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## LAW ALERT

# THE (SOMETIMES) SLEEPING GIANT STIRS... HUD PUBLISHES FINAL RULE ON AFFIRMATIVELY FURTHERING FAIR HOUSING

The Department of Housing and Urban Development (HUD) released its final rule last month for the implementation of the Fair Housing Act's Affirmatively Furthering Fair Housing (AFFH) provisions. Coming on the heels of the Supreme Court's momentous decision in [Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. \(No. 13-1371\)](#) upholding disparate impact claims under the Fair Housing Act of 1968 (FHA), HUD has strengthened its commitment to fair housing by implementing tougher AFFH compliance regulations and standards. The Fair Housing Act of 1968 not only prohibits discrimination against protected classes in housing but also mandates that meaningful actions are taken in order to end discrimination in housing, overcome patterns of segregation and achieve integrated and inclusive living patterns and communities through the duty to affirmatively further fair housing. Protected classes under the FHA include race, color, national origin, sex, religion, and, following the Fair Housing Amendments Act of 1988, disability and familial status.

Until now, HUD had not issued clear, assessable guidelines to housing authorities and public agencies receiving HUD grants regarding how to comply with and promote the FHA AFFH requirements. The new regulations apply to local and state agencies that are required to prepare Consolidated Plans and to housing authorities that are required to prepare public housing authorities' (PHA) Plans. The earlier AFFH process lacked clarity in defining what constitutes an impediment to fair housing

choice or the necessary actions to overcome those impediments, leaving providers in the dark and stalling progress on eliminating housing segregation. In exchange for receipt of HUD financial assistance, including HOME and CDBG funds, local and state agencies' Consolidated Plans (required of HUD grant recipients) and PHA Plans will now be required to include more detailed analyses of housing segregation within the jurisdiction and incorporate strategies and specific targets to combat housing segregation and promote inclusive communities. HUD has provided new tools, timelines and clarifications on how to more effectively meet AFFH duties under the FHA with the goal of helping program participants better identify and address areas of racially and ethnically concentrated poverty, disparities in access to opportunity, patterns of segregation and disproportionate housing needs.

Significant changes in the new regulations include the following:

### **New Process: Public Agency Assessment of Fair Housing**

The Assessment of Fair Housing (AFH) tool will replace the current "Analysis of Impediments (AI)" tool. While the AI plan was neither submitted to nor reviewed by HUD, HUD will now require public agency program participants to submit an AFH to HUD for review. The AFH process includes novel key features: (1) a new fair housing assessment tool; (2) the provision of nationally uniform data to be used in assessment activities; (3)

direction regarding the purpose of the AFH and clarification of the standards by which the AFH will be evaluated; (4) more integration between the AFH and the Consolidated Plan or the PHA Plan; and (5) a new HUD review procedure based on clearer standards.

### **Staggered AFH Deadlines**

The final rule provides a staggered submission deadline for AFHs depending upon the type of program participant. For entities required to prepare Consolidated Plans, such as cities and counties receiving HOME or CDBG funds, the submission deadline for the first AFH may be as early as 270 calendar days prior to the start of the 2017-18 program year. For most public housing authorities, the initial submission deadline may be 270 days prior to the start of the 2018-19 fiscal year. The actual deadlines may be delayed depending upon when HUD publishes the Assessment Tool.

### **Clarification for Data Analysis and Identification of Housing Priorities and Goals**

The final rule revises and clarifies how the analysis of data and the identification of fair housing priorities and goals should be undertaken. However, the grant recipient is ultimately responsible for establishing appropriate priorities and goals for overcoming the effects of factors identified by the analysis as contributing to fair housing issues in the recipient's jurisdiction. Therefore, it will be the recipient's responsibility to use its AFH in its planning and decision-making process to combat housing segregation.

On July 16, 2015, HUD opened a 30-day comment window on the new program participant Assessment Tool.

<https://www.federalregister.gov/articles/2015/07/16/2015-17463/affirmatively-furthering-fair-housing-assessment-tool-solicitation-of-comment-30-day-notice-under>

You can find the two options for the Assessment Tool online:

Option A:

[http://www.huduser.org/portal/sites/default/files/pdf/AFFH\\_AssessmentTool\\_OptionA.pdf](http://www.huduser.org/portal/sites/default/files/pdf/AFFH_AssessmentTool_OptionA.pdf)

Option B:

[http://www.huduser.org/portal/sites/default/files/pdf/AFFH\\_AssessmentTool\\_OptionB.pdf](http://www.huduser.org/portal/sites/default/files/pdf/AFFH_AssessmentTool_OptionB.pdf)

Comments on the Assessment Tool are due August 17, 2015. A revised version of the tool is to be released at a future date following consideration of public comments received in response to this 30-day comment period and approval of the Assessment Tool from the OMB. The date that the approved program participant Assessment Tool is published in the Federal Register will serve as the effective date for program participants to start AFH implementation. Look for a complete analysis of the final assessment tool in a future G&L law alert.

If you have any questions, please contact Karen Tiedemann, Heather Gould, Hana Hardy, or any other attorney at Goldfarb & Lipman.

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