

# Highlights of HUD's Proposed Affirmatively Furthering Fair Housing (AFFH) Rule for Aging and Disability Advocates

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## Introduction

The US Department of Housing and Urban Development (HUD) has released a proposed rule on the Fair Housing Act's (FHA's) Affirmatively Furthering Fair Housing (AFFH) mandate. The FHA – which prohibits housing discrimination based on race, color, religion, national origin, sex (including gender identity and sexual orientation), disability, and familial status – also requires recipients of HUD funding to affirmatively further fair housing. These recipients must take meaningful actions to combat discrimination, overcome segregation, and reduce barriers that restrict access to opportunity for protected classes. The 2023 proposed AFFH Rule builds on past versions of this rule and sets out the obligations of HUD grantees, including Public Housing Authorities (PHAs), states, and local jurisdictions to identify and remedy fair housing problems in their communities.

The proposed rule is an important step towards advancing fair housing. This fact sheet summarizes the proposed rule and some highlights for aging and disability advocates. Page numbers in this fact sheet refer to the [preview version of the proposed rule](#), and we encourage advocates to view the rule itself for a more comprehensive overview and complete details.

## Summary of the Proposed AFFH Rule

Under the proposed rule, states, local jurisdictions, and PHAs—collectively referred to as “program participants”—must develop “Equity Plans” at least every five years, conducting a focused analysis of fair housing issues in their communities and setting goals to overcome them. Equity Plans must be informed by HUD-provided data, local data and knowledge, and “robust community engagement.” Program participants will submit Equity Plans to HUD for approval, and HUD will publish Equity Plans on HUD-maintained websites to increase transparency. Following approval of their Equity Plans, program participants will incorporate fair housing goals and strategies from their Equity Plans into planning documents, such as Consolidated Plans and PHA Plans. Program participants will also provide annual progress reports to HUD (which will be published on HUD websites) on progress achieved for each fair housing goal, along with any proposed revisions to Equity Plans. Finally, the proposed rule also creates a new administrative complaint and enforcement mechanism that will allow members of the public to file complaints regarding a program participant's failure to comply with AFFH regulations or Equity Plan commitments, as well as actions that are “materially inconsistent” with AFFH obligations.

## Definitions: § 5.152 (p. 156)

The proposed rule features the following definitions that incorporate the needs of people with disabilities. Advocates should refer to the proposed rule for full definitions of these terms.

- **“Affordable Housing Opportunities”** means, among other things, housing in locations that promote integration and is accessible to individuals with disabilities, including by providing necessary accessibility features. (p. 157)
- **“Community Assets”** means programs, infrastructure, and facilities that provide opportunity and a desirable environment, examples of which include efficient transportation services, community-based supportive services for individuals with disabilities, and healthcare services. (p. 159)
- **“Disability”** is defined in a manner consistent with federal nondiscrimination laws. The definition does not change the definition of “disability” or “disabled person” adopted pursuant to a HUD program statute for purposes of determining an individual’s eligibility to participate in a housing program that serves a specified population. (p. 160)
- **“Fair Housing Choice”** includes a realistic opportunity for persons with disabilities to obtain and maintain 1) housing with accessibility features meeting the individual’s disability-related needs; 2) housing provided in the most integrated setting appropriate to an individual’s needs; and 3) housing where community assets are accessible to individuals with disabilities, including voluntary disability-related services that individuals need to live in their housing. (p. 162)
- **“Integration”** for people with disabilities means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual’s needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and Section 504. (p. 166-67)
- **“Segregation”** for persons with disabilities includes a condition in which available housing or services are not in the most integrated setting appropriate to an individual’s needs in accordance with the requirements of the Americans with Disabilities Act and Section 504. (p.170-71)
- **“Underserved Communities”** means groups or classes of individuals “that are protected classes or who share a particular characteristic, disproportionately include members of protected class groups, and have not received equitable treatment...[e]xamples 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.” (p. 171-72)

## Equity Plans § 5.154 (p. 172)

Program participants must develop Equity Plans at least every five years. An Equity Plan must have two components: (1) analysis of fair housing data and identification of fair housing issues required by fair housing goal categories; and (2) the establishment and commitment to undertake fair housing goals, strategies, and meaningful actions for each fair housing goal category.

