



# An Overview of HUD's Proposed Affirmatively Furthering Fair Housing Rule



# Mandate of The Proposed Rule

All HUD programs need to be administered in a manner that furthers the policy of Affirmatively Furthering Fair Housing, thereby ensuring that not only does discrimination not occur, BUT THAT FUNDING RECIPIENTS TAKE:

“proactive steps to address the issues of segregation and related barriers, particularly as reflected in racially and ethnically concentrated areas of poverty”.

The Act allows the Secretary of HUD the discretion to define the precise scope of AFFH obligation upon its participants.

The purpose of the proposed AFFH rule is to better define the concept of AFFH and to provide a framework within which participants will be compliant with the policy goal of fair housing.



# Mandate Of The Proposed Rule (Continued)

## The purpose of AFFH is:

- To improve fair housing choice for all through fair housing planning, strategies, and actions.
- Provide clearer standards.
- Provide greater technical assistance by HUD.
- Ensure stronger accountability systems governing fair housing planning, strategies, and actions.
- Assess issues related to fair housing choice and
- Identify fair housing goals that will inform housing and community development policy and investment planning.



# What is Affirmatively Furthering Fair Housing?

## **AFFH's definition under the proposed rule means:**

- Taking proactive steps beyond simply combating discrimination to foster more inclusive communities and
- Providing access to community assets for all persons protected by the Fair housing Act.
- Addressing significant disparities in access to community assets.
- Overcoming segregated living patterns.
- Supporting and promoting integrated communities.
- Ending racially and ethnically concentrated areas of poverty
- Ensuring compliance with civil rights and fair housing laws.



# What is Affirmatively Furthering Fair Housing? (Continued)

- One must analyze and eliminate housing discrimination
- Promote fair housing choice for all person
- Provide opportunities for inclusive patterns of housing occupancies [to protected classes]
- Promote housing that is structurally accessible to, and usable by, all persons, and
- Foster compliance with the nondiscrimination provisions of the Fair housing Act.

***The concept of AFFH requires participants to work on fixing the issues, which at their core, lead to discrimination and not allowing people the opportunity of fair housing choice.***



# What is Affirmatively Furthering Fair Housing? (Continued)

***Fair housing choice*** is defined by HUD as “individuals and families having the information, options, and protection to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin or handicap.”

There exists within the definition of fair housing choice three concepts of choice:

- **Actual choice** – the existence of realistic housing options
- **Protected choice** – housing that can be accessed without discrimination
- **Enabled choice** – the availability and realistic access to sufficient information regarding options so that choice is informed





# What is Affirmatively Furthering Fair Housing? (Continued)

- HUD is addressing the issues and impact of segregation and poverty on individual's housing choice by requiring that
  - Participants create and develop an Assessment of Fair Housing (AFH), submit the AFH for review by HUD
  - Incorporate the AFH into the Public Housing Assessment (PHA) and Consolidated Plans.



# Why HUD Is Making Changes To The Rule?

- HUD has realized that the current process of affirmatively furthering fair housing using the AI and certification process is not as effective as they had originally envisioned it to be.
- This low level of effectiveness was due to a number of reasons including
  - There not being any review by HUD of AIs,
  - HUD did not provide information or inform participants of the AI process and
  - There was no clear connection between the AI and community planning efforts.
  - The current system has also fallen short in effectiveness by not incorporating leading innovations in sound planning practice and not effectively using limited public resources to affirmatively further fair housing.





# Why HUD Is Making Changes To The Rule? (Continued)

- Change in the quality of AIs differs among participants.
  - This range of quality is due to participants not putting the time or money into an AI so that it can be an effective planning tool
  - Lack of goals and instruction from HUD on what an AI should accomplish.



# Why HUD Is Making Changes To The Rule? (Continued)

- HUD has also envisioned this proposed to rule to address the “legacy of segregation and factors related to locational choice that have been influenced by race, national origin, disability and other protected classes.”



# Outcomes/Objectives That HUD Hopes To Accomplish Through This Rule

In the proposed rule, HUD has stated 6 outcomes/objectives that it hopes to achieve through the proposed changes:

1. Replacing the Analysis of Impediments (AI) with an Assessment of Fair Housing (AFH), which will use regional and nation benchmarks and data tools to facilitate the measurements of trends and changes over time.
2. HUD will provide data that program participants must consider in their AFHs.
3. There will be an incorporation of explicit fair housing plans into existing planning processes.
4. Encouraging and addressing regional approaches to fair housing issues
5. An integral component of the AFH will be the required inclusion of community participation.
6. Establish an approach to AFFH that requires a coordinated effort to combat illegal housing discrimination.

Id. 43711.



# Who Is Affected By This Rule and How?

Anyone who receives federal monies from HUD must create policies that ensure that affirmatively fair housing occurs.

