

## **Proposed Affirmatively Furthering Fair Housing Regulations Published for Comment**

The long-awaited proposed rule intended to improve the obligation to affirmatively further fair housing (AFFH) was published for comment on July 19, 2013. The Fair Housing Act of 1968 prohibits housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or handicap – the “protected classes” of people. The Act also requires HUD’s program participants to take steps to actively overcome historic patterns of segregation and promote fair housing choice.

It is widely recognized that the current practice of affirmatively furthering fair housing choice has not been effective. It merely required localities, states, and public housing agencies (PHAs) receiving HUD funds (“program participants”) to certify that they were complying by having an Analysis of Impediments (AI), taking actions to overcome impediments, and keeping records.

Major features of the proposed rule include:

- Replacing the current Analysis of Impediments (AI), for which no format or standards exist, with a standardized Assessment of Fair Housing (AFH).
- Providing comprehensive, nationally uniform data by HUD.
- Incorporating language in the Consolidated Plan and PHA Plan regulations that directly ties those plans’ priority setting, commitment of resources, and specific activities into the AFH.
- Requiring the AFH to be submitted to HUD for review and approval (AIs were not submitted to or reviewed by HUD) well in advance of preparing a Consolidated Plan or PHA Plan so that the AFH informs the priorities, strategies, and future activities covered by those plans.

### **HUD Will Provide Data**

HUD will provide each “program participant” with nationally uniform local and regional (or state-level) data on a variety of fair housing factors such as patterns of integration and segregation, and racial and ethnic areas of concentrated poverty (to be known as RCAPs and ECAPs). HUD will also provide data related to education, poverty, transit access, employment, and environmental health hazards. Additional or better local or regional data may be used to supplement HUD data.

### **The Assessment of Fair Housing (AFH)**

Unlike the AI, the proposed rule would set out a structure of the AFH, requiring it to:

- Have a fair housing analysis based on HUD-provided data and community input.
- Identify fair housing issues across the protected classes within the jurisdiction and region, such as:
  - Integration and segregation patterns and trends;
  - Racially or ethnically concentrated areas of poverty;
  - Significant disparities in access to community assets; and
  - Disproportionate housing needs.
- Identify the most significant factors influencing fair housing issues.
- Determine fair housing priorities and justify those priorities.
- Set goals for mitigating or addressing the most significant factors causing fair housing disparities.

Regional AFHs are encouraged but not required. That is, two or more program participants are encouraged to work together to submit a single, joint AFH.

### **PHAs Would Have Three AFH Options**

A PHA may choose to participate with a local government in developing an AFH, or it may choose to conduct its own AFH. PHAs that are covered by a state agency will be bound by the state AFH, but may elect to work with the state in developing the AFH.

### **Public Participation in the AFH Process**

The proposed rule requires the public participation provisions of the ConPlan and PHA Plan be followed when developing the AFH, obtaining community feedback, and addressing complaints.

ConPlan jurisdictions will have to consult with community and regionally-based (or state-wide) organizations that represent protected class members, organizations that enforce fair housing laws, and fair housing organizations and nonprofits. Consultation must occur throughout the fair housing planning process, and must seek input regarding how the AFH goals inform the priorities and objectives of the ConPlan.

At least one public hearing regarding AFH-related data and affirmatively furthering housing in a jurisdiction's housing and community development programs must be held before the proposed AFH is published for comment. In addition, the required minimum of two ConPlan hearings for entitlement jurisdictions (and only one for states) must address the jurisdiction's proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH.

### **AFH Timing**

HUD would require program participants to submit their initial AFH to HUD at least 270 calendar days before the start of the program year prior to the start of a new Consolidated Plan or PHA Plan planning process. Future AFHs would have to be submitted at least 195 days before. The lead time emphasizes HUD's intent that the AFH should inform the Consolidated Plan and PHA Plan process.

Each ConPlan program participant and each PHA participating with a local government in developing an AFH must submit an AFH at least once every five years. PHAs undertaking their own AFH must have annual updates.

### **HUD Review of the AFH**

Unlike the AI, the AFH must be submitted to HUD for review and approval. The AFH will be considered accepted by HUD within 60 calendar days. However, if HUD does not approve an AFH, it must provide specific reasons and explain actions that must be taken to gain approval. Program participants then have 45 days to revise and resubmit an AFH. A revised AFH will be considered accepted after 30 calendar days, unless HUD does not approve the revised version.

HUD may decide not to accept an AFH, or a portion of one, if it is inconsistent with civil rights laws or if the assessment is substantially incomplete. For example:

- The AFH was developed without community participation or consultation.

- The AFH fails to satisfy the required elements of the regulation, such as priorities that are materially inconsistent with data and other evidence.

In order for a ConPlan or PHA Plan to be approved, and therefore a program participant to receive funds, there must be an approved AFH.

### **Revising the AFH**

An AFH must be revised if there is: a Presidentially-declared disaster; major demographic change; substantial policy changes such as a major zoning amendment; or, significant civil rights findings. Revisions to the AFH, require the ConPlan and PHA Plan public participation regulations pertaining to significant amendments to be followed.

### **The AFH and the Consolidated Plan**

The ConPlan's "Strategic Plan" (five-year plan) would have to describe how the jurisdiction's priorities and specific objectives will affirmatively further fair housing by having strategies and actions consistent with the goals and other elements of the AFH. The ConPlan's Annual Action Plan would have to describe the actions a jurisdiction plans to carry out in the upcoming year to address fair housing issues identified in the AFH.

The proposed rule refines the current definition of "certifying" that a jurisdiction will "affirmatively further fair housing" by stating that the jurisdiction "will take meaningful actions to further the goals identified in the AFH...and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing."

### **The AFH and the PHA Plan**

The proposed rule states that any affirmative steps a PHA intends to take through its policies to reduce racial and ethnic concentrations, reduce segregation, and promote integration must be consistent with the AFH. Plus, any plans for construction, rehabilitation, modernization, demolition, disposition, or designation as elderly or disabled, must be consistent with the AFH.

A PHA's certification that it is affirmatively furthering fair housing means that it will: take meaningful actions to further the goals in the AFH; take no action that is materially inconsistent with its obligation to affirmatively further fair housing; and address fair housing issues. A PHA's civil rights certification will be challenged if it fails to meet the affirmatively furthering fair housing regulations.

A more detailed summary is at [PDF](#). NLIHC will provide more analysis and a sample comment letter in the weeks ahead. Comments are due September 17, 2013.

The proposed rule is at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf>.

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