



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-15]

Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice advises that HUD is extending the deadline for submission of an Assessment of Fair Housing (AFH) by local government consolidated plan program participants to their next AFH submission date that falls after October 31, 2020. Such program participants will not be required to submit an AFH using the current Office of Management and Budget (OMB)-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No: 2529-0054), but must continue to comply with existing obligations to affirmatively further fair housing. Local government program participants that have already submitted an AFH that has been accepted by HUD must continue to execute the goals of that AFH.

DATES: Applicability Date: **[Insert date of publication in the Federal Register].**

Comment Due Date: **[Insert date 60 days from date of publication in the Federal Register].**

ADDRESSES: Interested persons are invited to submit comments responsive to this notice to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. Submission of Hard Copy Comments. Comments may be submitted by mail or hand delivery.

Each commenter submitting hard copy comments, by mail or hand delivery, should submit

comments to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to <http://www.regulations.gov> without change.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m., Eastern Time, weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5246, Washington, D.C. 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, at 80 FR 42357, HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule. The AFFH final rule provides HUD program participants with a new approach for planning for fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing as required by the Fair Housing Act, 42 U.S.C. 3608. To assist HUD program participants in meeting this obligation, the AFFH rule provides that program participants must conduct an Assessment of Fair Housing (AFH) using an “Assessment Tool.” HUD’s AFFH regulations provide for a staggered AFH submission deadline for its program participants. (See 24 CFR 5.160.)

On October 24, 2016, at 81 FR 73129, HUD published a notice extending the deadline for submission of an AFH for local government consolidated plan participants that received in Fiscal Year (FY) 2015, or receive in a subsequent fiscal year, a CDBG grant of \$500,000 or less, or in the case of a HOME consortium, whose members collectively received a CDBG grant of \$500,000 or less, from the program year that begins on or after January 1, 2018, to the program year that begins on or after January 1, 2019 for which a new consolidated plan is due. By notice published in the Federal Register on January 13, 2017, at 82 FR 4388, HUD announced the

renewal of approval of the Assessment Tool for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing Opportunities for Persons With AIDS (HOPWA) formula funding from HUD when conducting and submitting their own AFH, and in some joint and regional collaborations, as explained in that notice. This Assessment Tool is referred to as the Assessment of Fair Housing Tool for Local Governments.

This notice extends the deadline for submission of an Assessment of Fair Housing (AFH) to all local government consolidated plan program participants until their next AFH submission deadline that falls after October 31, 2020. (See 24 CFR 5.160(a) for information about how to calculate a program participant's AFH submission deadline.) The AFFH rule requires that program participants have no less than 9 months after the publication of the OMB-approved assessment tool to submit their AFH. Therefore, the Department selected the October 31, 2020 date in anticipation that it will complete the Paperwork Reduction Act requirements and receive OMB approval to renew the Assessment of Fair Housing Tool for Local Governments by January 31, 2020. Local government program participants will not be required to submit an AFH using the current OMB-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No: 2529-0054), but must continue to comply with existing statutory obligations to affirmatively further fair housing. (See 42 U.S.C. 3608.) Local government program participants who qualified for an extension under the October 24, 2016 notice are also covered by this notice, extending their deadline for submission of an AFH to their next AFH submission deadline (See 24 CFR 5.160(a).) that falls after October 31, 2020.

Based on the initial AFH reviews, HUD believes that program participants need additional time and technical assistance to adjust to the new AFFH process and complete AFH

submissions that can be accepted by HUD. HUD's decision is informed by the review of AFH submissions received. Based on the first 49 AFH initial submissions that received a determination of accept, non-accept, or deemed accepted from HUD, the Department found that many program participants are striving to meet the requirements of the AFFH rule. In 2017, the Department conducted an evaluation of these submissions and found that more than a third (35%) were initially non-accepted.

HUD's analysis identified several reasons that merit a delay of AFH submission deadlines, including program participants' need for additional technical assistance. HUD determined that many program participants struggled to meet the regulatory requirements of the AFFH rule, such as developing goals that could be reasonably expected to result in meaningful actions to overcome the effects of contributing factors and related fair housing issues. Further, program participants struggled to develop metrics and milestones that would measure their progress as they affirmatively furthering fair housing. HUD determined that program participants' frequent misunderstanding of how to set clear goals, metrics, and milestones that addressed their identified contributing factors and related fair housing issues often resulted in non-accepted AFHs. HUD believes that additional technical assistance may result in program participants better understanding their obligations under the AFFH rule. HUD also believes that by enhancing its technical assistance that resources expended by program participants will be reduced because they are more likely to submit an initial AFH that can be accepted by HUD.

