

# Fair Housing Planning Resource Guide

Understanding the Proposed  
Affirmatively Furthering Fair Housing Rule



## The National Community Reinvestment Coalition

The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women owned business associations and social service providers from across the nation.

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The Board of Directors would like to express their appreciation to the NCRC professional staff who contributed to this publication and serve as a resource to all of us in the public and private sector who are committed to responsible lending. For more information, please contact:

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## Introduction

This guide is intended to serve as resource for housing & community development professionals who are seeking to understand the recently proposed United States Department of Housing & Urban Development Affirmatively Furthering Fair Housing Rule that was published in the Federal Register on July 19<sup>th</sup>, 2013.

Through this rule, HUD proposes to provide HUD program participants with more effective means to affirmatively further the purposes and policies of the Fair Housing Act, which is title VIII of the Civil Rights Act of 1968. The current practice of affirmatively furthering fair housing, carried out by HUD grantees, which involves an analysis of impediments to fair housing choice and a certification that the grantee is affirmatively furthering fair housing, has been found by HUD to be not as effective as they originally envisioned.

To better fulfill the agency's statutory obligations, HUD proposes in the rule to replace existing requirements with a fair housing assessment and planning process that is intended to aid HUD program participants in improving access to opportunity and advancing the ability for all families to make housing choices.

To facilitate this new approach, HUD proposes to provide states, local governments, and public housing agencies, as well as the communities they serve, with national and regional data including, but not limited to, data on patterns of integration and segregation, and racially and ethnically concentrated areas of poverty. The proposed rule would further commit HUD to greater engagement and better guidance for program participants in fulfilling their obligation to affirmatively further fair housing.

The purpose of this document is to guide practitioners through the requirements of the proposed rule so that practitioners understand, if this version of the proposed rule is finalized, what will be required of them.

## What Is the Point of the Proposed AFFH rule?

On July 19, 2013, the United States Department of Housing and Urban Development (HUD) released their proposed rule on Affirmatively Furthering Fair Housing (AFFH). The proposed rule results in the creation of a new initial planning tool called the Assessment of Fair Housing (AFH) which will be included in and used as a guide for later planning tools such as the Public Housing Agency (PHA) Plan and the Consolidated Plan. As previously stated in the introduction, the purpose of this document is to guide practitioners through the requirements of the proposed rule so that practitioners understand, if this version of the proposed rule is finalized, what will be required of them. This guide will be updated when the rule is issued in final form. This chapter will explain the purpose of the new rule, with a brief historical discussion of the policy context which prompted the rule's issuance.

### **Our Nation's Commitment to Equal Housing Opportunity**

Thousands gathered on August 28, 2013, at the National Mall in front of the Lincoln Memorial to commemorate the 50<sup>th</sup> Anniversary of Dr. Martin Luther King's famous "I have a dream" speech, which helped to advance the passage of the Civil Rights Act of 1964. However, under this Act not all civil rights were protected. It was not until 4 years later, after Dr. King's assassination, that the Fair Housing Act was passed by Congress. Under the Fair Housing Act, "the Federal Government, within its constitutional limitations, is required to provide for fair housing within the United States."<sup>1</sup> Fair housing prohibits discrimination based upon race, color, religion, sex, familial status, national origin, or handicap, whether in the sale, rental or financing of a home. This proactive national commitment to eradicate housing discrimination is called the policy of Affirmatively Furthering Fair Housing (AFFH). All HUD programs need to be administered in a manner that affirmatively furthers fair housing, as it is illegal for the government to provide money for discriminatory activities.

The Fair Housing Act authorizes the HUD Secretary to define the precise scope of AFFH obligation for its stakeholders. In fact, each federal regulator, i.e., prudential banking regulators, the United States Department of Agriculture, and others, have a responsibility to affirmatively further fair housing. The purpose of the HUD proposed AFFH rule is to better define the concept of AFFH, and to provide a framework within which HUD's stakeholders, contract agencies and participants will be compliant with the policy goals of fair housing.

The National Community Reinvestment Coalition's purpose in creating this guide is to make sure that our member practitioners will understand the proposed rule

<sup>1</sup> "Affirmatively Furthering Fair Housing, Proposed Rule:" 78 Federal Register 139 (July 19 2013), 43710-43743, 43711.

and what they will now be required to do. Remember, the rule **may change based upon comments HUD receives on the proposed rule**. Practitioners will only be responsible for fulfilling HUD’s final Affirmatively Furthering Fair Housing rule.

## Affirmatively Furthering Fair Housing – A Definition

AFFH, under the proposed rule, “means taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns as well as to support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws.<sup>2</sup>”

This proposed definition of AFFH is in contrast to the current AFFH definition as stated in the Fair Housing Planning Guide<sup>3</sup> which requires “a grantee to conduct an analysis to identify impediments to fair housing choice within the jurisdiction and to take appropriate actions to overcome the effects of any impediments identified through the analysis.”<sup>4</sup> HUD further clarifies these “broad objectives to mean that one must analyze and eliminate housing discrimination, promote fair housing choice for all persons, provide opportunities for inclusive patterns of housing occupancies [to protected classes], promote housing that is structurally accessible to, and usable by, all persons, and foster compliance with the nondiscrimination provisions of the Fair Housing Act.<sup>5</sup>” The concept of AFFH would now require participants to work on fixing the issues which, at their core, lead to discrimination and segregation and deny people the opportunity of fair housing choice.

HUD is addressing the issues and impact of segregation and poverty on an individual’s housing choice by requiring that participants create and develop an Assessment of Fair Housing, submit the Assessment of Fair Housing for review by HUD, and incorporate the Assessment of Fair Housing into the PHA and Consolidated Plans; all actions that until now have not been required under the rule.

<sup>2</sup> Id. 43729.

<sup>3</sup> HUD’s current AFFH final rulemaking that was created/codified in 1990.

<sup>4</sup> Fair Housing Planning Guide, 1-2 (1993).

<sup>5</sup> Id. 1-3.

## Why is HUD Proposing Changes to the Current Rule?

HUD has realized that the current process of affirmatively furthering fair housing using the Analysis of Impediments (AI) and certification process is not as effective as they had originally envisioned it to be.<sup>6</sup> This low level of effectiveness was due to a number of factors including, 1) that HUD did not review AIs, 2) that they did not provide information or inform participants of the AI process and 3) that there was no clear connection between the AI and community planning efforts.<sup>7</sup> Furthermore, many community development and fair housing practitioners note that the current system has also fallen short in effectiveness by not incorporating leading innovations in sound planning practice and not effectively using limited public resources to affirmatively further fair housing.<sup>8</sup>

Another reason for the change is that quality of AIs differs among participants. This range of quality is due to participants not putting the time or money into an AI so that it can be an effective planning tool and a lack of goals and instruction from HUD<sup>9</sup> on what an AI should accomplish.

HUD has also envisioned this proposed rule to address other significant barriers to fair housing choice that do not typically rise to the level of discriminatory actions that would trigger a violation under the Fair Housing Act. These barriers include addressing the “legacy of segregation and factors related to locational choice that have been influenced by race, national origin, disability and other protected classes.”<sup>10</sup>

<sup>6</sup> “Affirmatively Furthering Fair Housing, Proposed Rule:” 78 Federal Register 139 (July 19 2013), 43710-43743, 43710.

<sup>7</sup> “Affirmatively Furthering Fair Housing, Regulatory Analysis Impact.” Docket No. FR-5173-P-01. (Aug 19, 2013) 1-34, 7.

<sup>8</sup> “Affirmatively Furthering Fair Housing, Proposed Rule:” 78 Federal Register 139 (July 19 2013), 43710-43743, 43710.

<sup>9</sup> Id. 43713.

<sup>10</sup> “Affirmatively Furthering Fair Housing, Regulatory Analysis Impact.” Docket No. FR-5173-P-01. (Aug 19, 2013) 1-34, 5.

## What are the Six Outcomes & Objectives that HUD Hopes to Accomplish Through the Rule?

In the proposed rule, HUD has stated six outcomes/objectives that it hopes to achieve through the proposed changes:

1. The rule will replace the Analysis of Impediments (AI) with an Assessment of Fair Housing (AFH), which will use regional and national benchmarks and data tools to facilitate the measurements of trends and changes over time.
2. HUD will provide data that program participants must consider in their Assessment of Fair Housing.
3. There will be an explicit incorporation of fair housing plans into existing planning processes.
4. The rule will encourage and address regional approaches to fair housing issues.
5. An integral component of the Assessment of Fair Housing will be the required inclusion of community participation.
6. The rule will establish an approach to AFFH that requires a coordinated effort to combat illegal housing discrimination.<sup>11</sup>

## Who is Covered by the Rule & How Does it Impact You?

Anyone who receives federal monies from HUD must create policies that affirmatively further fair housing.

The rule will reach “1,200 local governments, all states, the insular areas, and more than 4,000 PHA’s.”<sup>12</sup>

There are two main groups who receive federal funding for housing. These groups are (1) Public Housing Agencies (PHAs) and (2) local governments and states that receive HUD funds through the following programs<sup>13</sup>:

- Community Development Block Grants (CDBG)
- HOME Investment Partnerships (HOME)
- Emergency Solutions Grants (ESG)
- Housing Opportunities for Persons With AIDS

<sup>11</sup> “Affirmatively Furthering Fair Housing, Proposed Rule:” 78 Federal Register 139 (July 19 2013), 43710-43743, 43711.

