

# AFFIRMATIVELY FURTHERING FAIR HOUSING



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## INTRODUCTION

On July 8, 2015, HUD released the long-awaited final rule intended to improve the obligation to “affirmatively further fair housing choice” (AFFH). It was formally published in the *Federal Register* on July 16, 2015.

The 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.”

The Act also requires jurisdictions and public housing agencies (PHAs) receiving federal funds for housing and urban development to affirmatively further fair housing, to take steps to actively overcome historic patterns of segregation and to promote fair housing choice.

The final rule adds a number of sections to the existing regulations that generally apply to almost all HUD programs, 24 CFR Part 5, Subpart A. It also modifies portions of other regulations, including those for the Consolidated Plan (ConPlan) and the Community Development Block Grant (CDBG), HOME, Emergency Solutions Grants (ESG), and Housing Opportunities for People with AIDS (HOPWA) programs, as well as programs run by PHAs. The final rule calls any city, county, or state receiving any of these funds a “program participant”. PHAs are also program participants.

The opening text of the final rule declares that the **purpose of the AFFH rule** is to provide program participants “with an effective planning approach to aid them in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.”

[24 CFR 5.150]

In the preamble to the rule, HUD stresses that the new AFFH approach does not mandate specific outcomes. Rather, it establishes a standardized fair housing assessment and planning process to give program participants a more effective means to affirmatively further the purposes of the Fair Housing Act.

## When Will the New AFFH System Begin?

Most program participants will not be required to use the new AFFH system until 2019 (*see details page 16*). Until a program participant is required to submit an AFH, it must continue to follow the current AI process, the Analysis of Impediments to fair housing choice process.

(For information about the AI process, refer to separate document from 2010, “Affirmatively Furthering Fair Housing and the Analysis of Impediments to Fair Housing Choice (AI)” at [http://nlihc.org/sites/default/files/AFFH\\_Brief\\_Outline\\_letterhead.pdf](http://nlihc.org/sites/default/files/AFFH_Brief_Outline_letterhead.pdf).)

[24 CFR 5.151]

## The Need for the AFFH Rule

AFFH has been law since 1968; however, meaningful regulations providing program participants with guidance on how to comply have not existed. Since 1974, CDBG recipients, since 1990 HOME recipients, and since 1998 PHAs have had to certify (pledge) that they will affirmatively furthering fair housing. This certification rule for jurisdictions was transferred to the ConPlan regulations in 1995. That merely means completing an analysis of impediments (AI) to fair housing choice, taking appropriate actions to overcome the effects of impediments, and keeping records of those actions.

It was widely recognized, including by the Government Accountability Office, that HUD's existing method of implementing affirmatively furthering fair housing choice had not been effective. There are numerous limitations of the current AFFH system, including:

- There is no regulatory guidance. Consequently, there is no clarity about what constitutes an impediment to fair housing choice or an appropriate action to overcome it.
- The AI is not directly linked to a jurisdiction's ConPlan or a PHA's 5-Year PHA Plan.
- The AI is not submitted to HUD for review.
- The AI has no prescribed schedule for renewal; consequently, many are not updated in a timely fashion.
- Public participation is not required when drafting an AI.

## How Will the New AFFH System Differ From the Current System?

The key differences from the current AFFH system include:

1. The Analysis of Impediments (AI) is replaced by the Assessment of Fair Housing (AFH). The rule provides a standard framework for program participants to use to identify and examine "fair housing issues" and the underlying "contributing factors" that cause the fair housing issues (*see definitions page 4*).
2. HUD will provide each program participant with data covering the local jurisdiction and the surrounding region. Program participants must consider this data when assessing fair housing.
3. HUD will receive, review, and decide whether the AFH can be accepted.
4. The fair housing goals and priorities that program participants set in the AFH will be incorporated into their ConPlans and PHA Plans.
5. Public participation is required in the development of the AFH.
6. The AFH must be submitted every five years in synch with a new ConPlan or PHA Plan.

