

MEMORANDUM

To: Sunia Zaterman, CLPHA Executive Director
From: Iyen A. Acosta, R&C
CC: Steve Holmquist, R&C
Date: February 22, 2023
Re: Overview of Affirmatively Furthering Fair Housing Proposed Rule and Questions Raised

HUD published the Affirmatively Furthering Fair Housing (AFFH) Proposed Rule on February 9, 2023. There is a sixty (60) day comment period, so comments to the AFFH Proposed Rule are due on April 10, 2023.

General Overview of AFFH Proposed Rule

Under the AFFH Proposed Rule, program participants will be required to create an “Equity Plan” every 5 years, with annual “progress reports” submitted to HUD regarding goals identified in the Equity Plan.

At a minimum, the Equity Plan must address the following fair housing goal categories:

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

For PHAs, the Equity Plan must respond to specific questions regarding (1) demographics, (2) segregation and integration, (3) R/ECAPs, (4) access to community assets and affordable

housing opportunities, and (5) local policies and practices impacting fair housing. Specifically, PHA Equity Plans must address the following questions:

(1) Demographics.

(i) What are the current demographics of the geographic area of analysis by protected class group (race, color, national origin, religion, sex, familial status, and disability) and how have those demographics changed over time?

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

(2) Segregation and integration.

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

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

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

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

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

(3) R/ECAPs.

(vii) Identify and describe R/ECAPs, including their location, the demographics (by protected class) living in R/ECAPs, and percentage of each protected class group in the jurisdiction or region resides in R/ECAPs?

(viii)(a) How have the demographics and location of R/ECAPs changed over time? Has concentration of protected class groups within each R/ECAP increased or decreased? (b) Describe the conditions in R/ECAPs that limit access to opportunity for the residents who live there, including housing costs and cost burden, housing quality, housing instability,

displacement, source of income discrimination, and eviction risk. How have these conditions changed over time?

(ix) How many of the PHAs' public housing developments are located in R/ECAPs? Compare the demographics and location of the residents of public housing with the demographics and location of the R/ECAP.

(x) What proportion of the PHA's vouchers are inside R/ECAPs compared to those outside R/ECAPs? What are the demographics (by protected class) of the PHA's HCV households residing inside R/ECAPs compared to those outside R/ECAPs?

(xi) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to these patterns?

(4) Access to community assets and affordable housing opportunities.

(xii) Describe which protected class groups have a disproportionately greater need for affordable housing opportunities. How do these groups compare to the PHA's current assisted resident demographics? Are there other underserved communities or groups (e.g., persons experiencing homelessness) that also have a disproportionately greater need for affordable housing opportunities?

(xiii) Of PHA participants, describe which protected class groups experience significant disparities in access to the following community assets:

- (1) Education;
- (2) Employment;
- (3) Transportation;
- (4) Low-poverty neighborhoods;
- (5) Environmentally healthy neighborhoods;
- (6) Affordable housing opportunities and homeownership opportunities; and
- (7) Other community assets.

Which protected class groups on the PHA's waiting list or who want to be on the PHA's waiting list experience significant disparities in access to the community assets identified in paragraph (e)(4)(ii)(A) of this section based on available local data and local knowledge?

(xiv) Compare locations of the PHA's public housing and HCV and the demographics of voucher assisted households with areas that have greater access or that lack access to these community assets. Is there a lack of affordable rental opportunities in more well-resourced areas, including units affordable for housing choice vouchers and for improved voucher mobility outcomes? How has access to community assets changed for the PHA's residents based on the PHA's funding and siting decisions?

(xv) Are there developments in the PHA's stock or residents of the PHA's publicly supported housing in particular neighborhoods in the PHA's service area that do not have the same access to the community assets compared to other residents located in the PHA's service area?

(xvi) Describe any differences, based on local data and local knowledge, in the quality of the PHA's housing for residents residing in:

(A) R/ECAPs compared to the housing the PHA offers residents residing in other parts of the PHA's service area; and

(B) Elderly-designated housing or housing disproportionately serving older adults (whether or not specifically authorized to do so) compared to housing serving families.

(xvii) Describe whether individuals with disabilities who participate in or who are eligible to participate in the PHA's programs, services, and activities experience barriers that deny individuals with disabilities access to opportunity and community assets in the geographic areas of analysis with regard to the following:

(A) Accessible and affordable housing;

(B) Accessible government facilities and websites;

(C) Accessible public infrastructure;

(D) Reliable and accessible transportation;

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

(F) Employment; and

(G) Community-based supportive services.

(xviii) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to these patterns?

(5) Local policies and practices impacting fair housing.

