

# Housing Affairs Letter

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## HUD Preps 2016 Fair Housing Push

With the final touches largely in place, HUD officials hunker down for a confrontation with several major cities over their compliance to rules governing fair housing in their use of federal subsidies. Up to 1,100 communities receiving such aid are subject to HUD's enforcement campaign set to begin in early 2016.

Using the new regulations and four new "fact" or guidance sheets (employed to circumvent lengthy congressional scrutiny required in regulation development), HUD is set to begin enforcement of the new Affirmatively Furthering Fair Housing rule attached to the 1968 Fair Housing Act this year.

HUD will use surveys compiled by public housing authorities called Analysis of Impediments to fair housing in their use of federal grants through the years. The new regulations mandate that recipients of funding under Community Development Block Grants, Emergency Solutions Grants, Home Investment Partnerships, Housing Opportunities for Persons with AIDS, and PHA subsidies, use their grants to the letter of the law, regardless of previous spending waivers granted by the department.

HUD is going back to the 1974 initiation of the CDBG program to assess how the money has been spent and whether the funding universally ensured fair housing opportunities or if communities used their funding to corral affordable housing in economic ghettos.

In a late move, HUD shifted its enforcement prerogatives by requiring communities through their PHAs to ramp up their obligations to fair housing by engaging in a new process to establish their fair housing priorities if they want to continue receiving federal subsidies.

HUD's new guidance calls for a survey name change as well. The designation shifts from Analysis of Impediments to "Assessment of Fair Housing" and requires a four-step process to set fair housing priorities and goals every five years.

Two of the guidance sheets require public participation in the development of AFH plans. The third guidance details how communities and PHAs can collaborate to prepare joint or regional plans. The fourth guidance tells PHAs delivery of the first AFH is due when the agency's new 5-Year Consolidated Plan (ConPlan) or a new 5-Year PHA Plan is submitted.

A major change under the new AFH plan is the public participation mandate. The original AI plan omitted public involvement. The new regimen requires PHAs or the community's equivalent agency to hold at least one public hearing and allow 30 days for the public to comment.

While it remains unclear how HUD will implement its new AFFH initiative, the department is working from a model established by its five-year face-off with Westchester County, NY regarding the county's spending of its CDBG grants. HUD told county officials to accept a settlement of the federal fair housing lawsuit or face withholding of its CDBG grants and possible repayment of all previous CDBG assistance. The county settled in September 2009 but is still involved in political wrangling with HUD.

HUD likely will use AFFH against communities refusing to apply the new mandates. The department could investigate whether city housing and land-use regulations have a "disparate impact" on protected classes like race, religion, familial status, national origin, sex and disability under the department's new disparate impact rule, the use of which has been cleared by the U.S. Supreme Court.

If disparate impact is certified, HUD could override local zoning laws and implement federal housing and zoning policies such as home density requirements, minimum lot size requirements, and limits on the number of homes that could be rented in selected neighborhoods.

The alternative is HUD confiscation of federal grant subsidies applying to the specific program in question over fair housing.

**Info:** See the guidance orders at <http://tinyurl.com/npot7tg> and [www.cdpublications.com/docs/8621](http://www.cdpublications.com/docs/8621)

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