

# **Affirmatively Furthering Fair Housing, Part I: An Overview for Advocates**



**RENEE WILLIAMS & KARLO NG  
WWW.NHLP.ORG**

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# Housekeeping

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- Evaluations will be e-mailed to registrants after the webinar.
- MCLE certificates will be emailed to California attorneys in the next two weeks.
- Registration info for Part II of this series, taking place June 8, is coming soon.



# Overview

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- Today, we will do the following:
  - Summarize the legal framework concerning the duty to affirmatively further fair housing (AFFH);
  - Provide an overview of the AFFH final regulation;
  - Introduce the Assessment of Fair Housing (AFH) Assessment Tool;
  - Briefly discuss community participation;
  - Provide a brief implementation update; and
  - Conclude with Q&A.

# Stepping Back – Why This is Important

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- The Affirmatively Furthering Fair Housing (AFFH) regulation creates a structured fair housing planning process during which HUD funding recipients will assess fair housing issues and ultimately set goals to overcome barriers to fair housing choice.
- This planning process presents a key opportunity to empower communities to call attention to fair housing issues such as segregation and disproportionate housing needs.
- Community participation, particularly by underrepresented groups, will provide vital local context.



# Duty to Affirmatively Further Fair Housing

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# Duty to Affirmatively Further Fair Housing (AFFH)

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- Fair Housing Act
  - HUD must “administer the programs and activities relating to housing and urban development in a manner affirmatively to further” FHA’s policies. 42 U.S.C. § 3608 (e)(5).
  - Obligation also applies to all “executive departments and agencies.” 42 U.S.C. § 3608(d).
- Affirmative obligation
  - AFFH requires *more than merely prohibiting discrimination*; instead, there exists an obligation to “take the types of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied.”
    - ✦ Preamble to AFFH Final Rule, 80 Fed. Reg. 42,272, 42, 274 (July 16, 2015).



# Duty to AFFH (cont.)

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- AFFH obligation applies to:
  - HUD and other federal agencies that administer housing & urban development activities and programs
  - Federal funding recipients
    - Example: A jurisdiction that receives Community Development Block Grant (CDBG) funding must certify that the jurisdiction will affirmatively further fair housing. *See* 42 U.S.C § 5304(b)(2).
- AFFH requirements have previously included:
  - completing an analysis of impediments (AI);
  - taking actions to overcome identified impediments' effects;
  - and maintaining records.
  - *See, e.g., former* 24 C.F.R. § 570.601(a)(2).



# Examples of Problematic Practices

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- HUD's failure to adequately consider regional approaches to desegregating public housing (Baltimore, MD)
- Demolishing public housing without financing replacement housing on the same site, thus resulting in reduced housing opportunities in non-segregated areas (Aurora Housing Authority – Aurora, IL)
- County's refusal to take "race-based impediments to housing choice" into account when completing the Analysis of Impediments (Westchester County, NY)

# Affirmatively Furthering Fair Housing Rule

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# AFFH Final Rule

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- Issued in July 2015
  - Effective date: August 17, 2015
  - Federal Register: 80 Fed. Reg. 42,272 (July 16, 2015)
- Creates and amends HUD regulations to create a new fair housing analysis framework
- Implementation will be staggered, but first new Assessments of Fair Housing (AFHs) will be due in October of this year.

# The Rule's Definition of AFFH

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Affirmatively Furthering Fair Housing means...

**“taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.** Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair **housing extends to all of a program participant's activities and programs relating to housing and urban development.**”

-- 24 C.F.R. § 5.152



# AFFH Final Rule – Key Features

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- Replaces the Analysis of Impediments (AI) with the Assessment of Fair Housing (AFH)
  - Structured process with HUD review for all AFHs
- Stresses a balanced approach
  - Place-based AND mobility strategies
- Incorporates fair housing planning into broader planning processes (e.g., PHA Plan, Consolidated Plan)
- Requires meaningful community participation
- Seeks more meaningful and effective fair housing planning through the provision of data
  - Includes data on education, transportation, employment, and the environment
- Encourages HUD grantees to collaborate in submitting AFHs
- Requires jurisdictional AND regional thinking and data analysis

# Assessment of Fair Housing (AFH)

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- Local jurisdictions, states/insular areas, and public housing authorities (PHAs) will submit an AFH to HUD for review and acceptance prior to submitting a Consolidated Plan (ConPlan) or PHA Plan.
- The AFH process will help inform fair housing priorities and commitment of resources.
- Failure to submit an AFH that is accepted by HUD may impact (including causing the loss of) funding.
  - 24 C.F.R. § 5.162(d)