<sup>12</sup> Id. 43715.

<sup>13</sup> Id. 43730-43731.

The rule also reaches any not for profit or private sector organization or contractor that receives federal funds from HUD under a range of grant or contract programs, such as Comprehensive Housing Counseling, Continuum of Care, or the Fair Housing Initiatives Program, for example.

## What is an Assessment of Fair Housing (AFH)?

The Assessment of Fair Housing is a new tool and document that participants will develop that will fulfill the statutory requirements of AFFH. The Assessment of Fair Housing is a report that must provide an assessment of the elements and factors that cause or maintain four major situations that impact and limit housing choice in violation of the Fair Housing Act. These four situations are: (1) disparity in terms of access to community assets, (2) segregation, (3) racially or ethnically concentrated areas of poverty,<sup>14</sup> and (4) disproportionate housing needs. The Assessment of Fair Housing will also provide goals that the jurisdictions will undertake to correct these situations. Furthermore, the Assessment of Fair Housing will be incorporated into the PHA Plan and Consolidated Plan.

The AI is being replaced by the Assessment of Fair Housing because there was an uneven quality in AIs with many jurisdictions putting too low a priority on their creation and use as a planning tool.<sup>15</sup> HUD views the Assessment of Fair Housing as a different and stronger tool from an AI because the Assessment of Fair Housing will contain data that HUD will provide to its participants. HUD is also clarifying the goals and requirements of the Assessment of Fair Housing process and integrating the Assessment of Fair Housing into the PHA Plan, Consolidated Plan, and other future planning documents like PHA Capital Fund, transportation, and education plans.<sup>16</sup>

### Who Must Submit an Assessment of Fair Housing?

Public Housing Agencies and local governments and states that receive HUD funds through the following programs will have to submit an Assessment of Fair Housing for review by HUD. These programs are:

- Community Development Block Grants (CDBG)
- HOME Investment Partnerships (HOME)
- Emergency Solutions Grants (ESG)
- Housing Opportunities for Persons With AIDS

<sup>14</sup> Id. 43730.

<sup>15</sup> Id. 43713.

<sup>16</sup> Id. 43717.

### **What Issues Must the Assessment of Fair Housing Address?**

The Assessment of Fair Housing must address the following four issues<sup>17</sup> which HUD views as core issues that need to be solved to eliminate housing discrimination:

1. Integration and segregation
2. Concentrations of poverty
3. Disparities in access to community assets
4. Disproportionate housing needs based upon race, color, religion, sex, familial status, national origin, or handicap

Additionally, the Assessment of Fair Housing will assess the jurisdiction's fair housing enforcement and fair housing outreach capacity.<sup>18</sup>

HUD will provide participants with an assessment tool that they are required to use to help determine the issues listed above.<sup>19</sup>

### **What is the Minimum Information the Assessment of Fair Housing Must Include?**

To pass review by HUD the Assessment of Fair Housing must consist of the following<sup>20</sup> components:

- Summary of fair housing issues and capacity to address
- Analysis of data
- Assessment of determinants of fair housing issues
- Identification of fair housing priorities and general goals
- Summary of community participation

## **Explanation of the Assessment of Fair Housing Components**

### **Summary of Fair Housing Issues and Capacity to Address:**

Participants must provide a summary of the current fair housing situation assessing both the laws and judgments in their jurisdiction. Specifically, this summary must address the following four components<sup>21</sup>:

- Summary of fair housing issues including any findings or judgments related to fair housing or other civil rights laws.

<sup>17</sup> Id. 43731.

<sup>18</sup> Id. 43731.

<sup>19</sup> Id. 43718.

<sup>20</sup> Id. 43731.

<sup>21</sup> Id. 43731.

- Assessment of compliance with existing fair housing laws, regulations, and guidance
- Assessment of the jurisdiction’s fair housing enforcement.
- Fair housing outreach capacity

**What Data will HUD be Providing & Analysis of the Data:**

HUD is going to provide participants with data that will specifically apply to the issues that impact discrimination and the participants must at a minimum use this data in their Assessment of Fair Housing analysis section. This data will be nationally uniform, and will include local and regional data on the following issues<sup>22</sup>:

- Patterns of integration and segregation
- Racially and ethnically concentrated areas of poverty
- Access to community assets in the areas of: education, employment, low-poverty, transportation, and environmental health
- Disproportionate housing needs
- Individuals with disabilities and families with children
- Discrimination

PHA’s will also receive locational data, distribution of housing choice vouchers and occupancy data.<sup>23</sup>

It is important to note that entitlement communities can, and often should, as a fair housing planning “best practice,” supplement this data with additional data that is available to you from your states and communities. For example, research commissioned by planning officials, reported by financial institutions, (such as Home Mortgage Disclosure Act or related foreclosure datasets), reports by universities, are all examples of additional data resources appropriate for inclusion.

**What are Specific Examples of Metrics Under the Proposed Rule that I Should Be Attentive to?**

Specifically, HUD will be providing participants with the following types of data in each of the areas listed below:

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<sup>22</sup> Id. 43731.

<sup>23</sup> Id. 43731.

**Segregation:**

HUD will provide three different metrics that will help participants determine if their geographical area has high, moderate, or low levels of segregation.<sup>24</sup>

**1. Dissimilarity Index:**

A dissimilarity index is a summary measurement of the extent to which the frequency of any two groups differs across census tracts or block-groups.<sup>25</sup> HUD will also provide a color-coded designation, which will inform participants if the tract has a high, moderate, or low dissimilarity index. In HUD’s calculations a value of zero is perfect integration and a value of 1 is complete segregation. HUD views a high segregation level as being between 0.55-1, moderate segregation ranges from 0.41-0.54 and low segregation ranges from 0-0.40.<sup>26</sup>

**2. Isolation Indices**

Isolation indices compare a group’s share of the overall population in a jurisdiction to the average neighborhood share for members of that group.<sup>27</sup> The maximum value for this index is 1; therefore, the closer a community gets to the value of 1 the more segregated a community is.<sup>28</sup> This value, while similar to the dissimilarity index, is able to provide a better understanding of residential segregation in areas where minority populations are extremely small.<sup>29</sup>

**3. Predicted Racial/Ethnic Composition Ratio**

This ratio is used within very small communities to find out the segregation level. For this metric a predicted value for the racial/ethnic minority that exists in a jurisdiction is compared to the actual composition.<sup>30</sup> The closer the value is to 1 the closer a jurisdiction is to its predicted level of minority composition.<sup>31</sup>

<sup>24</sup> “Affirmatively Furthering Fair Housing, Data Methodology, Draft.” (June 2013) 1-11, 2

<sup>25</sup> Id. 2.

<sup>26</sup> Id. 2.

<sup>27</sup> Id. 2.

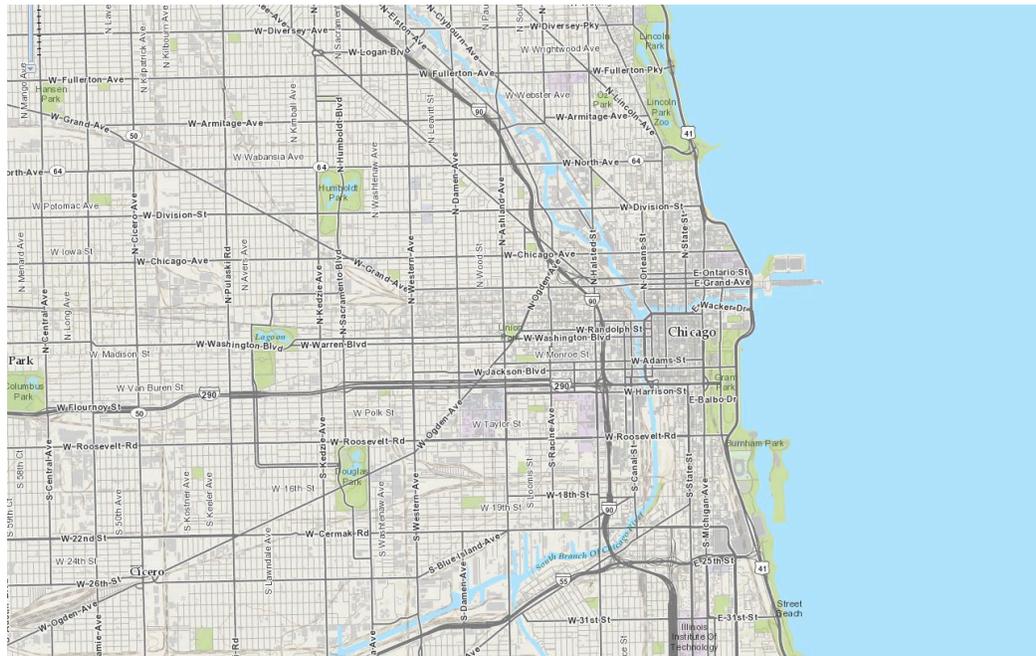
<sup>28</sup> Id. 3.

<sup>29</sup> Id. 3.

<sup>30</sup> Id. 3.

<sup>31</sup> Id. 3.