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

There is a new definition of “affirmatively furthering fair housing”:

“Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”

“Specifically it means taking meaningful actions that:

1. Address significant disparities in housing needs and in access to community opportunity.  
*(see page 5)*
2. Replacing segregated living patterns with truly integrated and balanced living patterns.
3. Transforming racially and ethnically concentrated areas of poverty into areas of opportunity.
4. Fostering and maintaining compliance with civil rights and fair housing laws.”

[24 CFR 5.152]

### What are “meaningful actions”?

Meaningful actions are “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”

[24 CFR 5.152]

### What does it mean to “certify”?

Jurisdictions submitting ConPlans and PHAs submitting PHA Plans have always had to certify (pledge) that they are affirmatively furthering fair housing choice. The final rule amends the old definitions of certifying AFFH compliance to mean that program participants will:

- Take meaningful actions to further the goals in the Assessment of Fair Housing (AFH); and,
- Not take any action that is materially inconsistent with its obligation to affirmatively further fair housing.
- PHAs must also address fair housing issues and contributing factors in their programs.

[24 CFR 91.225(a)(1) for localities & 91.325(a)(1) for states]

[24 CFR 903.7(o) (1) for PHAs]

## FIRST, A FEW DEFINITIONS OF OTHERWISE SIMPLE WORDS

[24 CFR 5.152]

### Fair Housing Choice

Fair housing choice means people have enough information about realistic housing options to live where they choose without unlawful discrimination and other barriers.

For people with disabilities, it also means accessible housing in the most integrated setting appropriate to the person's needs, including disability-related services needed to live in the housing.

### Fair Housing "Issue"

Fair housing issue means a condition that restricts choice or access to opportunity, including: *(definitions on next page)*

1. Ongoing local or regional segregation, or lack of integration.
2. Racial or ethnic concentrations of poverty.
3. Significant disparities in access to opportunity.
4. Disproportionate housing needs based on the "protected classes" of race, color, national origin, religion, sex, familial status, or disability.

A fair housing issue also includes evidence of illegal discrimination or violations of civil rights laws, regulations, or guidance.

### Fair Housing "Contributing Factor"

Fair housing contributing factor means something that creates, contributes to, perpetuates, or increases the severity of one or more fair housing "issues".

**Definitions for the Four Fair Housing Issues** *(see next page)*

## Definitions for the Four Fair Housing Issues

[24 CFR 5.152]

- **Integration** means that there is not a high concentration of people of a particular protected class in an area subject to analysis required by the Assessment Tool (see *below*), such as a census tract or neighborhood, compared to the broader geographic area.
- **Segregation** means that there is a high concentration of people of a particular protected class in an area subject to analysis required by the Assessment Tool, such as a census tract or neighborhood, compared to the broader geographic area.
- **Racially or Ethnically Concentrated Area of Poverty, R/ECAP**, means a geographic area with significant concentrations of poverty and minority populations. The rule does not define “significant” or give metrics. However, the proto-type mapping system demonstrated by HUD suggests that R/ECAPs will be outlined on maps and provided in data tables.
- **Significant disparities in access to opportunities** means substantial and measurable differences in access to education, transportation, economic, and other important opportunities in a community, based on protected class related to housing.
- **Disproportionate housing need** refers to a significant disparity in the proportion of a protected class experiencing a category of housing need, compared to the proportion of any other relevant groups or the total population experiencing that category of housing need in the geographic area. Categories of housing need are:
  - Cost burden and severe cost burden (paying more than 30% and 50% of income, respectively, for rent/mortgage and utility costs);
  - Overcrowded housing (more than one person per room); and,
  - Substandard housing conditions.

## Assessment Tool

The Assessment Tool refers to forms or templates provided by HUD that must be used to conduct and submit an AFH.

[24 CFR 5.152]

The Assessment Tool consists of a series of questions designed to help program participants identify racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and disproportionate housing needs. The Assessment Tool gives more detailed definitions of these than the rule does.

