

AFFIRMATIVELY FURTHERING FAIR HOUSING

Proposed Regulation

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**NATIONAL LOW INCOME
HOUSING COALITION**

NFHA
National Fair Housing Alliance

INTRODUCTION

Proposed rule to improve the obligation to “affirmatively further fair housing choice” (AFFH) published on July 19, 2013.

Comments due September 17.

INTRODUCTION

(continued)

Fair Housing Act of 1968 prohibits housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability --- the “protected classes” of people.

Act also requires HUD’s program participants to take steps to actively overcome historic patterns of segregation and to promote fair housing choice.

INTRODUCTION

(continued)

Current AFFH practice not effective.

Merely requires localities, states, and public housing agencies (PHAs) receiving HUD funds

(“program participants”) to certify that they:

- Have Analysis of Impediments (AI) to fair housing choice;
- Take actions to overcome impediments; and,
- Keep records.

PREVIEW

Major features of the proposed rule include:

- Replacing Analysis of Impediments (AI) with standardized Assessment of Fair Housing (AFH).
- Providing nationally uniform data from HUD.
- Weaving AFH into Consolidated Plan (ConPlan) and PHA Plan rules, tying AFH to their priorities, resource uses, and specific activities.
- Submitting AFH for HUD review and acceptance before preparing ConPlan or PHA Plan so that AFH informs those plans' priorities, strategies, activities.

WHAT DOES IT MEAN TO “AFFIRMATIVELY FURTHER FAIR HOUSING”?

Existing (old) definition of AFFH means:

- Conducting analysis to identify “impediments” to fair housing choice;
- Taking appropriate actions to overcome effects of impediments; and,
- Having records reflecting the analysis and actions.

WHAT DOES IT MEAN TO “AFFIRMATIVELY FURTHER FAIR HOUSING”?

(continued)

HUD proposing to change AFFH to mean taking steps for “protected classes” to:

1. Overcome segregated living patterns.
2. Support and promote integrated communities.
3. End racially and ethnically concentrated areas of poverty.
4. Address major differences in access to community assets.
5. Foster and maintain compliance with civil rights and fair housing laws.

WHAT DOES IT MEAN TO “AFFIRMATIVELY FURTHER FAIR HOUSING”?

(continued)

AFFH will be accomplished primarily by:

- Using federal and other resources; and,
- Taking actions that address or lessen fair housing “issues” identified in an Assessment of Fair Housing, AFH.

WHAT DOES IT MEAN TO “AFFIRMATIVELY FURTHER FAIR HOUSING”?

(continued)

ConPlans and PHA Plans have had to certify that they are AFFH by:

- Conducting analysis to identify “impediments”;
- Taking actions to overcome impediments; and,
- Having records.

Proposed rule amends certifying AFFH to mean:

- Take meaningful actions to further goals in the Assessment of Fair Housing (AFH); and,
- Not take any action significantly inconsistent with obligation to affirmatively further fair housing.

A FEW DEFINITIONS

Fair housing “issues” are ongoing local or regional:

1. Segregation, or need to support integrated communities.
2. Racial or ethnic concentrations of poverty.
3. Major differences in access to community assets.
4. Imbalances in housing needs based on “protected classes”
5. Discrimination or violations of civil rights laws
6. Other condition that is obstacle to or fails to advance fair housing choice.

A FEW DEFINITIONS

(continued)

Fair housing “determinants” are factors that create, contribute to, or perpetuate a fair housing “issue”.

Program participants means:

- Jurisdictions required to submit a ConPlan (those getting CDBG, HOME, ESG, or HOPWA).
- Public housing agencies (PHAs).

WHAT IS AN ASSESSMENT OF FAIR HOUSING(AFH)?

AFH is a document having:

- Fair housing data,
- Assessment of fair housing “issues” and “determinants”; and,
- Fair housing priorities and goals.

WHAT IS AN ASSESSMENT OF FAIR HOUSING (AFH)?

(continued)

- AFH will inform fair housing strategies in ConPlan, PHA Plan, and other plans such as transportation, education, and environment plans.
- AFH will address: integration and segregation; concentrations of poverty; major differences in access to community assets; and, imbalances in housing needs based on protected classes.
- AFH will assess jurisdiction's fair housing enforcement and outreach capacity.



CONTENT OF AN AFH

The Assessment of Fair Housing (AFH) must:

1. Analyze HUD-provided data; other local or regional data; and, community input.
 - Must use analysis to identify, across protected classes, within jurisdiction and region, fair housing “issues” of:
 - Integration and segregation patterns and trends;
 - Racially or ethnically concentrated areas of poverty
 - Significant differences in access to community assets;
 - Imbalances in housing needs.