# What Entities Must Submit the AFH?

## 24 C.F.R. § 5.154(b)

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- HUD funding recipients (including states/insular areas and local governments) that submit ConPlans for the following programs:
  - Community Development Block Grant (CDBG)
  - HOME Investment Partnerships (HOME)
  - Housing Opportunities for Persons with AIDS (HOPWA)
  - Emergency Solutions Grants (ESG)
- Public housing authorities (PHAs)
  - Receiving assistance under Sections 8 or 9 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437f or 42 U.S.C. § 1437g)

# A Few Key Terms – 24 C.F.R. § 5.152

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- Fair housing issue
  - Condition that “restricts fair housing choice or access to opportunity.”
  - Includes segregation, racially/ethnically concentrated areas of poverty, disproportionate housing needs, significant disparities in opportunity access, and evidence of discrimination/violations of civil rights law or regulations re: housing
- Contributing factor
  - “[A] factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues.”
  - Goals in the AFH are made to overcome contributing factors and fair housing issues.



# A Few Key Terms (cont.)

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- **Local data (found under the “Data” definition)**
  - **Metrics, statistics, & quantified information that**
    - ✦ Are relevant to the geographic areas of analysis;
    - ✦ Are statistically valid (as determined by HUD);
    - ✦ Can be found “through a reasonable amount of search”
    - ✦ Are “readily available” for low/no cost; and
    - ✦ Are necessary to complete the AFH.
- **Local knowledge**
  - **Information that:**
    - ✦ Relates to the relevant geographic areas of analysis;
    - ✦ Is relevant to and necessary for the AFH; and
    - ✦ Is “known or becomes known” to the funding recipient.

# Required Elements of the AFH – 24 C.F.R. § 5.154

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- ☑ Summary of fair housing issues
  - Assessment of fair housing compliance, enforcement, and outreach
- ☑ Data analysis
  - To identify racially/ethnically concentrated areas of poverty, segregation/integration trends and patterns, significant disparities in access to opportunity, disproportionate housing needs
- ☑ Assessment of fair housing issues
  - Identify contributing factors for segregation, racially/ethnically concentrated areas of poverty, disproportionate housing needs, disparities in access to opportunity



## Required Elements of the AFH – 24 C.F.R. § 5.154 (cont.)

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- ☑ Fair housing priorities/goals
  - Identify significant contributing factors, prioritize contributing factors to be addressed by goals, and provide justification for the priorities
  - AFFH rule requires inclusion of “metrics and milestones”
- ☑ Strategies to implement priorities and goals
  - Not included in AFH, but other documents (ConPlan, PHA Plan, Annual Action Plans)
- ☑ Summary of the community participation process
  - Summary of comments received, and explanation if certain comments were not incorporated into the AFH
- ☑ Progress since last AFH (or AI, other planning documents)

# How Can I Find Out If My Local Jurisdiction Must Submit an AFH?

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- Not every local jurisdiction has to submit an AFH
  - Entitlement jurisdictions versus non-entitlement jurisdictions
- Several ways to investigate:
  - HUD Exchange Website
    - ✦ <https://www.hudexchange.info/grantees/>
      - Look for CDBG, HOME, HOPWA, ESG dollars
  - National Low Income Housing Coalition's lists of anticipated due dates
    - ✦ [http://nlihc.org/issues/affh/afh\\_dates](http://nlihc.org/issues/affh/afh_dates)
  - Ask your local jurisdiction or your local HUD office
  - HUD Exchange – Ask a Question
    - ✦ <https://www.hudexchange.info/get-assistance/my-question/>



# HUD Exchange Website

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Search for an Organization

View Organization by Location

Choose a State...

Find by State

View Organization by Program

Choose a Program...

Find by Program

# HUD Exchange Website (cont.)

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Cathedral City, CA

Display Organiza

2015

Website: <http://www.cathedralcity.gov>

## CDBG: Community Development Block Grant Program

CDBG provides grants to states and localities to provide decent housing and a suitable living environment, and to expand economic opportunities, principally for low- and moderate-income persons.

