



## UNDERSTANDING HUD'S NEW AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) REGULATION

In July, 2015, HUD issued a new regulation to implement a long-standing provision of the 1968 federal Fair Housing Act. That provision requires HUD to “administer [its] programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the Fair Housing Act]. (42 U.S.C. §3608(e)(5)) A similar provision (42 U.S.C. §3608(d)) applies to *all* federal agencies with housing and community development programs. This is the origin of the term, “affirmatively furthering fair housing (AFFH).” What does it mean? And how will the AFFH regulation work?

### **A Little History and Context**

Congress enacted the Fair Housing Act in 1968 against a backdrop of racial unrest. In the summer of 1967, demonstrations and uprisings took place in predominantly African American neighborhoods in more than 120 cities across the country. Typically sparked by police actions that residents felt were unfair or abusive, these uprisings were fueled by residents’ anger and frustration over conditions in their neighborhoods: entrenched segregation that limited housing choice, high rents for housing that was in poor condition, low performing schools and limited access to jobs and transportation, among others. Like the events that took place in Ferguson, Baltimore and elsewhere in 2015, they focused the nation’s attention on the problems faced by people living in communities cut off from opportunity. A commission set up by then-President Lyndon Johnson to investigate the riots warned that, “Our nation is moving toward two societies – one black and one white, separate and unequal.” (Report of the National Advisory Commission on Civil Disorders, March 1, 1968.) It noted the harm caused by segregation, both to residents of segregated communities and to the nation as a whole. The Commission recommended banning racial discrimination in housing, and taking positive steps to break down the barriers of segregation that had been created by specific, deliberate policies and practices of local, state and federal government as well as the private sector. Those recommendations resulted in the federal Fair Housing Act.

### **What is Affirmatively Furthering Fair Housing?**

The concept of “affirmatively furthering fair housing,” or AFFH, means that it is not enough to end discrimination based on race, national origin or any of the other characteristics protected under the Fair Housing Act. As the courts have interpreted it, the Fair Housing Act also reflected Congress’ desire for HUD to “use its grant programs to end discrimination and segregation, to the point where the supply of genuinely open housing increases.” (NAACP v. Secretary of Housing and Urban Development, 817 F2d 149, 155 (1<sup>st</sup> Cir. 1987)). Congress

recognized that where a person lives has a big impact on the opportunities available to them – schools, jobs, transportation, health, recreation, etc. – and that in order for the country as a whole to flourish, we must take active steps to ensure that all communities can provide their residents with the kinds of opportunities they need to succeed.

HUD's regulation sums this up concisely, saying that affirmatively furthering fair housing means taking meaningful steps to:

1. Address significant disparities in access to community assets (schools, jobs, transit, etc.);
2. Overcome segregated living patterns;
3. Promote integrated communities;
4. End racially and ethnically concentrated areas of poverty; and
5. Foster and maintain compliance with civil rights and fair housing laws.

The regulation goes on to make it clear that, to accomplish these goals, jurisdictions must *both* target investments in neighborhoods that have been neglected *and* expand affordable housing in communities that already provide their residents with lots of access to opportunity but have few affordable units. The aim is to ensure housing choice: not to make decisions for people about where to live, but to make good choices available to them.

### **How the Rule Works**

The AFFH regulation applies to cities, counties, states and insular areas that receive funding from HUD through the Community Development Block Grant (CDBG), Emergency Solution Grant (ESG), HOME, and Housing Opportunities for People with Aids (HOPWA) programs and are required to submit Consolidated Plans (ConPlans). These are known as entitlement jurisdictions. The rule also applies to public housing authorities (PHAs). Together, we refer to all of these entities as “grantees.”

These “grantees” will be required to conduct an Assessment of Fair Housing (AFH) once every five years, in advance of their ConPlan or PHA plan. The AFH replaces the old Analysis of Impediments to Fair Housing Choice (AI).

