



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

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MEMORANDUM FOR: All CPD Formula Program Grantees
All CPD Field Office Directors

FROM: Harriet Tregoning, Principal Deputy Assistant Secretary
for Community Planning and Development, D

SUBJECT: Incorporating 24 CFR Part 5 Affirmatively Furthering Fair Housing
into 24 CFR 91.10 Consolidated Program Year, 24 CFR 91.105
Citizen participation plan for local governments and 24 CFR 91.115
Citizen participation plan for States

The U.S. Department of Housing and Urban Development (HUD) recently published a Final Rule at 24 CFR Part 5 regarding a grantee's obligation to Affirmatively Further Fair Housing (AFFH). The new rule sets forth a meaningful and transparent process to identify and understand local and regional fair housing issues and to set goals for improving fair housing choice and access to opportunity. HUD is providing its consolidated plan grantees and public housing authorities with an Assessment Tool and a rich set of data within a mapping tool to support the development of the Assessment of Fair Housing (AFH), which is replacing the Analysis of Impediments to Fair Housing Choice (AI). The assessment of information on the current state of neighborhood demographics and assets within an open planning process can affect the nature of the conversations, and ultimately, community decisions. The AFH Tool, informed by the community participation process, will guide grantees through the identification of fair housing issues and related contributing factors, and result in prioritizing and setting of goals for its upcoming planning period.

Under the new rule, the citizen participation plan requirements at 24 CFR 91.105 for local governments and 24 CFR 91.115 for states have been revised to accommodate the new AFH, the analysis undertaken pursuant to § 5.154 requiring consultation and community participation in the analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals.

Section 107 of the Cranston-Gonzalez National Affordable Housing Act and its implementing regulations at 24 CFR Part 91 require jurisdictions to implement a citizen participation process as a prelude to the allocation and expenditure of formula funds for HUD's Community Planning and Development programs. These requirements are also contained in section 104(a)(2) of the Housing and Community Development Act of 1974 for CDBG grantees. A grantee's citizen participation plan and proposed allocation of funds to eligible activities are components of its consolidated plan required pursuant to 24 CFR 91. The specific statutory requirement is implemented through 24 CFR 91.105 and 24 CFR 91.115, which describe the standards for local government and state citizen participation plans applicable to the formula grant programs.

Under the new AFFH rule, a grantee's citizen participation plan will need to be amended prior to the initiation of the AFH process to comply with the new provisions at § 91.105 for local governments and § 91.115 for states. This memorandum outlines the revisions and additions to the consolidated plan process, the consultation process and the citizen participation plan requirements for both local government and states so they may incorporate the AFH into their citizen participation plan.

24 CFR 91.10 – Consolidated program year and collaborating on an AFH submission

The AFFH rule at 24 CFR 5.152 and 5.156 encourages program participants to collaborate in undertaking a joint Assessment of Fair Housing (AFH) or a regional AFH. A joint AFH refers to two or more program participants conducting and submitting a single AFH. Joint participants may include local jurisdictions, states, Insular Areas, or PHAs. A regional AFH is a type of joint AFH in which at least two of the participants are consolidated plan program participants, conducting and submitting a single AFH. Collaborating program participants must, through a written agreement, designate one participant as the lead entity to oversee the joint or regional AFH on behalf of all collaborating program participants. Program participants that intend to collaborate must notify the appropriate FHEO Regional Director and provide a copy of their collaboration agreement. The new rule requests all collaborating program participants be on the same program year and consolidated plan submission cycle before submission of the joint AFH or regional AFH.

For the purposes of the AFFH Rule, HUD considers a consortium that acts as a single unit of general local government for the purposes of the HOME program to also be a single program participant for the purposes of completing an AFH. As such, a HOME consortium must submit a single AFH that covers the jurisdictions that make up the consortium. HUD does not consider such a submission to be a "joint" or "regional" submission. As such, HOME consortia are not subject to the requirements to notify HUD of the intent to submit jointly or to complete a separate written agreement. Consolidated Planning regulations require HOME consortium members to be on the same cycle for the 3-5 year consolidated plan (and to submit a single consolidated plan), so the AFH due date would be the same for the entire consortium.

Under 24 CFR 91.10, a jurisdiction may either shorten or lengthen its program year to align its program year with its collaborating partners. To change the beginning date of the following program year, the jurisdiction must notify their HUD field office in writing at least two months before the date the program year would have usually ended if it had not lengthened or at least two months before the end of a proposed shortened program year.