Additionally, HUD determined that significant staff resources are required when deciding that an AFH will not be accepted because it is inconsistent with fair housing or civil rights requirements or substantially incomplete, or both. (See 24 CFR 5.162 (a)(2)(b).) HUD believes that it can reduce the resources expended by program participants by examining and revising its

technical assistance content and methods of delivery so that program participants' AFHs are more likely to meet the regulatory requirements on first submission.

In order to reduce burden for program participants in conducting AFHs that meet the regulatory requirements, HUD, in the AFFH rule, encourages program participants to share resources and to address fair housing issues from a broader perspective by collaborating and submitting a single AFH. Nonetheless, HUD believes that some joint and regional collaborations that were non-accepted on their first submission may have benefited from technical assistance early in the process. For example, the largest regional AFH submitted to HUD consisted of 19 program participants. In its review of the AFH, HUD determined that each of the 19 program participants met the regulatory standards for nonacceptance. HUD believes that improving technical assistance for collaborative AFHs will enable collaborations to more efficiently use their resources to address fair housing issues that cross jurisdictional boundaries.

Based on the initial AFH reviews, HUD believes that local government program participants need additional time and technical assistance from HUD to adjust to the new AFFH process and complete acceptable AFH submissions. HUD also believes it can use this time to improve its Data and Mapping Tool (AFFH-T) and the User Interface (AFFH-UI). The extension period allows HUD to further refine its materials to provide additional guidance to program participants. Finally, this extension allows HUD staff to devote additional time to providing program participants, and program participants in an AFH collaboration, with technical assistance on the legal objective to affirmatively further fair housing.

Consolidated plan program participants must continue to comply with existing, ongoing obligations to affirmatively further fair housing. Until a consolidated plan program participant is required to submit an AFH, it will continue to provide the AFFH Consolidated plan certification

in accordance with the requirements that existed prior to August 17, 2015. See 24 CFR 5.160(a)(3). The requirements obligated a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice 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.

For Consolidated plan program participants that are starting a new 3-5-year Consolidated plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD, Fair Housing Planning Guide (1996), available at <https://www.hud.gov/sites/documents/FHPG.PDF> until those consolidated plan program participants submit an AFH after October 31, 2020. HUD encourages consolidated plan program participants to use the data and mapping tool and the AFH Assessment Tool as resources for program participants that are updating their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.¹

Program participants that have already submitted an AFH which has been accepted by HUD must continue to execute the goals of that accepted AFH and are not required to conduct a separate AI. Program participants that are covered by this notice and that may have already

¹ Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: "How can States Collaborate with Local Governments or PHAs?". The guidance is available at: <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>. This guidance is generally applicable to all types of program participants.

begun work on an AFH may continue to do so, as the AFFH rule may provide program participants with a useful framework for complying with their AFFH obligation.

HUD will discontinue the review of AFHs currently under review and will not render an accept, deemed accepted, or non-accept determination. Program participants that received a non-accept decision from HUD on their AFH submission and are preparing to re-submit an AFH are also covered by this notice and should not submit their revised AFHs. HUD encourages these program participants to use the information contained in their draft AFHs to conduct the required AI analysis. Finally, program participants prepared to submit their first AFH are covered by this notice and should not submit an AFH to HUD. Program participants that have not received an accept or non-accept determination from HUD, or that have received a non-accept but will no longer be required to resubmit their AFH, are still required to prepare an AI, as described above in this notice.

HUD is issuing this notice for applicability immediately upon publication. Program participants must continue to affirmatively further fair housing as required by the Fair Housing Act. 42 U.S.C. 3608.

Although HUD is issuing this notice for applicability immediately upon publication, it also invites public comment for a period of 60-days on the extension. HUD will consider all the comments in its ongoing process of reviewing the Assessment of Fair Housing Tool for Local Governments.

Dated: January 2, 2018

Anna Maria Farías, Assistant Secretary for Fair Housing
and Equal Opportunity

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