HUD is providing uniform national data to all grantees to help them with their assessments, along with an on-line tool that maps much of the data. The data and mapping tool is available to the public, and can be found on the HUD website at <https://egis.hud.gov/affht/#>. HUD is also providing a template for the AFH, which guides grantees through the questions they must consider and the data they should use in their assessments. This is called the Assessment Tool. There are separate Assessment Tools for local governments, states and insular areas, and PHAs. In addition to the data that HUD is providing, it encourages grantees to incorporate relevant local data (quantitative information) and knowledge (qualitative information) into their analyses.

Grantees will submit their AFHs to HUD for review. If HUD does not reject an AFH within 60 days it will be deemed accepted. A grantee must have an accepted AFH in order for HUD to approve its ConPlan or PHA plan. Without an accepted AFH, grantees cannot receive their CDBG or PHA funding. HUD will not accept an AFH if it is inconsistent with fair housing and civil rights laws, or if it is substantially incomplete.

The Assessment of Fair Housing is linked to the ConPlan or PHA plan, which must reflect the priorities and goals identified in the AFH and demonstrate how the grantee is affirmatively furthering fair housing. Each year, in their Annual Action Plans and performance reports, grantees must report on the progress they have made in achieving the fair housing goals contained in their AFH.

### **The Assessment of Fair Housing**

HUD has provided a format for each grantee to use in its Assessment of Fair Housing, or AFH. This is known as the Assessment Tool, and there are three different Assessment Tools: one each for local governments, states and insular areas, and PHAs. The Tools are on-line forms that guide the grantee through a series of questions about the fair housing issues in their jurisdiction and the factors that cause or contribute to those problems, called “contributing factors” in the regulation. They point the grantee to the maps and data that will help in the analysis of each fair housing issue, and provide a list of possible contributing factors for each. This analysis of the fair housing issues is the core of the AFH.

HUD has identified five fair housing issues. These are:

1. Segregation and integration;
2. The intersection between high levels of segregation and concentrated poverty (areas identified in the regulation and on the HUD maps as “racially concentrated areas of poverty” (RCAPs) or “ethnically concentrated areas of poverty” (ECAPs);
3. Disparities in access to community assets (schools, jobs, transportation, etc.);
4. Disproportionate housing needs (people who are paying too much of their income on housing, live in overcrowded conditions, or live in substandard housing units); and
5. Fair housing enforcement, outreach capacity and resources.

The Assessment Tool walks the grantee through an analysis of each of these issues for the jurisdiction overall, and then through a separate analysis of how these issues affect publicly-supported housing (public housing, Project-based Section 8, etc.) and people with disabilities.

Once the grantee has determined which of these issues are present in its community and which contributing factors are causing the problems, it must then assess which contributing factors are most significant in causing, contributing to or perpetuating discrimination and segregation, and set goals for overcoming them. It must also identify metrics and a timeline for measuring progress. The specific strategies and action steps the grantee will take to

accomplish those goals do not have to be included in the AFH, but must be incorporated into the ConPlan or PHA plan. The regulation is very clear that affirmatively furthering fair housing requires grantees to look at *both* targeted investments in neighborhoods that have been neglected to increase access to opportunity in those areas *and* expanding affordable housing in areas with high levels of opportunity but a limited supply of affordable units.

The Assessment of Fair Housing is a planning document that lays out the path the grantee will follow to increase equitable access to opportunity. In order to fulfill their obligation to affirmatively further fair housing, grantees must take meaningful steps to carry out that plan. The regulation also makes it clear that the AFFH obligation applies to all of a grantee’s housing and community development activities and resources, not just the funding it receives from HUD.

### Implementation

HUD is phasing in implementation of the new regulation, following the five year schedule under which grantees submit their ConPlans or PHA plans. In 2016, some 23 entitlement jurisdictions are required to conduct Assessments of Fair Housing under the new rule. These are jurisdictions that received more than \$500,000 in CDBG funds in 2015 and have ConPlans due in 2017. Over the next several years, other grantees will begin to conduct their Assessments of Fair Housing as shown on the chart below.