HUD recognizes that for the purpose of submitting a joint or regional AFH, some grantees may need to extend their consolidated plan beyond the normal three to five year time period in order to align their program with the other collaborating participants' consolidated plan cycles. Under 24 CFR 91.20, a jurisdiction may request an extension in writing to the field office of its intent to prepare a joint or regional AFH. The field office, at its discretion, will review and consider an extension of no more than two years for the specific purpose of aligning consolidated plan cycles for a joint or regional AFH. Jurisdictions requiring more than two years to become aligned with their designated AFH lead's program year start date should instead submit a new consolidated plan with a time period that would align the jurisdiction to its collaborating partners. Jurisdictions should

be aware that even when an extension is granted they must still continue to submit an annual action plan and required certifications.

The new rule does provide that if the alignment of a program year is not practicable, then the submission deadline for a joint AFH or regional AFH must be based on the designated lead entity's program year start date for its CPD formula grant programs. Within twelve months after the date of AFH acceptance, each collaborating program participant that has a program year start date earlier than the designated lead entity must make appropriate amendments to its consolidated plan to incorporate strategies and proposed actions consistent with the fair housing goals, issues, and other elements identified in the joint AFH or regional AFH.

24 CFR 91.100 and 24 CFR 91.110 - Consultation

The AFFH Final Rule revised the consultation process at 24 CFR 91.100(a)(1) and (5) and (c) and paragraph 91.100(e) was added to reflect the following additional consultation requirements for local governments. For states, the equivalent provision at 24 CFR 91.110(a) was also revised. Details of these additions and revisions are discussed in this section.

Under § 91.100(a)(1), a jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services, including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons. A jurisdiction shall also consult with community-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws when preparing both the AFH and the consolidated plan. The jurisdiction's consultation process, under § 91.100(a)(5), should include consultation with regional government agencies in addition to adjacent units of general local government and local government agencies. This includes local government agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

States, under § 91.110(a), must comply with the same requirements as local governments with the addition of also consulting with state-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws during preparation of the AFH and consolidated plan.

Public housing agencies (PHAs):

Under § 91.100(c)(1), the jurisdiction shall consult with public housing authorities (PHAs) operating in the jurisdiction. This consultation will continue to consider public housing needs, planned programs and activities under the consolidated plan. It will also now require consultation with PHAs operating in the jurisdiction on the AFH, on strategies for affirmatively furthering fair housing, and on proposed actions to affirmatively further fair housing in the consolidated plan. The intent is that this consultation will help provide a better basis for the certification by the authorized officials that the PHA Plan is consistent with the consolidated plan and the local government's description of its strategy for affirmatively furthering fair housing. The consultation process continues to require the jurisdiction to address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to a troubled PHA to improve the

PHA's operations and remove the designation of troubled. The regulation, under § 91.100(c)(1), requires the jurisdiction to now obtain PHA input on addressing fair housing issues in the public housing and Housing Choice Voucher programs.

States must comply with the same requirements as local governments. Section 91.110(a)(1) is revised to address state-specific consultation requirements with respect to public housing or Housing Choice Voucher programs. The state shall consult with any housing agency administering public housing or the section 8 program on a statewide basis as well as all PHAs that certify consistency with the state's consolidated plan. A state's consultation with these entities may consider public housing needs, planned programs and activities, the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing. The state's consultation also helps ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program are fully coordinated with those funded under a program covered by the consolidated plan to achieve comprehensive community development goals and affirmatively further fair housing.

Under § 91.100(c)(2) for local governments and § 91.110(a)(1) for states, the consultation process should work to ensure that activities with regard to affirmatively furthering fair housing are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the grantee should now work with or consult with the PHAs, as appropriate, to identify actions the grantee may take, if any, to assist the PHA in implementing the required remedies.

Affirmatively Furthering Fair Housing:

Section 91.100(e)(1)-(3) for local governments and § 91.110(a)(2) for states are new additions to Part 91 and specifically address the consultation process with regard to affirmatively furthering fair housing organizations. The local jurisdiction shall consult with community-based and regionally-based organizations, and the state shall consult with state-based and regionally-based organizations. These organizations should represent protected class members, and organizations that enforce fair housing laws, such as state or local fair housing enforcement agencies, including participants in the:

- Fair Housing Assistance Program (FHAP);
- Fair housing organizations;
- Nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP); and
- Other public and private fair housing service agencies, to the extent that such entities operate within the grantee's area.