### 2015 CDBG Awards

[View All CPD Awards](#)

**Award Amount**

\$526,093.00



### 2015 CDBG Reports

[View Reports](#)



# When Will the First AFHs Be Due?

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- Different funding recipients will complete AFHs on differing timetables.
- Submission requirements are outlined in 24 C.F.R. § 5.160.
- Submission of the **first AFH** is required at least **270 calendar days** before the start of the program years (for PHAs, fiscal years), for which the recipient's new ConPlan (for PHAs, new 5-year plan) is due
- HUD's AFFH FAQs (Dec. 31, 2015) have charts for first AFH submission deadlines

# When Will the First AFHs Be Due? (cont.)

- Local government CDBG grantees with FY 2015 grant > \$500k
  - First AFHs due 270 days before program year that starts on or after January 1, 2017 for which ConPlan is due
  - Exception: For recipients with program years starting before July 1, 2017 for which a ConPlan is due, the first AFH is due **October 4, 2016**.

For: Local Governments that Received More than \$500k in FY2015 CDBG								
If the next program year for which a new Consolidated Plan is due is:	Jan. 1, 2017	April 1, 2017	July 1, 2017	Oct. 1, 2017	Jan. 1, 2018	April, 2018	July 1, 2018	Oct. 1, 2018
Your first AFH will be due*	Oct. 4, 2016	Oct. 4, 2016	Oct. 4, 2016	Jan 4, 2017	April 6, 2017	July 5, 2017	Oct. 4, 2017	Jan. 4, 2018

Table Source: HUD December 2015 FAQ



# When Will the AFHs Be Due? (cont.)

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- Local government CDBG grantees with FY 2015 grant of  $\leq$ \$500k
  - First AFHs due 270 days before program year that starts on or after January 1, 2018 for which ConPlan is due
- States/Insular Areas
  - First AFHs due 270 days before program year that begins on or after January 1, 2018 for which a new ConPlan is due.
- PHAs
  - First AFHs due 270 days before fiscal year that begins on or after January 1, 2018 for which a new 5-year plan is due

# When Will the First AFHs Be Due? (cont.)

<b>For:                      States, Insular Areas                      Local Governments that Received Less than \$500k in FY2015 CDBG                      Non-qualified PHAs</b>								
<b>If the next                      program year                      (Con Plan                      program                      participants) or                      fiscal year                      (PHAs) for which                      a new                      Consolidated                      Plan or PHA                      Plan is due is:</b>	<b>Jan. 1,                      2018</b>	<b>April                      1, 2018</b>	<b>July 1,                      2018</b>	<b>Oct. 1,                      2018</b>	<b>Jan. 1,                      2019</b>	<b>April,                      2019</b>	<b>July 1,                      2019</b>	<b>Oct. 1,                      2019</b>
<b>Your first AFH                      will be due**</b>	<b>April                      6,                      2017</b>	<b>July 5,                      2017</b>	<b>Oct. 4,                      2017</b>	<b>Jan. 4,                      2018</b>	<b>April                      6, 2018</b>	<b>July 5,                      2018</b>	<b>Oct. 4,                      2018</b>	<b>Jan. 4,                      2019</b>

*Table Source: HUD December 2015 FAQ*



# When Will the First AFHs Be Due? (cont.)

- Qualified PHAs
  - First AFHs due 270 days before fiscal year that begins on or after January 1, 2019 for which a new 5-year plan is due

For: Qualified PHAs								
<b>If the next fiscal year for which a new 5-year PHA Plan is due is:</b>	Jan. 1, 2019	April 1, 2019	July 1, 2019	Oct. 1, 2019	Jan. 1, 2019	April, 2019	July 1, 2019	Oct. 1, 2019
<b>Your first AFH will be due**</b>	April 6, 2018	July 5, 2018	Oct. 4, 2018	Jan 4, 2019	April 6, 2019	July 5, 2019	Oct. 4, 2019	Jan 4, 2020

*Table Source: HUD December 2015 FAQ*

# When Will the First AFHs Be Due? (cont.)

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- Several exceptions/circumstances can change first due dates, so confirm.
  - For example, joint/regional submissions can change submission deadlines.
  - Circumstances leading to exceptions are listed in HUD's AFFH Guidebook, Section 3.1.2
- This deadline framework is only for the first AFH submission; subsequent AFHs have shorter periods before program years
- Funding recipients will continue completing AIs until their first AFH. 24 C.F.R. § § 5.151; 5.160(a)(3).