HUD states that the Assessment Tool questions are intended to enable program participants to perform meaningful assessments of fair housing issues and contributing factors, and to set meaningful fair housing goals and priorities. The Assessment Tool provides more detailed examples of fair housing issues and contributing factors.

## WHAT IS AN ASSESSMENT OF FAIR HOUSING (AFH)?

An Assessment of Fair Housing (AFH) means an analysis of fair housing data, an assessment of fair housing “issues” and “contributing factors”, and an identification of fair housing priorities and goals, all of which are submitted to HUD using the Assessment Tool.

[24 CFR 5.152]

The introduction to the AFH in the regulation states that in order to develop a successful AFFH strategy, it is necessary to assess the factors that cause, increase, contribute to, or maintain fair housing problems such as segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs

*(all of which are explained on the previous page).*

[24 CFR 5.154(a)]

The purpose of the AFH is to identify goals to affirmatively further fair housing and to inform fair housing strategies in the ConPlan, Annual ConPlan Action Plan, PHA Plan, and other community plans regarding transportation, education, or the environment.

[24 CFR 5.154(d)]

## CONTENT OF AN AFH

Program participants must conduct an Assessment of Fair Housing (AFH) using the HUD-prescribed Assessment Tool. The rule sets out a structure for the AFH, unlike the Analysis of Impediments (AI) it replaces, requiring the AFH to:

**1. Analyze data and other information**, including:

- a. HUD-provided data;
- b. Other local data; and,
- c. Local knowledge, including information gained from community participation.

The purpose of this analysis is to identify, across the protected classes, both within the jurisdiction and region, the “fair housing issues” of:

- a. Integration and segregation patterns and trends;
- b. Racially or ethnically concentrated areas of poverty;
- c. Significant disparities in access to opportunity; and,
- d. Disproportionate housing needs.

[24 CFR 5.154(d)(2)]

## 2. Assess fair housing issues.

Use the Assessment Tool and the data analysis of step #1 to identify “contributing factors” for:

- a. Segregation;
- b. Racially or ethnically concentrated areas of poverty;
- c. Disparities in access to opportunity; and,
- d. Disproportionate housing needs.

[24 CFR 5.154(d)(3)]

## 3. Identify fair housing priorities and goals.

Based on identified “fair housing issues” and “contributing factors” of steps #1 and #2, the AFH must:

- a. Identify and discuss the fair housing issues;
- b. Identify significant contributing factors, assign a priority to them, and justify the priorities; and,
- c. Set goals for overcoming the effects of the prioritized contributing factors. For each goal:
  - i. Identify one or more contributing factors that the goal is designed to address;
  - ii. Describe how the goal relates to overcoming the contributing factor(s) and related fair housing issue(s); and,
  - iii. Identify the metrics and milestones for determining what fair housing results will be achieved.

[24 CFR 5.154(d)(4)]

## 4. Summarize Public Participation.

The AFH must have a summary of:

- a. The public participation process and efforts to broaden participation in developing the AFH;
- b. Public comments received in writing and/or orally at public hearings; and,
- c. Comments not accepted, and the reasons why.

[24 CFR 5.154(d)(6)]

## 5. Review of Progress

After the first AFH, each AFH after must summarize progress achieved in meeting the goals and related metrics and milestones of the previous AFH and identify any barriers that prevented achieving those goals.

[24 CFR 5.154(d)(7)]



## LINKAGE BETWEEN THE AFH AND THE CONPLAN OR PHA PLAN

Strategies and actions to implement the fair housing goals and priorities in an AFH must be included in a program participant's 5-Year ConPlan, Annual ConPlan Action Plan, or 5-Year PHA Plan.

However, the AFH does not have to include the strategies and actions.

[24 CFR 5.154(d)(5)]

If a program participant does not have a HUD-accepted AFH (*see next page*), HUD will not approve its ConPlan or PHA Plan.

[24 CFR 5.162(d)]

ConPlan or PHA Plan strategies and actions must affirmatively further fair housing.

Strategies and actions may include (but are not limited to):

- Enhancing mobility;
- Encouraging development of new affordable housing in areas of opportunity;
- Encouraging community revitalization through place-based strategies; and,
- Preservation of existing affordable housing.