This consultation will help provide a better basis for the grantee's AFH, its certification to affirmatively further fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing.

- For local jurisdictions, this consultation must occur with any organizations that have relevant knowledge or data to inform the AFH.
- For states, this consultation should occur with organizations that have the capacity to engage with data informing the AFH.

The organizations involved in the consultations should be sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH, the consolidated plan, and their implementation. At a minimum, the grantee will consult with the above referenced organizations in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.

24 CFR 91.105 and 91.115 - Citizen Participation Plan

The AFFH Rule has revised the citizen participation process at 24 CFR 91.105(a)(1) and (a)(2)(i) through (iii). Paragraph 91.105(a)(4) is added and paragraphs § 91.105(b), (c), (e)(1), (f) through (j) and (l) are revised to reflect additional citizen participation plan requirements for local governments. For states, 24 CFR 91.115 is revised at § 91.115(a)(1) and (2). Paragraph § 91.115(a)(4) is added and paragraphs § 91.115(b), (c), (f), (g), and (h) are revised to reflect additional citizen participation plan requirements. In addition to these new provisions, the regulation now replaces “citizens” with “residents” at § 91.105(b), development of the AFH and the consolidated plan. Details of these additions and revisions are discussed in this section.

Encouragement of citizen participation:

In addition to existing citizen participation plan requirements, under § 91.105(a)(2)(i) through (iii) for local governments and § 91.115(a)(2)(i) through (iii) for states, the plan must also encourage citizens to participate in the development of the AFH and any revisions to the AFH in the same manner one would encourage citizen participation in the consolidated plan, any substantial amendments to the plan and the performance report. This process shall include persons living in areas designated by the local jurisdiction as a revitalization area, areas designated by either a local jurisdiction or a state as a slum and blighted area and areas where CDBG funds are proposed to be used.

The citizen participation plan shall encourage the participation of local and regional institutions for jurisdictions and statewide and regional institutions for states. The plan shall also encourage the participation of Continuums of Care, businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations, in the process of developing and implementing the AFH and the consolidated plan.

States, under § 91.115(a)(2)(iii), should explore alternative public involvement techniques, such as focus groups and use of the internet. These techniques should encourage a shared vision of change for the community and the review of program performance.

For local jurisdictions, the citizen participation plan, under § 91.105(a)(2)(iii), shall also encourage, in conjunction with public housing agency consultations, participation of residents of

public and assisted housing developments, including any resident advisory boards, resident councils, and resident management corporations, in the process of developing and implementing the AFH and the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the PHA about the AFH, AFFH strategy, and consolidated plan activities related to the jurisdiction's developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.

Assistance provided to non-English speaking residents of the community, previously addressed under § 91.105(e), is now located at § 91.105(a)(4) for local governments and § 91.115(a)(4) for states. The citizen participation plan shall describe the grantee's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking and limited English proficiency residents of the community.

Development of the AFH and the consolidated plan:

Under § 91.105(b) for local governments and § 91.115(b) for states, the citizen participation plan must include the following minimum requirements for the development of both the AFH and the consolidated plan.

- The citizen participation plan must require that the grantee make available to the public, residents, public agencies, and other interested parties any HUD-provided data and other supplemental information the grantee plans to incorporate into its AFH at the start of the public participation process (or as soon as feasible after).
- The grantee may make the HUD-provided data available to the public by cross-referencing to the data on HUD's website.
- The citizen participation plan must require the grantee to publish the proposed AFH and the proposed consolidated plan in a manner that affords its residents, units of general local government, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments.
- The citizen participation plan must set forth how the grantee will make public the proposed AFH and the proposed consolidated plan and give reasonable opportunity to examine each document's content.
- The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the grantee's official government web site, as well as at libraries, government offices, and public places.
- The summary must describe the content and purpose of the AFH or the consolidated plan, as applicable, and must include a list of locations where copies of the entire proposed document may be examined.
- In addition, a reasonable number of free copies of the plan or the AFH, as applicable, must be provided to residents and groups that request a copy of the plan or the AFH.
- The citizen participation plan must provide for at least one public hearing during both the development of the AFH and development of the consolidated plan and must provide a

period, not less than 30 calendar days, to receive comments from residents of the community on the consolidated plan or the AFH. The required public hearing must occur before the proposed consolidated plan is published for comment.

