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Affirmatively Furthering Fair Housing Implementation: An Update for Advocates

Updated October 2016

➤ **The Final AFFH Rule**

HUD published its final affirmatively furthering fair housing (AFFH) rule on July 16, 2015; the rule became effective on August 17, 2015.¹ The AFFH rule introduces a new fair housing planning framework that will be incorporated into the existing Consolidated Plan/Public Housing Authority (PHA) Plan processes. This framework, called the Assessment of Fair Housing (AFH), is replacing the Analysis of Impediments to Fair Housing Choice (AI). HUD is currently implementing the final rule.

The AFFH rule:

- lays the foundation for more meaningful and effective fair housing planning through requiring HUD funding recipients to consider HUD-provided data, as well as local data² and local knowledge³;
- requires funding recipients to think about fair housing planning both locally and regionally;
- requires community participation and input; and
- acknowledges that both place-based approaches and mobility approaches can be

¹ Affirmatively Furthering Fair Housing, Final Rule, 80 Fed. Reg. 42,272 (July 16, 2015). Note that this update refers to those entities receiving HUD funding that must comply with the AFFH rule as “funding recipients.” The AFFH rule refers to these entities as “program participants.”

² The AFFH rule defines “local data” as referring to “metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the [funding recipient’s] geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool.” 24 C.F.R. § 5.152 (definition of “Data”) (noting that the definition of “local data” is “more fully addressed in the Assessment Tool”). Note that HUD states the following in the AFFH rule preamble: “The phrase ‘subject to a determination of statistical validity by HUD’ is included to clarify that HUD may decline to accept local data that HUD has determined is not valid but not that HUD will apply a rigorous statistical validity test for all local data.” 80 Fed. Reg. at 42,306.

³ The AFFH rule defines “local knowledge” as referring to “information to be provided by the [funding recipient] that relates to the [funding recipient’s] geographic areas of analysis and that is relevant to the [funding recipient’s] AFH, is known or becomes known to the [funding recipient], and is necessary for the completion of the AFH using the Assessment Tool.” 24 C.F.R. § 5.152 (definition of “Local knowledge”) (noting that the definition of “local knowledge” is “more fully addressed in the Assessment Tool”).

consistent with the duty to AFFH.⁴

The AFFH rule's requirements apply to local jurisdictions, states, and insular areas⁵ that must complete a Consolidated Plan for the following programs: Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Solutions Grants (ESG).⁶ The AFFH rule also applies to public housing authorities (PHAs).⁷ Each of these funding recipients must complete and submit an AFH to HUD under the AFFH rule.

The AFH process relies heavily on a successful community participation process; therefore, advocates are encouraged to familiarize themselves with the AFH and any associated documents so that the communities you work with can truly play a meaningful role in shaping the AFH –including the required analysis and goal-setting.

➤ **AFH Assessment Tools, Data/Mapping Tool, and Guidebook**

HUD has taken several major steps in implementing the AFFH rule. These steps have included the following:

- Releasing the AFH Assessment Tool for Local Governments in December 2015 (with approval for a period of one year);
- Soliciting public comment on the renewal of the Assessment Tool for Local Governments;
- Issuing the Assessment Tool for States and Insular Areas and the Assessment Tool for PHAs for public comment;
- Releasing the Data/Mapping Tool; and
- Publishing the *Affirmatively Furthering Fair Housing Guidebook* and other AFFH resources.

These developments are summarized below.

Assessment Tools

HUD is in the process of developing several AFH Assessment Tools. HUD funding recipients, including PHAs, will use these Tools to perform the required fair housing analysis under the AFFH rule. The Tools will ask HUD funding recipients a series of questions about fair housing barriers (called “fair housing issues” in the AFFH rule), such as segregation and disparities in access to opportunity, in a particular geographic area. To answer these questions, the AFFH rule requires

⁴ Note discussion about the balanced approach in the Preamble to the AFFH rule, beginning on 42,278. The Preamble also notes that place-based and mobility approaches “need not be mutually exclusive.” *Id.* at 42,279.

⁵ The term “insular areas” includes Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. 24 C.F.R. § 5.152 (citing 24 C.F.R. § 570.405). Please refer the following site for more information about HUD’s CDBG Insular Areas Program: <https://www.hudexchange.info/programs/cdbg-insular-areas/>.

⁶ 24 C.F.R. § 5.154(b)(1).

