

April 18, 2023

Fair Housing Committee Report to AHAC EXCOM

Mary Paden, Chair, Fair Housing Committee

After three meetings, the AHAC Fair Housing Committee would like to offer an initial report to AHAC Excomm. We will later make recommendations for the BOS on ways to proceed with Fair Housing goals and actions under a new rule forthcoming from HUD.

Note that Fairfax County recognizes 14 protected classes related to Fair Housing.¹

We reviewed the [Metropolitan DC Council of Governments \(COG\) proposal](#) for seven fair housing goals in the Metro DC area. We also reviewed the [Draft Affirmatively Furthering Fair Housing Rule](#) from HUD.

Eight COG jurisdictions, including Fairfax County, met for many months to agree on seven common goals to further fair housing. These goals go beyond the conventional scope of fair housing of educating, testing, and enforcing fair housing laws. They include development of affordable housing, zoning changes to encourage affordable housing, home ownership programs, making more housing accessible to disabled residents, and locating public transit near affordable housing. The goals and suggested strategies to attain them are listed in annex A.

In Fairfax County, attaining these goals would involve action in four administrative departments: the Office of Human Rights and Equity Programs (OHREP), the Department of Housing and Community Development (HCD), the Department of Planning and Development (DPD), and the Department of Transportation (FCDOT).

Jurisdictions were asked to supplement the broad COG goals and strategies with measurable actions to attain the goals. These actions were intended to eventually become reporting mechanisms that were previously developed by consultants under pre-2015 fair housing rules with progress reported to HUD annually. Seven of the jurisdictions submitted at least some actions before the public review period that ended March 31, but Fairfax County submitted only a few items. For the local-only actions formulated by NoVa jurisdictions, refer to the [Regional Fair Housing Matrix](#) compiled by Northern Virginia Alliance for Affordable housing.

Demographics and segregation data and mapping in the draft COG report was based on the strict 2015 Obama administration HUD rule, which was discarded by President Trump. While the COG Fair Housing draft was on public review in March, HUD released a draft Affirmatively Furthering Fair Housing Rule for public review (though April 24), which relaxed some of the research requirements that smaller jurisdictions found burdensome and proposed a process of how to link the research with fair housing goals, strategies, and actions. See annex B for an example of the process.

The time table for when the new HUD rule will take effect is not yet clear. At the time designated, Fairfax county will submit an *Equity Report* to HUD that will replace the *2017 Impediments to Fair Housing*

¹ Code of Fairfax County, 11.1-3-1(b). It is the policy of the County of Fairfax to provide for fair housing throughout the County, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability.

report and then begin using the new report as the basis for its annual progress reports to HUD. Jurisdictions that do not comply are given consultations with HUD with possible loss of HUD funding for noncompliance. The proposed rule requires program participants to incorporate the fair housing goals from their Equity Plans into their consolidated plan, annual action plan, or Public Housing Authority Plan.

Public Comments

Fairfax County publicized the comment period for the COG report to the general public through its usual channels. OHREP, in cooperations with Neighborhood and Community Services, held two public meetings in minority areas: Gerry Hyland Government Center on Richmond Highway and the James Lee Community Center in Annandale, with 33 total participants giving valuable comments.

Fair Housing Committee Discussion

After reviewing the COG report, committee discussion focused on three areas: 1) the lack of actions proposed by Fairfax County in relation to its neighboring jurisdictions, 2) the lack of an overarching administrative mechanism that spans the four departments where actions are required to meet the COG goals, and 3) recommendations to AHAC ExCom and thus to the BOS . At this point, we can share some of our thinking.

Fairfax County Actions

Fairfax county must develop fair housing actions that have measurable outcomes at some point as they will be required by HUD under the new AFFH rule. Since Fairfax has committed time and money to the COG process and it would be easier to follow through with the goals and strategies framework, plus Fairfax County specific actions. The actions should be measurable and achievable and actually move us in the direction of the goals. Options for developing actions include:

1. Developing a process to create actions in line with the goals and strategies in the COG report.
2. Hiring a consultant to develop Fairfax-specific actions under the COG framework.