CONTENT OF AN AFH

(continued)

Significant disparities in access to community assets: measurable differences in access to education, transportation, economic, and other assets, based on housing location and protected classes.

Disproportionate housing needs: when percentage of protected class families in a “category of housing need” is 10% higher than percentage of all people in the category.

Three “categories of housing need”:

- Cost burden and severe cost burden (paying more than 30% and 50% of income for rent/mortgage and utility costs);
- Overcrowded housing (more than one person/room); and,
- Substandard housing conditions.

CONTENT OF AN AFH

(continued)

AFH must:

2. Assess primary “determinants” influencing conditions for protected class relating to fair housing “issues”:
 - Integration and segregation;
 - Concentrations of poverty;
 - Major differences in access to community assets;
 - Imbalances in housing needs.

CONTENT OF AN AFH

(continued)

AFH must:

3. Identify and prioritize fair housing “issues”, and justify those priorities;
 - Identify most significant fair housing “determinants” related to priority “issues”; and,
 - Set and prioritize one or more goal(s) for lessening or addressing “determinants”.

CONTENT OF AN AFH

(continued)

AFH must:

4. Assess program participant's fair housing enforcement and outreach capacity.

Means ability of a jurisdiction and organizations to take and investigate complaints, get remedies, do fair housing testing, and educate community.

CONTENT OF AN AFH

(continued)

AFH must:

5. Summarize:

- Community participation process, including efforts to broaden community participation in development of AFH;
- Comments from the public received in writing, or orally at hearings;
- Comments not accepted, and reasons why.

HUD WILL PROVIDE UNIFORM DATA

HUD will provide nationally uniform local and regional (or state-level) data on:

1. Patterns of integration and segregation;
2. Racial and ethnic areas of concentrated poverty (RCAPs and ECAPs);
3. Access to opportunities in the neighborhood, such as education, employment, transportation, environmental health, low-poverty, etc.
4. Imbalances of housing needs of protected classes;
5. People with disabilities; and,
6. Families with children.

HUD WILL PROVIDE UNIFORM DATA

(continued)

- Additional or better local/regional data may be used.
- HUD will provide PHA site location data, distribution of housing choice vouchers, and occupancy data.
- HUD data, any available local or regional information, information obtained through community participation and consultation must be used.

HUD WILL PROVIDE UNIFORM DATA

(continued)

- To be a RCAP or ECAP, census tract must have:
 - Non-white population of 50% or more in metro areas, 20% or more in non-metro areas; and
 - Poverty rate greater than 40%, or three times average tract poverty rate of metro area, whichever is lower.
- HUD prototype fair housing data mapping tool at http://egis.hud.gov/affht_pt.
- HUD will provide additional guidance and information later.

PHAs HAVE THREE AFH OPTIONS

1. PHA and local government may develop joint AFH.
 - PHA must work with local government where 60% of PHA's "hard units" are [vouchers not considered].
 - Voucher-only PHA choosing this option must work with jurisdiction governing it.
 - These PHAs and local governments must engage in required AFH community participation.

continues

PHAs HAVE THREE AFH OPTIONS

(continued)

1. PHA and local government may develop joint AFH.

(continued)

1. PHA and local government may develop joint AFH.
 - PHA must certify PHA Plan is consistent with AFH and ConPlan.
 - PHA must participate in AFH process every five years.
 - If PHA disagrees with any aspect of joint AFH, may submit dissenting statement or alternative views that become part of AFH.

PHAs HAVE THREE AFH OPTIONS

(continued)

2. PHA may choose to conduct its own AFH.
 - Must certify that PHA Plan consistent with AFH, and will affirmatively further fair housing.
 - Must update AFH every year.

PHAs HAVE THREE AFH OPTIONS

(continued)

3. PHAs covered by state agency are bound by state's AFH.
 - May work with state in developing AFH.
 - Must:
 - Show that development-related activities AFFH [not voucher-related activities].
 - Certify their PHA Plan consistent with state's AFH and ConPlan.
 - Incorporate state's AFH and ConPlan every five years.

REGIONAL AFHs

Program participants are encouraged (not required) to submit joint AFH.

- One member must be lead entity.
- Each must analyze and address its local fair housing “issues” and “determinants”, and meet its own AFFH obligations.
- Must be a plan for community participation that includes stakeholders from each program participant.

TIMING OF THE AFH

- Initial AFH must be sent to HUD 270 calendar days before start of program year that new ConPlan due.
- Every five years after, new AFH must be sent to HUD 195 calendar days before start of program year a new ConPlan due.
 - PHAs with joint AFH must mesh new AFH into PHA Plans every five years.
 - PHAs with own AFH must update it every year.

