

A colorful illustration of diverse children holding hands in a circle, symbolizing unity and community. The children are drawn in a simple, cartoonish style with various skin tones, hair colors, and clothing. The background is white, and the children are arranged in a circle, with some partially cut off by the edges of the frame.

# AN OVERVIEW OF FAIR HOUSING FOR HOME PROGRAM PARTICIPANTS AND THEIR HOUSING PARTNERS

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# What is Fair Housing?



# HOME Investment Partnership Program



- Created in 1990 by Congress
- Congress found U.S. “has not made adequate progress towards the national housing policy goal [...] which would provide decent, safe, sanitary, and affordable living environments for all Americans.”
- One of the largest affordable housing programs
- Unlike other HUD block grant programs, primary focus is homeownership assistance and affordable rental housing development.

# Applying Fair Housing to HOME Participating Jurisdictions

- Fair Housing Laws Apply to HOME Participating Jurisdictions (PJs) and all “housing partners”
- Certifications of nondiscrimination by PJs and subrecipients in administration and operation of program funds
  - All persons and entities who use HOME program funds
    - PJ & its Recipients
    - State recipients
    - Contractors & Subcontractors
    - Developers (including Community Home Development Organizations)
    - Owners
    - Management Agents



# Applying Fair Housing to HOME Participating Jurisdictions



- Prohibit discrimination in housing and housing related transactions by PJs and their housing partners;
- Require PJs to affirmatively further fair housing;
- Prescribe design and construction standards to ensure equal access to housing by persons with disabilities;
- Promote the use of minorities and women, and minority and women business enterprises in Federally funded contracting opportunities;
- Encourage the creation of employment opportunities for low-income residents of neighborhoods where HOME Program activities are undertaken; and
- Require the implementation of affirmative marketing strategies and outreach to those segments of the populations identified as least likely to apply for the housing without such outreach.

# Fair Housing



- Civil Rights Act of 1964, as amended
  - Prohibits discrimination by all recipients of federal financial assistance in their programs and activities
  - Provides protections on the basis of:
    - Race
    - Color
    - National Origin, including LEP
- Title VIII of the CRA of 1968, as amended (Fair Housing Act)
  - Provides protections against discrimination in the housing, lending and insurance markets *regardless* of whether federal financial assistance involved
  - Provides protections on the basis of:
    - Race
    - National Origin
    - Religion
    - Disability
    - Sex
    - Familial Status
    - Color
- Rehabilitation Act of 1973
  - Prohibits discrimination based upon *disability* in all programs and activities by HOME PJs, including their housing partners

# Title VI

- Provides broad discretion to HUD to impose record-keeping and reporting requirements to implement its nondiscrimination mandate
- HUD may terminate or suspend funding to recipients for their failure to comply with Title VI requirements



# Fair Housing Act



The Fair Housing Act is the BROADEST of these laws in its application to real-estate related transactions

- Prohibits discrimination in the following ways:
  - Refuse to rent or sell housing
  - Refuse to negotiate for housing
  - Make housing “unavailable or otherwise deny”
  - Set different terms, conditions or privileges for sale or rental of a dwelling
  - Provide different housing services or facilities
  - Falsely deny that housing is available for inspection, sale, or rental
  - For profit, persuade owners to sell or rent (blockbusting) or
  - Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing
  - Refuse to make a mortgage loan
  - Refuse to provide information regarding loans
  - Impose different terms or conditions on a loan, such as different interest rates, points, or fees
  - Discriminate in appraising property
  - Refuse to purchase a loan or
  - Set different terms or conditions for purchasing a loan



# Fair Housing Act

## Additional Fair Housing Act Protections for Disabled

If someone is disabled, or regarded as being disabled, housing providers may not:

- Refuse to allow tenant to make reasonable modifications to your dwelling or common use areas
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

## Additional Fair Housing Act Protections for Families

- Unless a building or community qualifies as housing for older persons (minimum 55+), it may not discriminate based on familial status.



# Fair Housing Act



## Other protections

### Advertising and Association:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement indicating a limitation or preference based on a protected characteristic. Such advertising or notices are prohibited even in the case of single-family and owner-occupied housing that are otherwise exempt from reach of Fair Housing Act.