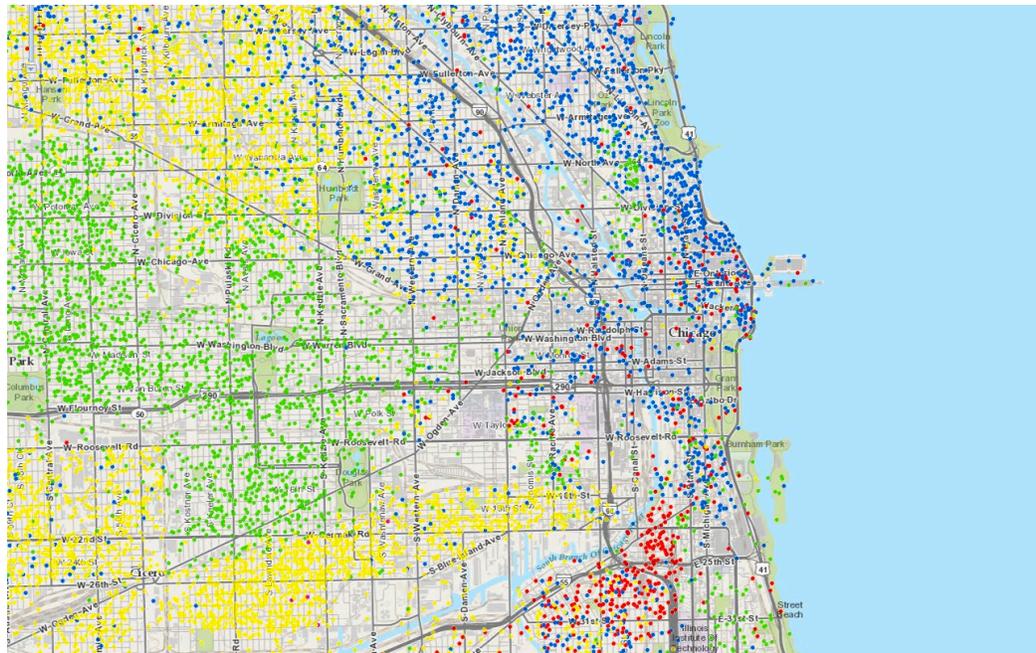
Below are two maps of Chicago, Illinois. The first map is a map of Chicago with basic geographic information. The second map is of the same area, but contains HUD-provided data on race/ethnicity.



[http://egis.hud.gov/affht\\_pt/](http://egis.hud.gov/affht_pt/), Sept. 17, 2013.

**Race Ethnicity (2010) Race/Ethnicity (2010) All Persons 1 Dot = 75**

- White Not-Hispanic Population
- Hispanic Population
- American Indian Population
- Black/African-American Population
- Asian Population
- Pacific Islander/Hawaiian Population

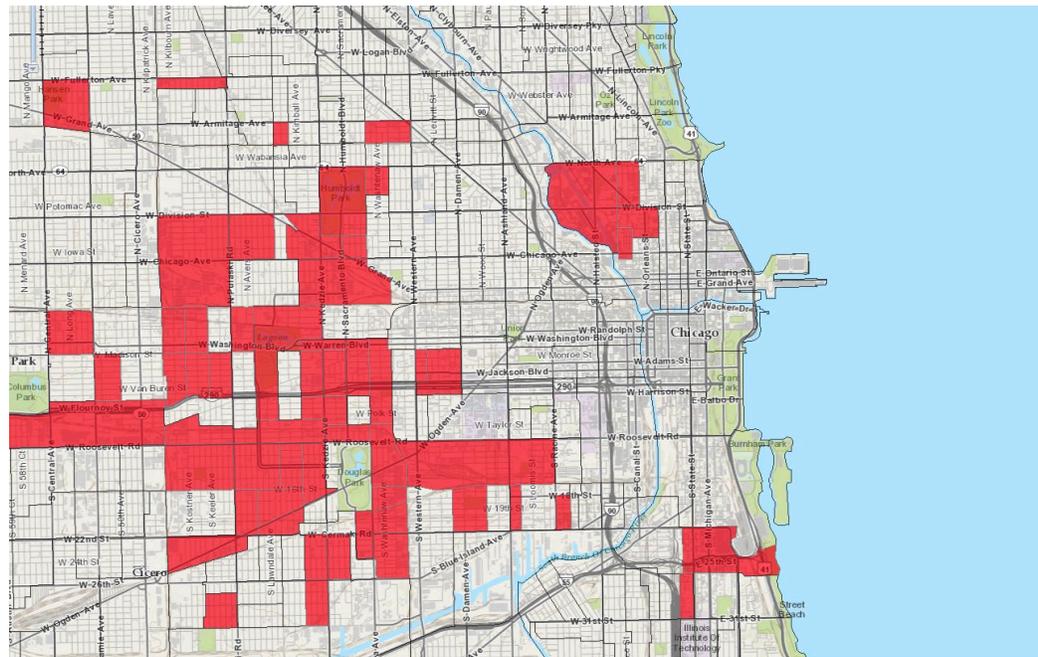


[http://egis.hud.gov/affht\\_pt/](http://egis.hud.gov/affht_pt/), Sept. 17, 2013.

**Poverty: Racially/ethnically- concentrated areas of poverty (RCAP/ECAP):**

An RCAP/ECAP requires two values: (1) an ethnic/racial value and (2) a poverty value. A racial/ethnic concentration threshold exists in a metropolitan area if there is a non-white population of 50% or more.<sup>32</sup> In non-metropolitan areas this concentration threshold will be set at 20%.<sup>33</sup> The poverty threshold exists when 40% or more of individuals living in area are living at or below the poverty level.<sup>34</sup> HUD will also recognize that an area has reached the poverty threshold if the rate is three times the average tract poverty rate in that specific metro/micro area. HUD will provide whichever threshold is lower. Therefore, when an area has surpassed the 40% poverty rate and it is located in an area with a non-white population of 50% or greater than an RCAP/ECAP exists.

Below is a map of Chicago, Illinois, which contains HUD provided data depicting the areas in red that are considered by HUD to be areas of racially/ethnically concentrated areas of poverty.



[http://egis.hud.gov/affht\\_pt/](http://egis.hud.gov/affht_pt/), Sept. 17, 2013.

<sup>32</sup> Id. 1.

<sup>33</sup> Id. 2.

<sup>34</sup> Id. 1.

### **Community Asset Indicators<sup>35</sup>:**

There are two stages to the community asset analysis. The first stage looks to the degree to which a neighborhood offers these community assets. Each neighborhood is rated along a set of key dimensions.<sup>36</sup> In the second phase, these dimensions' rankings are combined with data on where people in particular subgroups live, to then be able to develop a measure of that group's general access to each asset dimension.<sup>37</sup>

HUD is going to focus on the following six assets:<sup>38</sup>

1. Poverty index – percent of families living below the poverty line and percent of households receiving public assistance.
2. School Proficiency Index – percent of elementary students who are proficient in reading and percent who are proficient in math according to state examinations. HUD will not be providing this data for middle schools or high schools.
3. Labor Market Engagement/Human Capital Index – neighborhood unemployment rate; neighborhood labor force participation rate; and percent of the population over the age of 25 with a bachelor's degree or higher.
4. Job Access Index –number of jobs in a neighborhood; distance from a neighborhood to employment centers; and number of workers commuting to those employment centers.
5. Health Hazards Exposure Index – distance to facilities in EPA's Toxic Release Inventory database; volume of releases; and toxicity of released chemicals. This index only looks at outdoor toxins, not indoor toxins.<sup>39</sup>
6. Transit Access – distance to nearest fixed-rail or bus rapid transit station.

Participants have the flexibility to take the above data and replace or supplement it with better local data. Specifically HUD recognizes that there is other data like neighborhood crime and lead/radon level,<sup>40</sup> which can provide additional information to make the Assessment of Fair Housing stronger and more applicable to local jurisdictions.

<sup>35</sup> "Affirmatively Furthering Fair Housing, Proposed Rule:" 78 Federal Register 139 (July 19 2013), 43710-43743, 43718.

<sup>36</sup> "Affirmatively Furthering Fair Housing, Data Methodology, Draft." (June 2013) 1-11, 4.

<sup>37</sup> Id. 4.

<sup>38</sup> "Affirmatively Furthering Fair Housing, Proposed Rule:" 78 Federal Register 139 (July 19 2013), 43710-43743, 43718.

<sup>39</sup> "Affirmatively Furthering Fair Housing, Data Methodology, Draft." (June 2013) 1-11, 5.

<sup>40</sup> Id. 5.

