



**PUBLIC HEALTH
LAW CENTER**

at Mitchell Hamline School of Law

April 24, 2023

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6250-P-01, Affirmatively Furthering Fair Housing

To Whom It May Concern,

The Public Health Law Center (PHLC) is pleased to submit this comment in response to the Department of Housing and Urban Development's (HUD) Affirmatively Furthering Fair Housing rule to further address fair housing by centering equity. PHLC is a nonprofit organization working to advance equitable public health policies through the power of law. For over 20 years, PHLC has fought to regulate and eliminate commercial tobacco products, increase access to healthy food, support physical activity, promote equitable transportation, and improve environmental health as means of reducing chronic disease. PHLC partners with Tribal leaders, federal agencies, health advocacy organizations, state and local governments, and many others to combat systems of institutional racism and create healthier communities across the country.

In keeping with these goals, PHLC recently expanded its scope of work to include the pursuit of healthy housing, especially for the historically disenfranchised who are now most vulnerable to the devastating impacts of climate change. Most recently, we led a coalition of environmental and social justice groups in petitioning¹ HUD for equitable decarbonization of public housing. We are now working to provide jurisdictions with legal technical assistance to support efforts to enact progressive building performance standards to support electrification and reducing energy burden.

We applaud HUD's work to include equity as part of Public Housing Authority's (PHA) and program participants' annual plans to cover their operations and needs. We support the new proposed rule to further AFFH mandates and simplify the process for PHAs in developing their Equity Plans. Everyone, regardless of race, age, class, disability status or religion deserves to be ensured freedom from housing discrimination and the right to a stable and safe place to call home. PHLC believes that everyone deserves access to quality community assets that provide basic needs for survival and advancement, such as grocery stores with healthy food options, job opportunities, and schools that are sufficiently staffed and equipped with modern technology.

¹ Public Health Law Center. RE: Petition for Rulemaking to Electrify and Weatherize Public Housing and Housing under HTF, HOME, and CDBG (2022).

<https://www.publichealthlawcenter.org/sites/default/files/resources/public-housing-petition.pdf>

Along with providing much needed support and funding, the proposed rule could also help more people secure housing and a venue to share their needs and concerns. We encourage further efforts to increase support to PHAs doing this important work and offer suggested changes to the Assessment Tool to better discern equity issues from program participants.

Defining Equity

Overt acts of discrimination are rare. Tighter restrictions and societal standards have made the once common practice of obtrusive bigotry uncommon. However, this does not mean that discrimination no longer exists. Discrimination has taken a new face, and is hidden behind inequitable policies, local ordinances, and business practices. To our nation's credit, it is true that we no longer operate in a Jim Crow-era society, largely due to laws such as the Civil Rights Act and the Fair Housing Act which maintained the goal of eliminating discrimination's historical perversion of American culture. These laws have allowed us to address and effectively eviscerate the ability to establish blatantly discriminatory policies and practices. While this is a necessary first step, discrimination, particularly on the basis of race, is a convoluted and nuanced concept. Therefore, equity must be prioritized by jurisdictions, especially when completing fair housing assessments.

The first change we recommend is for HUD to provide a clear and succinct definition of "equity" or "health equity" that all staff undertaking fair housing planning and community members, nationwide, can reference while developing their Equity Plans. This definition should clearly convey the importance of equity in fair housing to attain the goals of the fair housing standard. It is important that this definition be specific, actionable, and measurable. Further, the definition should be centered around the political² and social³ determinants of health⁴ to acknowledge historical and current disenfranchisement, and to acknowledge a path forward. The health equity definition created by Dr. Paula Braveman and her team is an excellent starting point: "Health equity means that everyone has a fair and just opportunity to be as healthy as possible. This requires removing obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care. For the purposes of measurement, health equity means reducing and ultimately eliminating disparities in health and its

² Satcher Health Leadership Institute, Morehouse School of Medicine. Political Determinants of Health (2020). <https://satcherinstitute.org/priorities/political-determinants-of-health/>

³ Center for Disease Control. Social Determinants of Health (2002). <https://www.cdc.gov/about/sdoh/index.html>

⁴ In addition to traditional determinants of health such as genetics and direct environment, modern policy often refers to the social determinants of health, "the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks." U.S. HEALTH & HUMAN SERVICES DEPARTMENT, Social Determinants of Health, <https://health.gov/healthypeople/priority-areas/socialdeterminants-health> (last visited July 26, 2022). Moreover, the social determinants of health are themselves shaped by political determinants. DANIEL DAWES, THE POLITICAL DETERMINANTS OF HEALTH, Johns Hopkins University Press (2020). Commenters recognize that all of these various factors play a role in our understanding of health.

determinants that adversely affect excluded or marginalized groups.”⁵ HUD can use this opportunity to create an equity standard to capture the fundamental nature of housing.