### Architectural:

Provides minimum accessibility guidelines for housing first occupied after March 13, 1991.

# Section 504

- All aspects of program administration and implementation by PJs as well as actual housing programs that receive HOME funds
- Programs must be fully accessible to persons with disabilities
  - Appropriate provision of reasonable accommodations and modifications
  - Auxiliary aids and services necessary for disabilities
  - No segregation based on disability unless authorized under 24 CFR Part 8
  - Self evaluation of programs and policies to ensure nondiscrimination
  - Physical accessibility requirements when federal financial assistance used for new construction or substantial rehabilitation
    - Minimum percentage or number of fully accessible units
    - Uniform Federal Accessibility Standards
    - Applies in addition to Fair Housing Act design and construction requirements



# Affirmative Marketing



- Umbrella of Nondiscrimination in advertising under Fair Housing Act
- In addition, HOME program designed to ensure that all HOME funded developments are accessible to members of the protected classes.
- Effective affirmative marketing procedures specifically describe the steps that must be taken to advertise to tenants who are not likely to apply for the housing without special outreach.
- Affirmative marketing may be part of a larger, more general marketing strategy focused on reaching all potential tenants.
- Applies to HOME funded projects of five or more units
- Must consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to protected class
- The affirmative marketing procedures need not apply to households with Housing Choice Vouchers or with tenant-based rental assistance provided with HOME funds.

What is  
Affirmatively  
Furthering  
Fair Housing  
(AFFH)?



# AFFH



## Statutory Basis for AFFH?

Federal Register / Vol. 80, No. 136 / Thursday, July 16, 2015 / Rules and Regulations 42353

section 808(e)(5) of the Fair Housing Act, and in subsequent legislative enactments, the purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations in §§ 5.150 through 5.180 is to provide program participants with an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The regulations establish specific requirements for the development and submission of an Assessment of Fair Housing (AFH) by program participants (including local governments, States, and public housing agencies (PHAs)), and the incorporation and implementation of that AFH into subsequent consolidated plans and PHA Plans in a manner that connects housing and investment planning with meaningful actions that affirmatively further fair housing. A program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.

### § 5.151 Affirmatively Furthering Fair Housing: Implementation.

Section 5.160 of the AFH regulations provides the date by which program participants must submit their first AFH. A program participant's AFH submission date is the date by which the program participant must comply with the regulations in §§ 5.150 through 5.180. Until such time, the program participant shall continue to conduct an analysis of impediments, as required of the program participant under one or more of the HUD programs listed in § 5.154, in accordance with requirements in effect prior to August 17, 2015.

### § 5.152 Definitions.

For purposes of §§ 5.150 through 5.180, the terms "consolidated plan," "consortium," "unit of general local government," "jurisdiction," and

"State" are defined in 24 CFR part 91. For PHAs, "jurisdiction" is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.180 and related amendments in 24 CFR parts 91, 92, 570, 574, 576, and 903:

**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.

**Assessment of Fair Housing (assessment or AFH)** means the analysis undertaken pursuant to § 5.154 that includes an analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH) or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).

**Assessment Tool** refers collectively to any forms or templates and the accompanying instructions provided by HUD that program participants must use to conduct and submit an AFH pursuant to § 5.154. HUD may provide different Assessment Tools for different types of program participants. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA), the Assessment Tool will be subject to periodic notice and opportunity to comment in order to maintain the approval of the Assessment Tool as granted by the Office of Management and Budget (OMB) under the PRA.

**Community participation**, as required in § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes. For HUD regulations implementing the Housing and Community Development Act of 1974, the statutory term for "community participation" is "citizen participation," and, therefore, the regulations in 24 CFR parts 91, 92, 570, 574, and 576 use this term.

**Consolidated plan program participant** means any entity specified in § 5.154(b)(1).

**Contributing factor**. See definition of "fair housing contributing factor" in this section.

**Data**. The term "data" refers collectively to the sources of data provided in paragraphs (1) and (2) of this definition. When identification of the specific source of data in paragraph (1) or (2) is necessary, the specific source (HUD-provided data or local data) will be stated.