HUD REVIEW OF THE AFH

AFH must be sent to HUD for review and “acceptance”.

Acceptance may be denied if AFH (or a part) is:

- Inconsistent with fair housing or civil rights laws;
- “Substantially incomplete”, examples include AFH:
 - Developed without community participation or consultation with other entities.
 - Fails to satisfy required elements of regulation; for example, AFH with priorities significantly inconsistent with data and other evidence.

HUD REVIEW OF THE AFH

(continued)

- AFH considered accepted in 60 calendar days.
- If not accepted, HUD must give specific reasons and describe actions to take for acceptance.
 - Have 45 days to revise and resubmit AFH.
 - Revised AFH considered accepted after 30 calendar days, unless HUD does not accept.
- Acceptance does not mean program participant is meeting obligation to AFFH.
 - Means ConPlan or PHA Plan may be approved and related HUD funds received.

REVISING THE AFH

- Must be revised if a significant change:
 - Presidentially-declared disaster;
 - Major demographic changes;
 - Substantial policy changes such as zoning or development plans.
 - Significant civil rights findings.
- HUD may also require revision if it detects significant change.

REVISING THE AFH

(continued)

- Must specify criteria for significant revisions following ConPlan or PHA Plan regulations.
- Must follow ConPlan or PHA Plan public/resident participation regulations for significant amendments.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

- ConPlan jurisdictions must follow ConPlan public participation provisions in developing AFH.
- ConPlan public participation regulations amended to include AFH.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

(continued)

Encouraging Public Participation in Development of AFH

ConPlan Jurisdictions must:

- Provide for and encourage residents to participate in development of AFH and any significant revisions to AFH.
- Encourage participation by public housing Resident Advisory Boards (RABs) and resident councils, in addition to residents.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

(continued)

Encouraging Public Participation in Development of AFH

(continued)

ConPlan jurisdictions must:

- Have procedures for assessing residents' language needs, including translation of notices and other vital documents.
- Take reasonable steps to ensure meaningful opportunities for people with limited English proficiency to participate.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

(continued)

Availability To The Public

- Make publicly available, HUD-provided data and other information to be used preparing AFH.
- Publish proposed AFH for public review and comment.
 - May be summary in newspapers and having copies at libraries, other public places.
 - Must provide reasonable number of free copies upon request.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

(continued)

Availability To The Public

(Continued)

- HUD-accepted AFH and any significant revisions must be publicly available, including in forms accessible to people with disabilities when requested.
- Public must have reasonable and timely access to records from last five years.

PUBLIC PARTICIPATION

ConPlan Jurisdictions

(continued)

Public Review and Comment During Development of AFH and ConPlan

- Have at least one public hearing before proposed AFH published, get ideas about AHF data and AFFH in jurisdiction's housing and community development programs.
- Provide at least 30 days for comment on proposed AFH.
- Consider comments in preparing final AFH, attach summary of comments and reasons for not accepting to final AFH.
- Provide meaningful, written responses to written complaints in 15 working days.
- Have at least one hearing before proposed ConPlan published, get comments about strategies and actions for AFFH.



CONSULTATION WITH OTHER ENTITIES

ConPlan Jurisdictions

- When preparing AFH and ConPlan, must consult community and regionally-based(or state-wide) organizations, including:
 - Organizations representing protected class;
 - Organizations that enforce fair housing laws;
 - Fair housing organizations and nonprofits receiving FHIP funding;
 - Other public and private fair housing service agencies;
 - Adjacent governments and metro-wide planning and transportation agencies;
 - PHAs about AFH and proposed ConPlan strategies and actions for AFFH.

CONSULTATION WITH OTHER ENTITIES

ConPlan Jurisdictions

(continued)

- Fair Housing Advisory Council or similar group that includes community members, advocates, or fair housing experts is acceptable for consultation requirement.
- Must be with any representative organization with capacity to use data informing AFH.
- Must occur throughout fair housing planning process, including development of AFH and ConPlan.
- Consultation regarding ConPlan must seek input about how AFH goals inform ConPlan priorities and objectives.

AFFH AND THE CONPLAN

ConPlan Jurisdictions

The Five-Year Strategic Plan

ConPlan requires jurisdictions to set priorities and objectives for allocating funds for five-year period.

AFFH rule requires jurisdictions to:

- Describe how priorities and objectives will AFFH;
- Have strategies and actions consistent with goals and other elements of AFH;
- Identify additional objectives and priorities for AFFH for fair housing issues not addressed by priorities and objectives.