(xix) How do local laws, policies, ordinances, and other practices impede or promote the siting of affordable housing and use of HCV in well-resourced areas of opportunity? (include both policies under the PHA's direct control (e.g. preferences, types of housing designations, creation and retention of units for large families) and municipal or State policies (e.g. zoning and land use policies, ordinances, or regulations, eviction policies and procedures) known to the PHA to impact the siting of affordable housing and voucher mobility). Describe the boundaries of the PHA's service area and the PHA's mobility and portability policies and activities. Is there a need for services, improved

access to economic opportunity, or place-based investments to assist the PHA's assisted residents or the neighborhoods where its housing developments or HCV are located?

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

(xxi) What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments involving the PHA related to fair housing or other civil rights laws?

(xxii) What specific steps does the PHA take to ensure compliance with existing fair housing and civil rights laws and regulations, including the implementation of discretionary policies and practices (e.g., policies related to preferences, portability, reasonable accommodations, unit tenancing, including designated accessible units, evictions)?

The Equity Plan must identify the fair housing goals designed and reasonably expected to overcome the fair housing issues identified. Program participants will be required to incorporate these fair housing goals into subsequent planning documents (e.g. PHA Plans, Consolidated Plans, Annual Action Plans, etc.).

For the Equity Plan process, the AFFH Proposed Rule would require program participants to more significantly engage the community in the development of the Equity Plan. Further, to ensure that there is compliance and transparency in the process, the AFFH Proposed Rule contemplates certain enforcement mechanisms, including the ability of members of the public to file complaints with HUD regarding such AFFH processes.

The AFFH Proposed Rule contemplates the following compliance processes:

- (1) Individual Complaints - complaints may be submitted by an individual, association, or other organization that alleges that a program participant has failed to comply with the AFFH rule, noncompliance with the program participant's AFFH commitments, or that the program participant has taken action that is materially inconsistent with the obligation to affirmatively further fair housing. The Responsible Civil Rights Official shall process the complaint and, upon the acceptance of a complaint, investigate accordingly.
- (2) Compliance Reviews - the Responsible Civil Rights Official may periodically conduct reviews of program participants in order to ascertain whether there has been a failure to comply with AFFH or any other Federal civil rights law for which HUD has jurisdiction.

Where appropriate, the Responsible Civil Rights Official shall attempt resolution through informal means, a Voluntary Compliance Agreement ("VCA"), or, in appropriate circumstances, assurances or special assurances of compliance in lieu of a VCA.

If resolution is not achieved and a violation is found, the Responsible Civil Rights Official shall issue a Letter of Findings to the program participant.

If the Responsible Civil Rights Official determines that compliance cannot be secured by voluntary means and ten days have elapsed since the determination of noncompliance was issued, compliance may be effected through additional enforcement actions, including, but not limited to:

- (1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;
- (2) The initiation of an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action pursuant to 24 CFR 180.415 seeking suspension or termination of or refusal to grant or to continue to grant Federal financial assistance and any other appropriate relief necessary to remedy the non-compliance, including but not limited to conditioning the use of Federal financial assistance, and other declaratory, injunctive, or monetary relief;
- (3) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and
- (4) Any applicable proceeding under State or local law.

Further, Federal financial assistance may be refused as HUD is not required to provide assistance during the pendency of the administrative proceeding.

Questions for Member Feedback for Comments to AFFH Proposed Rule

HUD poses thirty-two (32) specific questions (many with subparts) regarding the AFFH Proposed Rule, many of which warrant member feedback for incorporation into the actual comments to the rule. The relevant questions arranged by topic area are as follows:

A. Equity Plans

Q8. HUD requests commenters provide feedback on the content of the Equity Plan. Specifically:

Q8a. Are the questions effective for purposes of how to assess where equity is lacking and to facilitate the development of meaningful goals that are designed and can be reasonably expected to overcome the effects of past or current policies that have contributed to a systemic lack of equity? Put differently, do the proposed questions clearly elicit from program participants an assessment of the fair housing issues that exist and their causes so that goals can be appropriately tailored to address the identified fair housing issues?

Q8b. Does the analysis lend itself to identifying fair housing issues for each of the following protected class groups: race, color, national origin, sex, religion, familial status, and

disability? If not, how can HUD improve this aspect of the analysis to better serve this purpose? Are there additional data sources that would assist in facilitating this analysis?

Q8c. What additional areas of analysis, if any, should HUD include?

Q8d. Should the fair housing goals be modified, improved, or streamlined so that program participants can set appropriate goals for overcoming systemic issues impacting their communities?