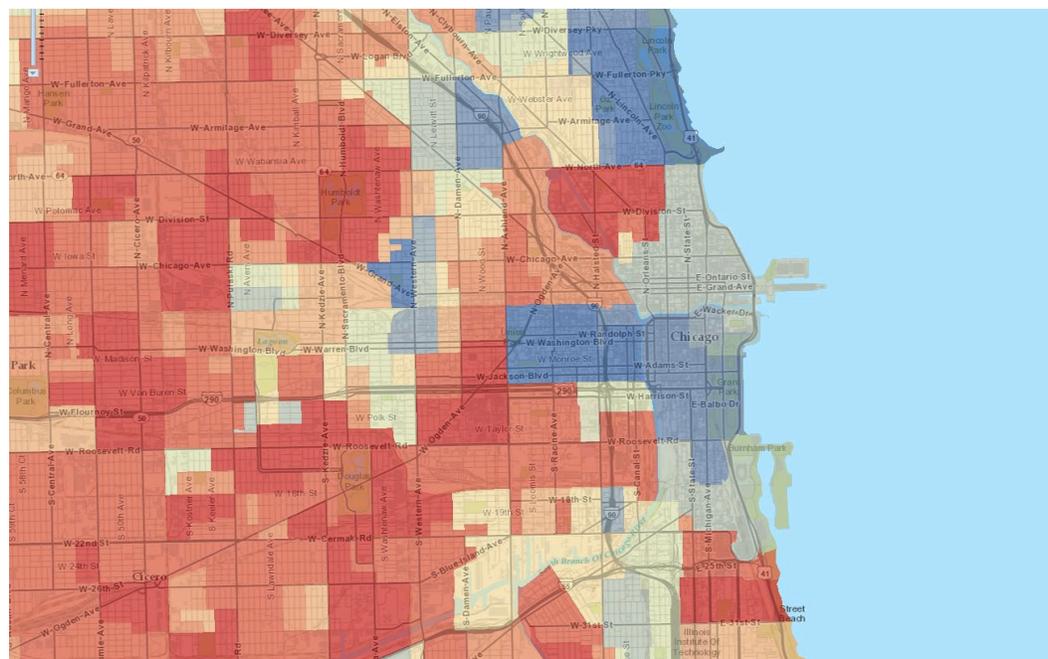
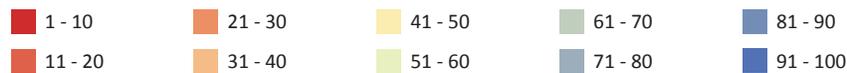
Just like a best-practice AI requires the following additional information, this same information needs to be added to the Assessment of Fair Housing. The information is:

- Zoning and land use policies
- Fair housing complaints, public and private sector litigation
- HMDA data
- Fair housing investigation and testing
- Results of FHIP grants
- Patterns of occupancy recommendations

Below is the map of Chicago, Illinois, with HUD-provided data highlighting the level of elementary school proficiency, one of the community access to asset indicators.

**Community Assets and Stressors** School Proficiency

The colors and numbers correspond to the percentage of children who are proficient in elementary math and reading.



[http://egis.hud.gov/affht\\_pt/](http://egis.hud.gov/affht_pt/), Sept. 17, 2013.

**Disproportionate Housing Needs:**

HUD will be providing data that identifies when the numbers of housing problems and severe housing problems are higher for racial or ethnic groups than for the population as a whole. This is the same data analysis that must be used in the Consolidated Plan.<sup>41</sup>

The housing problems that HUD examines are as follows<sup>42</sup>:

- Lacks complete kitchen facilities
- Lacks complete plumbing facilities
- More than one person per a room
- Cost burden – monthly housing costs which include utilities that exceeds 30% of the monthly income

A severe housing problem is present when the following housing problems exist:

- Lacks complete kitchen facilities
- Lacks complete plumbing facilities
- More than 1.5 persons per a room
- Severe cost burden – monthly housing costs which include utilities that exceeds 50% of monthly income

**Assessment of Determinants of Fair Housing Issues:**

HUD will provide an assessment tool which will help the participants identify the primary determinants that are causing the impediments of segregation, concentration of poverty, disparities in access to community assets, and disproportionate housing needs based on being a member of a protected class.<sup>43</sup> This assessment is the main analysis tool that participants will use in order to understand the needs of their jurisdiction.

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<sup>41</sup> Id. 8.

<sup>42</sup> Id. 9.

<sup>43</sup> "Affirmatively Furthering Fair Housing, Proposed Rule:" 78 Federal Register 139 (July 19 2013), 43710-43743, 43731.

## Identification of Fair Housing Priorities and General Goals

Under this section the Assessment of Fair Housing must<sup>44</sup>:

- Identify and prioritize fair housing issues arising from the assessment and justify why it prioritized the issues in that specific order, and
- Identify the most significant fair housing determinants related to these priority issues and set a minimum of one goal to mitigate or address this detriment. Note: one does not have to detail in the Assessment of Fair Housing the strategy or funding decisions subject to the Consolidated Plan, PHA plan or other planning plans.

## Summary of Community Participation

A summary of the citizen participation plan must be included with the Assessment of Fair Housing. This plan will describe how the jurisdiction engaged with citizens and stakeholders to understand and incorporate their concerns.<sup>45</sup> A summary of all citizen comments including incorporation and rejection must be attached to the Assessment of Fair Housing under this section. This guide will go further into detail on the citizen participation requirement in subsequent sections.

## How the Assessment of Fair Housing Differs Among Specific Program Participants

- **PHA:**  
HUD will provide PHAs with locational data, data on distribution of housing choice vouchers and occupancy data.<sup>46</sup> PHAs are also provided with a process for the submission and review of dissenting statements/ideas on an Assessment of Fair Housing created with a Consolidated Plan program participant.<sup>47</sup> The alternate idea will become a part of the Assessment of Fair Housing that is submitted and have the same review and deadline period. HUD will be the one to decide if a dissenting view will have to become integrated into the PHA plan.<sup>48</sup>

<sup>44</sup> Id. 43731.

<sup>45</sup> Id. 43731.

<sup>46</sup> Id. 43717.

<sup>47</sup> Id. 43718.

<sup>48</sup> Id. 43731.

- HOME and CDBG Consortia:**  
HOME participants are considered to be a single unit of general local government.<sup>49</sup> Units of local government that participate in a HOME consortium then must prepare an Assessment of Fair Housing for the consortium.<sup>50</sup> If the consortium contains one or more CDBG entitlement communities the consortium must provide for community participation within each CDBG entitlement community.<sup>51</sup>
- Insular Area:**  
Insular area may choose to produce an abbreviated Assessment of Fair Housing or complete Assessment of Fair Housing like the local governments need to prepare.<sup>52</sup>
- District of Columbia:**  
The District of Columbia is considered a unit of general local government under this proposed rule.<sup>53</sup>

## Assessment of Fair Housing Produced By Regionally Collaborating Program Participants:

Two or more program participants are able to collaborate and submit a single Assessment of Fair Housing.<sup>54</sup> These participants do not need to be contiguous and can even be located in different states. One of the participants must be designated as the lead participant on the Assessment of Fair Housing. The community participation requirement in the Assessment of Fair Housing must include residents and citizens from both jurisdictions. Even though participants are working together on the Assessment of Fair Housing, each participant is still required to analyze and address local fair housing issues in its own jurisdiction.<sup>55</sup>

## Submission Requirements

The initial Assessment of Fair Housing needs to be submitted at least 270 calendar days before the start of the program participants new year.<sup>56</sup> After submission of the initial Assessment of Fair Housing, all subsequent Assessments of Fair Housing need to be submitted at least 195 days before the next program year.

<sup>49</sup> Id. 43718.

<sup>50</sup> Id. 43731.

<sup>51</sup> Id. 43731.

<sup>52</sup> Id. 43718.

<sup>53</sup> Id. 43732.

<sup>54</sup> Id. 43732.

<sup>55</sup> Id. 43732.

<sup>56</sup> Id. 43732.

Submissions need to be completed early so that the Assessment of Fair Housing can be incorporated into the PHA plans. Submissions need to take place every 5 years.<sup>57</sup> The absolute final deadline to submit a Consolidated Plan that is dependent upon an accepted Assessment of Fair Housing is August 16<sup>th</sup>. Failure to submit the Consolidated Plan by this final deadline will result in the loss of CDGB funds for the upcoming year.<sup>58</sup>

## Review and Revision of the Assessment of Fair Housing

The purpose of the review is for HUD to determine if the participant has met the requirements of providing an analysis, assessment and goals. HUD has 60 days to review the Assessment of Fair Housing. If HUD has not rejected the Assessment of Fair Housing within that 60-day period then the Assessment of Fair Housing has been accepted.<sup>59</sup> Acceptance only means that HUD is able to administer funds to the participant. It does not mean that the participant has complied with its obligation under AFFH.<sup>60</sup> Therefore, this allows HUD the opportunity to not offer funds if HUD discovers after the 60-day period that Assessment of Fair Housing was not completed correctly.

If HUD chooses to reject an Assessment of Fair Housing it must provide notification in writing of the reason(s) for the rejection and state actions that the participant may take to address these issues.<sup>61</sup>

An Assessment of Fair Housing is rejected if it is inconsistent with fair housing or civil rights law or if the Assessment of Fair Housing is substantially incomplete. The proposed rule provided two examples of what HUD considers a substantially incomplete Assessment of Fair Housing that would result in the Assessment of Fair Housing being rejected<sup>62</sup>:

1. The required community participation or consultation component is missing.
2. An Assessment of Fair Housing that is missing the required elements or has goals that are not consistent with the data.

The participant has 45 calendar days to revise and resubmit the Assessment of Fair Housing. If the resubmitted Assessment of Fair Housing is not rejected within 30 days of receipt by HUD, then it has been accepted.<sup>63</sup>

<sup>57</sup> Id. 43733.

<sup>58</sup> Id. 43732.

<sup>59</sup> Id. 43733.

<sup>60</sup> Id. 43733.

<sup>61</sup> Id. 43733.

<sup>62</sup> Id. 43733.

<sup>63</sup> Id. 43733.

