
SUMMARY PROPOSED REGULATIONS AFFIRMATIVELY FURTHERING FAIR HOUSING

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INTRODUCTION

The long-awaited proposed rule intended to improve the obligation to “affirmatively further fair housing choice” (AFFH) was published for comment on July 19, 2013. Comments are due September 17.

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

It is widely recognized that HUD’s current practice of affirmatively furthering fair housing choice has not been effective. It merely requires localities, states, and public housing agencies (PHAs) receiving HUD funds (“program participants”) to certify (pledge) that they are complying by:

1. Having an Analysis of Impediments (AI) to fair housing choice;
2. Taking actions to overcome impediments; and,
3. Keeping records.

Major features of the propose rule include:

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

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

HUD is proposing a new definition of “affirmatively furthering fair housing”.

Affirmatively furthering fair housing (AFFH) means taking proactive steps to foster more inclusive communities for everyone protected by the Fair Housing Act (the “protected classes”).

More specifically it means taking proactive steps to:

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

The above ends will be accomplished primarily by:

1. Making investments with federal and other resources;
2. Instituting strategies or taking actions that address or mitigate fair housing “issues” (see page 3) that are identified in an Assessment of Fair Housing, AFH (see page 4); and,
3. Promoting fair housing choice for all consistent with the Fair Housing Act.

[24 CFR 5.152]

The existing (old) definition of AFFH means:

1. Conducting an analysis to identify impediments to fair housing choice within the jurisdiction;
2. Taking appropriate actions to overcome the effects of any impediments identified through that analysis; and,
3. Maintaining records reflecting the analysis and actions.

[24 CFR 91.225(a)(1) for localities & 91.325(a)(1) for states]
[24 CFR 903.7(o)(3) for PHAs]

Jurisdictions submitting ConPlans and PHAs submitting PHA Plans have always had to certify (pledge) that they are affirmatively furthering fair housing choice by carrying out the three actions of the old AFFH definition.

The proposed AFFH rule would amend the old definition of certifying AFFH compliance to mean the jurisdiction or PHA 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.

[24 CFR 91.225(a)(1) for localities & 91.325(a)(1) for states]
[24 CFR 903.7(o) for PHAs]

NEW AFFIRMATIVELY FURTHERING FAIR HOUSING PROVISIONS

HUD proposes to add a number of sections to the existing regulations that generally apply to almost all HUD programs, 24 CFR Part 5, Subpart A.

FIRST, A FEW DEFINITIONS OF OTHERWISE SIMPLE WORDS

Fair Housing Choice

Fair housing choice means people have enough information about realistic options that can be accessed without discrimination.

Fair Housing “Issues”

Fair housing issues mean ongoing local or regional:

1. Segregation, or need to support integrated communities.
2. Racial or ethnic concentrations of poverty.
3. Disparities in access to community assets (explained in greater detail on page 4).
4. Disproportionate housing needs (explained in greater detail on page 4) based on the “protected classes” of race, color, national origin, religion, sex, familial status, or disability.
5. Evidence of illegal discrimination or violations of civil rights laws, regulations, or guidance.
6. Any other condition that is an obstacle to or fails to advance fair housing choice.

Fair Housing “Determinants”

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

Program Participants

Program participants means:

- Any jurisdictions required to submit a ConPlan (those getting CDBG, HOME, ESG, or HOPWA funds).
- Public housing agencies (PHAs).
- Others in HUD programs that may be subject to AFFH regulations and announced by HUD through a *Federal Register* notice. (Advocates interpret this to mean programs that currently do not exist.)

[24 CFR 5.152]

Three technical definitions are presented on page 4:

- Assessment of Fair Housing (AFH)
- Disproportionate housing need
- Significant disparities in access to community assets

There are other definitions that this summary does not include.

WHAT IS AN ASSESSMENT OF FAIR HOUSING (AFH)?

An Assessment of Fair Housing (AFH) is a document that includes fair housing data, an assessment of fair housing “issues” and “determinants”, and an identification of fair housing priorities and general goals.

[24 CFR 5.152]

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

The AFH will address: integration and segregation; concentrations of poverty; disparities in access to community assets; and, disproportionate housing needs based on the protected classes. The AFH will also assess a jurisdiction’s fair housing enforcement and outreach capacity.