AFFH AND THE CONPLAN

ConPlan Jurisdictions

(continued)

The Annual Action Plan

Must indicate actions intend to take in upcoming year to address fair housing issues in AFH.

Amending the ConPlan

Must ensure ConPlan amendments are consistent with analysis and strategies in AFH, and with certification to AFFH.

AFFH AND THE PHA PLAN

Deconcentration

- PHA’s policies for “development related activities” [not applying to vouchers] “should” be designed to:
 - Reduce racial and ethnic concentrations of poverty;
 - Reduce segregation and promote integration;
 - Reduce major differences in access to community assets;
 - Address imbalance in housing needs of protected classes.

AFFH AND THE PHA PLAN

Deconcentration

(continued)

- “Development related activities” include:
 - Affirmative marketing, applicant consultation and information, tenant selection and assignment policies, provision of additional supportive services and amenities;
 - Construction, rehabilitation, modernization, demolition, disposition, designation (for example, as “elderly”), and physical accessibility.
- Steps PHA intends to take through policies must be in admission policy and be consistent with AFH.

AFFH AND THE PHA PLAN

Affirmatively Furthering Fair Housing

- Existing PHA rule requires policies on eligibility, selection, and admissions to be designed to reduce racial and ethnic concentrations.
- Proposed rule adds:
 - Concentrations based on disability.
 - Policies must conform to AFH and PHA's assessment of fair housing needs.
 - Plans for construction, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility must be consistent with AFH.

AFFH AND THE PHA PLAN

Affirmatively Furthering Fair Housing

(continued)

- Existing rule suggests PHAs take steps to overcome effects of conditions that resulted in limiting participation in programs due to race or ethnicity.
- Propose rule adds:
 - Disability.
 - PHAs “must” take affirmative steps to overcome effects of discrimination, such as:
 - Tenant selection and assignment policies that lead to desegregation, e.g., tailored site-based waiting lists and residency preferences designed to assist in deinstitutionalizing people with disabilities.
 - Additional supportive services that enable people with disabilities to transfer from institutional settings to the community.

AFFH AND THE PHA PLAN

Certifying AFFH

- “Affirmatively furthering fair housing” is redefined to mean PHA will:
 - Take meaningful actions to further goals in AFH;
 - Take no action significantly inconsistent with obligation to AFFH;
 - Address fair housing “issues” and “determinants” in its programs.

AFFH AND THE PHA PLAN

Certifying AFFH

(continued)

- Certification applies to tenant and voucher participant selection and occupancy plans, as well as capital activities.
- Existing regulation lists five standards for compliance with certification.
- Proposed rule adds:
 - Complies with AFH consultation requirements.
 - Keeps records of results of actions taken.

AFFH AND THE PHA PLAN

Certifying AFFH

(continued)

Failure to meet all of the new AFFH requirements is a reason to challenge PHA's certification that it is affirmatively furthering fair housing.

RESOURCES

- Main source of information is [HUDUser](#) website.
- Proposed rule is at:
 - Formal *Federal Register* [version](#).
 - Large print, [double-spaced version](#).
- NLIHC [summary](#) of proposed AFFH rule.
- NLIHC [brief outline](#) of proposed AFFH rule.
- NLIHC [short narrative](#) summary of proposed rule.
- NLIHC preliminary sample comment letter (coming soon).
- Check National Fair Housing Alliance [website](#).

SENDING COMMENTS

Comments are due, September 17, 2013

Using regulations.gov,

<http://www.regulations.gov/#!submitComment;D=HUD-2013-0066-0001>.

QUESTIONS?



HUD's Proposed Regulation on Affirmatively Furthering Fair Housing (AFFH)

*National Low Income Housing Coalition Webinar
August 29, 2013*

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Putting the rule in context

Where you live affects your:

- Education
- Access to jobs
- Access to transportation
- Health and access to health care
- Exposure to crime
- Wealth

Zip code = Life Trajectory?

The existing AFFH process is:

- a. Broken
- b. Moribund
- c. Ineffective
- d. All of the above

The new rule strives to:

- Be more robust
- Be more comprehensive
- Provide clarity and consistency
- Be less burdensome for grantees and PHAs
- Have greater impact on communities and residents

Importance of the proposed rule

- Represents a major step forward for HUD and communities
- Result of a long, arduous process
- Crucial for community stakeholders to provide support, critiques, suggestions
- Urge HUD to move quickly to finalize

Key issues in assessing the rule

1. Framework for implementing AFFH provisions of Fair Housing Act
2. Timing and capacity
3. Public participation
4. Data and definitions
5. Application to PHAs
6. Enforcement
7. Scope of the regulation

Framework for implementing AFFH

1. New definition of “Affirmatively Furthering Fair Housing” is:
 - clearer
 - more comprehensive
 - more straightforward than the current regulation

Framework for implementing AFFH

2. Clarifies that AFFH applies to all of a grantee's or PHA's housing and community development activities
 - not just spending, also policies and practices
 - not just activities funded by HUD

Framework for implementing AFFH

3. The Assessments of Fair Housing (AFHs) are synchronized with the ConPlan and PHA planning process.
4. Fair housing priorities identified in the AFH must be reflected in the ConPlan and PHA plan.

