

Affirmatively Furthering Fair Housing: Celebrating the 50th Anniversary of the Fair Housing Act

By: Kimberly Spence and Ben Toro-Spears

April 2018 marked the 50th Anniversary of the Fair Housing Act (FHA), which sought to not only end housing discrimination based on race, color, religion, national origin, sex, disability, and familial status, but also to reverse segregation in communities around the country. Fifty years later, housing discrimination and segregation remain a debilitating reality for racial and ethnic minorities, persons with disabilities, foreign-born individuals, others protected by the FHA, and some groups that are not covered by the FHA, including those who identify as LGBTQ.

The Affirmatively Furthering Fair Housing (AFFH) Final Rule presented local governments and PHAs with a valuable opportunity to face the reality of segregation in their communities through rigorous assessment, facts-based analysis, and regional collaboration. This approach marked a significant step forward in advancing the intent of the Fair Housing Act.

HUD Puts the Brakes on the Assessment of Fair Housing

On January 5, 2018, HUD published a notice that delayed the implementation of the 2015 AFFH Final Rule and granted Consolidated Plan program participants an extension to the deadline to submit their first Assessment of Fair Housing (AFH).

Prior to that notice, entitlement jurisdictions and public housing authorities (PHAs) in Florida were getting ready to prepare their first AFH, a majority of which were due in 2019 or 2020. In the last year, the Florida Housing Coalition responded by increasing training opportunities on AFH topics to inform grantees and PHAs about the new fair housing planning process and to encourage them to begin the process well in advance of the deadline for submittal of their initial AFH.

As a result of the HUD notice, Assessment of Fair Housing activity across the country has effectively been suspended until the program participant's next AFH submission deadline after October 31, 2020.



What does this mean for Affirmatively Furthering Fair Housing?

Both the notice and the subsequent Frequently Asked Questions (FAQ) make it clear that program participants are still obligated to affirmatively further fair housing as mandated by the Fair Housing Act. This means planning around fair housing and identification of barriers to fair housing choice must continue at the local level.

Additionally, entitlement jurisdictions must still annually certify that they will affirmatively further fair housing (AFFH) to continue to receive grant funds from HUD. The definition of AFFH differs pre-and post- the AFFH Final Rule, and the notice requires that program participants meet the federal regulatory requirements that existed prior to the AFFH Final Rule until they are required to submit an AFH to HUD.

In other words, program participants must revert to the old definition of AFFH that is included in the HUD Fair Housing Planning Guide, Volume 1. This definition includes the following three components.

1. Conduct an analysis to identify impediments to fair housing choice within the jurisdiction;
2. Take appropriate actions to overcome the effects of any impediments identified through the analysis; and
3. Maintain records reflecting the analysis and actions taken in this regard.

How to proceed in the local fair housing planning process

First, program participants should determine when their Analysis of Impediments to Fair Housing Choice (AI) must be conducted or updated and how they will format their AI. Federal regulations require that program participants conduct or update their AI based on their Consolidated Planning cycle. Therefore, program participants should be preparing their AI in the same timeframe they have a Consolidated Plan due to HUD. Regarding formatting, the HUD Fair Housing Planning Guide includes a suggested format for AIs. HUD is also permitting program participants to utilize the AFH tools – the AFH Assessment Tool and the AFFH data and mapping tool – implemented after the AFFH Final Rule to prepare their AIs. The options available to program participants to conduct or update the AI include the following.

1. Follow the suggested format in the Fair Housing Planning Guide;
2. Use the AFH Assessment Tool template (recommended if program participants have already started an AFH); or
3. Adopt a custom approach such as a hybrid planning document that combines elements of the AI-suggested format and the AFH Assessment Tool.

The Florida Housing Coalition recommends adopting the third, the custom approach. The custom approach recognizes that there are areas in both the AI-suggested format and the AFH Assessment Tool that can be enhanced by merging the formats.

Benefits of a hybrid planning document include identifying initial fair housing issues by utilizing the AFFH HUD-provided

data and mapping tool, and expanding the analysis of factors such as zoning regulations, lending practices, and housing options for persons with disabilities that are examined at different levels in the AI and AFH formats. Further, the AFH process improved on the pre-AFFH Final Rule planning process by requiring a robust community participation process, refining the goal setting and implementation process, and linking the fair housing goals to the Consolidated Plan and thus the federal resources. All of these practices have significant value to the local community, regardless of whether they are explicitly required by HUD.

A final component to consider is collaboration with other program participants or PHAs when conducting the AI. Under the AFFH Final Rule, HUD encouraged program participants to prepare joint or regional AFHs, including formal collaboration with neighboring entitlement jurisdictions and PHAs. HUD continues to affirm this position for AIs going forward. A Consolidated Plan program participant can partner with one or more Consolidated Plan program participants to prepare a Regional AI.

Fair Housing Advocacy

Despite the delay in the implementation of the AFFH Final Rule, the Florida Housing Coalition remains a steadfast champion of fair housing. We will continue to support local governments through training that encourages communities to use AFFH as an instrument to leverage federal funding with other public and private resources to eliminate segregation and support vibrant, prosperous communities and opportunities accessible to all. HNN



KIMBERLY SPENCE

Kimberly Spence is a Technical Advisor for the Florida Housing Coalition and has more than 10 years of experience administering local planning, housing, and community development programs, and providing consulting services with a focus on data collection and analysis for preparation of Consolidated Plans, Annual Action Plans, and Analyses of Impediments to Fair Housing. Spence specializes in collecting and interpreting social, economic, and physical data; preparing Consolidated Plans, Annual Action Plans, and Analyses of Impediments; development of policies and procedures; setting up tracking and reporting program progress in IDIS; and grant monitoring.



BEN TORO-SPEARS

Ben Toro-Spears is a Technical Advisor for the Florida Housing Coalition with an extensive background in fair housing, affordable housing and community development, real estate finance, and data management. Toro-Spears has a focus on data collection and analysis for preparation of Consolidated Plans, Annual Action Plans, and Analyses of Impediments to Fair Housing. He provides training to local governments, nonprofit housing developers, and their partners on compliance with affordable housing program regulations, financial and data management, and best practices for organizational management.