These groups are (1) Public Housing Agencies (PHA) and (2) Local governments and States that receive HUD funds through the following programs:

- Community Development Block Grants (CDBG)
- HOME Investment Partnerships (HOME)
- Emergency Solutions Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)



# What Is An Assessment of Fair Housing (AFH)?

The AFH is a new tool and document that participants will develop that will fulfill the statutory requirements of AFFH. The AFH is a report, that must provide an assessment of the elements and factors that cause or maintain four major situations that impact and limit housing choice in violation of the Fair Housing Act. Id. 43730.



# What Is An Assessment of Fair Housing (AFH)? (Continued)

These four situations are:

1. Disparity in terms of access to community assets
2. Segregation
3. Racially or ethnically concentrated areas of poverty and
4. Disproportionate housing needs.

The AFH will also provide goals that the jurisdictions will undertake to correct these situations. The AFH will also be incorporated into the PHA Plan and Consolidated plan.





# What is an Assessment of Fair Housing (AFH)? (Continued)

HUD views the AFH as a different and stronger tool from an AI because the AFH will contain data that HUD will provide to its participants. HUD is also clarifying the goals and requirements of the AFH process and integrating the AFH into the PHA Plan, Consolidated Plan and other future planning documents like PHA Capital Fund, transportation and education plans.



# Who Must Submit an AFH?

- Public Housing Agencies and Local governments and States that receive HUD funds through the following programs will have to submit an AFH for review by HUD. These programs are:
- Community Development Block Grants (CDBG)
- HOME Investment Partnerships (HOME)
- Emergency Solutions Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)



# What Issues Must the AFH Address?

The AFH must address the following issues which HUD views as core issues that need to be solved to eliminate housing discrimination:

- Integration and segregation
- Concentrations of poverty
- Disparities in access to community assets
- Disproportionate housing needs based upon race, color, religion, sex, familial status, national origin or handicap



# What Issues Must the AFH Address? (Continued)

Additionally, the AFH will assess the jurisdiction's fair housing enforcement and fair housing outreach capacity.

HUD will provide participants with an assessment tool that they use to help determine the issues listed above.



# What Is the Minimum Information the AFH must Include?

To pass review by HUD the AFH must consist of the following components:

- Summary of fair housing issues and capacity to address
- Analysis of data
- Assessment of determinants to fair housing issues
- Identification of fair housing priorities and general goals
- Summary of community participation



# Explanation of the AFH Components

- Participants must provide the following four components:
  1. Summary of fair housing issues including any findings or judgments related to fair housing or other civil rights laws
  2. Assessment of compliance with existing fair housing laws, regulations, and guidance
  3. Assessment of the jurisdiction's fair housing enforcement
  4. Fair housing outreach capacity





# Analysis of the Data

**HUD will be providing data to the participants that they must use in the AFH. This data will be nationally uniform, local and regional data on:**

- Patterns of integration and segregation
- Racially and ethnically concentrated areas of poverty
- Access to community assets in the areas of: education, employment, low-poverty, transportation, and environmental health
- Disproportionate housing needs
- Individuals with disabilities and families with children
- Discrimination
- Summary of Community Participation



# Analysis of the Data (Continued)

Specifically, HUD will be providing participants with the following data in each of the above areas:

- Segregation
- Racially/ethnically- concentrated areas of poverty (RCAP/ECAP)
- Community Asset Indicators
- Disproportionate Housing Needs
- Assessment of Determinants of Fair Housing Issues
- Identification of Fair Housing Priorities and General Goals



# How The AFH Differs Among Specific Program Participants?

## **PHA:**

- HUD will provide PHAs with locational data, distribution of housing choice vouchers and occupancy data. PHAs are also provided with a process for the submission and review of dissenting statements for an AFH created with a consolidated plan program participant.

## **HOME:**

- HOME participants are considered to be a single unit of general local government. So their AFH needs to be like a local government's AFH.

## **Insular Area:**

- Insular area may choose to produce an abbreviated AFH or complete AFH like the local governments need to prepare.

## **District of Columbia:**

- District of Columbia is considered a local government under this proposed rule.



# AFH Produced by Regional Collaboration

- Two or more program participants are able to collaborate together and submit a single AFH.
- These participants do not need to be contiguous and can even be located in different States.
- One of the participants must be designated as the lead participant on the AFH.
- The community participation requirement in the AFH must include residents and citizens from **both** jurisdictions.
- **Even though participants are working together on the AFH, each participant is still required to analyze and address local fair housing issues in its own jurisdiction.**



# Submission Requirements

- Submissions need to take place every 5 years.
- The AFH will be submitted on the same cycle that they submit their Consolidated plans, or PHA plans.
- The initial AFH needs to be submitted at least 270 calendar days before the start of the program participants' new year.
- After submission of the initial AFH, all subsequent AFHs need to be submitted at least 195 days before the next program year.
- Submissions need to be completed early so that the AFHs can be incorporated into the PHA plans.
- The absolute final deadline to submit an AFH is **August 16<sup>th</sup>**.
- Failure to submit by this final deadline will result in the loss of CDGB funds for the upcoming year.



# Review and Revising of AFH

- The purpose of the review is for HUD to determine if the participant has met the requirements of providing an analysis, assessment and goals.
- HUD has 60 days to review the AFH. If HUD has not rejected the AFH within that 60-day period then the AFH has been accepted.





