



INTERIM GUIDANCE FOR PROGRAM PARTICIPANTS ON STATUS OF ASSESSMENT TOOLS AND SUBMISSION OPTIONS

HUD is providing guidance for Program Participants to assist in carrying out certain responsibilities related to their obligation to affirmatively further fair housing (AFFH) pending issuance of the final Assessment of Fair Housing (AFH) Tool for States and Insular Areas. As interim guidance, this guidance will be updated based on the availability of Assessment Tools for States and Insular Areas and Public Housing Agencies (PHAs),¹ or by January 1, 2019, whichever is earlier.

STATUS OF ASSESSMENT TOOLS

Program participants will not be required to begin conducting their assessments until the full array of online resources, including both the Data and Mapping Tool (AFFH-T) and the User Interface are complete and operational. The status of these Assessment Tools and related online resources are as follows:

- **Local Government and Joint/Regional:** Final and available ([OMB Control No. 2529-0054](#)).
- **PHA and PHA-only collaboration:** Final and available ([OMB Control No. 2529-0055](#)). OMB has approved the AFH Assessment Tool for PHAs. HUD will issue an additional Federal Register notice notifying PHA's of their new submission date at a later time once additional resources become available.
- **Qualified PHA (QPHA):** Currently unavailable—final version subject to full Paperwork Reduction Act (PRA) process.
- **State and Insular Area:** Currently going through PRA Process (see additional details below).

GENERAL GUIDANCE FOR PROGRAM PARTICIPANTS

Pursuant to 24 C.F.R. § 5.160, AFH submission requirements depend on the type of program participant (or lead entity in the case of a collaboration) and the availability of applicable Assessment Tools and their related Data and Mapping Tool. The following tables are meant to assist program participants in identifying options for collaboration² and accompanying submission deadlines.

¹ HUD has announced its intention to release an Assessment Tool for Qualified PHAs (QPHAs). This will be subject to the Paperwork Reduction Act (PRA) process, and the public will have an opportunity to submit comment.

² Guidance on how program participants can collaborate on their AFH submissions can be found on www.hudexchange.info/programs/affh.

Local Governments, States, and Insular Areas			
	Option 1: Submit an AFH Alone	Option 2: Collaboration with one or more Local Governments or PHAs on an AFH	Option 3: Collaboration with State Lead Entity on an AFH
Local Government Program Participants with CDBG Grants in FY15 of \$500,000 or Less³	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool with option to use \$500,000 or Less Local Government Insert if the Program Participant is eligible	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas with option to use \$500,000 or Less Local Government Insert if the Program Participant is eligible
	<u>Submission Deadline:</u> 270 days prior to the program year start date for the next 3-5-year consolidated planning cycle beginning on or after January 1, 2019.	<u>Submission Deadline:</u> Based on Lead Submitter's Submission Deadline	<u>Submission Deadline:</u> Based on Lead Submitter's Submission Deadline, which is triggered by approval and publication of a final State Assessment Tool
Local Government Program Participants with CDBG Grants in FY15 that are Over \$500,000	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas
	<u>Submission Deadline:</u> 270 days prior to the program year start date for the next 3-5-year consolidated planning cycle.	<u>Submission Deadline:</u> Based on Lead Submitter's Submission Deadline	<u>Submission Deadline:</u> Based on Lead Submitter's Submission Deadline, which is triggered by approval and publication of a final State Assessment Tool
States and Insular Areas	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas	
	<u>Submission Deadline:</u> Triggered by approval and publication of a final Assessment Tool for State and Insular Areas	<u>Submission Deadline:</u> Triggered by approval and publication of a final Assessment Tool for State and Insular Areas	

³ For any HOME consortium whose members do not receive CDBG funds or whose members collectively received \$500,000 or less in CDBG funds in FY2015, the consortium's first AFH is due 270 days prior to the program year for which a new 3-5-year Consolidated Plan is due starting on or after January 1, 2019. For any HOME consortium in which members received more than \$500,000 in CDBG funds in FY2015, the consortium's first AFH is due 270 days prior to the program year for which a new 3-5 Consolidated Plan is due starting on or after January 1, 2017. 81 Fed. Reg. 73129.

