



FEDERAL REGISTER

Vol. 78

Friday,

No. 139

July 19, 2013

Part IV

Department of Housing and Urban
Development

24 CFR Parts 5, 91, 92, et al.

Affirmatively Furthering Fair Housing; Proposed Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**24 CFR Parts 5, 91, 92, 570, 574, 576,
and 903**

[Docket No. FR-5173-P-01]

RIN No. 2501-AD33

Affirmatively Furthering Fair Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Through this rule, HUD proposes to provide HUD program participants with more effective means to affirmatively further the purposes and policies of the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968. The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD's program participants to take steps proactively to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all. As acknowledged by the U.S. Government Accountability Office (GAO) and many stakeholders, advocates, and program participants, the current practice of affirmatively furthering fair housing carried out by HUD grantees, which involves an analysis of impediments to fair housing choice and a certification that the grantee will affirmatively further fair housing, has not been as effective as had been envisioned. This rule accordingly proposes to refine existing requirements with a fair housing assessment and planning process that will better aid HUD program participants fulfill this statutory obligation and address specific comments the GAO raised. To facilitate this new approach, HUD will provide states, local governments, insular areas, and public housing agencies (PHAs), as well as the communities they serve, with data on patterns of integration and segregation; racially and ethnically concentrated areas of poverty; access to education, employment, low-poverty, transportation, and environmental health, among other critical assets; disproportionate housing needs based on the classes protected under the Fair Housing Act; data on individuals with disabilities and families with children; and discrimination. From these data, program participants will evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, and set forth fair housing priorities and goals. The benefit of this approach is that these priorities and goals will then better inform program participant's strategies and actions by

improving the integration of the assessment of fair housing through enhanced coordination with current planning exercises. This proposed rule further commits HUD to greater engagement and better guidance for program participants in fulfilling their obligation to affirmatively further fair housing. With this new clarity through guidance, a template for the assessment, and a HUD-review process, program participants should achieve more meaningful outcomes that affirmatively further fair housing.

DATES: Comment Due Date: September 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500: Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above

address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Camille Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410; telephone number 202-708-1793 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) outlawed discrimination and set out steps that needed to be taken proactively to overcome the legacy of segregation through the obligation of affirmatively furthering fair housing (AFFH).

Informed by lessons learned in localities across the country, HUD issues this proposed rule, which provides new tools now available to help guide communities in fulfilling the original promise of the Fair Housing Act. The proposed rule involves refining the fair housing elements of the existing planning process that states, local governments, insular areas, and public housing agencies (program participants) now undertake. The process proposed by this rule assists these program participants to assess fair housing determinants, prioritize fair housing issues for response, and take meaningful actions to affirmatively further fair housing.

As recognized by HUD staff, program participants, civil rights advocates, the GAO, and others, the fair housing elements of current housing and community development planning are not as effective as they could be, do not incorporate leading innovations in sound planning practice, and do not sufficiently promote the effective use of limited public resources to affirmatively further fair housing. The approach

proposed by the rule addresses these issues and strengthens AFFH implementation. It does so by providing data to program participants related to fair housing planning, clarifying the goals of the AFFH process, and instituting a more effective mechanism for HUD's review and oversight of fair housing planning. The proposed rule does not mandate specific outcomes for the planning process. Instead, recognizing the importance of local decision-making, it establishes basic parameters and helps guide public sector housing and community development planning and investment decisions to fulfill their obligation to affirmatively further fair housing. In addition, it helps educate other public sector agencies in their planning and investment decisions, and provides relevant civil rights information to the community and other private and public sector stakeholders.

Summary of Legal Authority

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619) declares that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits 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 handicap.¹ See 42 U.S.C. 3601 *et seq.* Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act. The Act leaves it to the Secretary to define the precise scope of the AFFH obligation for HUD's program participants.