PHAs working on their Equity Plans need a common understanding of how HUD defines equity or health equity, and how to operationalize the term throughout the Assessment Tool, so that all Equity Plans reflect the same overarching goal of furthering fair housing. The definition should use simple language so that all community members can understand the meaning and participate in the community engagement processes. It should also emphasize how equity affirms that all people should have access to the same opportunities which can lead to fair housing, as well as support HUD’s mission to “create strong, sustainable, inclusive communities and quality affordable homes for all.”⁶ To assure an understanding of what equity is, and that Equity Plans are created and centered around the provided definition, HUD should allocate funding to PHAs to hire an equity officer, or a consultant who specializes in equity development and leadership. This position will also provide guidance and help staff and community members execute Equity Plans beyond technical assistance needs.

Community Engagement

PHLC commends HUD for maintaining community engagement requirements as a continued priority of the AFFH process. We agree that program participants must engage with members of the public while developing their Equity Plans, including the identification of fair housing issues and the establishment of fair housing goals. Intentional efforts to reach out and seek community member experiences in public housing will build trust and collaboration,⁷ and likely strengthen goal outcomes outlined in their Equity Plan. To aid in the success of the community engagement sessions, we encourage PHAs to reach out and engage with all residents. To ensure that everyone living in a PHA community has an opportunity to participate in their Equity Plan, HUD should provide options to all local PHA offices for in-person and virtual participation. Meeting times should be varied to capture when people are likely to be home and able to participate. Translation services should be offered, if needed. Additionally, online portals or phone hotlines can be utilized to collect information from community members who may not feel comfortable or are unable to attend meetings. Community members should also be compensated for their time. Introductory trainings, webinars, or some other sort of instructional video may be helpful too.

Community engagement creates a unique opportunity for PHAs to discover opportunities to hire residents to execute pieces of the Equity Plan. These opportunities may include canvassing, hosting focus groups, and organizing meeting materials. Hiring community members to work on the Equity Plan would provide capacity and reduce stress in understaffed offices. Also, other community members may be more willing to participate in engagement sessions if they are

⁵ "A New Definition Of Health Equity To Guide Future Efforts And Measure Progress", Health Affairs Blog, June 22, 2017. <https://www.healthaffairs.org/doi/10.1377/forefront.20170622.060710/>

⁶ HUD. Equity Action Plan (2022).

<https://www.hud.gov/sites/dfiles/PA/documents/HUDEquity508compliant.pdf>.

⁷ Rios, Michael, et al. "Civic-University Synergy: Addressing Fair Housing through Engaged Community Programming." *Journal of Community Engagement and Higher Education* 11.3 (2019): 48-57.

facilitated by fellow residents. Resident leadership gives participants assurance that their experiences and perspectives on local issues and equity will be understood and accurately conveyed to decision-makers.

We recommend that the public-facing web portals and tools be easy to access and self-navigable. Staff and community members will be more likely to submit data for Equity Plans if the composition and submission process is simple. Technical support, via phone, email and/or online chat, should be available for those experiencing issues with the web platform, especially in smaller, understaffed offices. The web platform should allow for frequent opportunities to save work to prevent information from being deleted from the system and to allow for participant feedback on how to make the portals more user friendly. Creating tools that are transparent and intuitive to use can support HUD's efforts to solicit additional feedback from community engagement efforts.

PHLC appreciates HUD's intention to allow the public to submit comments to HUD during its review of Equity Plans. Community stakeholders play a critical role in the lives of HUD's residents and will be able to provide much needed expertise on issues facing the community and how the PHA may have missed the mark when drafting the Equity Plan. Additionally, although PHLC favors the establishment of a complaint process, PHLC encourages HUD to clarify the mechanism HUD intends to use to access complaints and how complaints will be processed and adjudicated.

Assessment Tool Addition

HUD's efforts to streamline the Assessment Tool for the Equity Plan is important to reducing time or cost burdens for PHAs working to create and submit their plans. However, we suggest adding an additional question to the Assessment Tool for PHAs, specifically asking how cost and funding conditions affect program participants and PHAs. Collecting this data would allow PHAs to share baseline information to HUD about pertinent funding gaps in their communities, and how sustained federal funds would improve quality of life for residents and address capital improvement needs for housing infrastructure. We recommend that firm guidance accompany this question so that the focus remains on the PHA sharing the specific impediments to providing fair housing to residents, not on a laundry list of what is working poorly in the community. We also encourage HUD to research and create a reporting and investigation system that is both user friendly and allows community members to safely share any noncompliance issues.

