



We help build homes and communities across rural America.

April 20, 2023

Submitted via regulations.gov

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

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

Gentlepersons:

The Housing Assistance Council (HAC) appreciates this opportunity to comment on the Affirmatively Furthering Fair Housing (AFFH) rule proposed by the Department of Housing and Urban Development (HUD).

HAC is a national nonprofit organization that helps build homes and communities across rural America. Since 1971, HAC has provided below-market financing for affordable housing and community development, technical assistance and training, research and information, and policy formulation to enable solutions for rural communities across the country. In our work, HAC places a special focus on high-needs rural regions – including the Mississippi Delta and the Black Belt, rural Appalachia, Indian Country, the border colonias, and farmworker communities. With over 50 years of experience supporting and developing affordable housing and equity across rural America, HAC is uniquely positioned to comment on AFFH in rural places.

HAC supports, and is a signatory to, comments developed by the National Housing Law Project and the National Community Reinvestment Coalition in response to the proposed AFFH rule. We write separately to emphasize a few points that are particularly relevant to AFFH efforts in rural America.

As HUD's narrative notes, many rural places receive funds through their states rather than directly from HUD for the programs that trigger AFFH requirements. Their fair housing obligations, then, effectively flow through states. The need to analyze equity issues across large and varied geographies, the relatively lower capacity of some jurisdictions within those geographies, and the specifics of rural housing needs combine to create some issues that are particularly salient in rural places, though not unique to them.

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In this letter, HAC makes three primary points:

- Community engagement must be offered in many different ways.
- Analyses must be conducted in smaller geographic areas.
- Data on USDA-supported housing must be specifically included.

We also wish to take this opportunity to support the use of consultants and contractors by program participants and other entities involved in the AFFH process. In the introductory narrative to the proposed rule, HUD states repeatedly that it hopes program participants will not need to hire consultants or contractors to help develop their Equity Plans. While HAC supports HUD's desire to balance burden with completeness, many rural jurisdictions simply do not have the staff capacity to contribute meaningfully to their states' or counties' development and execution of Equity Plans. HUD must evaluate plans and actions based on their content, not on their authors, and must ensure that its nonregulatory guidance does not express a bias against any entity that makes use of non-staff resources.

## **Community engagement must be offered in many different ways.**

***Question 5.b. 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?***

Program participants must offer both online and off-line ways of participating in the Equity Plan process everywhere in the country, but particularly in rural areas. Online participation can be a way for residents of remote rural areas to be involved in hearings or forums they could not otherwise access without burdensome travel. On the other hand, in many remote and even not-so-remote rural places, internet access is inadequate and does not allow for participation in a live event. Grantees should reach out to residents of those areas through the media they use, such as local radio shows and bulletin boards in buildings that serve as community centers – post offices, churches, grocery stores – and should accept resident input by mail, email, and even voice mail.



## **Analyses must be conducted in smaller geographic areas.**

***Question 7. 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. 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?***

and

***Question 29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (e.g., urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.***

For states or insular areas, proposed Section 5.152 defines the geographic area of analysis to be the whole state or insular area, examined “on a county-by-county basis (not neighborhood-by-neighborhood).” For local governments, the geographic area of analysis is the local government’s whole jurisdiction; for PHAs, the definition is similar. The definitions for all geographic levels include a proviso requiring analysis of, “where necessary to identify fair housing issues, lower levels of geography ... .”

HAC’s research indicates that in many rural – and nonrural – places, the analysis of lower levels of geography will *always* be necessary to ensure Equity Plans are developed and implemented appropriately. Our work on geographic levels of analysis has determined that counties are often not accurate indicators of the distribution or characteristics of rural populations or markets. We have found census tracts to be more accurate than counties for understanding rural places in other contexts,<sup>1</sup> and this is true for AFFH as well. Counties, particularly large counties in the Western United States, may include places with differences as dramatic as those

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<sup>1</sup> David Lipsetz, HAC, “Comments on Enterprise Duty to Serve Underserved Markets Amendments Colonia Census Tract Definition,” December 2, 2022, <https://ruralhome.org/wp-content/uploads/2022/12/ColoniasDefinitionHACFinalComments.pdf>; David Lipsetz, HAC, “Comments on Community Reinvestment Act,” August 2, 2022, [https://ruralhome.org/wp-content/uploads/2022/08/HAC\\_CRA\\_NPR-Comments-FINAL-08.05.22.pdf](https://ruralhome.org/wp-content/uploads/2022/08/HAC_CRA_NPR-Comments-FINAL-08.05.22.pdf).



between a poverty-stricken inner-city neighborhood and a wealthy suburb of the same city. The AFFH Equity Plans should be tailored separately for those widely diverging parts of a county, as they would be for those urban and suburban locales.

The regulation should recognize this, perhaps by reversing the assumption that analyses should generally be conducted at the highest possible level of geography. HUD could require analyses always be undertaken at the smallest level of geography needed to identify fair housing issues, with the program participant responsible for justifying its selection of geographic level. Alternatively, HUD could use the definition as proposed and add a requirement that a state conducting a county-by-county analysis or another entity conducting a whole-of-jurisdiction analysis must explain why a more granular examination is not necessary.