[24 CFR 5.154(d)]

CONTENT OF AN AFH

Program participants must conduct an Assessment of Fair Housing (AFH). Unlike the Analysis of Impediments (AI) it would replace, the proposed rule would set out a structure for the AFH, requiring it to:

1. Analyze:
 - a. The HUD-provided data (see page 6);
 - b. Other local or regional data; and,
 - c. Community input.

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 (see page 6);
- b. Racially or ethnically concentrated areas of poverty (see page 6);
- c. Significant disparities in access to community assets; and,
- d. Disproportionate housing needs.

[24 CFR 5.154(d)(2)]

Significant disparities in access to community assets is defined as measurable differences in access to education, transportation, economic, and other important assets in a community, based on the location of housing and the protected classes.

Disproportionate housing needs exist when the percentage of protected class families in a “category of housing need” is 10% higher than the percentage of all people in the category. The proposed rule specifies three “categories of housing need”:

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

[24 CFR 5.152]

[The concept of disproportionate housing needs is used in the ConPlan.]

CONTENT OF AN AFH, *continued*

The proposed AFFH rule would set out a structure for the AFH, requiring it to:

2. Assess the primary “determinants” influencing conditions for protected class people relating to the fair housing “issues” of:

- a. Integration and segregation;
- b. Concentrations of poverty;
- c. Disparities in access to community assets; and,
- d. Disproportionate housing needs.

[24 CFR 5.154(d)(3)]

3. Consistent with both the analysis and assessment (items #1 and #2 above):

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

[24 CFR 5.154(d)(4)]

4. Assess the program participant’s fair housing enforcement and outreach capacity. This means the ability of a jurisdiction and organizations in the jurisdiction to accept and investigate complaints, obtain remedies, engage in fair housing testing, and educate the community.

[24 CFR 5.152 & 5.154(d)(1)]

5. Summarize:

- a. The community participation process (see page 10), including efforts to broaden community participation in the development of the AFH;
- b. Comments from the public received in writing, or orally at hearings;
- c. Comments not accepted, and the reasons why.

[24 CFR 5.154(d)(5)]

HUD WILL PROVIDE UNIFORM DATA

HUD will provide each “program participant” with nationally uniform local and regional (or state-level) data on:

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

Additional or better local or regional data may be used to supplement HUD data.

HUD will also provide PHA site location data, the distribution of housing choice vouchers, and occupancy data.

Program participants must use the HUD data, any available local or regional information, and information obtained through community participation and consultation (see page 10) to conduct an AFH.

[24 CFR 5.154(c)]

The preamble to the proposed rule elaborates on the data HUD will provide, including:

- Measures of segregation such as the dissimilarity index and the isolation index (see below).
- Indications whether a census tract is an RCAP or ECAP (see below).
- A poverty index indicating the depth and intensity of poverty.
- A neighborhood school proficiency index.
- A labor market engagement index.
- A job access index summarizing the accessibility of a neighborhood as a function of its distance to all job locations.
- A health hazards exposure index.
- A transit index reflecting a neighborhood’s proximity to transit stops.

Last year HUD demonstrated a prototype fair housing data mapping tool. The proposed rule does not mention such a tool, but it does indicate that additional guidance and information will be provided later. The prototype is at http://egis.hud.gov/affht_pt.

These data elements are explained in a supporting document at <http://www.regulations.gov/#!documentDetail;D=HUD-2013-0066-0003>.

For example, in order to be a RCAP or ECAP, a census tract must have:

- A non-white population of 50% or more in metro areas, 20% or more in non-metro areas; and
- A poverty rate greater than 40%, or three times the average tract poverty rate of the metro area, whichever is lower.

A dissimilarity index indicates the degree that the distribution of any two groups (often racial or ethnic groups) differs across census tracts or block groups.

An isolation index compares a group’s share of the overall population in a jurisdiction to the average neighborhood’s share for members of that group.