# Unofficial California AFH Due Dates\*

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2016	
Cathedral City (10/4/16)	Victorville (10/4/16)
Temecula (10/4/16)	Fairfield (10/4/16)
Apple Valley (10/4/16)	
Paramount (10/4/16)	

\*Dates are based on information compiled by the National Low Income Housing Coalition. Source: [http://nlihc.org/sites/default/files/AFH\\_CA.pdf](http://nlihc.org/sites/default/files/AFH_CA.pdf). These dates are unofficial, and are provided for informational purposes. For more information, visit NLIHC's [AFFH page](#).

# Unofficial California AFH Due Dates\* (cont.)

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2017

Sacramento (4/6/17)	Chino Hills (10/4/17)	Oxnard (10/4/17)	Monterey County (10/4/17)
Sacramento County (4/6/17)	San Clemente (10/4/17)	Long Beach (10/4/17)	Daly City (10/4/17)
Los Angeles (7/5/17)	Burbank (10/4/17)	LA County (10/4/17)	San Mateo County (10/4/17)
Glendora (10/4/17)	Pomona (10/4/17)	Rocklin (10/4/17)	
Palm Desert (10/4/17)	Moreno Valley (10/4/17)	Elk Grove (10/4/17)	

\*Dates are based on information compiled by the National Low Income Housing Coalition. Source: [http://nlihc.org/sites/default/files/AFH\\_CA.pdf](http://nlihc.org/sites/default/files/AFH_CA.pdf). These due dates are unofficial, and are provided for informational purposes. For more information, visit NLIHC's [AFFH page](#).



# Joint/Regional AFH Submissions

## 24 C.F.R. § 5.156

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- HUD is encouraging funding recipients to enter into joint/regional collaborations for the purposes of completing and submitting their AFHs.
- Each joint/regional submission has a lead entity.
- Important points re: joint/regional submissions
  - Individual funding recipients are still individually accountable. 24 C.F.R. § 5.156(a)(3).
  - Entering into a joint/regional collaboration can impact the AFH submission due date.
  - Generally, the submission deadline will be the lead entity's deadline.

# Submission Options for PHAs – 24 C.F.R. § 903.15

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- A PHA has three options for submitting an AFH
  - Option 1: Submit an AFH with a local jurisdiction or a state governmental agency
    - ✦ Must “choose the unit of general local government or State governmental agency in which the PHA is located, unless the PHA’s service area is within two or more jurisdictions.”
    - ✦ If the PHA serves two or more jurisdictions, the PHA can “choose the jurisdiction that most closely aligns to its planning activities” unless another binding agreement (e.g., consent decree) applies.
  - Option 2: Submit an AFH with one or more other PHAs
  - Option 3: Submit an AFH on its own.
- Note that for PHAs, there are no size cut-offs that exempt PHAs from submission; “qualified PHAs” simply get more time to submit an AFH.



# HUD Review – 24 C.F.R. § 5.162

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- One of the distinguishing features of the AFH is HUD review for all AFH submissions.
- Upon submission, HUD has **60 calendar days** to review the AFH.
- After 60 days, the AFH is deemed “accepted” unless HUD notifies the funding recipient otherwise.
  - What does “acceptance” mean?
- Jurisdictions and PHAs can revise and resubmit if their AFHs are not accepted.
- Failing to fulfill community participation or consultation requirements is grounds for non-acceptance.

# AFH Assessment Tool

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# What is the Assessment Tool?

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- The Assessment Tool “refers collectively to any forms or templates and the accompanying instructions provided by HUD that [funding recipients] must use to conduct and submit an AFH.” 24 C.F.R. § 5.152.
- Funding recipients will use the Assessment Tool to fulfill the requirement to conduct and submit an AFH.
- Different Assessment Tools for different funding recipients
  - Dec. 2015 Assessment Tool will be used by local governments submitting AFHs, as well as in certain joint/regional collaborations involving local governments.
  - HUD has issued different draft Assessment Tools for states, PHAs for public comment
- Each Assessment Tool must be published for at least 9 months before an AFH for that funding recipient can be due. 24 C.F.R. § 5.160(a)(1)(ii).