[24 CFR 5.154(d)(5)]

The AFH purpose section of the rule also discusses the link between the AHF and the ConPlan or PHA Plan. The AFH is to be incorporated into ConPlans and PHA Plans in a manner that connects housing and community development policy and investments with meaningful actions that affirmatively further fair housing.

A program participant's strategies and actions must affirmatively further fair housing. Activities to affirmatively further fair housing may include:

- Developing affordable housing in areas of high opportunity;
- Removing barriers to developing affordable housing in areas of high opportunity;
- Revitalizing or stabilizing neighborhoods through targeted investments;
- Preserving or rehabilitating existing affordable housing;
- Promoting greater housing choice within or outside of areas of concentrated poverty;
- Promoting greater access to areas of high opportunity; and,
- Improving community assets, such as quality schools, employment, and transportation.

[24 CFR 5.150]

The ConPlan regulations were modified to require the Strategic Plan portion of the ConPlan to describe how a program participant's ConPlan priorities and specific objectives will affirmatively further fair housing by having strategies and actions consistent with the goals and "other elements" identified in the AHF.

[24 CFR 91.215(a)(5) for localities, 91.315(a)(5) for states]

Annual Action Plans that are submitted in between 5-Year ConPlans must describe the actions the program participant plans to take during the upcoming year to address fair housing goals.

[24 CFR 91.215(k)(1) for localities, 91.320(j)(1) for states]



## HUD REVIEW OF THE AFH

The AFH (unlike the AI) must be submitted to HUD for review and “acceptance”.

- HUD will determine whether the AFH has a fair housing analysis, assessment, and goals.
- HUD may choose not to “accept” an AFH, or a part of an AFH, if it is:
  - “Inconsistent” with fair housing or civil rights laws, examples of which include:
    - ❑ The analysis of fair housing issues, fair housing contributing factors, goals, or priorities in the AFH would result in policies or practices that would discriminate.
    - ❑ The AFH does not identify policies or practices as fair housing contributing factors even though they result in excluding protected class people from areas of opportunity.

or,

- “Substantially incomplete”, examples of which include an AFH that:
  - ❑ Was developed without the required community participation (*see page 10*) or required consultation with other entities (*see page 14*).
  - ❑ Fails to satisfy a required element of this regulation, examples of which include:
    - An AFH with priorities or goals materially inconsistent with the data and other evidence.
    - An AFH that has priorities or goals not designed to overcome the effects of contributing factors and related fair housing issues.
- The AFH will be considered “accepted” by HUD within 60 calendar days.

[24 CFR 5.162(a)(1)&(b)(1)]

- HUD “acceptance” does not mean a program participant is meeting its obligation to affirmatively further fair housing; it means that for purposes of administering HUD funds (such as CDBG), the program participant has provided the elements required in an AFH.

[24 CFR 5.162(a)(2)]

- If HUD does not “accept” an AFH, HUD must provide specific reasons and describe actions that must be taken to gain “acceptance”.
  - Program participants have 45 days to revise and resubmit an AFH.
  - A revised AFH will be considered “accepted” after 30 calendar days, unless HUD does not “accept” the revised version.

[24 CFR 5.162(a)(1)&(b)(2)(c)]

## PUBLIC PARTICIPATION IN THE AFH PROCESS

To ensure that the AFH is informed by meaningful community participation, the rule requires program participants to give the public reasonable opportunities for involvement in both the development of the AFH and its incorporation into the ConPlan, PHA Plan, and other planning documents. The public participation provisions of the ConPlan and PHA Plan regulations must be followed in the process of developing the AFH.

Program participants “should” use communications means designed to reach the broadest audience. Examples in the rule include:

- Publishing a summary of each document in one or more newspapers;
- Making copies of each document available on the program participant’s official website;
- Making copies of each document available at libraries, government offices, and public places.