(1) **HUD-provided data**. As more fully addressed in the Assessment Tool, the term "HUD-provided data" refers to HUD-provided metrics, statistics, and other quantified information required to be used with the Assessment Tool. HUD-provided data will not only be provided to program participants but will be posted on HUD's Web site for availability to all of the public;

(2) **Local data**. As more fully addressed in the Assessment Tool, the term "local data" refers to metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the program participant'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.

**Disability**. (1) The term "disability" means, with respect to an individual: (i) A physical or mental impairment that substantially limits one or more major life activities of such individual; (ii) A record of such an impairment; or (iii) Being regarded as having such an impairment.

(2) The term "disability" as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008. This definition does not change the definition of "disability" or "disabled person" adopted pursuant to a HUD program statute for purposes of determining an individual's eligibility

*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.*

# AFFH



## Guiding Policy for the Rule

- Improve integrated living patterns and overcoming historic patterns of segregation
- Transform racially and ethnically concentrated areas of poverty (R/ECAPs) into areas with greater access to opportunity
- Reduce disparities in access to opportunity experienced by different protected classes
- Respond to disproportionate housing needs experienced by different protected classes

# AFFH



## Requirements of Program Recipients:

- Provide an Analysis of Impediments that:
  - Analyzes and discusses HUD-provided data as well as local data and knowledge of community
  - Identifies fair housing issues in the jurisdiction and region and related contributing factors.
    - **Common contributing factors: ZONING regulations, real estate costs, shortage of affordable housing, etc.**
- Creates goals that are designed to overcome significant contributing factors and related fair housing issues



# AFFH



## Balanced Approach towards implementing AFFH

### Placed-Based Strategies v. Mobility

- Place-based strategies may include but are not limited to:
- Making investments in segregated, high poverty neighborhoods that improve conditions and eliminate disparities in access to opportunity between residents of those neighborhoods and the rest of the jurisdiction and region
- Maintaining and preserving existing affordable rental housing stock, including HUD assisted housing, to reduce disproportionate housing needs

# AFFH



## Balanced Approach towards implementing AFFH

### Place-Based v. Mobility

- Mobility strategies may include but are not limited to:
- Developing affordable housing in areas of opportunity to combat segregation and promote integration
- Providing greater access to existing affordable housing in areas of opportunity, for instance through mobility counseling for Section 8 Housing Choice Voucher recipients
- Creating housing mobility programs that effectively connect low income residents of segregated areas to affordable housing in integrated areas, providing greater access to opportunity

# Fair Housing and Tenant Based Rental Assistance



- Private landlords who house tenants receiving HOME Program tenant-based rental assistance (TBRA), but who do not receive any other HOME Program assistance, are subject to the requirements of the Fair Housing Act, as well as the requirements of the HOME Program.
- Applicant Selection Criteria
- Preferences For Persons with Disabilities
- Reasonable Modifications and Accommodations
- TBRA Program Accessibility (PJ and its administrator)

# Creating Economic Opportunity



- Comply with Federal requirements designed to provide access to economic opportunities generated with HOME funds
  - Low- and very low-income persons, and the businesses that employ them, through Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”) and the applicable regulations at 24 CFR Part 135;
  - Minority business enterprises and women business enterprises (MBE/WBEs), through notification and solicitation activities specified in procurement regulations at 24 CFR 85.36(e), and incorporated into the HOME Program by reference at 24 CFR 92.350; and
  - Minorities and women, and entities owned by minorities and women, through a minority outreach program established and overseen by the PJ, pursuant to the HOME Program regulation at 24 CFR 92.351(b).

# Section 3



- Applicability
  - Scope
  - Size
- Goals
  - Training and Employment
  - Contracting
- Failure to Meet Goals
- Outreach to Minorities and Women
- Implementation of Requirements
- PJ Oversight Responsibilities
- Monitoring

A colorful illustration of diverse children of various ethnicities and ages holding hands in a circle. The children are drawn in a simple, cartoonish style. The background is white, and the children are wearing various colored clothing. The illustration is partially obscured by a large teal semi-transparent rectangle.

# Q & A

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