HAC is not recommending Equity Plans be developed for every census tract, as that would be extremely burdensome for program participants. To help determine where smaller geographies merit closer attention, participants could use proxies for fair housing issues, such as poverty rates and durations. For example, in the context of the joint Community Reinvestment Act (CRA) regulation currently under development by the prudential bank regulators, HAC proposed<sup>2</sup> that it would be appropriate to set a presumption that persistent poverty counties and high poverty census tracts are locations where racial/ethnic economic inequities exist. HUD could apply a similar concept here.

Persistent poverty counties are those with poverty rates of 20 percent or more in several consecutive decades. A recent Government Accountability Office study found three federal agencies had identified between 394 and 602 counties and county equivalents experiencing persistent poverty as of fiscal year 2020, based on varying timeframes and data sources.<sup>3</sup> Persistent poverty counties' characteristics indicate they may experience fair housing issues. The majority are rural (82 percent), are concentrated in high-need regions (82 percent), and have relatively large non-white non-Hispanic populations (63 percent). Three-quarters of counties with majority Black non-Hispanic populations and 80 percent of majority Native American non-Hispanic counties are persistently poor compared to 7 percent of majority white non-Hispanic counties.<sup>4</sup>

Like persistent poverty counties, high-poverty census tracts can be defined in different ways. The bank regulators' 2022 request for CRA information proposed identifying them as census tracts with poverty rates at or above 40 percent, and HAC

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<sup>2</sup> Lipsetz, "Comments on Community Reinvestment Act," 23-28.

<sup>3</sup> U.S. Government Accountability Office, *Areas with High Poverty: Changing How the 10-20-30 Funding Formula Is Applied Could Increase Impact in Persistent-Poverty Counties*, GAO-21-470, 2021, <https://www.gao.gov/assets/gao-21-470.pdf>.

<sup>4</sup> HAC tabulations of decennial 2000 and 2010 and ACS 2019 (5-year) survey data.



calculated there were 3,007 such tracts among the more than 84,000 census tracts nationwide.

Using persistent poverty counties and high poverty census tracts for AFFH purposes might mean, for example, that in geographies where a program participant covers the balance of a state or county outside entitlement jurisdictions, persistently poor counties could be covered by a single Equity Plan. For counties that are not persistently poor, Equity Plans could be created separately for high-poverty census tracts. This proposal would not mandate thousands of Equity Plans that otherwise would not have been required, since some proportion of these counties and census tracts overlap, and some high-poverty census tracts that are not in persistent poverty counties are in cities where HUD's proposal would already require separate Equity Plans.

## **Data on USDA-supported housing must be specifically included.**

***Question 8.h. Are there different or additional questions that HUD should pose to rural areas to assist such areas in meeting their obligations to affirmatively further fair housing? If so, how should the analysis for rural areas differ from the required analysis in proposed §5.154?***

HUD should require all program participants (not just PHAs) to analyze the cumulative fair housing implications of all demolition, disposition, conversion, "repositioning," and other loss of publicly supported housing in the geographic area of analysis. This analysis must include not only HUD-supported housing, but also units assisted by the Low Income Housing Tax Credit, state-funded housing programs, and USDA's rural housing programs, particularly the Section 515 rental housing direct loan program. HUD should include data from USDA in the information it compiles for program participants and should require states and localities to use any data that state agencies may have on Housing Tax Credit properties and others.

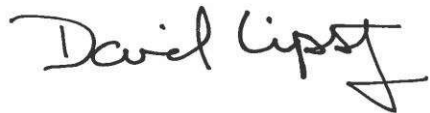
HUD should understand, and should ensure that program participants understand, that, while most USDA-financed housing is in rural places, a few older properties with active USDA loans or guarantees are in exurbs or suburbs. If a location fit USDA's housing programs' definition of rural at the time a property was financed, the property retains that financing even if its area loses its rural character, for example by annexation into a growing city. Therefore even a program participant with an entirely non-rural service area may need to take into account the presence of such properties.



USDA offers direct loans and loan guarantees for both single-family and multifamily homes, but inclusion in Equity Plans is particularly relevant for Section 515 rental properties because preserving them is currently one of the most pressing rural housing issues. Section 515 properties have been leaving the program as mortgages mature or are prepaid, and in the immediate future exponentially more properties are expected to leave the portfolio, threatening access to affordable rental housing in many rural markets. While USDA's Section 515 resources can assist residents with moderate incomes, the vast majority of these developments serve particularly low-income and vulnerable populations. The average household income of residents in USDA Section 515 properties is only \$15,502 and tenants receiving rental assistance have average annual incomes of \$12,989. Additionally, approximately two-thirds of Section 515 tenants are elderly or disabled. The racial/ethnic characteristics of tenants vary widely among states, but in many places there are high proportions of non-white residents.<sup>5</sup> Preserving the affordability of Section 515 units can be crucial to maintaining equitable housing opportunities in rural locations.

HAC appreciates HUD's efforts to provide a truly functional AFFH process and the attention to rural places demonstrated in HUD's questions. Thank you for your consideration of these comments. Please do not hesitate to contact me if you need additional information.

Sincerely,



David Lipsetz  
President & CEO

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<sup>5</sup> Joaquin Altoro, "Results of the 2022 Multi-Family Housing Annual Fair Housing Occupancy Report," Unnumbered Letter, March 21, 2023, [https://www.rd.usda.gov/sites/default/files/RDUL-MFH\\_Occupancy\\_Report.pdf](https://www.rd.usda.gov/sites/default/files/RDUL-MFH_Occupancy_Report.pdf).