PHAs WOULD HAVE THREE AFH OPTIONS

Public housing agencies' (PHAs') five-year PHA Plans must be consistent with the ConPlan of the jurisdiction they are located in. PHAs must have an AFH, and have three options for meeting this requirement:

[24 CFR 5.158(b)]
[24 CFR 903.15(a)]

1. A PHA may participate with a local government to develop an AFH together.

- The PHA must work with the local government where 60% of the PHA's "hard units" are located [vouchers are not considered].
 - If the percentage of a PHA's hard units in a local government is closer to 50%, then the PHA may choose to participate with a local government that has planning activities most similar to those of the PHA.
- A PHA that only administers vouchers and chooses the option of a joint AFH must coordinate with the jurisdiction that governs its operations.
- PHAs and local governments submitting a joint AFH must actively participate in required AFH community participation (see page 10).
- The PHA must certify that its PHA Plan is consistent with the AFH and ConPlan.
- The PHA must participate in the AFH process every five years.

[24 CFR 5.158(b)]
[24 CFR 903.15(a)(1)&(c)]

- If a PHA disagrees with any aspect of the joint AFH, it may submit a dissenting statement or submit alternative views that become a part of the AFH.

[24 CFR 5.154(e)(1)]

2. A PHA may choose to conduct its own AFH.

- It must certify that its PHA Plan is consistent with the AFH, and that it will affirmatively further fair housing.
- It must update its AFH every year.

[24 CFR 903.15(a)(2)&(c)]

3. PHAs that are covered by a state agency will be bound by the state AFH, but may choose to work with the state in developing the AFH.

These PHAs must:

- Demonstrate that their development-related activities [not voucher-related activities] affirmatively further fair housing.
- Certify that their PHA Plan is consistent with the state's AFH and ConPlan.
- Incorporate their state's AFH and ConPlan every five years.

[24 CFR 903.15(a)(3)&(c)]

There is more about PHAs and the obligation to affirmatively further fair housing on page 15.

REGIONAL AFHs

Two or more program participants are encouraged, but not required, to work together to submit a single, joint AFH.

- They do not have to be contiguous.
- They may cross state borders.
- One member of a regional AFH must be designated as a lead entity.
- Each program participant must still analyze and address its local fair housing “issues” and “determinants”, and meet its own affirmatively further fair housing obligations.
- There must be a plan for community participation that includes residents and stakeholders from all of the program participants, not just those of the lead entity. If the program participants have public notice and comment periods that differ, the longest period must apply to all.

[24 CFR 5.156]

TIMING OF THE AFH

The proposed AFFH rule stresses that fair housing considerations are to fully inform the ConPlan and PHA Plan processes. It also emphasizes accountability to the community. Therefore:

- 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 ConPlan is due.
- At least every five years after the initial AFH is in place, a new AFH must be sent to HUD 195 calendar days before the start of a program participant’s program year in which a new ConPlan is due.
 - PHAs participating with their jurisdictions must incorporate the new AFH into their PHA Plans every five years.
 - PHAs conducting their own AFH must update their AFH every year.
- In order for a ConPlan or PHA Plan to be approved so that a program participant may receive HUD funds tied to those plans, a program participant must have an “accepted” AFH (see next section).
 - If an AFH is not submitted in a timely manner, HUD may postpone the date a ConPlan may be submitted in order for an AFH to be accepted; however, failure to submit a ConPlan with an “accepted” AFH by August 16 will automatically result in the loss of CDBG funds.
 - If a PHA preparing its own AFH fails to submit one in a timely manner, the PHA must submit its AFH no later than 75 calendar days before the beginning of its fiscal year in order to avoid an impact on its funding.

[24 CFR 5.160(a)&(c)]

[24 CFR 5.160(b)(1)]

HUD REVIEW OF THE AFH

Unlike the AI, the AFH 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; 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 13).
 - Fails to satisfy the required elements of this regulation; for example, an AFH with priorities materially inconsistent with the data and other available evidence.

[The language about “substantially incomplete” mirrors the existing ConPlan regulations.]
[24 CFR 5.162(a)(1)&(b)]
- The AFH will be considered “accepted” by HUD within 60 calendar days.
- 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)&(c)]
- 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)]

REVISING THE AFH

- An AFH must be revised if there is a significant change in circumstances, including:
 - A Presidentially-declared disaster;
 - Major demographic changes;
 - Substantial policy changes such as those related to zoning, housing plans, or development plans or policies; or,
 - Significant civil rights findings.