Public Housing Agencies				
	Option 1: Submit an AFH Alone	Option 2: PHA-Only Collaboration on an AFH	Option 3: Collaboration with one or more Local Governments on an AFH	Option 4: Collaboration with State as Lead Entity on an AFH
QPHAs (Fewer than 550 Units)	<u>Applicable Assessment Tool:</u> QPHA Assessment Tool	<u>Applicable Assessment Tool:</u> PHA Assessment Tool with option to use PHA Insert	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool with option to use PHA Insert	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas with option to use PHA Insert
	<u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5- year cycle. Triggered by the announcement of the availability of all resources for completion of the Final QPHA Assessment Tool	<u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5-year cycle of the Lead PHA. Triggered by the announcement of the availability of all resources for completion of the Final PHA Assessment Tool	<u>Submission Deadline:</u> Based on Lead Submitter’s Submission Deadline	<u>Submission Deadline:</u> Triggered by approval and publication of a final Assessment Tool for States and Insular Areas
PHAs 1250 or fewer Units	<u>Applicable Assessment Tool:</u> PHA Assessment Tool	<u>Applicable Assessment Tool:</u> PHA Assessment Tool with option to use 1,250 unit or fewer PHA Insert ("PHA Insert")	<u>Applicable Assessment Tool:</u> Local Government Assessment Tool with option to use the PHA Insert	<u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas with option to use PHA Insert ⁴

⁴ While not final, HUD announced its intention to make an insert available to PHAs with 1250 units or fewer in the case of collaboration using the State Assessment Tool, as it has in the Local Government and PHA Assessment Tools. See 82 Fed. Reg. 4388 (Jan. 13, 2017).

Public Housing Agencies				
	Option 1: Submit an AFH Alone	Option 2: PHA-Only Collaboration on an AFH	Option 3: Collaboration with one or more Local Governments on an AFH	Option 4: Collaboration with State as Lead Entity on an AFH
	<p><u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5-year PHA Planning cycle.</p> <p>Triggered by the announcement of the availability of all resources for completion of the Final PHA Assessment Tool</p>	<p><u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5-year PHA planning cycle of the Lead PHA.</p> <p>Triggered by the announcement of the availability of all resources for completion of the Final PHA Assessment Tool</p>	<p><u>Submission Deadline:</u> Based on Lead Submitter’s Submission Deadline</p>	<p><u>Submission Deadline:</u> Triggered by approval and publication of a final Assessment Tool for States and Insular Areas</p>
PHAs with more than 1250 units	<p><u>Applicable Assessment Tool:</u> PHA Assessment Tool</p>	<p><u>Applicable Assessment Tool:</u> PHA Assessment Tool</p>	<p><u>Applicable Assessment Tool:</u> Local Government Assessment Tool</p>	<p><u>Applicable Assessment Tool:</u> Assessment Tool for States and Insular Areas</p>
	<p><u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5-year PHA Planning cycle.</p> <p>Triggered by the announcement of the availability of all resources for completion of the Final PHA Assessment Tool</p>	<p><u>Submission Deadline:</u> 270 days prior to the program year start date for the next 5-year PHA Planning cycle.</p> <p>Triggered by the announcement of the availability of all resources for completion of the Final PHA Assessment Tool</p>	<p><u>Submission Deadline:</u> Based on Lead Submitter’s Submission Deadline</p>	<p><u>Submission Deadline:</u> Triggered by approval and publication of a final Assessment Tool for States and Insular Areas</p>

PENDING THE AVAILABILITY OF APPLICABLE ASSESSMENT TOOLS

- **Are Program Participants subject to the obligation to affirmatively further fair housing?**

Yes. Under the Fair Housing Act and other statutory authorities, HUD program participants receiving Federal financial assistance are required to administer their programs and activities in a manner that affirmatively furthers fair housing.