- Equity Plans must be informed by HUD-provided data, local data and knowledge, and “robust community engagement.”

- Program participants must submit annual progress evaluations to HUD that describe progress towards goals, any relevant changed circumstances, and, if necessary, proposed adjustments to the Equity Plan.

## Fair Housing Goal Categories

- Equity Plans must analyze fair housing issues and set goals that address the following fair housing goal categories listed on p. 175:
  1. Segregation and integration
  2. Racially or ethnically concentrated areas of poverty
  3. Disparities in access to opportunity
  4. Inequitable access to affordable housing opportunities and homeownership opportunities
  5. 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
  6. Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure
  7. 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

As part of their analysis, program participants must evaluate the jurisdiction's local policies and practices and whether changes are necessary to affirmatively further fair housing. They must respond to a variety of questions, including the questions below that are relevant to older adults and people with disabilities:

## Segregation and Integration

Program participants must identify areas within the geographic area of analysis that have significant concentrations of particular protected class groups, including individuals with disabilities, and describe public or private practices and other factors that may have contributed to patterns of segregation and integration. (p. 176-78, 183-84)

## Access to Community Assets

All program participants must identify barriers that deny individuals with disabilities access to opportunity and community assets with regard to the issues listed on p. 179 and 187:

1. Accessible and affordable housing;
2. Accessible government facilities and websites;
3. Accessible public infrastructure (sidewalks, pedestrian crossings, parks and recreation, libraries);
4. Reliable and accessible transportation;
5. Accessible schools and educational programs, and in particular, high-performing schools and educational programs;
6. Employment; and
7. Community-based services

In addition, PHAs must do the following:

- Analyze differences in the quality of the PHA’s housing for residents living in “elderly-designated housing” or housing disproportionately serving older adults compared to housing serving families. (p. 187)
- Analyze whether there is a need for services, improved access to economic opportunity, or place-based investments to assist the PHA’s assisted residents or neighborhoods where its housing developments or Housing Choice Vouchers are located. Examples could include a need for services for residents, service coordinators, and health access. (p. 188)

## Community Engagement § 5.158 (p. 199)

During development of the Equity Plan, program participants must engage with the public to identify fair housing issues and set fair housing goals. Program participants must also engage with the public on at least an annual basis while the Equity Plan is in effect. Program participants must do the following:

- For the development of the Equity Plan, hold at least three public meetings at various accessible locations and at different times to ensure that members of protected class groups and underserved communities can participate. At least one meeting must be in a jurisdiction where underserved communities disproportionately reside. Participants should also make efforts to obtain input from underserved populations who do not live in underserved neighborhoods. (p. 203)
- For annual engagement, participants must hold at least two public meetings at different locations, one of which should be in an area where underserved communities disproportionately reside. (p. 203)
- Program participants must connect with and provide information about fair housing planning to local community leaders, which may include (but are not limited to) advocates, community-based organizations, clergy, healthcare professionals, educational leaders or teachers, and other service providers, such as social workers and case managers. (p. 203)
- While the proposed rule itself does not include an explicit requirement for program participants to consult with agencies advocating for people with disabilities – such as Centers for Independent Living, Protection & Advocacy Agencies, Aging and Disability Resource Centers, and Councils on Developmental Disabilities – the preamble of the proposed rule makes clear that HUD intends for public engagement to include these organizations. (p. 50)

## Compliance Procedures § 5.170 (p. 226)

Individuals and organizations may submit complaints to HUD regarding a program participant’s failure to comply with the AFFH Rule or its Equity Plan commitments, as well as actions that are “materially inconsistent” with the obligation to affirmatively further fair housing. Complaints must be filed within 365 days of the last incident of the alleged violation unless good cause exists for extending the deadline.

## Conclusion

Justice in Aging supports the new proposed AFFH Rule, and we will work with partners to submit comments identifying ways to strengthen the rule even further for older adults and people with disabilities. Advocates who are interested in providing input on the proposed rule can [visit HUD’s AFFH website](#) for more resources and [submit comments](#) by April 10, 2023.