



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

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Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276,
Washington, DC 20410-0001

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RE: Docket No. FR-6123-A-01, Affirmatively Furthering Fair Housing: Streamlining and Enhancements

The City of Somerville welcomes the opportunity to submit comments to the Department of Housing and Urban Development (HUD) regarding proposed amendments to the 2015 Affirmatively Furthering Fair Housing rule (AFFH). Soliciting public input on the proposed amendments to the AFFH rule can provide a wide range of opinions and feedback which is important to ensure a transparent process. The City has focused its comments on particular sections of the questions below.

The City supports the goals of the current AFFH rule and is committed to addressing fair housing issues in our community. The intent and goals of the AFFH rule and its associated tools should not be altered or amended in a manner that would substantially diminish meaningful actions that could achieve positive change. Small changes may be needed to enhance the rule and help participants meet their obligations, but significant change could adversely affect the original intent of the rule.

- 1. What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?**

- **What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations?**

Community participation and engagement is an integral component for program participants that are seeking to fulfill the Affirmatively Furthering Fair Housing (AFFH) regulations. Community participation empowers residents to advocate for policy changes and provides an otherwise absent avenue for feedback regarding the lived experiences of discrimination. Input from the community must be included in the AFFH process, but it depends on the manner used to solicit feedback. Certain methods like small group discussions may be useful, but insufficient as a way to access a range of perspectives. The population and demographics of a program participant may play a role in which type of method will most effectively engage and receive the most feedback from the public. Participants with a large percentage of seniors may find it difficult to exclusively engage their community through online surveys and other internet based methods.

Therefore, an “All the above” community participation approach may be most useful for program participants to undertake in fulfilling their AFFH obligations. Such an approach may include, but is not limited to soliciting community feedback through online or print surveys, use of social media, small and possibly large group discussions, outreach at community events, public hearings and stakeholder meetings. Use of these methods and any others will allow participants to retain some sort of flexibility and reduce regulatory burden. HUD can help reduce some burdens by providing community engagement strategies to program participants. Residents will be able to convey their opinions and thoughts in various manners and it will hopefully ensure that historically disenfranchised communities are included in the process and their voices can be heard.

- **Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)?**

The issues considered in the AFFH may require separate or additional public participation than what is already required, if the program participant determines it is necessary to fulfill their AFFH obligations. Mandates on participants to further address a particular AFHH topic, beyond what is already required, seem unnecessarily burdensome (except in cases when a participant is not putting forth good-faith efforts to comply with the AFFH rule). Based on Somerville’s experience, public input on the AFFH should be included, but not mandatory as part of the Consolidated Plan; it may be prohibitively time consuming for participants with large populations.

2. **How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely**

upon their own experiences? If the latter, how should HUD assess this more qualitative approach?

- **Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation?**

For any proposed amendment to the AFFH regulations concerning data collection and analysis, we believe HUD should allow program participants to use their own data and require the use of a uniform data set to compare program participants with each other. The uniform data set should be continually updated, but also supplemented with participant experiences and local data. The data tool provides a generalized data set to compare participants while also reducing the amount of time and work it would take a participant to gather the data themselves. For those participants without GIS or mapping specialists (or access to such specialists), having a visual representation of the data is helpful for general comprehension and community engagement.

- **Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences?**

Due to the demographic and geographic differences in communities, it may be useful for participants to use some of their own experiences. However, communities should not rely solely on their own experiences, especially at the expense of not using any uniform data. Issues that may arise when relying solely on experience may include the neglect of community engagement and input, as some program participants are not always fully aware of the housing issues affecting residents. Additionally, relying exclusively on experience in a report could lead to participants not complying with the AFFH rule and a lack of depth and framework to their data. A balance approached would be the best method in regard to collecting and analyzing the methods used to analyze the data.

- 3. How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERs), or utilize an alternative structure?**

- **How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual**

performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer?

We believe program participants should be required to report on AFFH plans and progress no more than every 5 years or a time frame HUD mandates, whichever is longer. A time frame shorter than 5 years would likely prove to be excessively burdensome for participants, as staff capacity, time and resources are all needed to undertake and complete thoughtful preparation of an Assessment of Fair Housing (AFH). Additionally, some of the issues in the AFFH regulations will take time to change and/or improve in each respective participant's community. Therefore, allowing a sufficient amount of time between reporting will enable participants to accurately determine if there has been noticeable or stagnant change.

4. Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?

