two-way information flow between community members and those in power;⁶³ community buy-in;⁶⁴ the importance of a deliberative process;⁶⁵ and the importance of having meaningful access to participate.⁶⁶ HUD should assist

⁵⁷ Ibid.

⁵⁸ Judith E. Innes & David E. Booher, “Reframing public participation: strategies for the 21st century,” *Planning Theory & Practice*, 5, no. 4 (October 2007): 423, <https://doi.org/10.1080/1464935042000293170>.

⁵⁹ Sherry R. Arnstein, “A Ladder of Citizen Participation,” *Journal of the American Institute of Planners*, 35, no. 4 (July 1969): 219, <https://doi.org/10.1080/01944366908977225>.

⁶⁰ Ibid.

⁶¹ Sally A. Nuamah, “The Cost of Participating while Poor and Black: Toward a Theory of Collective Participatory Debt,” *Perspectives on Politics*, 19, no.4 (October 2020): 1124, <https://doi.org/10.1017/S1537592720003576>.

⁶² Judith E. Innes & David E. Booher, “Reframing public participation: strategies for the 21st century,” *Planning Theory & Practice*, 5, no. 4 (October 2007): 428, <https://doi.org/10.1080/1464935042000293170>.

⁶³ Jason Wagner, “Measuring Performance of Public Engagement in Transportation Planning: Three Best Principles,” *Transportation Research Record*, 2397, no. 1 (2013): 40, <https://doi.org/10.3141/2397-05>.

⁶⁴ Wagner, “Measuring Performance,” 40; Innes & Booher, “Reframing public participation,” 428.

⁶⁵ Terry L. Cooper, Thomas A. Bryer, & Jack W. Meek, “Citizen-centered Collaborative Public Management,” *Public Administration Review*, 66 (2006): 79, <https://doi.org/10.1111/j.1540-6210.2006.00668.x>.

⁶⁶ Bonnie Fan & Sarah E. Fox, “Access Under Duress: Pandemic-Era Lessons on Digital Participation and Datafication in Civic Engagement,” *Proceedings of the ACM on Human-Computer Interaction*, 6, issue GROUP (January 2022): 7-8, <https://doi.org/10.1145/3492833>.

program participants with designing public engagement experiences that can meet these standards and build lasting, working relationships between community members and program participants.

Recommendation 4: HUD should provide program participants with resources and technical assistance on more creative strategies for community engagement.

In a follow-up to Question 5, HUD also asks:

Should HUD require that a minimum number of meetings be held at various times of day and various accessible locations to ensure that all members of a community have an opportunity to be heard? Should HUD require that at least one meeting be held virtually?⁶⁷

While the impulse to require a minimum number of meetings is understandable, a minimum does not guarantee that the meetings program participants host will yield meaningful results. The eighth principle of regulation from Executive Order 12866 requires that agencies, where possible, “specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.”⁶⁸ Rather than prescribe a specific minimum number of meetings at certain locations and times, HUD should consider providing measurable performance objectives for program participants to meet that focus on engaging underserved communities. Some easy measures could include the number of participants who attend a meeting or how many handouts are taken,⁶⁹ though these metrics do not necessarily measure the quality of engagement. Based on a thorough literature review, researchers Brown and Chin identified a variety of evaluation criteria for measuring the effectiveness of a public participation process. Some of the measures they identified that would be most relevant here include: representativeness of the participants; early involvement in the process; seeking out and involving those affected by decisions; participants’ comfort and convenience with regard to the time and place of the meeting; and deliberative quality.⁷⁰ This is not an exhaustive list, and HUD should do further research to decide what metrics would be most effective at getting the results it wants.

With performance objectives like these, HUD could provide standards that program participants must meet on each engagement criteria for their community engagement efforts to be considered satisfactory. Providing performance standards based on meaningful public engagement may result in more useful outcomes for program participants than simply requiring a minimum number of

⁶⁷ Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8546, no. 5A (proposed Feb. 9, 2023).