- **Are Program Participants that Lack an Applicable Assessment Tool subject to the requirements to conduct an AFH?**

Not yet. The Affirmatively Furthering Fair Housing (AFFH) Final Rule provides that no AFH will be due before the publication of the Assessment Tool applicable to the program participant (or lead entity in a collaboration). Further, HUD must provide a minimum of 9 months after the publication of the final Assessment Tool when setting a new deadline for submission of the AFH. See 24 C.F.R. § 5.160(a)(1)(ii). Program participants should consult the tables above, which directs which Assessment Tool they should use as well as their current availability as of the date of this guidance.

- **What should a Program Participant do to continue to comply with AFFH requirements pending the availability of its applicable Assessment Tool?**

Under the Fair Housing Act and other statutory authorities, program participants have a continuing obligation to affirmatively further fair housing. The AFFH Rule provides that “until such time as [a] program participant [is] required to submit an AFH, the program participant shall continue to conduct an analysis of impediments... in accordance with requirements in effect prior to August 17, 2015.” 24 C.F.R. § 5.160(a)(3).

For a State or Insular area, or a program participant collaborating with a State or Insular Area as the lead entity, this means it will continue to certify in accordance with the existing AFFH certification requiring that the participant will affirmatively further fair housing. The certification for a local government, State, or Insular Area indicates that it will conduct an Analysis of Impediments to Fair Housing Choice (AI) to identify impediments to fair housing choice within the jurisdiction or State, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions. As a result, these program participants will continue to conduct AIs, as opposed to AFHs, until such time as a final Assessment Tool for their use has been approved in accordance with the PRA. Similarly, PHAs will continue to certify that they will continue to affirmatively further fair housing. Program Participants remain subject to FHEO compliance reviews and investigations, and HUD may request and review the AI or other records in the event of a complaint or during routine onsite or offsite monitoring.

ADDITIONAL GUIDANCE RELATED SPECIFICALLY TO STATES OR INSULAR AREAS OR COLLABORATIONS LED BY STATES OR INSULAR AREAS

- **Status of State Assessment Tool PRA Process**

In a Federal Register Notice dated September 28, 2016 (81 Fed. Reg. 66754), HUD solicited comment on a draft version of an Assessment Tool for States and Insular Areas and also announced a two-stage process for soliciting public comment and feedback before the Office of Management and Budget (OMB) would approve the final Assessment Tool under the PRA. This Notice stated:

Following this first stage of the extended PRA process, HUD will provide an updated version of the Assessment Tool. States and Insular Areas will not be required to use the Assessment Tool to complete an AFH until such time HUD publishes a final Notice announcing the availability of the final Assessment Tool and final AFFH-T for States and Insular Areas. This final Notice will not be published until after the second stage of this extended PRA process has been completed. By providing the updated version of the Assessment Tool prior to issuance of the final Notice, HUD is providing an opportunity for the public and program participants to have advanced review of the proposed requirements.

As of the date of this guidance, HUD is continuing to develop an updated version of the Assessment Tool, which HUD intends to publish before proceeding to a second 30-Day PRA Notice and Comment period. This second stage in this extended process will allow the public a further opportunity to review and provide feedback on the interaction between the Assessment Tool and the AFFH-T, to inform any necessary changes to the Assessment Tool itself.

- **Should a State or Insular Area update its Analysis of Impediments to Fair Housing Choice (AI) or wait for the Assessment Tool for States and Insular Areas?**

HUD's longstanding guidance on the AI process, the [Fair Housing Planning Guide](#), "suggests that jurisdictions conduct or update their AI at least once every 3 to 5 years (consistent with the Consolidated Planning Cycle)." Until the final publication of an Assessment Tool for States and Insular Areas, HUD recommends completing an update of the AI according to the existing guidance pending the final Assessment Tool for States and Insular Areas. HUD will continue to provide program participants and the public information regarding the status of the Assessment Tool for use by States and Insular Areas.