HUD may also require a revision if it detects a significant change.
[24 CFR 5.164(a)(1)]
- 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)]
- 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 (see next section).
 - Completed revisions must be made public and submitted to HUD, following the ConPlan or PHA Plan regulations.
[24 CFR 5.164(b)]

PUBLIC PARTICIPATION IN THE AFH PROCESS

To ensure that the AFH is informed by meaningful community participation, the proposed 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.

[24 CFR 5.158]

The proposed AFFH rule would amend the ConPlan public participation regulations to include the AFH.

Encouraging Public Participation in the Development of the AFH

The proposed 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 significant revisions to the AFH (see page 9 regarding significant 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 Resident Advisory Boards (RABs) and resident councils, in addition to residents, 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, *continues next page*

PUBLIC PARTICIPATION IN THE AFH PROCESS, *continued*

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

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

- Make available to the public as soon as practical, 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 affords 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, and by making copies available at libraries, government offices, and other public places.
 - The summary must include a list of places where copies of the entire AFH may be examined.
 - 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 significant 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 relating to the AFH from the last five years.

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

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

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

- 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(b)(3) for localities only]
[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]

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

PUBLIC PARTICIPATION IN THE AFH PROCESS, *continued*

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

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

- Consider any comments from the public 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)(i)&(ii) for localities & 91.115(b)(3) for states]

- 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]

A Few Additional Key Public Participation Features of the ConPlan Regs

- Jurisdictions are "expected to take whatever actions are appropriate" to encourage involvement by people of color, people who do not speak english, disabled people, and 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.

- There must be reasonable notice that standard documents, such as a draft AFH, are available for people to review and make comments about.
- 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 week's 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) for localities & 24 CFR 91.115(b)(3) for states]

CONSULTATION WITH OTHER ENTITIES AND THE AFH PROCESS

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

- When preparing the AFH and then the ConPlan, jurisdictions will be required to consult with community and regionally-based (or state-wide) 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 already 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 & 91.110(a),(a)(1)&(a)(2) for states]

- Consultation must be with any organizations that have the capacity to engage with data informing the AFH, are independent, and are representative. A Fair Housing Advisory Council or similar group that includes community members and advocates, fair housing experts, and other key stakeholders is acceptable for meeting the community consultation requirement.

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

- Consultation must occur throughout 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) for localities & 91.110(a)(2) for states]

AFFIRMATIVELY FURTHERING FAIR HOUSING AND THE CONPLAN

The proposed AFFH rule would amend the ConPlan rules pertaining to the five-year Strategic Plan and Annual Action Plan, directly tying the AFH and affirmatively furthering fair housing choice into the two ConPlan documents.

The Five-Year Strategic Plan

The existing ConPlan regulations require jurisdictions to set priorities and specific objectives for allocating funds for a five-year period.

The proposed AFFH rule adds a new paragraph requiring jurisdictions to describe how those priorities and specific objectives will affirmatively further fair housing. In order to do this, jurisdictions must provide strategies and actions in the Strategic Plan that are consistent with the goals and other elements of the AFH.

For fair housing issues not addressed by these priorities and objectives, the Strategic Plan must identify additional objectives and priorities for affirmatively furthering fair housing.

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

The Annual Action Plan

Jurisdictions must indicate the actions they intend to take in the upcoming year to address the fair housing issues identified in the AFH.

[24 CFR 91.220(k)(1) for localities & 91.320(j)(i) for states]

Amending the ConPlan

Jurisdictions must ensure that amendments to the ConPlan are consistent with the analysis and strategies in the AFH, as well as with their certification to affirmatively further fair housing.

[24 CFR 91.505(d)]

AFFIRMATIVELY FURTHERING FAIR HOUSING AND THE PHA PLAN

Deconcentration

The proposed AFFH rule would modify the existing PHA Plan regulations pertaining to deconcentration of poverty (Subpart A of Part 903).

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

- The types of “development related activities” mentioned in the proposed rule include:
 - Affirmative marketing;
 - Applicant consultation and information;
 - Tenant selection and assignment policies;
 - Provision of additional supportive services and amenities;
 - Construction, rehabilitation, modernization, demolition, disposition, and designation (for example as “elderly”); and,
 - Physical accessibility.

- Any affirmative steps a PHA intends to take through its policies must be stated in its admission policy and be consistent with the AFH.