The Assessment of Fair Housing must be revised if a significant change in circumstances has occurred like a natural disaster, or significant policy changes or significant civil rights findings.<sup>64</sup> A revision will not be considered complete without the community participation<sup>65</sup> section also being redone. A revision of an Assessment of Fair Housing automatically results in a revision of a PHA plan within 18 months.

## Record Keeping Pertaining to the Assessment of Fair Housing

Program participants are required to maintain records of the information used to develop the Assessment of Fair Housing. Specifically participants need to keep the following documents<sup>66</sup>:

- Information and records relating to the Assessment of Fair Housing or the revision of the Assessment of Fair Housing.
- Records showing compliance with the community participation requirement.
- Records demonstrating the actions the participant has undertaken to affirmatively further fair housing.
- If courts or the United States government have found violations to the Fair Housing Act, one must keep documents of the judicial findings and any measures that the participant took in response to the findings.
- Documents showing that the participant is in compliance with ensuring fair housing and community development activities.
- Records showing that consortium members are in compliance with AFFH.
- Any evidence that the participant relied upon to support its affirmatively furthering fair housing certification.

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<sup>64</sup> Id. 43733.

<sup>65</sup> Id. 43733.

<sup>66</sup> Id. 43734.

## How Does the Assessment of Fair Housing Link with and Eventually Become Incorporated into Consolidated Plans and Public Housing Agency Plans?

All participants that are required to produce either a PHA Plan or a Consolidated Plan are required to also develop and submit an Assessment of Fair Housing. Neither plan will be approved without prior approval of the Assessment of Fair Housing, as HUD's intention is for the Assessment of Fair Housing to influence the plans.<sup>67</sup>

The proposed rule results in a significant change to the current rule sections for Consolidated Plans and PHA Plans by incorporating the Assessment of Fair Housing requirement into these sections. The effects of these incorporations depends on which plan your jurisdiction must develop.

### **Consolidated Plan Programs:**

Participants under the Consolidated Plan will demonstrate how their affordable housing and community development priorities will fulfill the goal of AFFH. Furthermore, any additional actions that are not directly tied to the goals set forth in the Assessment of Fair Housing will also be identified. They must also describe their actions on how they will fulfill the goal of AFFH in their annual action plan.<sup>68</sup>

Under the definition for affirmatively furthering fair housing local governments need to consult with the community and regionally based organizations that represent protected classes and organizations that enforce fair housing rules.<sup>69</sup> It specifically states that organizations that receive Fair Housing Initiatives Program (FHIP) funds need to be contacted. This consultation will not only occur during the development of the Assessment of Fair Housing but will also continue during the development of the Consolidated Plan.<sup>70</sup>

### **States:**

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#### **States' Consolidated Plan and Assessment of Fair Housing:**

##### **Consultation Phase:**

States need to consult during the preparation of the Assessment of Fair Housing and the Consolidated Plan with public and private agencies that provide housing,

<sup>67</sup> Id. 43715.

<sup>68</sup> Id. 43715.

<sup>69</sup> Id. 43734.

<sup>70</sup> Id. 43735.

health, and social services, state- and regionally-based organizations that represent protected classes, organizations that enforce fair housing laws, or any other organization that can provide data that will enhance the Assessment of Fair Housing.<sup>71</sup> The state and the PHA need to consult so that the PHA plan will be consistent with the consolidated plan and in the manner in which the state will address the needs of public housing and to obtain the PHA's input on addressing fair housing issues. The hope is that through this consultation not only are states looking at AFFH but they are also looking at other programs such as local drug elimination, neighborhood improvement programs, and resident programs and services which are coordinated to reach community development goals.<sup>72</sup>

States may form a Fair Housing Advisory Council that includes community members and advocates, fair housing experts, housing and community development industry participants and other key stakeholders. Consultation has to occur with either the Fair Housing Advisory Council or with individual groups that focus on housing and its issues including participants in the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP).

The consultations need to occur throughout the process during the development of the Assessment of Fair Housing and the Consolidated Plan. For the Consolidated Plan input is needed to understand how the goals stated in the Assessment of Fair Housing will impact the objectives and priorities of the consolidated plan.<sup>73</sup>

**Citizen Participation:**

The state needs to create a participation plan, which will state the policies and procedures the state will implement to encourage citizen participation.<sup>74</sup> The state needs to encourage citizen participation among all its citizens and residents and interested parties in the development of the Assessment of Fair Housing, Consolidated Plan and performance report. The citizen participation requirement includes low and moderate-income individuals, non-English speakers and people who live in slum and blighted areas and areas where CDBG funds are proposed to be used.<sup>75</sup>

The state needs to look at other methods to encourage a shared vision of change for the community and the review of program performance. HUD is suggesting that the state can use focus groups and the internet to achieve this.<sup>76</sup>

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<sup>71</sup> Id. 43737.

<sup>72</sup> Id. 43736.

<sup>73</sup> Id. 43737.

<sup>74</sup> Id. 43737.

<sup>75</sup> Id. 43737.

<sup>76</sup> Id. 43737.

The citizen participation plan required in both the Assessment of Fair Housing and the Consolidated Plan need to meet the following minimum requirements<sup>77</sup>:

- Release the data that is provided by HUD to the public along with any additional data.
- Before an Assessment of Fair Housing or consolidated plan is adopted, information will be made public, including the amount of assistance it expects to receive and the range of programs that it will engage in and the estimated amount that will benefit low- and moderate-income persons. It will also state the jurisdictions plan to minimize displacement of people and how it will assist those who have been displaced; it must state when and how the state will make this information available.
- Publish both the Assessment of Fair Housing and Consolidated Plan and state how they will be published. It is possible to fulfill the publishing requirement by “publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available at libraries, government offices, and public places. The summary must include a list of the locations where copies of the entire proposed document may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan and/or the assessment.”<sup>78</sup>
- One public hearing is to be held on housing and community development needs and proposed actions for AFFH before the proposed Consolidated Plan is published for comment.
- One public hearing needs to be held before the proposed Assessment of Fair Housing is to be published for comment. The objective of this hearing is obtain the public’s view on the Assessment of Fair Housing related data and AFFH in the state’s housing and community development programs.
- The plan must state how and when advance notice will be given to citizens about upcoming hearings. Such notice will provide information about the subject so that the public can make informed comments. Best-practice for notice would be publication a minimum of two weeks before the hearing. Publication via small print notice in the newspaper a few days before the hearing would not be an example of a best practice.
- The time and location of the hearing must be convenient to the public and people with disabilities and specify how it will meet these requirements.
- It must meet the needs of non-English speaking citizens and residents.
- A minimum of 30 days must be provided to the public and local general units of government to comment on the Assessment of Fair Housing and/or consolidated plan.

<sup>77</sup> Id. 43737.

<sup>78</sup> Id. 43737.

- A summary of all comments or views received in writing or orally and an explanation for the reasons that certain comments were not accepted needs to be attached to the final Assessment of Fair Housing and/or final Consolidated Plan.
- Specify criteria that the state will use to determine when the need to amend the Consolidated Plan has occurred. The plan needs to include a change in the method of distribution of funds as one of the criteria to trigger the need for an amended Consolidated Plan.
- Specify the criteria which will trigger revisions to the Assessment of Fair Housing included in these triggers are significant policy changes or natural disasters.
- Citizens and local government units need to be notified that there is a revised or amended plan and then need to have a minimum of 30 days to provide comments on the amended and revised plans.
- There must be a summary of all comments on the amended or revised plans along with an explanation for the reasons certain comments were not accepted into the plans.
- The public needs to have access to the Assessment of Fair Housing, Consolidated Plan, performance report and any documents or records used in these plans.
- There must be procedures set in place to handle the public's complaints. A good-practice for CDBG grant recipients would be a written response within 15 working days.

The state's strategic plan will need to affirmatively further fair housing by setting strategies and actions that are consistent with the goals identified in the Assessment of Fair Housing.<sup>79</sup> The state's action plan also has to address the actions it plans to take over the next year to address fair housing issues identified in the Assessment of Fair Housing.<sup>80</sup> The action plan can also address the action it plans to take over the next year to deal with the needs of underserved, foster and maintain affordable housing, reduce the hazard of lead-based paint, reduce the number of people in poverty, develop institutional structure, enhance co-ordination between public and private housing and social service agencies, address the needs of public housing and encourage public housing residents to become management and participate in homeownership.<sup>81</sup>

Each state must submit a certification that it will affirmatively further fair housing, and thereby it will undertake actions that will further the goals identified in

<sup>79</sup> Id. 43739.

<sup>80</sup> Id. 43739.

<sup>81</sup> Id. 43739.

the Assessment of Fair Housing, and it will not undertake any actions that will be inconsistent with its AFFH obligation.<sup>82</sup>

There are some other requirements for states that choose to receive CDBG funds and then administer these funds to the units of local general government. In this situation, the Secretary of HUD must allow the state the opportunity to interpret the regulation as it understands it as long as this interpretation does not go against the Act.<sup>83</sup> However, the state will be found to be noncompliant if the Secretary finds that the procedures and requirements adopted are insufficient to afford reasonable assurance that the activities undertaken by units of general local government are not plainly inappropriate to meeting the requirement to AFFH.<sup>84</sup>

Local governments that receive CDBG funds from a state need to ensure that citizens are given reasonable and timely access to local meetings. Furthermore, technical assistance needs to be provided to groups that represent low and moderate income who request assistance in developing proposals. Additionally, two public hearings are held, which will occur at different stages. The purpose of the hearings is to cover the issues of: community development and housing needs, development of proposed activities and a review of program performance. A community development and housing needs hearing has to be held by the local government before submitting an application to receive CDBG from the state. These hearings must be "...held at times and accessible locations convenient to potential or actual beneficiaries, with accommodations for persons with disabilities.<sup>85</sup>" Additionally, the hearings need to be held in a manner in which non-English speakers can actively participate.