- **How can States and Insular Areas use the AFFH Rule framework, draft Assessment Tools, and AFFH Data and Mapping Tool (AFFH-T) to inform an AI update?**

While HUD's [Fair Housing Planning Guide](#) remains HUD's official guidance for completing an AI, HUD encourages any State or Insular Area that will update an AI pending a final Assessment Tool to take advantage of the framework set forth in the AFFH Rule (specifically at 24 C.F.R. § 5.154(d)) and draft Assessment Tools as a way of completing the obligations of the AI. HUD considers the objectives of the AFH—identifying significant contributing factors and related fair housing issues and establishing goals for overcoming the effects of those—to enhance those of the AI—identifying impediments to fair housing choice. The framework set forth in the AFFH

Rule provides a set of specific fair housing issues (segregation/integration, racially or ethnically concentrated areas of poverty (R/ECAPs), disparities in access to opportunity, and disproportionate housing needs) that States and Insular Areas may wish to analyze when conducting their AIs.

In conducting or updating the AI, States or Insular Areas may in particular find the following resources to be useful:

- [The Draft Assessment Tool for States and Insular Areas, as well as final Assessment Tools for Local Governments and PHAs](#)
- [AFFH Data and Mapping Tool \(AFFH-T\)](#)
- [The AFFH Rule Guidebook](#)

The Assessment Tools are meant to assist program participants as they undertake planning processes to meet their AFFH planning obligations. As explained further in the Fair Housing Planning Guide, the scope of an AI is broad and considers a variety of private and public practices, policies, and procedures that affect housing choice. For example, as the Fair Housing Planning Guide explains in Section 2.5, “the AI structure should provide for effective, ongoing relationships with all elements of the community with clear and continuous exchange of concerns, ideas, analysis, and evaluation of results.” As such, the community participation requirements of the AFFH Rule may provide States and Insular Areas with a useful framework for complying with their preexisting obligation. Similarly, when defining objectives and implementing Fair Housing Actions in conducting an AI, it may be useful for a State or Insular Area to consider the goal setting framework provided under the AFFH Rule and in the draft Assessment Tool.

In addition, HUD has provided maps and tables through the AFFH-T that can help show patterns related to fair housing issues. HUD is continuing to develop a beta version of the Data and Mapping Tool for States and Insular Areas, and will announce its availability through a Federal Register Notice, at which point States, Insular Areas, and the public may provide HUD with comments regarding the functionality and data packages.

Finally, the [AFFH Rule Guidebook](#) provides more detailed guidance on how program participants can use the Assessment Tool and AFFH-T. HUD strongly encourages States to use these resources to inform their fair housing planning pending a final Assessment Tool for States and Insular Areas.

- **How can States Collaborate with Local Governments or PHAs?**

As it has developed the AFH process, HUD has encouraged local governments and PHAs to collaborate with States and Insular Areas in a joint or regional AFH.⁵ HUD has also provided for one such method of collaboration with States and Insular Areas in its draft Assessment of Fair Housing Tool for States and Insular Areas by providing “inserts” for smaller program

⁵ See the AFFH Final Rule at 24 C.F.R. § 5.156(a) (“For the purposes of sharing resources and addressing fair housing issues from a broader perspective, program participants are encouraged to collaborate to conduct and submit a single AFH, either a joint AFH or regional AFH... for the purpose of evaluating fair housing issues and contributing factors.”).

participants. By Notice dated January 13, 2017 (82 Fed. Reg. 4373, 4377), HUD has also indicated it intends to make inserts for PHAs applicable to any PHAs with 1250 or fewer units.

In general, HUD anticipates that the opportunity to collaborate with a State or Insular Area on fair housing planning may be particularly useful for smaller or more rural program participants outside of larger metropolitan areas, or without opportunities for local collaboration within their CBSA, or for other local governments or PHAs seeking to participate in a wider regional approach to fair housing planning. PHAs that operate statewide or regionally or that operate under a consortium (24 CFR C.F.R. Part 943) may also particularly benefit from an AFH collaboration with a State.

Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants. 24 C.F.R. § 5.156(a)(3). Program participants, whether contiguous or non-contiguous, that are either not located within the same Core-Based Statistical Area (CBSA), or that are not located within the same State and seek to collaborate on an AFFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. 24 C.F.R. § 5.156(a)(2). In addition, program participants that intend to prepare either a joint or regional AFH shall promptly notify HUD of such intention and provide HUD with a copy of their written agreement. 24 C.F.R. § 5.156(a)(4).