Q8e. This proposed rule does not currently identify which specific maps and tables contained in the HUD-provided data program participants should rely on in answering the fair housing issues questions. Should HUD require the use of specific data sets and if so, what benefit would that have? How can HUD ensure that program participants, in using the HUD-provided data, identify the fair housing issues and underlying reasons for what the data show in order to assess where equity is truly lacking in their geographic areas of analysis?

Q8f. What is the proper regional analysis program participants should undertake in order to identify fair housing issues and set meaningful fair housing goals? Should different program participants have different required regional analyses (e.g., States vs. local governments; non-statewide PHAs)?

Q8g. Does HUD need to more specifically explain the required level of geographic analysis, whether in this rule itself or in sub-regulatory guidance, for purposes of the development of the Equity Plan, including how different levels of geographic analysis would facilitate the setting of fair housing goals that would result in material positive change that advances equity within communities? For example, should HUD require certain types of program participants to conduct an analysis at the following levels of geography for each fair housing issue: Core-Based Statistical Area, Metropolitan Statistical Areas, Block Groups, Census Tracts, and counties?

Q8h. Are there different or additional questions that HUD should pose to rural areas to assist such areas? If so, how should the analysis for rural areas differ from the proposed analysis?

Q8i. Has HUD sufficiently explained how to prioritize fair housing issues within fair housing goal categories for purposes of establishing meaningful fair housing goals? What additional clarification is needed, if any?

Q8j. How can HUD continue to streamline the required analysis for PHAs while also ensuring an appropriate fair housing analysis is conducted and meaningful fair housing goals are established and implemented?

Q8k. Are there areas of analysis that HUD should include for PHAs that it has not included in this proposed rule that would better assist PHAs in meeting their obligation to

affirmatively further fair housing? This may include analysis addressed to PHA-specific programs, such as public housing, vouchers, Moving To Work, or other PHA programs, as well as by type of PHA, such as troubled or qualified PHAs.

Q8l. Are there additional ways HUD could incentivize PHAs to collaborate with consolidated plan program participants in conducting an Equity Plan such that they can pool resources and develop broader solutions to fair housing issues?

Q8m. Since HUD has removed the requirement to identify and prioritize contributing factors, as was required by the Assessment Tool under the 2015 AFFH Rule, do the questions appropriately solicit responses that would include the underlying causes of the fair housing issues identified?

Q8n. Are there specific questions HUD should ask that it has not included in this proposed rule?

Q19. How can HUD best facilitate receiving feedback on Equity Plans submitted for its review from members of the public in order to inform the review process and how should HUD consider such feedback?

Q22. HUD specifically solicits comment on the proposal to publish submitted plans that it is reviewing but has not yet accepted or non-accepted. HUD seeks comment on both the benefits of this proposal and concerns with it.

Q26. Program participants who collaborate and conduct a joint Equity Plan may benefit from pooling resources to overcome fair housing issues. Are there further incentives HUD should or could offer to program participants that submit joint Equity Plans to HUD?

Q27. An Equity Plan must be revised if a material change occurs (e.g. presidentially declared disaster that impacts program participant's jurisdiction). HUD seeks comment on whether this proposal properly captures the circumstances under which a program participant should revise its Equity Plan, and in particular on the circumstances under which a disaster should or should not trigger the need for such revision.

B. Community Engagement

Q4. Are there different or additional regulatory changes HUD could make to the proposed rule that would be more effective in affirmatively furthering fair housing, including ways to improve access to community assets and other housing-related opportunities for members of protected class groups, including historically underserved communities, individuals with disabilities, and other vulnerable populations?

Q5. In what ways can HUD assist program participants in facilitating the community engagement process? Specifically:

Q5a. 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?

Q5b. Should HUD provide different requirements for community engagement based on the type of geographic area the program participant serves (e.g., rural, urban, suburban, statewide, etc.) and if so, why should requirements differ based on type of geography?

Q5c. Should HUD require program participants to utilize different technology to conduct outreach and engagement? If so, which technologies have proven to be successful tools for community engagement? Are these technologies usable by individuals with disabilities, including those who utilize assistive technology or require reasonable accommodations such as real-time captioning or sign-language interpreters?

Q5d. Has HUD sufficiently distinguished the differences between community engagement and citizen participation or resident participation such that program participants understand that HUD expects a more robust engagement process for purposes of the development of the Equity Plan than has previously been required for purposes of programmatic planning? How can HUD ensure that these important conversations are fully had within communities while not significantly increasing the burden on program participants and the communities themselves? Are there ways in which HUD can reduce any unnecessary burden resulting from separate requirements to conduct community engagement and citizen participation (for consolidated plan program participants) or resident participation (for PHAs)?