# Review and Revising of AFH (Continued)

- Acceptance only means that HUD is able to administer funds to the participant.
- It does not mean that the participant has complied with its obligation under AFFH.
- HUD has the opportunity to withhold funds if HUD decides after the 60 day period that the AFH was not completed correctly.



# Review and Revising of AFH (Continued)

- If HUD chooses to **reject** an AFH it must:
- Notify the participant in writing the reason for the rejection and
- State actions that the participant may take to address these issues

The participant has 45 days to revise and resubmit the AFH. If after 30 days after re-submission the AFH has not been rejected then it has been accepted.



# Review and Revising of AFH (Continued)

- An AFH is rejected if it is inconsistent with fair housing or civil rights law or if the AFH is substantially incomplete.
- The proposed rule provides two examples of a substantially incomplete AFH that would result in the AFH being rejected:
  - The required community participation or consultation component is missing
  - An AFH that is missing the required elements or has goals that are not consistent with the data



# Review and Revising of AFH (Continued)

- The AFH must be revised if a significant change in circumstances has occurred like a natural disaster or significant policy changes or significant civil rights findings.
- A revision will not be considered complete without the community participation section also being redone.
- A revision of an AFH automatically results in a revision of a PHA plan within 18 months.



# Record Keeping Pertaining to AFH

Program participants are required to maintain records of the information used to develop the AFH. Specifically participants need to keep the following documents:

- Information and records relating to the AFH or the revision of the AFH
- Records showing compliance with the community participation requirement
- Records demonstrating the actions the participant has undertaken to affirmatively further fair housing
- If courts or the United States Government have found violations to the Fair Housing Act, one must keep documents of the judicial findings and any measures that the participant took in response to the findings
- Documents showing that the participant is in compliance to ensure fair housing and community development activities
- Records showing that consortium members are in compliance with AFFH
- Any evidence that the participant relied upon to support its affirmatively furthering fair housing certification



# How Does The AFH Link To Other Guiding Documents and Plans

The AFH must be submitted and approved by HUD before the PHA plan is submitted so that the AFH can influence the PHA plan.

Id. 43715.





# How AFH links to Consolidated Plan?

Participants under the Consolidated Plan will demonstrate how their affordable housing and community development priorities will fulfill the goal of AFFH. Furthermore, any additional actions that are not directly tied to the goals set forth in the AFH will also be identified. They must also describe their actions on how they will fulfill the goals of AFFH in their annual action plan.



# How AFH links to Consolidated Plan? (Continued)

- Once HUD has made AFH-related data available to the jurisdiction, the jurisdiction will make this data and any additional data that they choose available to the public, public agencies and other interested groups, as soon as practical



# How AFH links to PHA Plans?

- PHAs are encouraged to create or be heavily involved in the creation their own AFH which will be a predicate to the PHA certification.
- PHA's are offered the opportunity to work with their local governments on the creation of an AFH.
- It is strongly encouraged for PHA to participate in the new collaborative AFH because in this situation PHAs will only need to submit their plan every 5 years.



# How AFH links to Local Government?

## The Local Government is required to:

- Encourage citizens, residents and other interested parties to participate in the development of the AFH or revisions to it
- Engage with people, who are of low and moderate income, persons who are living in slums as well as minorities and non-English speaking persons
- Under the citizen participation plan, Local Governments will be required to explain how they addressed language needs of non-English speaking residents to help ensure their engagement in the process



# How AFH links to Local Government? (Continued)

Local governments need to consult with the community and regionally based organizations that represent protected classes and organizations that enforce fair housing rules. It specifically states that organizations that receive FHIP funds need to be contacted. This consultation will not just occur during the development of the AFH but will also continue during the development of the consolidated plan as well.



# How AFH links to State Government?

- States are required to consult with public and private housing agencies that provide housing assistance.
- For the consolidated plan, the State must meet with organizations that enforce fair housing laws.
- States also have to meet with PHA, which will help provide a better basis for the certification as it will demonstrate that the PHA Plan is consistent with the Consolidated plan and the State's own description for its strategy for AFFH and addressing the needs of public housing.
- The State and the PHA are not just looking at AFFH under the proposed rule they are also looking at other programs such as local drug elimination, neighborhood improvement programs and resident programs and services are coordinated to reach community development goals.



# Additional Costs of Implementation of the Rule on Program Participants

- HUD is stating that there will be a reduction in costs for the development of data; however,
- For participants that have not be in compliance with their AIs in the past, there will be an increase in costs especially as many participants who have AI's that would be compliant have used outside consultants.
- Though HUD is providing national and regional data, it is not providing local data or additional national/regional data that would be needed by a jurisdiction to be able to properly execute an AFH.





# AFH Certification

## Certification:

Each jurisdiction must submit a certification. This certification will state that the jurisdiction will affirmatively further fair housing thereby it agrees to take meaningful actions to further the goals identified in the AFH and that none of its actions will be inconsistent with these goals.