In either case, we feel that public comment should be allowed on the proposed actions before they are finalized. Comments should at the very least be made by AHAC and interested fair housing organizations representing protected classes, as well as developers.

Overarching Administrative Framework

Currently, OHREP has responsibility for reporting to HUD with input from HCD. Our concern was not with the reporting function, but rather the need for someone to have overall responsibility for the direction and coordination of the fair housing work of the four departments and for the outcomes of their efforts. I have discussed this issue with Chief Equity Officer Karla Bruce, OHREP Director Ken Saunders, and HCD Director Tom Fleetwood. Ms. Bruce has indicated that she may be able to coordinate efforts through departmental equity plans, but more discussion is needed.

Board Action

After the Metropolitan Washington Fair Housing Plan is revised following the public comment period, which ended March 31, it will be sent to the Board of Supervisors for approval. At that time, we would like to send the AHAC ExCom a recommendation to the board regarding approval as well as development of Fairfax County actions, management of the action plan, and a process for public comment.

Annex A

METROPOLITAN WASHINGTON REGIONAL FAIR HOUSING PLAN – DRAFT Executive Summary

Prepared by the Lawyers' Committee for Civil Rights Under Law, the Urban Institute, and Ochoa Urban Collaborative in partnership with COG member governments, January 2023

By working together on these strategies, we can meet our goals to:

- Reduce housing discrimination
- Reverse patterns of racial segregation
- Improve access to opportunity for all current and future residents of the metropolitan Washington region

The goals and strategies

1. Increase the supply of affordable housing for families earning at or below 60% of the Area Median Income (AMI) for the region – especially where there hasn't been any.

There are several ways to achieve this goal:

- Explore policies and programs that increase the supply of housing for low- and moderate-income households. They include housing bonds, real estate transfer taxes and mandatory inclusionary housing where it is permitted.
- Create new rental housing for those with people earning at or below 60% of AMI -- instead of 80%. Build units for those earning at 50% of AMI or below to address the chronic housing shortage for low- and very low-income families.
- Provide low-interest loans to homeowners who want to build affordable ADUs (Accessible Dwelling Units) on their property. (Example: an apartment over a garage).

2. Change zoning and land use policies to expand access to fair housing. Increase the development, geographic distribution, and supply of affordable housing.

Zoning for single-family homes in the region makes it hard to develop affordable housing. To change this, local leaders can:

- Revise zoning regulations to allow as-of-right Accessory Dwelling Units

- Increase inclusionary zoning incentives for more affordable housing units to be created in a new mixed income building or increase fees for developers to pay for someone else to build affordable housing in a different location sometime in the future
- Adopt zoning changes to make it easier to develop affordable housing
- Include a fair housing equity analysis when reviewing significant rezoning proposals and specific plans

3. Implement policies to preserve affordable housing and prevent displacement of residents. Keep the same number of existing affordable rental units in our region.

We've lost affordable housing during the past decade. One of our priorities must be to have a net zero change. In other words, we need to offset the loss by building new or preserving existing units. To do this, we must:

- Track and support existing affordable housing
- Establish a loan fund to help tenants, nonprofit groups, and local governments buy apartments and manufactured home parks that are for sale

4. Increase the number of homeowners in the region and reduce the unequal treatment and discriminatory practices that keep members of protected classes from buying a home.

We can increase opportunities for low- and moderate-income buyers to buy homes:

- Through cooperative homeownership models and community land trusts
- By allowing and encouraging higher density, smaller/accessory dwelling units and duplexes
- By setting aside some subsidized homes in new housing developments

We also can help current homeowners who are racial and ethnic minorities, people with disabilities, and seniors with:

- Programs and products that pay for home repair, rehabilitation, and renovation
- Programs that provide energy efficient improvements to lower utility costs
- Counseling and legal referrals to help them avoid foreclosure

Unfair homebuyer practices make the wealth gap between White households and those of color worse. We must take steps to:

- Reduce appraisal bias – valuing property based on who owns it

- Increase fair housing testing to identify discrimination
- Monitor lenders and real estate entities to ensure equal treatment of applicants

5. Protect the housing rights of individuals who are part of protected groups. For example, people of color, those with disabilities and seniors.