States that receive CDBG funds need to certify that they will be AFFH compliant. Furthermore, each unit of general local government that receives CDBG funds from a state also has to certify that it will be AFFH compliant. States that choose to take CDBG funds and the administer them to local governments will specifically certify that they assume the responsibility of fair housing planning and take meaningful actions to further the goals of the Assessment of Fair Housing. Furthermore, it must not take actions that are materially inconsistent with its obligation under Assessment of Fair Housing, and assure that the units of local government funded by the state comply with their certification to AFFH.<sup>86</sup>

States that administer CDBG funds need to keep all records that will assist HUD with a review and audit of the state's administration of CDBG funds. The state and HUD together will determine the actual documents and records that the state needs to

<sup>82</sup> Id. 43739.

<sup>83</sup> Id. 43741.

<sup>84</sup> Id. 43741.

<sup>85</sup> Id. 43741.

<sup>86</sup> Id. 43741.

keep including documents related to the state’s Assessment of Fair Housing.<sup>87</sup> The state will determine which documents units of local government that receive CDBG funds need to retain; units of local government will need to keep documents that are related to the state’s Assessment of Fair Housing.<sup>88</sup>

The Fair Housing Act requires the Secretary to make sure that all states that administer CDBG funds to local governments and the local governments themselves administer programs and activities related to housing and community development in a manner that furthers the policies of the Fair Housing Act. For example, if an entitlement community or non-entitlement community in the state of Hawaii gets a grant, under subpart D of the Fair Housing Act, the certification of AFFH requires that the grantee will take actions that further the Assessment of Fair Housing goals and will not take any materially inconsistent actions.<sup>89</sup>

When a CDBG reviews for equal employment opportunity, equal opportunity in services, benefits and participation, fair housing, and actions to use minority and women’s business firms, then it is presumed that the recipient has met and carried out its CDBG funded programs in accordance with all civil rights certifications/ requirements and AFFH.<sup>90</sup> If the review criteria have not been met, then the recipient has an opportunity to present evidence that it has not failed to carry out the civil rights certifications/requirements and fair housing requirements of the Act. At this point the Secretary will determine if the recipient has been compliant.<sup>91</sup>

States’ action plans must address the fair housing issues identified in the Assessment of Fair Housing as well as other actions it plans to undertake each year to foster and maintain affordable housing, evaluate and reduce lead paint hazards, lower the number of poverty-level families, develop institutional structure and enhance coordination between private and public housing and social services.<sup>92</sup>

### **How Are Consortia Affected by the Proposed Rule?**

A consortium must describe how the strategic plan will fulfill all off their priorities for allocating housing and how its goals are consistent with the Assessment of Fair Housing. It must also explain why they are allocating priorities in a specific order.<sup>93</sup>

If the consortium does have CDBG entitlement communities within it, then those communities must submit a non-housing Community Development plan.<sup>94</sup> The consortium’s action plan needs to describe the resources to be used and activities

<sup>87</sup> Id. 43741.

<sup>88</sup> Id. 43741.

<sup>89</sup> Id. 43741.

<sup>90</sup> Id. 43742.

<sup>91</sup> Id. 43742.

<sup>92</sup> Id. 43738.

<sup>93</sup> Id. 43739.

<sup>94</sup> Id. 43739.

to be undertaken to fulfill the strategic plan. The action plan needs to address the fair housing issues identified in the Assessment of Fair Housing. The Consolidated Plan needs to provide a description for all resources and activities for both the consortium as a whole and each individual community within it.<sup>95</sup>

Each consortium must certify that it is AFFH compliant.<sup>96</sup> This certification will state that the consortium will take meaningful actions to further the goals identified in the Assessment of Fair Housing and that none of its actions will be inconsistent with its obligation to affirmatively further fair housing.

The proposed rule requires a consortium of HOME program participants to submit a consolidated plan in accordance with an Assessment of Fair Housing within 90 days of notification of participation.<sup>97</sup> Furthermore, this HOME consortium needs to keep documents of the actions the jurisdiction has taken to affirmatively further fair housing including documents related to the Assessment of Fair Housing.<sup>98</sup>

## Local Governments: Consolidated Plan and Assessment of Fair Housing – What are the changes?

### Local Government:

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#### **Consultation Phase of the Assessment of Fair Housing and Consolidated Plan:**

Under the current rule, when a local government is developing a Consolidated Plan they are required to meet with the public and private agencies to gain an understanding of their community and housing needs. Under the proposed rule this public participation is expanded so that it must also occur when the local government is developing their Assessment of Fair Housing. Specifically, during this consultation phase the local government must reach out to public and private agencies that provide assisted housing, health services, and social services in addition to community and regionally based organizations that represent protected classes and/or enforce fair housing law.<sup>99</sup>

Local governments need to consult with adjacent units of local governments on the issues that have an impact beyond their borders like the issue of public housing. The local government needs to consult with local PHA's operating in the area to discuss public housing needs, planned programs and activities, the

<sup>95</sup> Id. 43739.

<sup>96</sup> Id. 43739.

<sup>97</sup> Id. 43739-43740.

<sup>98</sup> Id. 43740.

<sup>99</sup> Id. 43734.

Assessment of Fair Housing, strategies for affirmatively furthering fair housing and proposed actions to affirmatively further fair housing in the Consolidated Plan.<sup>100</sup> The consultation between PHA and local government will help to ensure that activities with regard to AFFH, local drug elimination, neighborhood improvement programs, and resident programs and services funded under a PHA program and those funded under a program covered by the consolidated plan are fully coordinating to achieve community development goals.<sup>101</sup>

To fulfill the consultation requirement which is needed for the Assessment of Fair Housing and certification of AFFH, a Fair Housing Advisory Council can be created which will consist of community members, advocates, fair housing experts, housing and community development industry participants and other key stakeholders.<sup>102</sup> If this council is not formed, then the jurisdiction needs to meet with all of these interest groups separately. Under the proposed rule this consultation must occur throughout the process. Therefore at a minimum a consultation needs to occur during the Assessment of Fair Housing process and then again during the development of the Consolidated Plan. During the consultation for the consolidated plan, the jurisdiction needs to address how the goals outlined in the Assessment of Fair Housing will affect the priorities and objectives of the consolidated plan.<sup>103</sup> The jurisdiction needs to provide information about the Assessment of Fair Housing and the AFFH strategy to the PHAs so the PHA can make this information available at its annual public hearings.

**Citizen Participation Plan:**

The jurisdiction needs to adopt a plan which will set forth the policies and procedures for citizen participation.<sup>104</sup> This plan will encourage citizen participation in both the Assessment of Fair Housing and the Consolidated Plan. HUD believes that this plan will encourage participation by low and moderate –income individuals as well as people who live in slums and blighted areas and areas that will receive CDBG funds. Jurisdictions need to reach out to non-English speakers to ensure their participation in the processes<sup>105</sup> and state in their plan the undertaking of reasonable steps to provide language assistance.

The proposed rule has the following minimum requirements to be compliant with fulfilling the citizen participation plan sections in both the Assessment of Fair Housing and the consolidated plan. These requirements require certain actions from jurisdictions to ensure access of information to all<sup>106</sup>:

<sup>100</sup> Id. 43734.

<sup>101</sup> Id. 43734.

<sup>102</sup> Id. 43734-43735.

<sup>103</sup> Id. 43735.

<sup>104</sup> Id. 43735.

<sup>105</sup> Id. 43735.

<sup>106</sup> Id. 43735.

- Once HUD has made Assessment of Fair Housing-related data available to the jurisdiction, the jurisdiction will make this data and any additional data that they choose to use available to the public, agencies, and other interested groups.<sup>107</sup>
- Before a Consolidated Plan is adopted, information will be made public, including the amount of assistance it expects to receive, the range of programs that it will engage in and the estimated amount that will benefit low and moderate-income persons. It will also state the jurisdiction’s plan to minimize displacement of people and how it will assist those who have been displaced.
- It must state when and how it will make this information available.
- When publishing both the proposed Assessment of Fair Housing and proposed Consolidated Plan it must publish them in a way that allows for the public to review them and comment on them. The plan needs to state how it will publish the proposed Assessment of Fair Housing and Consolidated Plan. It is possible to fulfill the publishing requirement by “publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available at libraries, government offices, and public places. The summary must include a list of the locations where copies of the entire proposed document may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan and/or the assessment.”<sup>108</sup>
- A minimum of one public hearing needs to be held before the proposed Assessment of Fair Housing is published for comment.<sup>109</sup>
- There needs to be at least two public hearings per a year on the Consolidated Plan, which need to be held at two different points during the year.<sup>110</sup> One of the purposes of these hearings is to “address housing and community development needs, development of proposed activities, proposed strategies and actions for AFFH consistent with the Assessment of Fair Housing, and review of program performance.”<sup>111</sup> One of these hearings need to be held before the proposed Consolidated Plan is published for comments.<sup>112</sup>
- A minimum of thirty days is required for the public to comment on either the Assessment of Fair Housing, Consolidated Plan, revisions to the Assessment of Fair Housing, or amendments to the Consolidated Plan.