[24 CFR 5.158(a)]

### **The AFFH rule amended the ConPlan public participation regulations to include the AFH.**

#### Encouraging Public Participation in the Development of the AFH

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Provide for and encourage residents to participate in the development of the AFH and any revisions to the AFH (see page 17 regarding revisions).

[24 CFR 91.105(a)(2)(i) for localities & 91.115(a)(2)(i) for states]

- Encourage participation by the Continuum of Care, local and regional institutions, and other organizations (including community-based organizations) in the process of developing and implementing the AFH.

[24 CFR 91.105(a)(2)(ii) for localities & 91.115(a)(2)(ii) for states]

- Encourage participation by public housing residents, Resident Advisory Boards (RABs), resident councils, and other low income residents of a targeted revitalization area where a development is located, regarding developing and implementing the AFH.

[24 CFR 91.105(a)(2)(iii) for localities only]

- Describe procedures for assessing residents’ language needs, including any need for translation of notices and other vital documents. At a minimum, jurisdictions must take reasonable steps to provide language assistance to ensure meaningful access to participation by people with limited English proficiency.

[24 CFR 91.105(a)(4) for localities & 91.115(a)(4) for states]

**PUBLIC PARTICIPATION IN THE AFH PROCESS,**  
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## **PUBLIC PARTICIPATION IN THE AFH PROCESS,** *continued*

### **Make Data, the Proposed and Final AFH, and Records Available to the Public**

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Make available to the public as soon as practical [but] “after the start of the public participation process”, the HUD-provided data and any supplemental information the jurisdiction intends to use in preparing the AFH.

[24 CFR 91.105(b)(1)(i) for localities & 91.115(b)(1)(i) for states]

- Publish the proposed AFH in a manner that gives the public a reasonable opportunity to examine it and submit comments.
  - The public participation plan must indicate how the proposed AFH will be published.
  - Publishing may be met by:
    - ❑ Summarizing the AFH in one or more newspapers of general circulation. The summary must include a list of places where copies of the entire AFH may be examined.
    - ❑ Making copies available on the jurisdiction’s official website, and at libraries, government offices, and other public places.
  - The jurisdiction must provide a reasonable number of free copies to those who request it.

[24 CFR 91.105(b)(2) for localities & 91.115(b)(2) for states]

- The HUD-accepted AFH and any revisions must be available to the public, including in forms accessible to people with disabilities when requested.

[24 CFR 91.105(g) for localities & 91.115(f) for states]

- The public must be able to have reasonable and timely access to records from the last five years that relate to the AFH.

[24 CFR 91.105(h) for localities & 91.115(g) for states]

**PUBLIC PARTICIPATION IN THE AFH PROCESS,**  
*continues next page*

## **PUBLIC PARTICIPATION IN THE AFH PROCESS,** *continued*

### **Public Review and Comment During the Development of the AFH and the ConPlan**

The AFFH rule adds to the ConPlan rule, requiring jurisdictions to:

- Have at least one public hearing during the development of the AFH.  
[24 CFR 91.105(b)(3) for localities only]
- Have at least one public hearing before the proposed AFH is published for comment, in order to obtain public comments about AFH-related data and affirmatively furthering fair housing in the jurisdiction’s housing and community development programs.  
[24 CFR 91.105(e)(1)(iii) for localities & 91.115(b)(3) for states]
- Provide the public at least 30 days to comment on the proposed AFH.  
[24 CFR 91.105(b)(4) for localities & 91.115(b)(4) for states]
- Consider public comments submitted in writing, or orally at public hearings, when preparing the final AFH.
  - A summary of the comments must be attached to the final AFH.
  - An explanation of reasons for not accepting comments must be attached to the final AFH.  
[24 CFR 91.105(b)(5) for localities & 91.115(b)(5) for states]
- Have at least one public hearing before a proposed ConPlan is published for comment in order to obtain public comments about the proposed ConPlan’s strategies and actions for affirmatively furthering fair housing.  
[24 CFR 91.105(e)(1)(ii) for localities & 91.115(b)(3) for states]
- One of the two required public hearings about the ConPlan must address a program participant’s proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH.  
[24 CFR 91.105(e)(1)(i) for localities only]
- Respond to written complaints from the public about the AFH or any revisions to it. The response must be in writing, be meaningful, and be provided in 15 working days.  
[24 CFR 91.105(j) for localities & 91.115(h) for states]

