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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-19]

Affirmatively Furthering Fair Housing (AFFH): Responsibility to Conduct Analysis of Impediments

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

ACTION: Notice.

SUMMARY: By notice published elsewhere in today's Federal Register, HUD has withdrawn the current version of the information collection device used by local government program participants to assess fair housing issues as part of their planning for use of housing and community development block grants. The device is referred to as the Local Government Assessment Tool; the resulting assessment is referred to as an Assessment of Fair Housing (AFH). As explained in that notice, the withdrawal of the lack of a working information collection device means that a program participant that has not yet submitted an AFH using that device that has been accepted by HUD must continue to carry out its duty to affirmatively further fair housing by, inter alia, continuing to assess fair housing issues as part of planning for use of housing and community development block grants in accordance with pre-existing requirements. The pre-existing requirements referred to the fair housing assessment as an "analysis of impediments to fair housing choice" (AI). This notice reminds program participants of the requirements and standards for completing the AI.

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

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:

On July 16, 2015, HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule.¹ The AFFH final rule provides HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further fair housing. 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.” The AFFH regulations are codified in 24 CFR part 5, subpart A (§§5.150-5.168).

Through notice published elsewhere in today’s Federal Register, HUD announces its withdrawal of the Local Government Assessment Tool (OMB Control No: 2529-0054). As explained in that notice, the AFFH regulations at 24 CFR 5.160(a)(1)(ii) provide that if the specified AFH submission deadline results in a submission date that is less than 9 months after the Assessment Tool designed for the relevant type of program participant is available for use, “the participant(s)’ submission deadline will be extended ... to a date that will be not less than 9 months from the date of publication of the Assessment Tool.” As a result of the withdrawal of the Local Government Assessment Tool and the lack of available HUD data for the PHA Assessment Tool, currently no type of program participant has an Assessment Tool available for use.² Pursuant to 24 CFR 5.160(a)(1)(ii), the deadline for local government program participants to submit a first AFH is thus extended to a date not less than 9 months following the future

¹ 80 FR 42357.

² See 82 FR 4373.

publication of a revised and approved Local Government Assessment Tool.

In the meantime, as explained in the notice withdrawing the Local Government Assessment Tool, Consolidated Plan program participants that have not yet submitted an assessment using a HUD-provided assessment tool that must be accepted, must nonetheless continue to comply with existing, ongoing legal obligations to affirmatively further fair housing. Congress has repeatedly reinforced this mandate, requiring in the Housing and Community Development Act of 1974 and the Cranston-Gonzalez National Affordable Housing Act, for example, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will affirmatively further fair housing.³ Pursuant to 24 CFR 5.160(a)(3), until a Consolidated Plan program participant submits its first accepted AFH, it will continue to provide the AFFH certification with its Consolidated Plan, in accordance with the requirements that existed prior to August 17, 2015.⁴ Those requirements obligate 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.

Program participants are hereby reminded that the legal obligation to affirmatively further fair housing remains in effect, and that HUD places a high priority upon the responsibility of program participants to ensure that their AIs serve as effective fair housing planning tools. 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

³ See, e.g., 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15).

⁴ See, e.g., 24 CFR 91.225(a)(1) (2014); 24 CFR 91.325(a)(1) (2014).

accordance with the HUD Fair Housing Planning Guide (1996)⁵. The data HUD has developed in order to implement the AFFH rule will remain available for program participants to use in conducting 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.⁶

Further, program participants are hereby reminded that if HUD believes the AI or actions taken to affirmatively further fair housing to be inadequate, HUD may require submission of the full AI and other documentation. If HUD concludes that the AI is substantially incomplete, or the actions taken were plainly inappropriate to address the identified impediments, HUD may question the jurisdiction's AFFH certification by providing notice to the jurisdiction that HUD believes the AFFH certification to be inaccurate and provide the jurisdiction an opportunity to comment. If, after the notice and opportunity to comment is given to the jurisdiction, HUD determines that the AFFH certification is inaccurate, HUD will reject the certification. Rejection of the certification renders the Consolidated Plan substantially incomplete and constitutes grounds for HUD to disapprove the Consolidated Plan as submitted.⁷ A jurisdiction cannot receive its Community Development Block Grants (CDBG), HOME, Emergency Solutions

⁵ Available at <https://www.hud.gov/sites/documents/FHPG.PDF>

⁶ 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.

⁷ See 24 CFR 91.500.

Grants (ESG), or Housing for Persons With AIDs (HOPWA) program grants until the Consolidated Plan is approved.

Dated: _____

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