- **Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address?**

The proposed rule should require program participants to address both specific obstacles in fair housing and allow program participants to be able to self-determine the number and types of obstacles to address. Ensuring that program participants must address certain fair housing issues will retain the integrity and original intent of the AFFH rule. Moreover, if every municipality has to work on specific fair housing obstacles, it will provide comprehensive data that can be used to compare and contrast the obstacles participants are facing across the country. It is important to note that in some cases where more control is given to a participant there may be less concerted effort placed on particular issues that may not be a high priority for them. There must be a balance that will provide program participants flexibility and control on issues important to a given community, while still meeting the overall intent and objectives of the AFFH rule.

- **Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control?**

It would be beneficial for HUD to consider an incentive program for participants to collaborate regionally. The City of Somerville is part of the Greater Boston Metropolitan

Area, and a member community of several regional planning initiatives. As such, we are aware that there are other municipalities in the Greater Boston metropolitan area that share similar fair housing issues in terms of insufficient housing stock, lead paint in housing built before 1978, and various other factors. HUD should take steps to encourage participants in close proximity to each other and that have AFH submissions due at the same time to collaborate and share ideas in the process. Collaborations between participants could increase resources and remedies that program participants and residents can access.

5. How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?

For any proposed change to the AFFH rule, balance is needed when operating at the local level. We believe significant but not total deference should be provided to program participants. Participants know their local communities best and understand that a “one size fits all” approach may be counter-productive to establishing meaningful objectives that address various fair housing issues and obstacles. Program participants may share some characteristics while differing in others. Such differences suggest the need for a healthy amount of local autonomy; however, such autonomy must be carefully monitored in order to prevent the AFFH rule from being compromised either intentionally or inadvertently. For example, historical patterns of land use and zoning regulations should be reviewed with respect to their impact on a community’s capacity to support and encourage housing development that meets the spirit and purpose of the AFFH rule.

As it pertains to metrics and milestones that measure progress, less deference may have to be afforded, so improvements and actions to affirmatively further fair housing can be appropriately evaluated. If total deference were to be given to participants it would be difficult to determine or properly evaluate their progress in some cases, because their measure of success or improvement may vary greatly compared to another participant. One way HUD could help program participants with regard to measuring progress is by examining and providing thorough feedback on draft submissions of the AFH which will enable a participant to make necessary changes prior to submission of a final report.

6. How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?

- **How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable?**

Due to the fact that many of the goals of the AFFH can only be measured in the mid-to-long term, any sort of short term evaluation needs to be malleable and take into account different circumstances that program participants may face. Providing participants with guidelines about how AFFH efforts will be evaluated and what is acceptable or unacceptable could help inform work in localities as to what they can and cannot do. One method that HUD could use is to develop a “grading rubric” of sorts, which could foster understanding of how HUD plans on reviewing completed reports.

Another element that should be taken into consideration when determining whether AFFH efforts are acceptable is the extent to which communities encourage input and participation. Lack of community engagement would be a strong indicator of a participant’s willingness to hear about fair housing issues that may exist. Another way for HUD to assess local efforts is the amount and quality of information available on housing and its supply. Participants need to be able to identify if there is a high demand and low supply of housing in their communities, and how this dynamic can factor into fair housing law violations and reinforce existing segregation patterns.

- **What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)?**

Participants with insufficient efforts could be required to have staff attend HUD training (or trainings) on the requirements of the AFFH rule. An in-depth training by HUD official or representative could be useful and offer participants important feedback. Inevitably, the cost to conduct some sort of training or have a HUD staff member work “one-on-one” with the participant would have to be considered.

Ultimately though, we are confident that benefits gained from such training would outweigh the costs, if they can help position the participant to complete a thorough AFH and implement meaningful fair housing policies at the local level.

- 7. Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., “safe harbors”), and if so, what should they be?**

Determining a certain level of effort on specific actions that will ensure a participant is in compliance with the AFFH may be challenging, but would show that HUD is serious about implementing the AFFH rule and holding participants accountable. Some participants may disagree with the level of scrutiny their efforts will receive and others may call such action burdensome. At the same time, though, establishing a “safe harbor” could help clarify what is necessary.

Determining what such safe harbors should be is beyond what we are in position to comment on, in a fully informed manner that incorporates a diversity of local circumstances and conditions. Overall, the City of Somerville discourages adoption of any measures that would compromise or otherwise undermine the intent of HUD’s 2015 AFFH rule. Any time a municipality is required to submit a report, issues of reporting requirement burdens are likely to arise, often legitimately.

At the same time, issues involving residential patterns that can directly affect quality of economic opportunity– and ultimately the quality of life for millions of people – must be accorded paramount importance. The Fair Housing Act of 1968 and HUD’s 2015 AFFH rule sought to end housing discrimination and its pernicious effects. Our hope is that HUD remains committed to this goal.

Respectfully submitted on behalf of the City of Somerville, Massachusetts.