

# Affirmatively Furthering Fair Housing Interim Final Rule Fact Sheet

## Background

- U.S. Department of Housing and Urban Development (HUD) grantees must regularly certify compliance with the Fair Housing Act's Affirmatively Furthering Fair Housing (AFFH) requirement. The Fair Housing Act prohibits among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of race, color, religion, sex, familial status, national origin, or disability. It also extends beyond this non-discrimination mandate, requiring HUD to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Act. Courts have found that this requires HUD grantees to go beyond simply avoiding and barring discriminatory practices. HUD grantees must take meaningful steps to affirmatively further the Fair Housing Act's objectives, such as acting to desegregate communities.
- In the years prior to 2015, HUD implemented the AFFH mandate by requiring each grantee to complete an analysis of impediments to fair housing choice (AI). It did not have a process in place to systematically verify compliance.
- The 2015 AFFH rule established a process by which grantees had to conduct a more extensive analysis of local fair housing concerns, called an Assessment of Fair Housing (AFH), commit to specific steps to remedy them, and then submit their AFH to HUD for review. It also created a regulatory definition of the AFFH requirement to clarify the substantive expectations HUD had for grantees.
- The 2015 AFFH rule succeeded in encouraging program participants to make more serious and concrete commitments to AFFH by, for example, fostering the development of affordable housing and creating eviction protection programs. However, the creation and review of the program participants' AFHs proved to be unnecessarily burdensome for some program participants and HUD. The last administration stopped the AFH process soon after it had started. Initially, it maintained the regulatory definition of the AFFH requirement.
- In the summer of 2020, the prior administration replaced the 2015 AFFH rule with a rule called "Preserving Neighborhood and Community Choice" (PCNC) without going through the required notice and comment process. The PCNC rule not only rescinded the 2015 AFFH rule, but also redefined the term "Fair Housing" as well as the Fair Housing Act's AFFH obligation to eliminate much of HUD grantees' responsibility to address fair housing issues.

## The Interim Final Rule

- On June 10, 2021, HUD published in the Federal Register an interim final rule (IFR), entitled Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,

to restore meaningful implementation of the Fair Housing Act's AFFH requirement. The rule will be available for public view the day before.

- The AFFH IFR restores certain definitions and certifications from the 2015 Rule, which are grounded in legal precedent, to HUD's regulations implementing the Fair Housing Act's requirement to AFFH. HUD grantees thus will once again be regularly certifying compliance to a standard that requires them to take meaningful action to combat residential segregation and eliminate unequal access to housing-related opportunities.
- The AFFH IFR went into effect on July 31, 2021. HUD took comments for 30 days after publication. HUD may revise the IFR before its effective date based on the public comments it receives. Public comments were submitted electronically through the Federal eRulemaking Portal at regulations.gov.
- The IFR rescinds the PCNC rule.
- The IFR does not restore the 2015 AFFH rule's procedural provisions that governed how HUD grantees conducted fair housing planning and how HUD reviewed their planning work. The IFR does not require any particular fair housing planning process, so long as grantees can meaningfully certify that they are meeting the Fair Housing Act's AFFH obligation. HUD will provide technical assistance and support for grantees that want help with fair housing planning to support their certifications.

## Why HUD is Taking This Action Now

- This action is a significant step in HUD's efforts to fully meet its statutory duties under the Fair Housing Act.
- The PCNC regulation, which bore little resemblance to the actual AFFH obligation, undermined implementation and confused HUD funding recipients about their actual duties.
- HUD meets its own obligations to AFFH through its funding of HUD program participants and administration of HUD's programs.
- This IFR restores the understanding of AFFH that existed for decades prior.
- HUD's action on AFFH is consistent with the [President's Memorandum of January 26 on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies](#).
  - That memorandum directed HUD to examine the prior Administration's fair housing related rules and take all steps necessary to implement the Fair Housing Act's requirements that HUD administer its programs in a manner that affirmatively furthers fair housing and HUD's overall duty to administer the Act.
  - The White House directed HUD to examine the effects of the previous Administration's PCNC rule.
  - As the President's memorandum states, the AFFH requirement "is not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities."
- This action was timed to have the restored AFFH definition effective before a significant number of program participants had to certify compliance and file certain program planning documents with HUD by August 16.
- HUD invites public comments on this IFR and will consider them before the IFR's effective date. Additionally, HUD is solely reinstating definitions and certifications

that already have been through notice and comment procedures in order to restore an understanding of AFFH that is consistent with statutory requirements and judicial precedent interpreting the obligation.

## What the AFFH IFR Requires of HUD Program Participants

- Consistent with their statutory obligation under the Fair Housing Act, the IFR requires HUD grantees to certify that they will affirmatively further fair housing, which is defined as taking meaningful actions to address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
- HUD grantees may engage in fair housing planning to support their AFFH certifications, but the AFFH IFR does not require any specific form of planning or the submission of fair housing plans to HUD.

## HUD's Fair Housing Planning Support

- The IFR does not require HUD grantees to participate in a fair housing planning process. However, HUD anticipates that many grantees may want to engage in an established form of fair housing planning, and HUD will provide assistance to help its grantees undertake these efforts. While not required to do so, grantees may choose to continue to engage in familiar fair housing planning processes such as continuing to implement a completed AI or AFH, updating an existing AI or AFH, or conducting a new AI or AFH. Grantees may also choose to engage in other means of fair housing planning that meaningfully supports their certification.
- HUD has restored technical assistance materials for voluntary fair housing planning by HUD grantees on at <https://hud.gov/affh>.
- The AFFH Data and Mapping Tool (AFFH-T) is a publicly available, interactive tool that provides access to HUD-provided data that can be used to support fair housing planning and assess and analyze fair housing issues in jurisdictions. Some data has continually been updated and is currently available for local government jurisdictions and some PHAs. It is available at <https://egis.hud.gov/affht/>.

## Next Steps

- HUD intends to undertake a separate rulemaking to improve upon the 2015 AFFH rule. In the near future, HUD will issue a Notice of Proposed Rulemaking that will be published in a separate notice in the Federal Register and will solicit public comments on its proposed rule. Through this new rule, HUD will seek to create a new AFFH framework that helps program participants achieve improved fair housing outcomes while reducing burden and challenges associated with engaging in the fair housing planning process.