Summary of the Major Provisions of the Rule

The proposed rule—in concert with other HUD policies—is structured to provide direction, guidance, and procedures for program participants to promote fair housing choice. The rule promotes these objectives and responds to the GAO's observations by:

a. Refining the current requirement that program participants complete an Analysis of Impediments (AI) with a more effective and standardized Assessment of Fair Housing (AFH), through which program participants

would evaluate fair housing challenges and goals using regional and national benchmarks and data tools to facilitate the measurements of trends and changes over time;

b. Improving fair housing assessment, planning, and decision-making by providing data that program participants must consider in their AFHs, thereby aiding program participants establish fair housing goals to address these issues and concerns;

c. Incorporating, explicitly, fair housing planning into existing planning processes, the consolidated plan and PHA Annual Plan, which in turn incorporates fair housing priorities and concerns more effectively into housing, community development, land-use, and other decision-making that influences how communities and regions grow and develop;

d. Encouraging and facilitating regional approaches to addressing fair housing issues, including effective incentives for collaboration across jurisdictions and PHAs, and incorporation of fair housing planning into regionally significant undertakings, such as major public infrastructure investments;

e. Bringing people historically excluded because of characteristics protected by the Fair Housing Act into full and fair participation in decisions about the appropriate uses of HUD funds and other investments, through a requirement to conduct community participation as an integral part of program participants' AFHs; and

f. Establishing an approach to affirmatively further fair housing that calls for coordinated efforts to combat illegal housing discrimination, so that individuals and families can make decisions about where to live, free from discrimination, with necessary information regarding housing options, and with adequate support to make their choices viable.

Through these improvements, the rule seeks to make program participants more empowered to foster the diversity and strength of communities and regions by improving integrated living patterns and overcoming historic patterns of segregation, reducing racial and ethnic concentrations of poverty, and responding to identified disproportionate housing needs of persons protected by the Fair Housing Act. The rule also seeks to assist program participants in reducing disparities in access to key community assets based on race, color, religion, sex, familial status, national origin, or disability, thereby improving economic competitiveness and quality of life.

HUD intends the guidance, data, tools, and procedural improvements provided under this proposed rule to reduce the current data collection burden on program participants. HUD will provide technical assistance and guidance that will allow program participants to spend less time gathering information and more time engaged in conversation with the community regarding the most effective means of advancing their fair housing goals. In addition, HUD is facilitating the integration of previously separate planning processes into a single planning process, to the extent feasible, both to streamline the work that program participants undertake and to support the weaving of fair housing values throughout housing and community development decision-making. Under this new process, program participants will submit assessments on a regular schedule and HUD will review them. In addition to achieving more meaningful fair housing outcomes through direct alignment with related planning and investment processes, HUD expects that the clarity and explicit direction provided by the proposed rule should help program participants comply with their affirmatively furthering fair housing responsibilities. One of HUD's aspirations for the proposed rule is that it will reduce the risk of litigation for program participants. Moreover, HUD's commitment to be an ongoing partner in the process should result submissions that meet the standards for analysis that the proposed rule seeks to establish.

Summary of Costs and Benefits

As detailed in the Regulatory Impact Analysis (found at www.regulations.gov under the docket number 5173–P–01–RIA), HUD does not expect a large aggregate change in compliance costs for program participants as a result of the proposed rule. As a result of increased emphasis on affirmatively furthering fair housing within the planning process, there may be increased compliance costs for some program participants, while for others the improved process and goal-setting, combined with HUD's provision of foundational data, is likely to decrease compliance costs. Program participants are currently required to engage in outreach and collect data in order to meet the obligation to affirmatively further fair housing. As more fully addressed in the Regulatory Impact Analysis that accompanies this rule, HUD estimates net annual compliance costs in the range of \$3 to \$9 million.