⁷ 24 C.F.R. § 5.154(b)(2).

funding recipients to use HUD-provided data, local data, and local knowledge.⁸ Funding recipients must identify the contributing factor(s) significantly creating, contributing to, increasing the severity of, or perpetuating one or more fair housing issues.⁹ Once the contributing factors are identified and prioritized, funding recipients must set one or more goals to overcome the identified contributing factors and their fair housing issues.¹⁰

Ultimately, there will be four Assessment Tools: (1) a Tool for local governments; (2) a Tool for states and insular areas; (3) a Tool for PHAs; and (4) a Tool for Qualified PHAs.¹¹ To see the various draft Assessment Tools, visit the HUD Exchange website.¹²

- ❖ **Assessment Tool for Local Governments.** On December 31, 2015, HUD issued its first approved AFH Assessment Tool,¹³ approving the Tool for a one-year timeframe.¹⁴ This Tool is designed for use by local governments—specifically those receiving funding from HUD through the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Solutions Grants (ESG) programs. Specifically, this Tool will be used by local governments that submit their own AFHs, as well as (a) joint/regional collaborations between local governments; (b) joint/regional collaborations between at least one local government and at least one PHA; and (c) other joint/regional collaborations where the local government is the lead entity.¹⁵ HUD is currently in the process of renewing the Assessment Tool for Local Governments, with a prior 60-day public comment period ending on May 23, 2016.¹⁶ Most recently, HUD solicited comments during a 30-day

⁸ See generally 24 C.F.R. § 5.154.

⁹ 24 C.F.R. § 5.154(d)(3); *Affirmatively Furthering Fair Housing Rule Guidebook*, § 5.6 (Dec. 2015), available at: <https://www.hudexchange.info/resource/4866/affh-rule-guidebook/>. Please also refer to Part V of each Assessment Tool, where contributing factors that “significantly create, contribute to, perpetuate, or increase the severity of” fair housing issues are identified. The term “contributing factor” is defined at 24 C.F.R. § 5.152 (definition of “fair housing contributing factor”).

¹⁰ 24 C.F.R. § 5.154(d)(4)(iii), stating that the AFH must “[s]et goals for overcoming the effects of contributing factors as prioritized in accordance with [another provision in the rule].” Note that funding recipients must justify the prioritization of contributing factors. 24 C.F.R. § 5.154(d)(4)(ii). See the *AFH Rule Guidebook*, §§ 5.6 – 5.7 for more information. See also Assessment Tool for Local Governments, Part VI (Dec. 2015), available at:

<https://www.hudexchange.info/resource/4865/assessment-of-fair-housing-tool/>.

¹¹ *Affirmatively Furthering Fair Housing: Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 57,601, 57,601 (Aug. 23, 2016). Note that “qualified PHAs” are those PHAs: (1) that have a total of 550 (or fewer) Section 8 Vouchers and public housing units, combined; (2) that are not “troubled” PHAs; and (3) that have not received a failing Section 8 Management Assessment Program (SEMAP) score within the past 12-month period. 24 C.F.R. § 5.152 (definition of “Qualified public housing agency”).

¹² <https://www.hudexchange.info/programs/affh/proposed-tools/>.

¹³ *Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document*, 80 Fed. Reg. 81,840 (Dec. 31, 2015). The Tool for Local Governments is available at:

<https://www.hudexchange.info/resource/4865/assessment-of-fair-housing-tool/>.

¹⁴ *Affirmatively Furthering Fair Housing: Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment – 60-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 15,546, 15,546-47 (Mar. 23, 2016) (noting one-year approval for the December 2015 Local Government Assessment Tool).

¹⁵ *Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document*, 80 Fed. Reg. at 81,840. The “lead entity” (designated by the participating funding recipients) oversees the submission of the joint/regional AFH, and unless all collaborating participants can align program or fiscal years, the lead entity’s submission deadline will govern the due date for the joint/regional submission. See 24 C.F.R. § 5.156(b)(2); 24 C.F.R. § 5.160(a)(1)(i)(F).

