

Affirmatively Furthering Fair Housing

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Recipients of federal community planning and development funding (CDBG, HOME, HOPWA, and ESG), public housing authorities, States, and Insular Areas have long been mandated to Affirmatively Furthering Fair Housing (AFFH) as declared by the Fair Housing Act of 1968. The Fair Housing Act protects certain groups from unlawful discrimination in the sale, rental, and financing of housing. The protected classes under the federal law are race, color, national origin, religion, sex, disability, and familial status.

Prior to the publication of HUD's AFFH Rule in July 2015, the requirement to AFFH went largely unenforced. Local governments and PHAs were unclear about what actions they were required to take in order to meet their obligation to further fair housing and there was no standardized process for fair housing planning.

The new rule has clarified the definition of AFFH and instituted a new tool and process to aid local governments and PHAs in the analysis of fair housing issues in their jurisdiction's, service area, and region. The tool, known as the Assessment of Fair Housing (AFH), replaces the Analysis of Impediments to Fair Housing Choice (AI). One of the main differences between the AI and the AFH is that the AFH has strengthened the connection between fair housing planning and the use of federal funds to address priority housing and community development needs in a jurisdiction. This link is due to the receipt of federal funding by program participants being dependent on the submission and acceptance of the AFH by HUD.

All entitlement communities and PHAs (program participants) are required to prepare an AFH according to their planning cycles, every 3-5 years. In Florida, there are 179

program participants comprised of 80 Consolidated Plan participants and 99 PHAs. The majority of the Florida AFHs are due between 2019 and 2020 and the state's first submitters include Manatee County, the City of Tampa, and Miami-Dade County¹.

Local governments and PHAs must not only ensure that they do not discriminate in the administration and implementation of their policies, programs, and activities, but must also do everything within their power to stop and reverse the effects of the discriminatory practices in their jurisdictions and ensure equal access to housing and opportunities such as good quality schools, employment, safe neighborhoods, public amenities, and public transportation.

Development of the AFH

HUD encourages collaboration between one or more Consolidated Plan participant and PHAs for a more meaningful assessment. That is, an assessment with more impactful goals and strategies especially for issues that transcend jurisdictional boundaries. The process to prepare an AFH involves several components:

1. Community Engagement - The required community consultation is similar to the processes associated with the preparation of Consolidated Plans, Annual Action Plans, and PHA plans. At a minimum, the program participant must encourage broad participation by:

- Amending the Citizen Participation Plan to incorporate the public participation requirements applicable to the AFH as outlined at 24 CFR 5.158;
- Making HUD-provided maps and data as well as any local data that will be used in the analysis available to the public;
- Hosting public meeting(s) to gather input and recommendations from residents and stakeholders;

¹ Initial AFH due dates are as of April 5, 2016 and may be subject to change based on planning cycles or whether program participants are preparing regional or joint assessments. For the definitive due date, contact your local HUD field office.

- Consulting with public and private agencies and organizations including housing providers, social service agencies, health agencies, fair housing agencies, PHAs, regional planning agencies, and adjacent governments; and
- Making the AFH available for public review and submittal of comments with a minimum 30-day public comment period for Consolidated Plan participants and at least 45 days prior to the PHA public hearing.

Community engagement is a crucial component of the AFH process because of limitations of the HUD-provided data. HUD has provided data available on a national level mainly associated with three of the protected characteristics - race/ethnicity, national origin, and familial status. In order to identify the fair housing issues impacting a specific region of the country or state, it is imperative that residents, community leaders, and other stakeholders have an opportunity to share their local knowledge and local data and that this information is considered in the development of the AFH.

Beyond the minimum public participation requirements, there are also several best practices that program participants can engage in to reach the broadest audience including persons that often encounter discrimination such as persons with disabilities, persons with limited English proficiency, and low income persons.

2. Identification of Fair Housing Issues – Program participants must analyze fair housing issues impacting its jurisdiction and region. The fair housing issues include: segregation/integration patterns, racially or ethnically concentrated areas of poverty (R/ECAPs), disparities in

access to opportunity, and disproportionate housing needs. Program participants must discuss each issue and identify the contributing factors based on HUD-provided data and maps as well as local data and local knowledge.

3. Identifying Contributing Factors – The AFFH rule defines a contributing factor as “a factor that creates, contributes to, perpetuates, or increases the severity of one of more fair housing issues”. As part of the analysis of fair housing issues, program participants must identify significant factors that limit fair housing choice and access to opportunity. The specific contributing factors are derived from the review of the HUD-provided data, and local data, as well as input from the community participation process.

4. Prioritizing the Contributing Factors – Each contributing factor must be prioritized and the assigned priority justified by the program participant. HUD has allowed flexibility in regard to the methodology used to assign priorities, but requires that the highest priority be given to contributing factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.