In these written notifications or requests for approval, HUD recommends that program participants describe (1) how the State- or Insular Area-led collaboration will improve their AFH and related fair housing outcomes, (2) how the collaborating entities will ensure ongoing compliance with AFFH requirements pending the availability of an Assessment Tool for States or Insular Areas, and (3) include the written agreement between program participants.

For States or Insular Areas whose Consolidated Plans are due in FY 2017 or 2018, the State or Insular Area can act as the lead entity for a joint collaboration, while completing its own AI. Any program participant that is collaborating with a State or Insular Area as the lead entity should also ensure it is complying with existing requirements to conduct or update their AI or otherwise meet the obligations of their AFFH certification, as applicable. HUD encourages States or Insular Areas that are updating their AIs to collaborate with their local government and PHA partners in anticipation of the State- or Insular Area-led collaboration on the AFH. The collaboration may develop a collaborative AI that helps to meet the AFFH requirements of the collaborating partners.

For States or Insular Areas whose Consolidated Plans are due in FY 2019 or thereafter, such States or Insular Areas may be designated as the lead entity for a joint or regional Assessment of Fair Housing. The final Assessment Tool for States and Insular Areas to be issued by HUD following the completion of the final PRA process is intended to include additional mechanisms for implementing and achieving this result.

HUD will provide further instruction upon finalizing the Assessment Tool for States or Insular Areas or HUD may reassess the status of such collaborations based on the availability of the Assessment Tool.

- **When is the Submission Date for the Collaboration?**

To the extent practicable, all program participants must be on the same program year and fiscal year before submission of the joint or regional AFH. Program participants should also align consolidated planning cycles or PHA planning cycles to the extent practicable. The applicable procedures for changing consolidated plan program participant program year start dates, if necessary, are described in 24 C.F.R. § 91.10-20. The applicable procedures for changing PHA fiscal year beginning dates, if necessary, are described in 24 C.F.R. § 903.15. If alignment of a program year or fiscal year is not practicable, the submission deadline for a joint AFH or regional AFH will be based on the designated lead entity's program year start date. In the case where a State or Insular Area is the lead entity, the submission date will be subject to the extension based on when the final Assessment Tool for States and Insular Areas becomes available.⁶

▪ **How do local governments or PHAs collaborating with a State or Insular Area lead entity comply with AFFH obligations pending the final Assessment Tool for States and Insular Areas?**

Under the AFFH Rule, program participants must submit an AFH in accordance with the submission deadlines in 24 C.F.R. § 5.160(a). Under 24 C.F.R. § 5.160(a)(1)(ii), a submission deadline will be extended as specified in the appropriate Assessment Tool applicable to the program participant or lead entity publication to a date that will be no less than 9 months from the date of publication. In the case where a local government or PHA joins a collaboration with the State as a lead entity, the local government or PHA must continue to comply with their respective AFFH certifications applicable prior to the new AFFH rule. For a local government, this means that it must certify that it “will conduct an [AI] within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.” Similarly, a PHA is required to examine “programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and maintain records reflecting these analyses and actions.” For those program participants that choose to join a State- or Insular Area-led collaboration, HUD encourages use of the additional tools available under the new AFH framework, as described above, to develop a collaborative AI to help participants in the collaboration meet their AFFH obligations pending the requirement to submit the AFH.

⁶See AFFH Final Rule at 24 C.F.R. § 5.160(c) (“Collaborative AFHs. All collaborative program participants, whether joint participants or regionally collaborating participants, will select a lead entity and submit the AFH according to that entity's schedule.”). See also, 24 C.F.R. § 5.160(a)(1)(ii), (“If the time frame specified in paragraph (a)(1) of this [submissions requirements] section would result in a first AFH submission date that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or lead entity, the participant(s)' submission deadline will be extended as specified in that Assessment Tool publication to a date that will not be less than 9 months from the date of publication of the Assessment Tool.”).