[24 CFR 903.2(a)(3)]

Affirmatively Furthering Fair Housing

The section on “affirmatively furthering fair housing” in the existing PHA Plan regulations is modified in a number of ways:

- The existing rule requires policies governing eligibility, selection, and admissions to be designed to reduce racial and ethnic concentrations.

The proposed rule adds:

- Concentrations based on disability.
- The policies must conform to the AFH and the PHA’s assessment of fair housing needs.
- Any plans for construction, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility must be stated in the Capital Fund Plan, and must be consistent with the AFH.

[24 CFR 903.2(d)(2)]

AFFIRMATIVELY FURTHERING FAIR HOUSING AND THE PHA PLAN, *continues*

AFFIRMATIVELY FURTHERING FAIR HOUSING AND THE PHA PLAN, *continued*
Affirmatively Furthering Fair Housing, *continued*

- The existing rule suggests that PHAs take affirmative steps to overcome the effects of conditions that resulted in limiting participation due to race or ethnicity.

The proposed rule adds:

- Disability.
- PHAs “must” take affirmative steps to overcome the effects of discrimination.
- Examples of “affirmative steps” to include:
 - Use of tenant selection and assignment policies that lead to desegregation, such as tailored site-based waiting lists and residency preferences designed to assist in deinstitutionalizing people with disabilities.
 - Provision of additional supportive services that enable people with disabilities to transfer from an institutional setting to the community.

[24 CFR 903.2(d)(2)(i)&(ii)]

- The existing rule provides examples of potential challenges to a PHA’s certification that it is affirmatively furthering fair housing. The proposed rule adds, failure to meet all of the new AFFH requirements in 24 CFR part 5.

[24 CFR 903.2(d)(3)]

Certifying AFFH

The proposed AFFH rule would modify the existing PHA Plan regulations pertaining to the certification that the PHA is affirmatively furthering fair housing (Subpart B of Part 903).

- The modified rule defines “affirmatively furthering fair housing” to mean the PHA will:
 - Take meaningful actions to further the goals in the AFH;
 - Take no action materially inconsistent with its obligation to affirmatively further fair housing; and,
 - Address fair housing “issues” and “determinants” in its programs.

[24 CFR 903.7(o)(1)]

- The certification applies not only to the 5-Year PHA Plan and the Annual Plan, but also to any plans incorporated in them, such as the tenant and voucher participant selection and occupancy plans, as well as capital activities.

[24 CFR 903.7(o)(2)]

- The existing regulation lists five standards for considering a PHA to be in compliance with the certification that it is affirmatively furthering fair housing.

The propose rule:

- Modifies the recordkeeping provision by requiring records of the results of actions taken.
- Adds two more standards:
 - Operates programs in a manner consistent with any ConPlan and with any order or agreement to comply with civil rights laws.
 - Complies with the AFH consultation requirements.
- Replaces the word fair housing “impediments” with “issues” and “determinants”.

[24 CFR 903.7(o)(3)]

LOCAL JURISDICTIONS ARE RESPONSIBLE FOR MONITORING

Local jurisdictions must monitor their own strategies and actions intended to address the fair housing issues and goals in the AFH. Although states have a similar ConPlan rule regarding monitoring, the proposed AFFH rule for states is not amended to add monitoring for addressing AFH issues and goals.

[24 CFR 91.230 for localities only]

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, summaries or transcripts of public meetings or hearings, public notices, other correspondence, distribution lists, surveys, interviews, etc.
- Record demonstrating actions taken to affirmatively further fair housing.

[24 CFR 5.166]

Comments are due September 17, 2013, using [regulations.gov](http://www.regulations.gov),
<http://www.regulations.gov/#!submitComment;D=HUD-2013-0066-0001>

The proposed rule is at:

- Formal *Federal Register* version, <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf>.
- Large print, double-spaced (easier to read) version, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-16751.pdf>.

The website for HUDUser from the Office of Policy Development and Research is the main source for information, at http://www.huduser.org/portal/affht_pt.html. It includes supplemental information, including instructions for using a prototype geospatial tool for the data HUD will be providing, along with a description of the methodology used to arrive at the data. (The website for HUD's Office of Fair Housing and Equal Opportunity only links to the proposed rule.)