5. Setting Specific and Measurable Goals to Address the Contributing Factors and Associated Fair Housing Issues – Program participants must develop goals to address and overcome the significant contributing factors identified in this process. The goals should include a timeline for implementation, identify the relevant parties that will be involved with the implementation, and should be incorporated into the subsequent planning documents, including consolidated plans, annual action plans, and PHA plans.



Photos above are from a stakeholder forum and resident meeting held in September 2016 during the development of a regional AFH — a collaboration between the Tampa Housing Authority, City of Tampa, and Hillsborough County.

6. Submitting the AFH to HUD – Unlike its predecessor, the AFH must be submitted to HUD for review through the AFFH User Interface². The deadline for submitting an AFH is at least 270 days prior to the start of the program year for which a Consolidated Plan is due or the fiscal year for which a new 5-year PHA plan is due. Program participants should work with their HUD field office to confirm their AFH due date, especially if the AFH is a joint or regional collaboration involving multiple participants. HUD has 60 days to review the submitted AFH before it will either (i) accept the AFH if all the requirements are met or (ii) not accept the AFH if HUD finds that the AFH is substantially incomplete or inconsistent with fair housing or civil rights requirements.

The Future of Affirmatively Furthering Fair Housing

In January 2017, H.R. 482 and companion bill S.103, both titled “Local Zoning Decisions Protection Act of 2017,” were introduced to Congress, leaving the fate of fair housing enforcement in jeopardy. Though the future of regulated fair housing law is unknown, what we do know is that local governments do not need a federal rule to continue fair housing initiatives. Many local communities have long been implementing their own fair housing practices prior to the new AFFH final rule. In the event the AFFH rule is repealed, local governments and PHA’s will still have an obligation under the Fair Housing Act to affirmatively further fair housing.

When the AFFH rule took effect, no additional federal funding was allocated to cover costs associated with the preparation of the AFH. Continuing to implement best practices will not be an unexpected financial burden since the process most likely would have been supplemented with local funding.

Moving forward, there are several strategies communities can implement that are best practices for supporting fair housing efforts and creating inclusive communities.

1. Community Participation

A fundamental need for developing effective community wide housing strategies is community participation. Engage the public and relevant stakeholders in the planning process to obtain input critical to successfully identifying and implementing affordable housing and fair housing goals. Residents can participate in focus groups, public meetings, or public hearings.

2. Fair Housing Education

Education is a critical component to furthering fair housing initiatives. Provide outreach to the public, local government officials, and related housing organizations to raise awareness on fair housing law through literature, workshops, webinars, and housing summits. Local governments may also offer Fair Housing Certification courses to housing industry professionals.

3. Fair Housing Ordinance

Adopting a fair housing ordinance is a good start to creating local policy to assure full and equal opportunity to all residents in obtaining fair and adequate housing. Fair housing

ordinances help to prohibit discrimination and eliminate unfair housing practices in the sale, rent, or lease of any housing accommodation. A local fair housing ordinance can also include additional protected classes not covered by federal law.

4. Affordable Housing Policies

Lack of affordable housing is the most recognized impediment to fair housing choice. Improving affordable housing policies to increase the production and preservation of the local supply of affordable housing is paramount. These



² https://hudapps.hud.gov/HUD_Systems

policies can include relaxation of overly burdensome regulations that increase the cost to produce affordable housing, inclusionary housing policies, and creating a community land trust³.

5. Housing Plans

Continue to update plans outlining the principles, guidelines, standards, and strategies surrounding the housing needs of all residents. These plans include the Housing Element of the local Comprehensive Plan, Transportation Plans, Neighborhood Plans, and the Five-Year Consolidated Plan, if applicable.

There are many strategies local governments can implement to assist in affirmatively furthering fair housing. The suggestions above provide a preview of popular strategies used to enforce fair housing regardless of federal law and the AFFH rule. These strategies have proven to support affordable housing and when implemented properly, can have a significant impact for the community and its unmet housing needs.



Fair Housing and Related Services

The Florida Housing Coalition offers unparalleled experience in fair housing and HUD Consolidated Planning. Collectively, our team has developed nearly 20 Analyses of Impediments to Fair Housing Choice and 15 Consolidated Plans. That expertise

extends to HUD systems such as the Integrated Disbursement and Information System (IDIS), the eCon Planning Suite, and the new AFH Tool and User Interface. Our team has a breadth of experience working in all aspects of housing and community development including for state agencies, local governments, private consultants, and non-profit organizations. The Florida Housing Coalition is available

to assist you in the development of your AFH/AI or with any Consolidated Planning needs. Please visit our website at www.flhousing.org to learn more about our team of experts and for a comprehensive list of our services. HNN

³ The Florida Community Land Trust Institute is a program of the Florida Housing Coalition that can assist you with the formation and implementation of a Community Land Trusts (CLT). Phone 850-878-4219.



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