⁶⁸ Exec. Order No. 12866, Regulatory Planning and Review, §1(b)(8).

⁶⁹ Sherry R. Arnstein, “A Ladder of Citizen Participation,” *Journal of the American Institute of Planners*, 35, no. 4 (July 1969): 219, <https://doi.org/10.1080/01944366908977225>.

⁷⁰ Greg Brown & Sean Yeong Wei Chin, “Assessing the Effectiveness of Public Participation in Neighbourhood Planning,” *Planning Practice & Research*, 28, no. 5 (July 2013): 565, <https://doi.org/10.1080/02697459.2013.820037>.

meetings. Performance objectives, rather than a minimum number, also reflect the idea that different communities across the country have different contexts and cultures as it relates to community engagement. Each program participant knows their community best and knows what types of engagement are most effective at reaching them. Performance objectives would let them play to those strengths, rather than requiring a strategy that may not fit for their community.

Recommendation 5: HUD should specify performance metrics for engaging underserved communities rather than specifying minimums for meetings at various times and locations.

Regarding HUD’s question about virtual meetings, a digital platform can make public meetings accessible for community members who may not have flexible work schedules, or who may have accessibility needs that cannot be met at an in-person meeting.⁷¹ Increasing accessibility through virtual meetings would meet HUD’s goal to include disabled communities in fair housing issues.⁷² However, virtual meetings have some disadvantages, especially from the community’s perspective. The settings meeting hosts enable in the virtual room—like disabling chat features or hiding participants’ video feeds—can make meetings feel less inclusive and less interactive to participants.⁷³ Audio-only meetings (as opposed to video meetings) may affect community members’ understanding of what is happening in the meeting, if they are unfamiliar with the public meeting process.⁷⁴ Both could, in turn, negatively affect how participants view the community engagement process and dampen future engagement. If HUD decides to require at least one virtual meeting, it should provide best practices for productive virtual meetings to program participants. HUD should also clarify whether it expects both in-person and virtual meetings. HUD should clarify that virtual meetings are in addition to, not instead of, in-person meetings.

Recommendation 6: HUD should provide best practices for inclusive, engaging virtual meetings and recommend to program participants that virtual meetings should supplement, not replace, in-person meetings.

Conclusion

In this proposed rule, HUD creates a new framework for fair housing analysis and goal setting that seems set up to create results. This comment includes opportunities to assess the performance of

⁷¹ Bonnie Fan & Sarah E. Fox, “Access Under Duress: Pandemic-Era Lessons on Digital Participation and Datafication in Civic Engagement,” *Proceedings of the ACM on Human-Computer Interaction*, 6, issue GROUP (January 2022): 7, <https://doi.org/10.1145/3492833>.

⁷² Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8517 (proposed Feb. 9, 2023).

⁷³ Bonnie Fan & Sarah E. Fox, “Access Under Duress: Pandemic-Era Lessons on Digital Participation and Datafication in Civic Engagement,” *Proceedings of the ACM on Human-Computer Interaction*, 6, issue GROUP (January 2022): 10, <https://doi.org/10.1145/3492833>.

⁷⁴ *Ibid.*, p. 8.

the Equity Plan framework, in terms of cost savings to program participants. It also encourages HUD to push program participants to meaningfully engage their communities.

It offers six recommendations:

1. HUD should identify the quality-of-life metrics it believes will change with the implementation of this proposed rule and assess them at the family level after the first planning cycle is complete.
2. HUD should study the proportion of program participants relying on external contractors or consultants to complete Equity Plans and compare that to the proportion that required external assistance under the AFH system.
3. HUD should study the proportion of program participants that complete joint Equity Plans and enumerate the cost savings that result from completing a joint plan.
4. HUD should provide program participants with resources or technical assistance on newer strategies for community engagement.
5. HUD should specify performance metrics for engaging underserved communities rather than specifying minimums for meetings at various times and locations.
6. HUD should require at least one virtual meeting and clarify that virtual meetings are in addition to, not instead of, in-person meetings.