Phased-in Implementation of the AFFH Regulation

Type of Grantee:	1 <sup>st</sup> AFH submitted:*
Large CDBG grantees (>\$500,000 in CDBG in 2015)	2016+
Small CDBG grantees (<\$500,000 in CDBG funds in 2015)	2018+
States and insular areas, Public Housing Authorities (large and small)	TBD

\*The exact year for each grantee is based on the ConPlan or PHA plan schedule

HUD recognizes that housing issues and trends are not limited by jurisdictional boundaries, and it is encouraging grantees to take a regional approach to their AFHs. Grantees have three choices. They may 1) conduct their AFHs on their own; 2) partner with another grantee to do a

joint AFH (such as two PHAs working together, a PHA partnering with its jurisdiction, or a small city partnering with the county in which it is located); or 3) enter into a regional collaboration that includes two or more entitlement jurisdictions and could include one or more PHAs, as well. In any collaboration, each grantee is still responsible for its own community participation process, and must set its own fair housing goals.

### **The Importance of Community Engagement**

The regulation calls for a robust community engagement process, that will both provide information to and seek input from a wide range of community stakeholders, including public and private agencies providing assisted housing or health & social services, community- or regionally-based organizations that represent protected class members under the Fair Housing Act, and organizations that enforce fair housing laws. Grantees must hold at least one public hearing during the AFH process, make the draft AFH available to the public for comment for at least 30 days, and consider the data, knowledge and recommendations that members of the public provide. If the grantee decides not to accept any of the data, knowledge or recommendations, it must explain why in its AFH. Failure to conduct an effective community participation process may cause HUD to reject an AFH as being incomplete.

The community participation process can be a tremendous opportunity for the grantee to gather important information and perspectives on the most pressing fair housing needs in the community and promising strategies for addressing them. It offers community stakeholders a way to influence important housing and community development issues and priorities. To be most effective, stakeholders should also play an active role in the community participation process for the ConPlan or PHA plan, as those are the documents that spell out how the grantee will use its resources to fulfill the goals identified in the AFH.

### **Resources**

HUD has compiled many resources about AFFH and the regulation on its website, including the regulation itself, the Assessment Tools, the data and mapping tool, an AFFH guidebook explaining how to conduct the AFH and including a sample AFH, a variety of training videos, fact sheets and FAQs, and an Ask A Question portal that allows grantees and the public to request answers to specific questions they may have. All of these resources can be found at <https://www.hudexchange.info/programs/affh/>. Information about affirmatively furthering fair housing is also available on the websites of the National Fair Housing Alliance ([www.nationalfairhousing.org](http://www.nationalfairhousing.org)), the National Low Income Housing Coalition ([www.nlihc.org](http://www.nlihc.org)) and the Policy and Race Research Action Council ([www.prrac.org](http://www.prrac.org)), among others. In addition, under President Obama, the White House launched a new Opportunity Project (<http://opportunity.census.gov/>), designed to put data and tools in the hands of the public about critical resources such as access to jobs, housing, transportation, schools, and other neighborhood amenities.

For more information, contact Debby Goldberg at [dgoldberg@nationalfairhousing.org](mailto:dgoldberg@nationalfairhousing.org).



# A ZIP CODE SHOULD NOT DETERMINE A CHILD'S FUTURE.

Many variables can shape a child's outcome in life like the zip code where a child grows up. That's because not all neighborhoods have the same opportunities and resources, such as quality schools, transportation, housing, healthcare, food and jobs. The good news is that there are many ways to improve our communities so that everyone has a fair chance to succeed, regardless of zip code. You can play a vital role in your local community.

Find out how at:  
[hud.gov/fairhousing](http://hud.gov/fairhousing)



**FAIR HOUSING. SHARED OPPORTUNITY IN EVERY COMMUNITY.**

A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The National Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit [www.hud.gov/fairhousing](http://www.hud.gov/fairhousing).

National Fair Housing Alliance, March 2017.