# Assessment Tool (Excerpt)

## **B. General Issues**

### **i. Segregation/Integration**

#### **1. Analysis**

- a. Describe and compare segregation levels in the jurisdiction and region. Identify the racial/ethnic groups that experience the highest levels of segregation.
- b. Explain how these segregation levels have changed over time (since 1990).
- c. Identify areas with relatively high segregation and integration by race/ethnicity, national origin, or LEP group, and indicate the predominant groups living in each area.
- d. Consider and describe the location of owner and renter occupied housing in determining whether such housing is located in segregated or integrated areas.
- e. Discuss how patterns of segregation have changed over time (since 1990).
- f. Discuss whether there are any demographic trends, policies, or practices that could lead to higher segregation in the jurisdiction in the future.

#### **2. Additional Information**

- a. Beyond the HUD-provided data, provide additional relevant information, if any, about segregation in the jurisdiction and region affecting groups with other protected characteristics.
- b. The program participant may also describe other information relevant to its assessment of segregation, including activities such as place-based investments and mobility options for protected class groups.



# Community Participation

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# Community Participation

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- Community participation will form a **critical** part of successful AFH implementation.
- HUD data is limited, and so local data and local knowledge from community participation will be **vital to filling in these information gaps**.
- Advocates should familiarize themselves with the community participation requirements in the AFFH regulation.
  - Part II of our series will explore requirements in greater depth.
- Advocates should also collaborate with jurisdictions and PHAs **to go above and beyond what the regulation requires** and aim for a robust, meaningful process.



# Community Participation

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- Funding recipients should use communications “designed to reach the broadest audience.” 24 C.F.R. § 5.158(a).
- Funding recipients “shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws” including Title VI, Section 504, and the Americans with Disabilities Act, as well as applicable federal regulations. 24 C.F.R. § 5.158(a).
  - Access for limited English proficient persons and persons who experience disabilities
- The AFH must summarize comments received (including those not included in the AFH and why), the community participation process, and efforts “made to broaden community participation in the development of the AFH.” 24 C.F.R. § 5.154(d)(6).

# Select Requirements

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- **State and local governments must:**
  - Update their citizen participation plans.
  - Consult with certain groups or entities (“Consultation requirements”).
  - Hold at least one public hearing during the AFH’s development (before the AFH is published for comment).
  - Accept public comments on the AFH (30-calendar-day minimum).
- **PHAs must:**
  - Conduct a public hearing “at a location that is convenient to the residents served by the PHA.” 24 C.F.R. § 903.17(a).
  - Make proposed AFH and relevant information available no later than 45 days before the public hearing.
  - Accept public comments on the AFH.
  - Consult with the Resident Advisory Board/resident organization.



# Preparing to Participate

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- ✓ Identify relevant entities that must submit an AFH, and first AFH submission deadlines.
  - Remember to confirm deadlines, as joint/regional submissions and exceptions to the first AFH deadline may affect the due date.
- ✓ If possible, reach out to your jurisdiction/PHA to start laying the groundwork for cooperation now.
- ✓ Identify sources of local data and gather local knowledge.
- ✓ Review prior AIs (as well as other planning documents) and comments; identify what issues have not been addressed.
- ✓ Start discussions about the AFH process within your communities, as you attend other meetings with residents and other advocates.

# Preparing to Participate (cont.)

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- ✓ Connect with other social justice advocates – labor, environmental, educational, etc. – who may be able to provide useful insights and lend support around AFH advocacy efforts.
- ✓ Make sure that the funding recipient is engaging in sufficient outreach activities.
  - Outreach to LEP populations?
  - Is AFH process accessible for persons experiencing disabilities?
- ✓ Familiarize yourself with the various Assessment Tools, and, if possible, comment on the Tools.
- ✓ Contact NHLP with questions.



# AFFH Rule Implementation

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# Current State of AFFH Rule Implementation

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- First AFH submissions in October 2016
- In December 2015, HUD issued a finalized version of its Local Government Assessment Tool (approved for one year)
- Currently, there are three Assessment Tools that are out for public comment, with May deadlines:
  - Draft State/Insular Area Assessment Tool
  - Draft PHA Assessment Tool
  - Local Government Assessment Tool (renewal)
- HUD has issued the HUD Data and Mapping Tool, an AFFH Guidebook, and other resources:
  - <https://www.hudexchange.info/programs/affh/resources/>
- For a more info, refer to implementation update handout.



# Q & A

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# Thank You!

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Renee Williams  
National Housing Law Project

[rwilliams@nhlp.org](mailto:rwilliams@nhlp.org)

(415) 546-7000, ext. 3121

[www.nhlp.org](http://www.nhlp.org)

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