- The citizen participation plan shall require the grantee to consider the comments or views of residents, whether received in writing or orally at the public hearings, in preparing in the final AFH or the final consolidated plan. A summary of any comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the final AFH or the final consolidated plan.

States must comply with the same requirements as local governments; new language at § 91.115(b)(2) also addresses the need for states to ensure that the AFH, the consolidated plan and the PHA plan are informed by meaningful community participation by employing communications means designed to reach the broadest audience.

Consolidated plan amendments and AFH revisions:

Under § 91.105(c)(1) for jurisdictions and § 91.115(c)(1) for states, the criteria for amendments to the consolidated plan remain the same; the rule adds a section on criteria for revisions to the AFH. Grantees must specify the criteria they will use for determining when revisions to the AFH will be required. At a minimum, the specified criteria must address the situations described in 24 CFR 5.164, which include a material change in circumstances in the jurisdiction that affects the information on which the AFH is based, to the extent that the analysis, the fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances. Under § 91.105(c)(2) and § 91.115(c)(2), the citizen participation plan must provide community residents (and units of general local government for states) with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan and revisions to the AFH. The citizen participation plan must state how reasonable notice will be provided and the opportunity to comment will be given. The period of notification remains the same, not less than 30 calendar days, and now covers any revision to the AFH before the revised AFH is submitted to HUD for review. The grantee must still consider any comments or views of residents (and units of general local government for states) received in writing or orally at public hearings in regard to a substantial amendment to the consolidated plan or significant revision to the AFH, as applicable. A summary of these comments or views and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment to the consolidated plan or the revision to the AFH.

Public hearings:

In addition to obtaining residents' views through the required public hearing addressing housing and community development needs, development of proposed activities, and review of program performance, § 91.105(e) for local governments and § 91.115(b)(3) for states, require that the grantee must also address the proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH. At least one of the public hearings must be held before the proposed consolidated plan is published for comment. Under § 91.105(1)(iii) for local governments and § 91.115(b)(3) for states, the citizen participation plan must provide that at least one public hearing is held before the proposed AFH is published for comment, in order to obtain the views of

the community on AFH-related data and affirmatively furthering fair housing in the grantee's housing and community development programs.

Meetings:

Under § 91.105(f) for jurisdictions and § 91.115(b)(3)(ii) for states, the citizen participation plan must provide residents of the community with reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements, in accordance with section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 as well as the Americans with Disabilities Act and implementing regulations at 28 CFR part 35 and 36, as applicable.

Availability to the public:

Under § 91.105(g) for local governments and § 91.115(f) for states, the citizen participation plan must state how documents will be available to the public. In addition to the consolidated plan and any substantial amendments thereto, the HUD-accepted AFH and any subsequent revisions must be made available to the public. This includes making materials available in a form accessible to persons with disabilities or limited English proficiency upon request.

Access to records:

Under § 91.105(h) for local governments and § 91.115(g) for states, the citizen participation plan must state how the grantee will provide residents of the community, public agencies, and other interested parties with reasonable and timely access to information and records relating to the grantee's AFH, consolidated plan, and use of assistance under the programs covered by this part during the preceding 5 years.

Technical Assistance:

Under § 91.105(i), the citizen participation plan for local governments must provide for technical assistance to groups representative of persons of low-and-moderate income that request such assistance to comment on the AFH, or in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

Complaints:

Under § 91.105(j) for local governments and § 91.115(h) for states, the citizen participation plan shall describe the grantee's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, consolidated plan amendments, the AFH, any revisions to the AFH, and the performance report. At a minimum, the citizen participation plan shall require that the grantee must provide a timely, substantive written response to every written resident complaint, within an established period of time (normally within 15 working days, where practicable).

Jurisdiction responsibility:

The new AFFH rule adds an AFH reference at § 91.105(l) to ensure that citizen participation requirements do not restrict the responsibility or authority of the local governments for the development and execution of its consolidated plan or AFH.

The revised standards for local government and state citizen participation plans are applicable to formula grant programs administered by the Office of Community Planning and Development (CPD). It is important that both local governments and states incorporate the new provisions described in this memorandum into their consultation and citizen participation process in order to remain in compliance with regulatory requirements.

Grantees with questions concerning this Notice should direct their inquiries to their local HUD Field Office Community Planning and Development Division. Field Offices should direct their questions to the Office of Block Grant Assistance at (202) 708-1577 for the Entitlement CDBG program or (202) 708-1322 for the State CDBG program.