Evictions and rent increases force these residents to leave their homes. This happens most often to Black and Hispanic residents and people with disabilities. The pandemic has made things worse for renters and certain racial and ethnic groups. To help these residents keep their housing, we can:

- Expand local funding for housing vouchers. Make them valid across the region.
- Increase the scale and scope of housing mobility programs
- Reduce barriers to rental units by encouraging landlords to reduce, eliminate, or offset application fees for voucher holders
- Follow HUD’s guidelines for criminal background checks in tenant screening
- Pilot a Right to Counsel Program. Tenants would get legal representation for disputes with their landlords.
- Increase support for fair housing outreach, education, training, testing and enforcement

6. Increase community integration and reduce housing barriers for people with disabilities.

Existing federal funding is not enough to create the housing needed by people with disabilities so more can live independently in our communities. The region can:

- Use other funding sources to increase the supply of permanent housing. They include affordable housing bonds, affordable housing trust funds, commercial linkage fees and real estate transfer taxes.
- Adopt design standards that require accessible units in new multifamily developments that receive public funds. 10% of all units must be accessible to people with mobility disabilities and at least 4% for those with hearing and/or vision disabilities.
- Provide more support and resources for rental assistance programs for people with disabilities
- Conduct fair housing testing to investigate barriers identified by case managers who assist persons with disabilities
- Provide education on applying the Fair Housing Act’s reasonable accommodation duty in the context of criminal history screening
- Improve tracking and mapping of the location of affordable, accessible units. Include how accessible surrounding streets and sidewalks are.

7. Make public transit easier to access and afford for members of protected classes.

High housing costs in the region have forced many low- and moderate-income residents to move further away from their jobs and reliable public transportation. This includes members of protected classes. To address this, the region can:

- Identify resources to expand free or reduced-fare bus and other transportation to low-income households
- Study best practices and make recommendations to improve, expand and coordinate bus routes across borders in the region so these residents can access jobs in other areas

Metropolitan Washington Regional Fair Housing Plan, Draft, January 2023, pp 19-22

Annex B

HUD's Draft Affirmatively Furthering Fair Housing Plan states:

"Each program participant shall prepare an Equity Plan for the purpose of developing fair housing **goals, strategies, and meaningful actions** that are designed and can be reasonably expected to **overcome identified fair housing issues** in each fair housing goal category and advance equity based on protected characteristics in its geographic area of analysis with respect to its programs, services, and activities, including funding and siting decisions." (p.174)

ISSUES are the problems identified through extensive data analysis

GOALS are the major changes needed to further fair housing

STRATEGIES are ways to accomplish the goals

ACTIONS are discrete policies or programs with measurable outcomes that are in line with the strategies and will help accomplish the goals.

EXAMPLE

Research/Data: 70 percent of white families own homes whereas only 43 percent of Black families own homes.

Issue: Since homeownership is a major way to build intergenerational wealth, minority families need more access to homeownership opportunities.

COG Goal: Increase the number of homeowners in the region and reduce inequities and discriminatory practices that limit homeownership opportunities by members of protected classes.

COG Strategy 1: Ensure that affordable housing set-asides in new housing developments include subsidized home ownership opportunities in addition to subsidized rental opportunities.

FAIRFAX Action 1: Revise the County’s for-sale Workforce Dwelling Unit (WDU) Policy by lowering the current AMI category from 120% AMI to 80% AMI thus making the homes affordable to people at lower incomes. This is similar to the action taken last year on WDU rental units. Doing this however, will probably result in production of fewer total for-sale units. Based on the number of projected affordable housing projects for the next year, this action will produce about XX affordable for-sale units affordable to families making 80% AMI or less. Over the next five years, it could produce XXX such homes.