**PUBLIC PARTICIPATION IN THE AFH PROCESS,**  
*continues next page*

## PUBLIC PARTICIPATION IN THE AFH PROCESS, *continued*

### A Few Additional Key Public Participation Features of the ConPlan Regs

- Jurisdictions must take appropriate actions to encourage participation by people of color, people who do not speak english, and disabled people.

Localities must also encourage participation by residents of public and assisted housing.

[24 CFR 91.105(a)(2) for localities & 24 CFR 91.115(a)(2) for states]

- Access to information must be reasonable and timely.
  - For local jurisdictions (not states) the public must have “reasonable and timely” access to local meetings (such as Advisory Committee meetings, City Council subcommittee meetings, etc.).

[24 CFR 91.105(f)&(h) for localities & 24 CFR 91.115(f) for states]

- There must be “adequate” public notice of and access to upcoming hearings.
  - Publishing small print notices in the newspaper a few days before the hearing is not adequate notice.
  - Two weeks’ notice is adequate.
  - Hearings must be held at times convenient to people who are likely to be affected.
  - Hearings must be held in places easy for lower income people to get to.

[24 CFR 91.105(e)(2)&(3) for localities & 24 CFR 91.115(b)(3) for states]

## CONSULTATION WITH OTHER ENTITIES AND THE AFH PROCESS

The AFFH rule also amends the ConPlan regulations' consultation requirements to include the AFH.

- When preparing the AFH and then the ConPlan, jurisdictions are required to consult with community and regionally-based (or state-based) organizations, including:
  - ❑ Organizations that represent protected class members;
  - ❑ Organizations that enforce fair housing laws (including participants in the Fair Housing Assistance Program, FHAP);
  - ❑ Fair housing organizations and nonprofits receiving funding under the Fair Housing Initiative Program (FHIP);
  - ❑ Other public and private fair housing service agencies;
  - ❑ Adjacent governments, including agencies with metro-wide planning and transportation responsibilities, particularly for problems that go beyond a single jurisdiction;
  - ❑ Entities previously listed in the ConPlan regulations, such as public and private agencies that provide assisted housing, health services, and social services.
  - ❑ Public housing agencies (PHAs), not only about the AFH, but also about proposed strategies and actions for affirmatively furthering fair housing in the ConPlan.

[24 CFR 91.100(a),(c)&(e) for localities & 24 CFR 91.110(a) for states]

- Consultation must be with any organizations that have relevant knowledge or data to inform the AFH, and that are independent and representative.

[24 CFR 91.100(e)(2) for localities]

- Consultation “should” occur with organizations that have the capacity to engage with data informing the AFH, and are independent and representative.

[24 CFR 91.110(a)(2) for states]

- Consultation must occur at various points in the fair housing planning process, at least in the development of both the AFH and the ConPlan.
- Consultation regarding the ConPlan must specifically seek input about how the AFH goals inform the priorities and objectives of the ConPlan.

[24 CFR 91.100(e)(3) for localities & 91.110(a)(2) for states]

## HUD ENCOURAGES JOINT AND REGIONAL AFHs

HUD encourages program participants to collaborate to submit a joint AFH or a regional AFH.

A joint AFH involves two or more program participants submitting a single AFH.

A regional AFH involves at least two program participants that must submit a ConPlan.

- Collaborating program participants do not have to be adjacent to each other, and they may cross state lines, as long as they are in the same Core Based Statistical Area.
- One of the program participants must be designated as the lead entity.
- All program participants are accountable for the analysis and any joint goals and priorities.
- Collaborating program participants must include their individual analysis, goals, and priorities in the collaborative AFH, and are accountable for them.