¹⁶ *Affirmatively Furthering Fair Housing Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 15,546 (Mar. 23, 2016).

public comment period, ending on September 22, 2016.¹⁷ Upon renewal, HUD will seek public comment on the Assessment Tool for Local Governments every 3 years.¹⁸

- ❖ **Draft Assessment Tool for States/Insular Areas.** This year, HUD has released two drafts of the Assessment Tool for States/Insular Areas. States and insular areas that receive CDBG, HOME, HOPWA, or ESG funds from HUD are required to submit an AFH. The Assessment Tool for States/Insular Areas (“State Tool”) will be used by states and insular areas in submitting their own AFHs, as well as in the context of joint/regional collaborations with local governments or housing authorities in which the state/insular area is the lead entity. Such collaborating local governments and housing authorities will also use the State Tool to complete the AFH.¹⁹ HUD previously issued the Draft Assessment Tool for States/Insular Areas for a 60-day comment period²⁰ (ending May 10, 2016), and a 30-day comment period²¹ (ending October 28, 2016). HUD has announced that it will seek further comment focused on the interaction between the State Tool and the HUD-provided data and maps developed for this Tool at a later date.²²
- ❖ **Draft Assessment Tool for PHAs.** PHAs will have several options for submitting an AFH: (1) in collaboration with a local government/state governmental agency; (2) in collaboration with one or more PHAs; or (3) on their own.²³ If a PHA collaborates with a local government, then the Assessment Tool for Local Governments would be used; PHAs that enter into a collaboration where the state is the lead entity will use the State Tool. This year, HUD has released two drafts of the Assessment Tool for PHAs. The PHA Tool would be used by a non-qualified PHA that submits an AFH on its own or chooses to submit a joint AFH with one or more PHAs (including “Qualified PHAs”). HUD previously issued the Draft Assessment Tool for PHAs for a 60-day comment period²⁴ (ending May 23, 2016), and a 30-day comment period²⁵ (ending October 20, 2016). HUD will undergo the public comment process for the PHA Assessment Tool every 3 years upon approval of this Tool.²⁶
- ❖ **Assessment Tool for Qualified PHAs.**²⁷ While HUD has announced it will be developing a Tool specifically for Qualified PHAs,²⁸ no draft Assessment Tool for

¹⁷ See generally *Affirmatively Furthering Fair Housing: Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 57,601 (Aug. 23, 2016).

¹⁸ *Id.* at 57,601.

¹⁹ *Affirmatively Furthering Fair Housing: Assessment Tool for States and Insular Area—Information Collection: Solicitation of Comment First 30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 66,754, 66,754 (Sept. 28, 2016).

²⁰ *Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 12,921 (Mar. 11, 2016).

²¹ *Affirmatively Furthering Fair Housing: Assessment Tool for States and Insular Area—Information Collection: Solicitation of Comment First 30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 66,754 (Sept. 28, 2016).

²² *Id.* at 66,754-755.

²³ 24 C.F.R. § 903.15(a).

²⁴ *Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 15,549 (Mar. 23, 2016). Note HUD issued a subsequent notice to correct an error in the original notice. See *Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995; Correction*, 81 Fed. Reg. 22,105 (Apr. 14, 2016) (noting that HUD made an erroneous reference to the incorrect draft Assessment Tool).

²⁵ *Affirmatively Furthering Fair Housing: Assessment Tool for Public Housing Agencies—Information Collection: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 64,475 (Sept. 20, 2016).

²⁶ *Id.*

²⁷ See note 11 for the definition of “Qualified PHAs.”

Qualified PHAs has been released for public comment. This Tool would be used by Qualified PHAs submitting on their own, or who are submitting a joint AFH with other Qualified PHAs.²⁹

HUD AFFH Data/Mapping Tool

HUD has released its AFFH Data and Mapping Tool.³⁰ The Data/Mapping Tool can be accessed by members of the public, and requires no registration or log-in. Funding recipients will be required to use the Data/Mapping Tool to complete an Assessment Tool as part of the AFH analysis. Note that HUD expects to expand the Data/Mapping Tool's functionality. Currently, the Data/Mapping Tool is geared toward the Assessment Tool for Local Governments.

Advocates are strongly encouraged to familiarize themselves with the Data/Mapping Tool, as it provides an assortment of data that can be used for both the AFH process and other advocacy.

Additional information concerning the Data/Mapping Tool—including a user guide³¹ and HUD's *Affirmatively Furthering Fair Housing (AFFH) Data Documentation*³² (which provides background information about HUD's data)—can be found on the HUD Exchange website.³³

Note that HUD recently added a “print” feature to the Data and Mapping Tool so that users can now print out copies of the featured maps. (Data tables featured in the Data and Mapping Tool could already be printed once exported to Microsoft Excel.)

