

Unofficial Commentary on the Affirmatively Furthering Fair Housing—AFFH Rule



AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH)—LEGAL AUTHORITY

- The Federal Fair Housing Act prohibits housing discrimination and specifies that “The Secretary shall administer the programs and activities relating to housing and urban development in a *manner affirmatively to further the purposes of the Act.*” (emphasis added, 42 USC 3608(e)(5))
- In varying ways, AFFH requirements apply to *all* HUD programs (CPD, PIH, Housing, FHEO)
- Program-specific AFFH requirements & obligations are found in individual program regulations

General Goals of AFFH

(source: Fair Housing Planning Guide)

- Affirmatively Furthering Fair Housing = a real comprehensive strategy designed to:
 - ✓ Reduce Housing Discrimination
 - ✓ Promote public awareness of fair housing laws, rights, and obligations
 - ✓ Ensure a broad range of affordable housing opportunities
 - ✓ Ensure the *programmatic accessibility* of housing and programs to all protected classes
 - ✓ Ensure the *physical accessibility* of housing and programs to persons with disabilities

Affirmatively Furthering...

Does **NOT** mean establishing quotas.

Does **NOT** mean government mandating where people shall live.

DOES mean:

- Conducting analysis to identify groups **least likely** to participate (including development of AI or AFH)
- Undertaking affirmative **marketing and outreach** to promote participation by “least likely” groups
- Taking actions to **overcome patterns of segregation** or concentration
- Eliminating methods of administration which may have **effect** of discriminating, or limiting participation

AFFH – what does it mean for housing providers?

1. Who is living in your housing?

- Collect accurate racial/ethnic/disability data
- Analyze against US Census data to detect under-representations
- Affirmative outreach and marketing to promote participation by under-represented

AFFH – what does it mean for housing providers?

2. Where is your housing?

- Analyze what percentage in areas of racial/ethnic concentration – is it providing a “wide range of housing choices, including choices outside of areas of existing concentration”
- Development in non-minority areas
- Development in minority areas particularly if they are also areas of opportunity

Areas of opportunity: access to jobs, quality education, viable transportation, amenities (food, financial, etc.)

AFFH Actions in CPD-funded programs

Regulatory Requirements for CDBG/HOME programs:

- Meaningful citizen participation in planning processes (24 CFR 91.100)
- Conduct Analysis of Impediments to FH Choice (AI)* (24 CFR 91.225 + Fair Housing Planning Guide Volume I)
- ConPlan/AAP activities to **address impediments** (*ibid*)
- Data collection, monitoring & ongoing analysis by recipients/sub-recipients to identify underserved persons (24 CFR 121, 91.205, 91.225, 91.305, etc.)

*Under new AFFH rule published by HUD 7/16/2015, the AI will be replaced by a new template which would be called an Assessment of Fair Housing (AFH) – see also slide 14, below.

AFFH Actions in CPD-funded programs, cont'd.

- Development of housing that includes choices outside of areas of concentration (24 CFR 91.220, 92.202)
- Outreach & marketing to underserved persons (Title VI, Section 504 general regs)
- Analysis of special needs of persons with LEP (Title VI regs, 1/22/07 LEP Notice)
- Physical accessibility of meeting sites & funded activities, including housing* (Section 504 regs at 24 CFR 8.20, et seq.)
- Sign certification that recipient will AFFH (24 CFR 91.225, 91.325)

*Section 504 of Rehabilitation Act of 1973 requires that a minimum of 5% of units be accessible to persons with mobility impairments (24 CFR 8.20, et seq.)

AFFH Actions in CPD- & PIH-funded programs

AFFH rule (published in Federal Register 7/16/2015):

- Will replace AI with Assessment of Fair Housing (AFH) template
- HUD provides baseline datasets to recipient, recipient analyzes and commits to actions to address identified impediments/contributing factors

AFH would include specific analyses of (*non-exhaustive list*):

- Areas of racial/ethnic concentrations of poverty;
- Whether existing affordable housing provides range of choice, including choices outside areas of concentration;
- Educational, employment, transportation opportunities;
- Environmental factors, crime, amenities (food, financial, etc.)

Improved coordination/cooperation/integrated planning amongst CDBG/HOME & PIH recipients in remediating contributing factors

- HUD now evaluating public input received on draft AFH template

AFFH Actions in **PIH**-funded programs

LIPH, Section 8 HCV, Project-based rental assistance programs:

- Resident Advisory Board participation in PHA plan development (24 CFR 903.13)
- Ongoing analysis of applicant & participant rates, including identifying racially/ethnically-identifiable sites (24 CFR 903.2, 903.7)
- Outreach & marketing strategies to under-represented groups (24 CFR 903.2, 903.7)

AFFH Actions in **PIH**-funded programs, cont'd.

- Ongoing analysis of Admin Plan, ACOP, other policies to identify practices with disparate impact (e.g., preferences; adoption of site or AMP-based waiting lists) (24 CFR 903.2, 903.7; 960.206; 982.207; PIH Notice 2011-31 “Guidance on Non-Discrimination...PHAs)
- **Participating landlord list contains properties outside of areas of racial/ethnic concentration** (Title VI regs at 24 CFR 1.4)
- **Participating HCV landlord list contains accessible housing units** (Section 504 regs at 24 CFR 8.28)
- Sign certification that recipient will AFFH (24 CFR 903.2, 903.7)

AFFH Actions in PIH-funded programs, cont'd.

Other PIH-related **special actions** that may require AFFH impact analysis:

- Applications for demo-dispo (24 CFR 941.202, 24 CFR 970.7)
- Applications for Rental Assistance Demonstration (RAD) conversion (*supra*)
- Adoption of **locality preferences** (24 CFR 903.7)
- **Site selection** for Project-Based Voucher Program (24 CFR 983.55(e))
- Applications for LIPIH **senior/elderly designation** (24 CFR 945.205)
- Implementation of **site-based waiting lists** (24 CFR 903.1)

AFFH Actions in Multifamily Housing programs

Subsidized & FHA-Insured Multifamily Housing Programs:

- Site & neighborhood standards for new 202/811s – development **outside of areas of concentration** (annual NOFAs, 24 CFR 891.125, 24 CFR 891.320 + “most integrated setting” language found at 24 CFR 8.4)
- Analysis of participation rates, use of **AFHMPs** to conduct outreach to under-represented groups & prevent development of concentrated developments (24 CFR 200.600 + HUD AFHMP Forms 935.2)
- Analysis of methods of administration (e.g., site-based waiting lists, preferences) to identify policies which may have disparate impact on protected classes (Title VI, Section 504 regs)
- Olmstead considerations-integration mandate: where appropriate to a disabled person’s preferences & medical needs & preferences, is affordable housing development promoting integrated settings/non-institutional environments?

Community Participation—Four Parts:

- **Part 1** requires a description of outreach activities undertaken to encourage broad and meaningful community participation. This includes: 1) Identify media outlets used, including efforts to reach populations underrepresented in the planning process; 2) an explanation of how these efforts are designed to reach the broadest audience possible; & 3) for PHAs, identify your meetings with Resident Advisory Boards;
- **Part 2** requires a list of organizations consulted in the process;
- **Part 3** requires an evaluation of the community participation efforts in achieving meaningful participation, and;
- **Part 4** requires a summary of all comments obtained in the community participation process, including a summary of any comments, views, and recommendations not accepted and the reasons why not accepted.