Framework for implementing AFFH

5. AFHs must be updated if significant changes take place in the community:
 - natural disasters
 - major demographic changes
 - Substantial policy changes (e.g., zoning)
 - significant civil rights findings

Framework for implementing AFFH

6. When it comes to setting goals, the rule aims too low:
 - Grantees/PHAs are only required to set one or more goal(s) to address the fair housing concerns identified in their AFHs.

Framework for implementing AFFH

7. The rule does not establish any performance standards – no benchmarks for measuring progress.
8. Reporting requirements need to be clarified and strengthened to help in measuring progress.

Framework for implementing AFFH

9. The rule should clarify the need for grantees to balance neighborhood stabilization and/or revitalization strategies and strategies to promote mobility

Framework for implementing AFFH

10. Regional collaboration is encouraged, *but*
11. No incentives are provided to help overcome the challenges of regional collaboration.

Timing and Capacity

ConPlan system creates a “pig in a python”

1,218 ConPlans are submitted to HUD

- 668 (55%) have a July 1 program year start date
- 471 (39%) have a July 1, 2015 program year start date

Timing and Capacity

- Will HUD have the staff capacity to handle this number of AFH reviews?
- Will community stakeholders have the capacity to participate in the development of multiple AFHs at once?

Timing and Capacity

Resources are needed for capacity building:

- At HUD
- Among grantees/PHAs
- Among community stakeholders

Timing and Capacity

Check the timing of ConPlans in your area at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan/local

Public Participation

1. Public participation process mirrors that for the ConPlan *and*
also requires consultation with representatives of protected classes.

Public Participation

2. Public participation process mirrors that for the ConPlan/PHA plan –

How well does this work in your community?

Public Participation

3. Need centralized location (accessible website) for:
 - Schedule for AFH submissions
 - Accepted AFHs

Data and Definitions

HUD is providing grantees, PHAs and the public with uniform data and analytical tools (the “geospatial tool”) to use in analyzing local conditions and setting fair housing goals.

Data and Definitions

- What additional data sets (national or local) are needed?
 - HMMDA is one example
 - What else?

Data and Definitions

How well do HUD's definitions work in specific communities?

- RCAP/ECAP
- Disproportionate housing needs

Data and Definitions

- Data on race and ethnicity are provided at the Census tract level
 - Census tract boundaries don't always align neatly with recognized neighborhood boundaries
 - In some cases, Census tracts may be too big to be effective in capturing pockets of residential segregation and poverty

Application of AFFH to PHAs

1. The rule makes it clear that AFFH applies to PHAs and lays out procedures for them to follow.

Application of AFFH to PHAs

2. The rule offers PHAs the opportunity to collaborate with states or local jurisdictions to develop an AFH
3. The rule creates a disincentive for PHAs to conduct their own AFH by requiring annual updates (vs. 5 year cycle for joint AFHs)

Enforcement

1. AFHs must be submitted to HUD for review and acceptance.
2. Acceptance of an AFH by HUD *does not* mean that a grantee or PHA has fulfilled its AFFH obligations or certification requirements.

Enforcement

3. Failure to submit a timely AFH will result in the loss of HUD funding.

Enforcement

4. There is only one bite at the apple
 - AFHs will be deemed accepted if not rejected within 60 days
 - No mechanism for review if an AFH is later found to be inadequate

Enforcement

5. The rule does not provide an avenue for private enforcement of the AFFH requirements.

Scope of the Regulation

1. Not clear how HUD will evaluate non-spending related activities
2. Should clarify coverage for LGBT individuals
3. Regulation does not address the full range of programs and activities administered by HUD, nor those of other federal agencies

SUBMIT COMMENTS (!!!) at

<http://www.regulations.gov/#!documentDetail;D=HUD-2013-0066-0001>

Re: FR-5173-P-01 Affirmatively Furthering
Fair Housing

Deadline: Tuesday, September 17, 2013

QUESTIONS?

WWW.NLIHC.ORG/ISSUES/AFFH

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