HUD AFFH Rule Guidebook

In December 2015, HUD issued its *Affirmatively Furthering Fair Housing Rule Guidebook*.³⁴ The *Guidebook* is written for HUD funding recipients, but also generally provides information about both the AFFH rule and the AFH process.

Note that Section 5 of this version of the *Guidebook* is focused on the analysis that would be conducted using the Assessment Tool for Local Governments. However, the rest of the *Guidebook* contains helpful discussions about topics such as community participation.

²⁸ Affirmatively Furthering Fair Housing: Assessment Tool for Public Housing Agencies—Information Collection: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 64,475, 64,475 (Sept. 20, 2016).

²⁹ *Id.*

³⁰ The HUD Data and Mapping Tool can be accessed at: <http://egis.hud.gov/affht/>.

³¹ <https://www.hudexchange.info/resource/4849/affh-data-and-mapping-tool-user-manual/>.

³² <https://www.hudexchange.info/resource/4848/affh-data-documentation/>.

³³ The HUD Exchange website includes additional resources concerning data and mapping in the context of the AFH process; visit <https://www.hudexchange.info/programs/affh/resources/> and navigate to the “AFFH Data and Mapping” section to learn more.

³⁴ The *Guidebook* can be accessed at: <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.

➤ AFFH Implementation Going Forward

AFH Submission Dates³⁵

Implementation of the AFFH rule will be staggered, with the due date for a funding recipient's first AFH submission based on a variety of factors, including:

- the type and size of HUD program funding recipient at issue (with certain recipients having delayed submission requirements);
- the funding recipient's next Consolidated Plan due date or next PHA Five-Year Plan due date;
- the release of the approved Assessment Tool for that particular funding recipient (*i.e.*, funding recipients will have at least nine months between the issuance of the applicable Assessment Tool—in non-draft form—and the due date of their first AFH);³⁶ and
- whether the funding recipient enters into a joint or regional collaboration with another entity, as the lead entity's submission deadline will govern (if alignment of program or fiscal years is “not practicable”)³⁷.

Note that other exceptions may also apply.³⁸

The first AFH deadline was October 4, 2016, for select local governments that received more than \$500,000 in CDBG funding during FY 2015. Additional such local governments will continue submitting AFHs into 2017 and beyond.

Note that PHAs,³⁹ local governments receiving \$500,000 or less in CDBG funds in FY 2015, and states/insular areas, are generally required to begin submitting their AFHs after 2016.⁴⁰ In October 2016, HUD issued a Federal Register Notice announcing that Consolidated Plan funding recipients that received a CDBG grant of \$500,000 or less in FY 2015 will have a later submission deadline than the deadline that would have applied under § 5.160 of the AFFH rule.⁴¹

³⁵ See generally *AFFH Rule Guidebook*, at § 3.1.

³⁶ 24 C.F.R. § 5.160(a)(1)(ii).

³⁷ 24 C.F.R. § 5.156(b)(2); 24 C.F.R. § 5.160(a)(1)(i)(F).

³⁸ See *AFFH Rule Guidebook*, at § 3.1.2.

³⁹ Note that PHAs will submit their AFHs 270 calendar days before the beginning of the fiscal year for which their new Five-Year Plans are due. 24 C.F.R. § 5.160(a).

⁴⁰ 24 C.F.R. § 5.160(a)(1)(i); see also *Affirmatively Furthering Fair Housing Guidebook*, § 3.1.1.

⁴¹ *Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants That Receive a Community Development Block Grant of \$500,000 or Less*, 81 Fed. Reg. 73,129 (Oct. 24, 2016). This notice also applies to HOME Consortia. Furthermore, the Notice states, “Through this notice, HUD also advises that the AFH submission deadline for program participants that received an FY 2015 CDBG grant of \$500,000 or less also applies to new consolidated program participants that received a small CDBG grant in FY 2016, or receive a small CDBG grant in FY 2017 or FY 2018.” 81 Fed. Reg. at 73,130.

Estimated AFH Deadlines

The National Low Income Housing Coalition has compiled unofficial listings of jurisdictions and their projected AFH due dates based on what NLIHC terms “provisional” information obtained from HUD.⁴²

Please recall, however, that the due date for the AFH can be influenced by a number of factors, as outlined above. Thus, advocates should confirm the AFH due date with the jurisdictions and/or housing authorities in your service area. Importantly, advocates should inquire as to whether the jurisdiction or PHA intends to engage in a joint or regional AFH, as this fact could result in a change in the AFH due date (and not be reflected on the NLIHC listings).

