**HUD’S New Affirmatively Furthering Fair Housing (AFFH) Rule: Implications for NNIP**

DISCUSSION OUTLINE

NNIP Meeting April 8, 2016, San Antonio

Facilitator: Tom Kingsley

**BACKGROUND[[1]](#footnote-1)**

* Fair Housing Act of 1968 prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability (the “protected classes”)
* Act requires local jurisdictions and public housing authorities (PHAs) receiving HUD funds to “affirmatively further fair housing” (AFFH); that is, to take steps to actively overcome historic patterns of segregation and promote fair housing choice
* Widely recognized that HUD’s past method of AFFH not effective
	+ No formal regulatory guidance
	+ Required an “Analysis of Impediments” (AI), but that was not directly linked to the 5-year plans grantees must submit to HUD to receive funding - Consolidated Plans (“ConPlans”) for jurisdictions and “PHA plans” for PHAs.
	+ AI not even submitted for HUD review; had no prescribed schedule for renewal
	+ Public participation not required in drafting AI
* Environment strengthened by July 2015 Supreme Court decision upholding “disparate impact” (actions leading to disparate impact are illegal even if no intent to discriminate)

**NEW HUD AFFH RULE (JULY 2015)**

* AI replaced by Assessment of Fair Housing (AFH) - a standard framework program participants must now use to identify/examine “fair housing issues” and the underlying “contributing factors” that cause those issues.
* HUD will provide program participants with much of the data needed to prepare their AFH (covering their jurisdiction and the surrounding region).
* HUD will receive and review the AFH and decide whether it can be accepted.
* “Strategies and actions” needed to address the “fair housing goals and priorities” set out in the AFH must be described in participants’ ConPlans and PHA Plans.
* Public participation is required in the development of the AFH.
* Participants must prepare and submit an AFH every 5 years, synchronized with the preparation of their new 5-year ConPlans or PHA Plans.

**ASSESSMENT OF FAIR HOUSING (AFH) - ASSESSMENT TOOL**

HUD provides an “Assessment Tool” - forms and templates participants must use to conduct and submit and AFH (HUD, 2015). Contents as follows:

1. Cover Sheet
2. Executive Summary
3. Community Participation Process
4. Assessment of Past Goals and Actions
5. Analysis
6. Demographic Summary
7. General Issues
8. Segregation/Integration
9. Racial or Ethnically Concentrated Areas of Poverty (R/ECAPS)
10. Disparities in Access to Opportunity
11. Disproportionate Housing Needs
12. Publicly Supported Housing Analysis
13. Disability and Access Analysis
14. Fair Housing Enforcement, Outreach Capacity and Resources Analysis
15. Analysis of Contributing Factors and Fair Housing Goals and Priorities

**HUD PROVIDED MAPS AND TABLES[[2]](#footnote-2)**

HUD provided maps and tables can be downloaded (sometimes slow process at this point). (Idea is that this should be combined with relevant local data in analysis).

* Includes standard census/ACS measures: related to demographic change, racial/ethnic composition, poverty, etc.
* Also includes eight new indices. Dissimilarity index calculated for jurisdiction – others at census tract level:
	+ Dissimilarity index (decennial census block group data)
	+ Low poverty index (ACS data)
	+ School proficiency index (data from Great Schools, Common Core of Data, SABINS attendance boundaries)
	+ Jobs proximity index (LEHD data)
	+ Labor market index (ACS data)
	+ Low transportation cost index (Locational Affordability Index, LAI, data)
	+ Transit trips index (Locational Affordability Index, LAI, data)
	+ Environmental health index (National Air Toxics Assessment, NATA, data)
* HUD also identifies which tracts are classified as R/ECAPS (standard criteria applied to all tracts nationally).
* HUD strongly encourages use of local data in conjunction with data it provides.

**PREPARATION SCHEDULE**

* In the first round, AFHs must be submitted to HUD 270 days before start of program year in which new 5-year ConPlan or PHA Plan is due (195 ahead days for subsequent submissions).
* By this rule, only 21 jurisdictions must prepare AFHs in 2016 (i.e., during rest of the Obama Administration). The rest of the first round submissions will be due over 2017-2019. HUD now beginning to provide TA along with data to the first 21.
* Segregation and concentration of poverty are products of regional forces and policies and cannot be repaired by actions of any single jurisdiction. Accordingly, HUD strongly encourages individual jurisdictions to partner with others locally in preparing a regional AFH.

**OPPORTUNITIES FOR DATA/ANALYSIS OUTSIDE OF THE AFH CONTEXT**

* AFFH objectives can be furthered by data work outside of the context of direct work on individual AFHs. Examples include NNIP partner work on regional equity analysis.
* For instance, see case study on work of Kansas City partner (Mid-America Regional Council) under a HUD Sustainable Communities grant (Kingsley, 2015). This involved:
	+ Highly publicized analysis, regional demographic trends by location
	+ Analysis to identify locations where investment in higher-density mixed-use redevelopment now economically attractive
	+ Incorporated explicit analysis of R/ECAPS and opportunity areas regionally (in their Fair Housing Equity Analysis, FHEA)
	+ Use of new decision support tools – estimate implications (like ROI) of different redevelopment scenarios for specific nodes
	+ Developed tool-kit: guides on how to change zoning and other codes
* But, neighborhood level analysis of relevant NNIP-type data within individual municipalities as well as region-wide - should be very useful for jurisdictions and PHAs.

**WHAT COULD INDIVIDUAL NNIP PARTNERS DO?**

* Help individual jurisdictions and PHAs and regional groups – data work on AFH and /or 5-year plans
* Analyses of HUD provided data in conjunction with data from your own systems
* Separate reports and community engagement – setting AFFH issue in context of broader neighborhood indicator analysis

**WHAT COULD NNIP DO AS A NETWORK?**

* Keep partners informed about progress of AFH work across country
	+ Evolution of HUD policies, rules and TA/Training
	+ Best practice examples from individual regions/localities
* Conceptualize new cross-site initiative on AFFH
	+ Work with interested partners to develop plans and raise funds

**REFERENCES**

Abt Associates and Brent Mast. 2015. *Affirmatively Furthering Fair Housing (AFFH) Data Documentation.* Cambridge MA: Abt Associates.

Gramlich. Ed. 2015. *Final Regulations Affirmatively Furthering Fair Housing*. Washington DC: National Low Income Housing Coalition.

Kingsley, G. Thomas. 2015. *Metropolitan Kansas City: Creating Sustainable Places.* Washington DC: Urban Institute.

U.S. Department of Housing and Urban Development. 2015. *AFH Assessment Tool*. Washington DC: U.S. Department of Housing and Urban Development.

1. First two sections here in part adapted from Gramlich, 2015. [↑](#footnote-ref-1)
2. Full documentation on the data and the indices is provided in Abt Associates and Mast, 2015. [↑](#footnote-ref-2)