[24 CFR 5.156(a)]

A joint or regional AFH does not relieve each program participant from its obligation to:

- Analyze and address local and regional fair housing issues and contributing factors, and
- Set priorities and goals for its geographic area to overcome the effects of contributing factors and related fair housing issues.

[24 CFR 5.156(e)]

Collaborating program participants must have a plan for public participation that includes residents and others in each of the jurisdictions.

[24 CFR 5.156(d)]



## TIMING OF THE AFH

Most program participants will not be required to use the new AFFH system until 2019. Until a program participant is required to submit an AFH, it must continue to follow the current AI process, the Analysis of Impediments to fair housing choice process.

(For information about the AI process, refer to separate document from 2010, "Affirmatively Furthering Fair Housing and the Analysis of Impediments to Fair Housing Choice (AI)" at [http://nlhc.org/sites/default/files/AFFH\\_Brief\\_Outline\\_letterhead.pdf](http://nlhc.org/sites/default/files/AFFH_Brief_Outline_letterhead.pdf).)

[24 CFR 5.151 & 5.160(a)(3)]

There are five categories of due dates for the initial AFH.

In each case, the first AFH must be submitted to HUD 270 calendar days before the start of the program participant's program year in which a new 5-Year ConPlan or 5-Year PHA Plan is due.

1. CDBG entitlement jurisdictions receiving \$500,000 or more in Fiscal Year 2015 **and** that are required to have a new 5-Year ConPlan on or after January 1, 2017 must submit an initial AFH 270 calendar days before that new ConPlan is due. There are 22 such jurisdictions.
2. CDBG entitlement jurisdictions receiving \$500,000 or less in Fiscal Year 2015 **and** that are required to have a new 5-Year ConPlan on or after January 1, 2018 must submit an initial AFH 270 calendar days before that new ConPlan is due.  
(99 entitlement jurisdictions with either more or less than \$500,000 are expected to have to submit a new 5-Year ConPlan on or after January 1, 2018.)
3. States required to have a new 5-Year ConPlan on or after January 1, 2018 must submit an initial AFH 270 calendar days before that new ConPlan is due. Six states will start then.
4. Public Housing Agencies (PHAs) with more than 550 public housing units and vouchers, combined, ("non-qualified PHAs") must submit an AFH 270 calendar days before a new 5-Year PHA Plan is due on or after January 1, 2018.
5. PHAs with fewer than 550 public housing units and vouchers, combined, ("qualified PHAs") must submit an AFH 270 calendar days before a new 5-Year PHA Plan is due on or after January 1, 2019.

[24 CFR 5.160(a)(1)]

After the first AFH, all program participants must submit a new AFH 195 calendar days before the start of the first year of their next 5-Year ConPlan or 5-Year PHA Plan.

[24 CFR 5.160(b)]

All program participants must submit an AFH at least every five years.

[24 CFR 5.160(d)]

## REVISING THE AFH

- An AFH must be revised if there is a “material change”, which is a change that affects the information the AFH is based on so that the analysis, fair housing contributing factors, or priorities and goals do not reflect the current situation. Examples include:
  - A Presidentially declared disaster;
  - Major demographic changes;
  - New significant contributing factors; or,
  - Significant civil rights findings.

HUD may also require a revision if it detects a significant change.

[24 CFR 5.164(a)(1)]  
[24 CFR 903.15(c) for PHAs]

- A jurisdiction’s ConPlan-required “Citizen Participation Plan” and a PHA’s definition of a significant amendment must specify the criteria that will be used for determining when significant revisions to the AFH are appropriate.

[24 CFR 5.164(a)(2)], [24 CFR 91.105(c)(1)(ii) for localities & 91.110(c)(1)(ii) for states]  
[24 CFR 903.7(r)(2)(ii) for PHAs]

- When there are revisions to the AFH:

- The ConPlan and PHA Plan public or resident participation regulations pertaining to substantial/significant amendments must be followed.
- Completed revisions must be made public and submitted to HUD, following the ConPlan or PHA Plan regulations.