If advocates discover that one or more jurisdictions or PHAs intend to enter into a joint or regional collaboration, it is important to determine which entity will be the lead entity. As noted above, the lead entity’s AFH submission due date will determine the due date for the entire AFH submission (absent an alignment of fiscal years or program years).⁴³ This can result in earlier or later AFH submission due dates for funding recipients.

Resources from HUD

Additional information and resources about AFFH can be found on the HUD User AFFH webpage⁴⁴ as well as on the HUD Exchange website featuring training and resources for HUD funding recipients.⁴⁵ HUD recently developed another AFFH webpage with basic AFFH information and links.⁴⁶

HUD has issued two fact sheets about the community participation process; while these fact sheets are geared toward PHAs⁴⁷ and jurisdictions⁴⁸, respectively, they are instructive in terms of providing an overview of community participation requirements (with citations to applicable regulations).

In March 2016, HUD’s office of Community Planning and Development issued a memo to its staff and grantees providing a summary of the community participation and consultation requirements for jurisdictions under the AFFH rule.⁴⁹

In September 2016, HUD published an AFFH FAQ on its HUD Exchange website.⁵⁰ The questions are searchable by keyword and are arranged by topic categories.

HUD has also published a list of “AFFH Field Point of Contacts.”⁵¹

⁴² http://nlihc.org/issues/affh/afh_dates (all states); California advocates can find projected AFH due dates here: http://nlihc.org/sites/default/files/AFH_CA.pdf.

⁴³ 24 C.F.R. § 5.156(b)(2); 24 C.F.R. § 5.160(a)(1)(i)(F).

⁴⁴ https://www.huduser.gov/portal/affht_pt.html#affh.

⁴⁵ <https://www.hudexchange.info/programs/affh/>.

⁴⁶ http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/16affh_home_page.

⁴⁷ <https://www.hudexchange.info/resources/documents/AFFH-Fact-Sheet-Community-Participation-and-AFFH-Guidance-for-Public-Housing-Agencies.pdf>.

⁴⁸ <https://www.hudexchange.info/resources/documents/AFFH-Fact-Sheet-Community-Participation-and-AFFH-Guidance-for-Consolidated-Plan-Program-Participants.pdf>.

⁴⁹ <https://www.hudexchange.info/resources/documents/CPD-Memo-Incorporating-24-CFR-Part-5-AFFH-into-the-Consolidated-Program-Year-and-Citizen-Participation-Plan.pdf>.

⁵⁰ <https://www.hudexchange.info/affh/faqs/>.

⁵¹ <https://www.hudexchange.info/programs/affh/affh-field-point-of-contacts/>.

Additionally, HUD has released several webcasts related to AFFH.⁵²

➤ **What Advocates Can Do Now**

- ✓ Determine applicable AFH deadlines and confirm.
- ✓ Become familiar with HUD Assessment Tools and the AFFH Data/Mapping Tool.
- ✓ Find out if your jurisdiction or PHA plans to participate in a joint/regional AFH submission, and if so, the lead entity.
- ✓ Plan ahead to engage in the community participation process and submit comments on the AFH.
- ✓ Conduct outreach to other advocates (e.g., environmental, labor, educational) to build coalitions and share information relevant to the AFH analysis.
- ✓ Build (or use existing) relationships with jurisdictions and PHAs to begin collaboration with an eye toward the AFH.
- ✓ Identify potential sources of local data and local knowledge.
- ✓ Review past Analyses of Impediments and other planning documents to determine what fair housing issues need to be raised in the AFH process.
- ✓ Begin thinking about fair housing goals that you would like to see pursued in your jurisdiction, region, or PHA service area.
- ✓ Sign up for HUD updates regarding AFFH implementation on the HUD Exchange website.⁵³

➤ **Questions or Comments?** Contact Renee Williams, rwilliams@nhlp.org.

⁵² <https://www.hudexchange.info/programs/affh/resources/> (under the “Training” section).

⁵³ <https://www.hudexchange.info/programs/affh/> (Click on the “Join the AFFH Mailing List” link on the left side under “AFFH Help.”).