Q5e. Are there specific types of technical assistance that HUD can provide to assist program participants in conducting robust community engagement, including how community engagement can inform goal setting, implementation of goals, and progress evaluations? If so, please specify the types of technical assistance that would be most useful.

Q5f. Should HUD require the community engagement process to afford a minimum amount of time for different types of engagement activities (e.g., public comments on proposed Equity Plans, notice before public meetings)? If so, what should the minimum amount of time be in order to afford members of the community an equal and fair opportunity to participate in the development of the Equity Plan?

C. Compliance/Enforcement

Q13. Submission deadlines for PHAs are determined by the PHA's total number of public housing unit and vouchers, with PHAs with larger portfolios required to submit Equity Plans earlier (e.g. a PHA with 50,000 or more combined public housing units and vouchers required to submit their Equity Plan no later than 24 months after the effective date of the final rule or 365 calendar days prior to the date for which a new 5-year plan is due after January 1, 2024, whichever is earlier). HUD welcomes feedback on different cutoffs for submissions deadlines

that are accompanied by explanations of why different cut offs should be used instead of those in this proposed rule. HUD also welcomes comment on whether the deadline timeframes are appropriate and what, if any, obstacles might these new timeframes present with respect to the development of the Equity Plan and compliance with other programmatic requirements?

Q14. HUD seeks comment on whether it should require new program participants to engage in any specific planning process or other actions to meet their obligation to affirmatively further fair housing prior to the submission of their first Equity Plan.

Q15. HUD requests specific feedback on whether the compliance procedures and procedures for effecting compliance can be further clarified and improved.

Q28. With respect to the proposed AFFH enforcement scheme, complaints alleging the failure of a program participant to affirmatively further fair housing must be filed with HUD within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause. While noting that the proposed inclusion of a good cause exception reflects HUD's intent to be consistent with the regulations and practices of Federal agencies with respect to enforcement of various civil rights statutes, HUD specifically seeks comment on the following:

Q28a. Is 365 days an appropriate time limit? Are there specific considerations that argue for a longer or shorter time limit?

Q28b. What specific circumstances might constitute "good cause," under which the Responsible Civil Rights Official might be justified in extending the proposed 365-day deadline (e.g., the conduct constituting the alleged violation was not known or made public within the 365-day period)? Are there specific concerns that mitigate against a good cause exception (e.g., a concern about inconsistent application)?

Q32. ... Under the 2015 AFFH Rule, HUD was required to disapprove a program participant's programmatic plan under such circumstances, putting the program participant's continued funding at risk. This meant HUD had only two options: (a) accept a fair housing plan despite deficiencies or (b) terminate the program participant's funding. ... Under the proposed framework, HUD can reject a program participant's Equity Plan but accept its programmatic plan, allowing funding to continue so long as the program participant signs special assurances prepared by the Responsible Civil Rights Official that require the program participant to submit and obtain HUD acceptance of an Equity Plan by a specific date. The proposed rule provides that the program participant must commit to achieving an Equity Plan that meets regulatory requirements within 180 days of the end of the HUD review period for the programmatic plan and to amend its programmatic plans to reflect the Equity Plan's fair housing goals within 180 days of HUD's acceptance of the Equity Plan in order to continue to receive Federal financial assistance from HUD. A program participant's failure to enter into special assurances will result in disapproval of its funding plan. Those program participants that submit special assurances but do not fulfill them within the timeline provided will face enforcement action that includes the

initiation of fund termination and a refusal to grant or to continue to grant Federal financial assistance.

... HUD will publicly post all executed special assurances, and subsequently publicly post Equity Plans submitted pursuant to the special assurances and HUD's decision to accept the plans or not. ...

Q32a. Does the special assurance framework, provide sufficient incentive for program participants to develop and submit compliant Equity Plans in a timely manner? Are there changes that can be made to this proposed rule that would further incentivize timely and sufficient submissions?

Q32b. Are the remedies available to HUD under this framework sufficient? Does HUD need to set forth with greater specificity the remedies that a program participant could face for failing to provide an acceptable Equity Plan by the time its programmatic plan must be accepted? In particular, should the final rule specify the circumstances under which a program participant necessarily will lose funding, and if so, what are those circumstances?

D. Burden Reduction

Q1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?

Q2. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?

Q9. In order to reduce burden on program participants, HUD requests comments on how Equity Plans should be submitted to the Department (e.g., through a secure portal, via email, through a webpage that allows uploads, etc.) and whether HUD should mandate the file format the Equity Plan is submitted in (e.g., MS Word, PDF, etc.).