<sup>107</sup> Id. 43735.

<sup>108</sup> Id. 43735.

<sup>109</sup> Id. 43736.

<sup>110</sup> Id. 43736.

<sup>111</sup> Id. 43736.

<sup>112</sup> Id. 43736.

- The jurisdiction needs to consider any comments/views made orally or in writing at public hearings. A summary of all comments received and the reasons why some comments were rejected needs to be included with the final Assessment of Fair Housing and/or final Consolidated Plan. This same procedure needs to take place when there is a proposed amended Consolidated Plan or revisions to the Assessment of Fair Housing.
- Citizens need to be provided with reasonable and timely access to meetings.<sup>113</sup>
- All documents and records need to be made available to the public.<sup>114</sup>
- Technical assistance needs to be provided to groups representing low- and moderate-income people in commenting on the Assessment of Fair Housing or developing proposals for funding under the Consolidated Plan.<sup>115</sup>
- Procedures to be developed that will handle the public’s complaints about the Assessment of Fair Housing, Consolidated plan and any other plans.<sup>116</sup> At a minimum, the jurisdiction needs to provide a written response within a timely manner. HUD suggests that 15 working days for a CDBG grant recipient to respond will be timely.
- State criteria that will trigger amendments to the consolidated plan. One of these triggers is a change in the use of CDBG funds from one eligible activity to another.
- State criteria beyond significant changes in policy or natural disasters that would trigger the need for significant revisions of the Assessment of Fair Housing.<sup>117</sup>
- State how notice will be given to the public that there are revisions or amendments to the planning tools.

The local government’s strategic plan needs to address affirmatively furthering fair housing by setting strategies and actions that are consistent with the goals identified in the Assessment of Fair Housing. Its action plan must also address the fair housing issues identified in the Assessment of Fair Housing.<sup>118</sup> Furthermore, the action plan needs to include information about the local government’s plans to meet underserved needs, foster and maintain affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure and enhance coordination between public and private housing and social service agencies.<sup>119</sup>

<sup>113</sup> Id. 43736.

<sup>114</sup> Id. 43736.

<sup>115</sup> Id. 43736.

<sup>116</sup> Id. 43736.

<sup>117</sup> Id. 43736.

<sup>118</sup> Id. 43738.

<sup>119</sup> Id. 43738.

An aspect of AFFH is the submission by the jurisdiction of certification that it will affirmatively further fair housing; therefore the jurisdiction will take action to further the goals identified in the Assessment of Fair Housing and certifies that none of the actions it takes will be inconsistent with the goal of AFFH.<sup>120</sup>

The Consolidated Plan needs to describe procedures in place which will be used to monitor activities that carry out the Consolidated Plan and address the fair housing issues and goals identified in the Assessment of Fair Housing.

### **Insular Areas are Similar to Unit of Local Governments**

An insular area has the option to submit an abbreviated plan instead of a full Assessment of Fair Housing; the abbreviated Assessment of Fair Housing will contain only an assessment of needs, resources, and planned activities.<sup>121</sup> According to the proposed rule, “An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD.<sup>122</sup>” Even an abbreviated plan must address how it will further AFFH and draw connections between the Assessment of Fair Housing and the plan.<sup>123</sup> The insular area grantee must also sign a certification of AFFH.

The Assessment of Fair Housing that the insular area produces must also contain a citizen participation plan. There are some differences between the citizen plans for insular areas that receive CDBG funds and those created by states and local governments. Insular areas that receive CDBG funds must make their citizen participation plan available to the public before the Assessment of Fair Housing and statement for assistance is submitted to HUD<sup>124</sup> and the jurisdiction has to certify that they are following the citizen participation plan.

The citizen participation plan must contain policies and procedures for<sup>125</sup>:

- Giving citizens, residents and others were given timely notice of meetings and access to these meetings and information about the proposed and actual use of CDGB funds.
- Providing groups that represent low- and moderate-income people that request assistance in commenting on the Assessment of Fair Housing must receive technical assistance.

<sup>120</sup> Id. 43738.

<sup>121</sup> Id. 43739.

<sup>122</sup> Id. 43739.

<sup>123</sup> Id. 43739.

<sup>124</sup> Id. 43740.

<sup>125</sup> Id. 43740.

- Two public hearings to gain citizens' views and formulating or responding to proposals and questions are required. Each hearing has to take place at a different stage of the CDBG year. Hearings must cover the following issues: affirmatively furthering fair housing, community development and housing needs, development of proposed activities, proposed strategies and actions for AFFH consistent with the Assessment of Fair Housing, and review of program performance. The hearings must have notice and be held convenient and accessible times and places. The plan must specify how it will do this.
- Translations of documents if needed and language assistance so non-English speakers can participate.

An insular area that receives CDBG funds needs to publish a proposed Assessment of Fair Housing and proposed statement in a manner in which the public can read the documents as well as comments on the documents and on the jurisdictions performance. The proposed statement and proposed Assessment of Fair Housing has been publicized once a summary is published in one or more newspapers of general circulation and copies are made available at the public library, government office, and public places. The summary needs to include the contents and purpose of the rule and a list stating where one can read the proposed documents.

The proposed rule requires insular areas that receive CDBG funds to prepare an Assessment of Fair Housing and final statement. Comments and views received relating to these proposed documents must be considered and may result in the proposed document being modified. The final documents need to be made available to the public with the final statement containing the community development objectives, projected use of the funds, and the community development activities.

HUD is concerned that the public will not participate in amendment changes to the final statement or revisions to the Assessment of Fair Housing so they are requiring the insular areas that receive CDBG funds to:

- Provide citizens with information concerning the amendment or significant revision.
- Hold at least one public hearing on the revisions or amendments.
- Publish the proposed amendment/revision so that the public has time to submit comments on it.
- Consider all comments and if appropriate make modifications to the documents based upon the comments.
- Make the final version of the revised Assessment of Fair Housing or amended final statement publicly available before submitting it to HUD.

**Housing Opportunities for Persons with AIDS:**

Records for participants of Housing Opportunities for Persons with AIDS must be kept for a 4-year period. It is required that participants keep current and accurate data on the race and ethnicity of program participants and documentation related to the formula grantee’s assessment of fair housing.<sup>126</sup>

**Public Housing Agency Plans:**

The PHA’s Plan requires the PHA to focus on deconcentration of poverty and income mixing by promoted by a policy that provides for bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The PHA has an obligation to AFFH and any affirmative steps the PHA Plan takes must be stated in the admission policy and be consistent with the Assessment of Fair Housing.<sup>127</sup>

Any affirmative action a PHA wants to take must be stated in the admissions policy. While any plans for construction, rehabilitation, modernization, demolition, disposition, designation or physical accessibility of its housing or other facilities needs to be stated in the appropriate Capitol Fund and 5-Year Plan as well as being consistent with the Assessment of Fair Housing.<sup>128</sup> PHA’s must take affirmative steps to overcome discrimination and conditions that limit participation of people.<sup>129</sup> The rule provides examples of these affirmative steps including but not limited to: appropriate affirmative marketing efforts, use of tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, provision of additional supportive services and amenities to a development.<sup>130</sup>

A PHA’s certification will be subject to challenge when it appears that the PHA Plan or its implementation of its plan results in:

- Not reducing racial and national origin concentration in developments/ buildings and perpetuating segregated housing.
- Creating new segregation in housing.
- Failure to meet the AFFH requirements.

If HUD challenges the PHA certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants.<sup>131</sup>

<sup>126</sup> Id. 43742.

<sup>127</sup> Id. 43742.

<sup>128</sup> Id. 43742.

<sup>129</sup> Id. 43742.

<sup>130</sup> Id. 43742.

<sup>131</sup> Id. 43742.

The PHA needs to certify that it will carry out its plan in conformity with the Civil Rights Act, the Fair Housing Act, and the Americans with Disabilities Act. The PHA submits a certification of AFFH, whereby it will meaningful take actions to further the goals in the Assessment of Fair Housing and it will take no actions that are inconsistent with AFFH. This certification applies to both the 5-year plan and the annual plan.<sup>132</sup> Compliance of certification occurs when the PHA<sup>133</sup>:

- Examines its programs or proposed programs.
- Identifies any fair housing issues and determinants within those programs.
- Addresses those issues and determinants in a reasonable fashion in view of the resources available.
- Works with jurisdictions to implement any of the jurisdiction’s initiatives to Assessment of Fair Housing that require the involvement of the PHA.
- Operates programs in a manner consistent with any applicable consolidated plan, complies with any contribution or consultation requirement with respect to any applicable Assessment of Fair Housing.
- Maintains records reflecting these analyses, actions and the results of these actions.

The PHA must prepare an Assessment of Fair Housing but it has three options to meet this requirement.<sup>134</sup> The PHA has until 60 days before the certification is due to inform HUD which one of the three options it will use.<sup>135</sup>

- **Option 1:** The PHA may join with a unit of general local government and ensure that the PHA Plan is consistent with the applicable Consolidated Plan and Assessment of Fair Housing for the unit of general local government in which the PHA is located. To determine which local government unit to join up with, the PHA will work with the local government where 60% of the PHA’s projects are located. If the percentage is closer to 50% the PHA has the option to work with the local government that most closely aligns to its planning activities.<sup>136</sup> For PHAs with only Section 8 housing assistance, the PHA has to coordinate with the jurisdiction that governs the PHA’s operation. Certification will state the PHA is consistent with the applicable Consolidated Plan and Assessment of Fair Housing. If option 1 is selected then the PHA must participate in the Assessment of Fair Housing process every year.