Further, one of the broad areas identified in the Assessment Tool should focus on the environmental challenges that impede upon affirmatively furthering fair housing. As HUD attempts to fulfill its mission of providing dignified, safe, and sanitary housing for low-income residents, the agency must be mindful of the demographics it serves and of the health issues that uniquely impact these communities. Public housing residents are disproportionately Black and Hispanic, communities where respiratory illnesses—and especially asthma—are a primary concern. Asthma is an enormous problem in the United States, costing an estimated 82 billion

dollars per year in medical expenses, missed work and school, and mortality.⁸ Asthma disproportionately impacts marginalized and low-income communities,⁹ in large part because these populations have been systematically deprived of health care resources and forced into sub-par housing in neighborhoods with relatively high industrial pollution levels.¹⁰ Because many public housing residents are members of these marginalized groups, public housing residents are more likely than the general public to suffer from asthma.

Public housing residents are also disproportionately children,¹¹ whose still-developing respiratory systems are more susceptible to asthma than adult respiratory systems.¹² Moreover, due to historical and ongoing prejudicial treatment, Black, Puerto Rican and Indigenous children are far more likely to suffer from asthma than white children.¹³ Asthma is one of the leading causes of school absences overall, and children from low-income, Black, and Hispanic families are more likely to miss school because of asthma.¹⁴ Chronic school absences and irregular attendance prevent kids from reaching critical learning milestones and increase the odds that a child will not graduate from high school.¹⁵ In turn, dropping out is correlated with diminished health, increased involvement in the criminal justice system, and a continuation of the vicious cycle of poverty.¹⁶ Given these severe consequences, even minor physical condition deficiencies in HUD-assisted housing are contributing to cumulative racial and socioeconomic inequities.

⁸ Tursynbek Nurmagambetov et al., *The Economic Burden of Asthma in the United States, 2008-2013*, 15 ANNALS OF THE AMERICAN THORACIC SOCIETY 348, 353 (2018).

⁹ Cynthia A. Pate et al., *Asthma Surveillance – United States, 2006-2018*, Surveillance Summaries (Sept. 17, 2021), https://www.cdc.gov/mmwr/volumes/70/ss/ss7005a1.htm?s_cid=ss7005a1_w.

¹⁰ Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 Env'tl. Science & Tech. Letters 345, 345-46 (March 9, 2022). see also Anna Rosofsky et al., *Breathe Easy at Home: A Qualitative Evaluation of a Pediatric Asthma Intervention*, GLOBAL QUALITATIVE NURSING RES., Vol. 3 2016, at 7-8

¹¹ *Supra* n.63.

¹² AMERICAN LUNG ASSOCIATION, *Children and Air Pollution*, <https://www.lung.org/clean-air/outdoors/who-is-at-risk/children-and-air-pollution> (last visited July 22, 2022).

¹³ Asthma and Allergy Foundation of America, *supra* n.63; Asthma and Allergy Foundation of America, *Asthma Facts and Figures* (updated April 2022) <https://www.aafa.org/asthma-facts/>; Mary Kreger et al., *An Underpinning of School Inequities: Asthma Absences and Lost Revenue in California*, J. SCHOOL HEALTH, Vol. 90 2020, at 1, 6.

¹⁴ Hatice S. Zahran, MD, et al., *Vital Signs: Asthma in Children—United States, 2001-2016*, MORBIDITY AND MORTALITY WEEKLY REPORT Vol. 67, No. 5 (Feb. 9, 2018), at 149, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6705e1-H.pdf>; Joy Hsu et al., *Asthma-Related School Absenteeism, Morbidity, and Modifiable Factors*, 51 AM.J. PREVENTATIVE MEDIC. 23, 23 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4914465/pdf/nihms759133.pdf>; Sara B. Johnson et al., *Asthma and Attendance in Urban Schools*, PREVENTING CHRONIC DISEASE, Oct. 2019, at 1, <http://dx.doi.org/10.5888/pcd16.190074>.

¹⁵ DEPARTMENT OF EDUCATION, *Chronic Absenteeism in the Nation's Schools*, <https://www2.ed.gov/datastory/chronicabsenteeism.html#two> (last visited July 31, 2022).

¹⁶ *Id.*; see also WORLD VISION CANADA, *What Is the Cycle of Poverty?*, <https://www.worldvision.ca/stories/childsponsorship/what-is-the-cycle-of-poverty> (Mar. 4, 2021) (“The cycle of poverty begins when a child is born into a poor family. These families often have limited or no resources to create opportunities to advance themselves, which leaves them stuck in the poverty trap.”)

Conclusion

We thank HUD for introducing the proposed rule to further AFFH mandates and for the opportunity for public comments. Incorporating our additional proposed community engagement requirements, streamlined questions in the Assessment Tool, and expanded focus on equity, environmental health concerns, and community voices will provide opportunities for increased dialogue and overall participation in the process to increase fair housing. We also believe the rule will be most successful with a clear, commonly understood definition of “equity,” an additional question regarding funding and cost conditions, and a user-friendly web platform with enhanced technical support that will increase transparency, trust, and overall success of the program.

Sincerely,

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