[24 CFR 5.164(c)], [24 CFR 91.105(c)(1)(ii) for localities & 91.115(c)(1)(ii) for states]

- A revised AFH might not require submitting an entirely new AFH.
  - It only needs to focus on the material change and any new fair housing issues and contributing factors.
  - It must include appropriate adjustments to the analysis, assessments, priorities, or goals

[24 CFR 5.164(a)(3)]

- A revised AFH must be submitted within 12 months of the onset of the material change. For Presidentially declared disasters, the revised AFH is due two years after the date the disaster is declared.

[24 CFR 5.164(b)(1)]

## RECORDKEEPING

ConPlan participants and PHAs preparing their own AFHs must have and keep records, including:

- The information that formed the development of the AFH.
- Records demonstrating compliance with the consultation and community participation requirements, including: the names of the organizations involved in the development of the AFH, written public comments, summaries or transcripts of public meetings or hearings, public notices, other correspondence, distribution lists, surveys, interviews, etc.
- Records demonstrating actions taken to affirmatively further fair housing.

[24 CFR 5.168]

The records must be made available to HUD.

The AFFH rule does not state that these records are to also be made available to the public.

[24 CFR 5.168]

However, the ConPlan regulations require ConPlan jurisdictions to provide the public with reasonable and timely access to information and records relating to the jurisdiction's AFH.

[24 CFR 91.105(h) for localities, 91.115(g) for states]

## FOCUS ON PUBLIC HOUSING AGENCIES (PHAs)

A PHA must certify that it will affirmatively further fair housing. This means the PHA will:

- Take meaningful actions to further the goals identified in the AFH;
- Take no action that is materially inconsistent with its obligation to affirmatively further fair housing; and,
- Address fair housing issues and contributing factors.

[24 CFR 903.7(o)(1)]

A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities.

- A PHA's admission and occupancy policies for public housing and vouchers must comply with the PHA's plans to affirmatively further fair housing.

[24 CFR 903.15(d)]

- A PHA's policies should be designed to reduce the concentration of tenants by race, national origin, and disability.
  - Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.
  - PHA policies should include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation because of race, national origin, disability, or other protected class.
  - Affirmative steps may include:
    - ❑ Marketing;
    - ❑ Tenant selection and assignment policies that lead to desegregation;
    - ❑ Providing additional supportive services and amenities (for example, supportive services that enable someone with a disability to transfer from an institutional setting into the community);
    - ❑ Coordinating with agencies serving people with disabilities to provide additional community-based housing opportunities; or,
    - ❑ Connecting people with disabilities to supportive services to enable them to transfer from an institutional setting into the community.

[24 CFR 903.15(d)(2)]

HUD may challenge a certification if a PHA:

- Fails to meet the requirements in the AFFH regulations;
- Fails to take meaningful actions to further the goals of its AFH; or,
- Takes action that is materially inconsistent with affirmatively further fair housing.

[24 CFR 903.15(d)(3)(ii)]

**FOCUS ON PUBLIC HOUSING AGENCIES,**  
*continues next page*

## FOCUS ON PUBLIC HOUSING AGENCIES,

*continued*

A PHA's certification is in compliance if it meets the requirements of the previous page and it:

- Examines its programs;
- Identifies any fair housing issues and contributing factors in those programs;
- Specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in its AFH;
- Works with the local governments to implement those local governments' efforts to affirmatively further fair housing that require the PHA's involvement;
- Operates its programs in a manner consistent with local jurisdictions' ConPlans.

[24 CFR 903.7(o)(3)]

Three ways a PHA can meet its affirmatively furthering fair housing obligation:

1. A PHA may work with a local or state government in preparing an AFH.
  - If a PHA serves residents of two or more jurisdictions, the PHA may choose the jurisdiction that most closely aligns to its PHA Plan activities.

[24 CFR 903.15(a)(1)]

2. A PHA may work with one or more other PHAs in the planning, resident participation, and preparation of an AFH. One of the PHAs must be designated the lead agency.

[24 CFR 903.15(a)(2)]

3. A PHA may conduct its own AFH.

[24 CFR 903.15(a)(3)]