<sup>132</sup> Id. 43743.

<sup>133</sup> Id. 43743.

<sup>134</sup> Id. 43743.

<sup>135</sup> Id. 43743.

<sup>136</sup> Id. 43743.

- **Option 2:** The PHA will conduct its own Assessment of Fair Housing with geographical scope and proposed actions scaled to the PHA's operations.<sup>137</sup> It will then certify that its PHA Plan will comply with Assessment of Fair Housing. It will also submit a certification that it will affirmatively further fair housing, whereby the PHA will take meaningful action to further the goals of the Assessment of Fair Housing, and it will not take any materially inconsistent actions.<sup>138</sup> If option 2 is selected the PHA must update its own Assessment of Fair Housing every year.
- **Option 3:** For PHA's that are covered by state agencies, the state's Consolidated Plan and Assessment of Fair Housing are the plans in which it could participate. The PHA can decide not to participate with the state. If it chooses not to participate with the state it will still be bound by the state agency's conclusions contained in the state's Assessment of Fair Housing. It is required to certify compliance with AFFH and that the PHA plan is consistent with the applicable consolidated plan and Assessment of Fair Housing.<sup>139</sup> If option 3 is selected then it is necessary to incorporate the state's Consolidated Plan and Assessment of Fair Housing once every 5 years.<sup>140</sup> HUD is strongly encouraging PHAs to participate in the new collaborative Assessment of Fair Housing because in this situation PHAs will only need to submit their plan every 5 years.<sup>141</sup>

The PHA can select one of the three above options unless there is a binding agreement with HUD such as a recovery agreement or voluntary compliance agreement, which would require alternate Assessment of Fair Housing procedures, such as the PHA participating in the unit of local government Assessment of Fair Housing.<sup>142</sup> PHAs can request to change their fiscal years to better coordinate their planning with the planning done under the Consolidated Plan process.

Significant changes that require a PHA Plan amendment will result in the PHA having 18 months to make change to the PHA 5-Year plan.<sup>143</sup>

The PHA needs to keep a copy of the Assessment of Fair Housing and records showing action in accordance with AFFH.<sup>144</sup>

<sup>137</sup> Id. 43743.

<sup>138</sup> Id. 43743.

<sup>139</sup> Id. 43743.

<sup>140</sup> Id. 43743.

<sup>141</sup> Id. 43715.

<sup>142</sup> Id. 43743.

<sup>143</sup> Id. 43743.

<sup>144</sup> Id. 43743.

## Are there Additional Costs for Program Participants in the Implementation of the Rule?

Program participants are already required to prepare a written AFFH plan, undertake activities to overcome barriers, and keep records of their activities and its impact.<sup>145</sup> Now participants will “submit the plan to HUD for review and feedback; the contents of the plan would be more precisely defined; HUD would provide data for further analysis; and there would be a more precisely defined community participation process.”<sup>146</sup> HUD is stating that there will be a reduction in costs for the development of data. However, for participants that have not been in compliance with their AIs in the past, there will be an increase in costs<sup>147</sup> especially as many participants who have AIs that would be compliant have used outside consultants. Though HUD is providing national and regional data, it is not providing local data or additional national/regional data that would be needed by a jurisdiction to be able to properly execute an Assessment of Fair Housing.

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<sup>145</sup> Regulatory Impact Analysis, 9.

<sup>146</sup> Id. 9.

<sup>147</sup> Id. 10.

## For More Information

HUD's proposed rule to Affirmatively Further Fair Housing will positively impact community planning at the point of the conception of future new plans due to the creation and implementation of the new Assessment of Fair Housing planning tool.

The Assessment of Fair Housing will result in all of HUD's stakeholders and public and private sector community partners having a better understanding of the issues and problems that create housing discrimination so that jurisdictions will state clearer goals to eliminate discrimination and create opportunity for all people.

It is NCRC'S hope that this guide will enable you as a practitioner to gain an understanding of the new AFFH requirements and the unique interactions between the Assessment of Fair Housing and later planning tools so that you can work towards the goal of fair housing choice and opportunity for all. As we approach the 50<sup>th</sup> anniversary of the Fair Housing Act, the federal government needs to reaffirm its commitment to fair housing for all as required under the Fair Housing Act and this proposed rule is a reaffirmation of this policy.

If you would like additional information concerning the new proposed rule, please do not hesitate to contact Ali Lederer, Esq., Special Assistant to the Chief Program Officer at 202-464-2731 or [alederer@NCRC.org](mailto:alederer@NCRC.org) or any member of the NCRC National Neighbors professional staff at 202-628-8866. NCRC is a national leader in the AFFH field providing both technical assistance and training to ensure effective fair housing planning.

## Glossary Of Terms<sup>1</sup>

**Affirmatively Furthering Fair Housing** – Taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws. For participants subject to this subpart, these ends will be accomplished primarily by making investments with federal and other resources; instituting strategies, or mitigating fair housing issues identified in an Assessment of Fair Housing (AFH) and promoting fair housing choice for all consistent with the policies of the Fair Housing Act.

**Assessment of the Fair Housing (AFH)** – The document that is submitted to HUD that includes fair housing data analysis, an assessment of fair housing issues and determinants, and an identification of fair housing priorities and general goals.

**Community Participation** – A solicitation of views from the public (including citizens, residents, and other interested parties), a consideration of the views and recommendations received, and a process for incorporating such views in decisions and outcomes.

**Disproportionate Housing Needs** – These exist when the percentage of extremely low-income, low-income, moderate-income, and middle-income families in a category of housing need who are members of a protected class is at least 10 percent higher than the percentage of persons in the category as a whole. For this purpose, categories of housing need are cost burden and severe cost burden, overcrowding (especially for large families) and substandard housing conditions.

**Fair Housing Choice** – Individuals and families have the information, options, and protection to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin or handicap. It encompasses actual choice, which means the existence of realistic housing options; protected choice, which means housing that can be accessed without discrimination; and enabled choice, which means the availability and realistic access to sufficient information regarding options so that choice is informed.

<sup>1</sup>“Affirmatively Furthering Fair Housing, Proposed Rule:” 78 Federal Register 139 (July 19 2013), 43710-43743, 43729-43730

**Fair Housing Determinant** – A factor that creates, contributes to, or perpetuates one or more fair housing issues.

**Fair Housing Enforcement and Fair Housing Outreach Capacity** – The ability of a jurisdiction, and organizations located in the jurisdiction, to accept complaints of violations of fair housing laws, investigate such complaints, obtain remedies, engage in fair housing testing, and educate community members about fair housing laws and rights and includes any state or local agency that enforces a law substantially equivalent to the Fair Housing Act and any organization participating in the Fair Housing Initiative Programs.

**Fair Housing Issue** – Ongoing local or regional segregation or the need to support integrated communities; racial or ethnic concentrations of poverty; disparities in access to community assets; disproportionate housing needs based on race, color, religion, sex, familial status, national origin, or handicap; and evidence of illegal discrimination or violations of existing civil rights law, regulations, or guidance, as well as any other condition that impedes or fails to advance fair housing choice.

**Instructions and Assessment Tool** – This refers to guidance that HUD will issue to program participants providing directions on how to use the data to be provided and the assessment to be conducted, and such guidance will be updated periodically as may be necessary.

**Insular Areas** – Any of the following: Guam, the Northern Mariana Islands, the Virgin Islands, and America Samoa.

**Integration** – Based on the most recent decennial Census and other data sources as determined by HUD to be statistically valid, that particular geographic areas within a jurisdiction do not contain high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or handicap when compared to the jurisdiction or Metropolitan Statistical Area as a whole.

**Program Participant** – Public Housing Agency and state and local government that receive HUD funds through the following programs: Community Development Block Grants (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants (ESG), Housing Opportunities for Persons With AIDS.

**Protected Class** – A class of persons who are protected from housing discrimination on the basis of race, color, religion, sex, familial status, national origin or handicap under the Fair housing Act.

**Racially or Ethnically Concentrated Areas of Poverty** – A geographical area based on the most recent decennial Census and other data sources as they are

determined by HUD to be statistically valid, with significant concentrations of extreme poverty and minority populations.

**Regionally Collaborating Program Participants** – Those program participants collaborating to conduct a regional Assessment of Fair Housing.

**Segregation** – Geographical areas based on the most recent decennial Census and other data sources determined by HUD to be statistically valid, with high concentrations of persons of a particular race, color, religion, sex, familial status, national origin, or with a disability in a particular housing development, or a jurisdiction, compared to the jurisdiction or Metropolitan Statistical Area, as a whole resulting from fair housing determinants or other causes.

**Significant Disparities in Access to Community Assets** – Measurable differences in access to educational, transportation, economic, and other important assets in a community based on housing unit location and race, color, religion, sex, familial status, national origin, or disability, based on the most recent decennial Census and other data sources determined by HUD to be statistically valid, program participant provided supplemental or replacement data that has an empirical basis or both.



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