Q30. HUD seeks comment on whether the conforming amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 are adequate to ensure that programmatic requirements are consistent with program participants' implementation of this proposed rule's requirements. Specifically, HUD seeks comment on whether the specific provisions amended are sufficient or whether additional amendments should be made. Are there specific ways in which HUD can further clarify the conforming amendments to assist program participants in understanding and fulfilling their obligations to affirmatively further fair housing?

Q31. Certain definitions in this proposed rule contain language explaining how the defined term applies to the analysis required by § 5.154 and the type of analysis that HUD expects to be

included in an Equity Plan. HUD seeks comment on whether the inclusion of this type of language in the regulations is helpful and provides additional clarity regarding how the defined term should be used for purposes of developing an Equity Plan.

E. HUD-Provided Data/Technical Assistance

Q3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH-T, which is available at <https://egis.hud.gov/affht/>, while exploring possible improvements to the existing AFFH-T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants' data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

Q3a. Should HUD also provide static data packages that include some of the data included in the AFFH-T and a narrative description of those data? If so, what data would be most helpful to include in these data packages and narrative descriptions? For which program participants would data packages and narrative descriptions be most useful?

Q3b. What additional data and tools could HUD provide to facilitate a regional analysis?

Q3c. What types of data relating to homeownership opportunities should HUD consider providing? In addition to data on homeownership rates, which already are available in the consolidated planning data (CHAS) (which can be accessed at <https://www.huduser.gov/portal/datasets/cp.html>), including by protected class, what other data sources are reflective of disparities in homeownership opportunity?

Q3d. What other data sources should HUD provide for program participants to better identify the various types of inequity experienced by members of protected class groups that are the subject of the proposed rule's required analysis?

Q3e. Are there specific functions that could be included in the AFFH-T to allow the data to be more usable, more clearly displayed, or otherwise easier to interpret? If so, please provide a description of such functionality.

Q3f. Should HUD consider providing data that are not nationally uniform if they are available for certain program participants even if such data are not available for all program participants? If so, please provide examples of data that would be useful to provide for which there is not nationally uniform data and the reasons why it would be useful for HUD to provide these data.

Q3g. Are there additional data sets HUD could provide or require to be used for purposes of conducting a fair housing analysis that relate to eviction, neighborhood features (access to parks, green space, trees), zoning and land use, and housing-related costs (like transportation)?

Q21. What forms of technical assistance could HUD provide that would better position program participants and their communities to develop their Equity Plans and ultimately implement and achieve the fair housing outcomes set therein?

F. Definitions/Language

Q6. HUD seeks comments on whether the definition of “affordable housing opportunities” is sufficiently clear.

Affordable housing opportunities means:

(1) Housing that:

- (i) Is affordable to low- and moderate-income households;*
- (ii) Has a sufficient number of bedrooms to meet the needs of families of various sizes, particularly large families; and*
- (iii) Meets basic habitability requirements.*

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

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

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

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

HUD also seeks comment on whether the definition should apply to both rental and owner-occupied units. Are there other categories of affordable housing that should be explicitly referenced in this definition?

Q7. HUD has provided a new definition of “geographic area of analysis,” which is intended to provide program participants and the public a clear understanding of the types and levels of analysis that are needed by different types of program participants.

Geographic area, geographic area of analysis, or area means the areas, including a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or other applicable area

(e.g., census tract, neighborhood, ZIP code, block group, housing development, or portion thereof) relevant to the analysis required by § 5.154. The geographic areas of analysis for the different types of program participants are as follows:

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

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

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

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

Does this definition clearly articulate the geographic areas of analysis for each type of program participant and are the levels of analyses for the types of program participants appropriate to ensure Equity Plans are developed and implemented in a manner that advances equity?

Q10. HUD has included several new definitions in this proposed rule and requests feedback on whether they should be drafted differently, whether there may be additional definitions that are not included that would be useful, and whether any definitions included in this proposed rule are unnecessary.

Q11. Has HUD appropriately captured the types of populations—based on the characteristics protected by the Fair Housing Act—that have historically been underserved and continue to be

underserved today in communities in the new definition of “Underserved communities,” and if not, which additional types of populations or groups should HUD consider adding to this definition?

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

Q12. HUD requests feedback on whether including the definition of “Balanced approach” is helpful in understanding how to connect funding decisions to advancing equity within communities and how this definition can be modified or improved in order to more clearly make that connection.

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

Q18. Are there other types of “community assets,” that should be included in the new definition and the analysis of disparities in access to opportunity for purposes of the Equity Plan? If so, which assets should be included that are not currently included in this proposed rule?

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