Further, HUD believes that the rule has the potential for substantial benefit

¹ Although the term “disability” is used today to refer to an individual's physical or mental impairment, the term “handicap” is the term used in the Fair Housing Act, as enacted in 1968.

for program participants and the communities they serve. The rule would improve the fair housing planning process by providing greater clarity to the steps that program participants undertake to meaningfully affirmatively further fair housing, and at the same time provide better resources for program participants to use in taking such steps, hopefully resulting in increased compliance and fewer instances of litigation. Through this rule, HUD commits to provide states, local governments, PHAs, the communities they serve, and the general public with local and regional data on patterns of integration, racially and ethnically concentrated areas of poverty, access to key community assets, and disproportionate housing needs based on classes protected by the Fair Housing Act. From these data, program participants should be better able to evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, set forth fair housing priorities and goals, and document these activities.

The rule covers program participants that are subject to a great diversity of local preferences and economic and social contexts across American communities and regions. For these reasons, HUD recognizes there is significant uncertainty associated with quantifying outcomes of the process, proposed by this rule, to identify barriers to fair housing, the priorities of program participants in deciding which barriers to address, the types of policies designed to address those barriers, and the effects of those policies on protected classes. In brief, because of the diversity of communities and regions across the Nation and the resulting uncertainty of precise outcomes of the proposed AFFH planning process, HUD cannot quantify the benefits and costs of policies influenced by the rule. HUD is confident, however, that the rule will create a process that allows for each jurisdiction to not only undertake meaningful fair housing planning, but to have capacity and a well-considered strategy to implement actions to affirmatively further fair housing.

II. Background

A. Legal Authority

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619), enacted into law on April 11, 1968, declares that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” See 42 U.S.C. 3601. Accordingly, the

Fair Housing Act prohibits 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 handicap. See 42 U.S.C. 3601 *et seq.* Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)), requires that HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act. Section 808(d) of the Fair Housing Act (42 U.S.C. 3608(d)) directs other federal agencies to administer their programs relating to housing and urban development in a manner affirmatively to further the policies of the Fair Housing Act, and to cooperate with the Secretary in this effort.

The Fair Housing Act’s provisions related to “affirmatively . . . further[ing]” fair housing, contained in sections 3608(d) and (e), extend beyond the Act’s anti-discrimination mandates. See, e.g., *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970). When the Fair Housing Act was originally enacted in 1968 and amended in 1988, major portions of the statute involved the prohibition of discriminatory activities (whether undertaken with a discriminatory purpose or with a discriminatory impact) and how private litigants and the government could enforce these provisions.

In section 3608 of the Fair Housing Act, however, Congress went further by mandating that “programs and activities relating to housing and urban development” be administered “in a manner affirmatively to further the purposes of this subchapter.” Congress has repeatedly reinforced this mandate, requiring in the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and in the Quality Housing and Work Responsibility Act of 1998, that covered HUD program participants certify as a condition of receiving federal funds that they will affirmatively further fair housing. See 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C–1(d)(16).²

² Section 104(b)(2) of the Housing and Community Development Act (HCD Act) (42 U.S.C. 5304(b)(2)) requires that, to receive a grant, the state or local government must certify that it will affirmatively further fair housing. Section 106(d)(7)(B) of the HCD Act (42 U.S.C. 5306(d)(7)(B)) requires a local government that receives a grant from a state to certify that it will affirmatively further fair housing. The Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) provides in section 105 (42 U.S.C. 12705) that states and local governments that

In examining the legislative history of the Fair Housing Act and related statutes, courts have found that the purpose of the AFFH mandate is to ensure that recipients of federal housing and urban development funds do more than simply not discriminate: it obligates them to take proactive steps to address segregation and related barriers for those protected by the Act, particularly as reflected in racially and ethnically concentrated areas of poverty. The United States Supreme Court, in one of the first Fair Housing Act cases it decided, referenced the Act’s co-sponsor, Senator Walter F. Mondale, in noting that “the reach of the proposed law was to replace the ghettos ‘by truly integrated and balanced living patterns.’” *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972).³ The Act recognized that “where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.” 114 Cong. Rec. 2276–2707 (1968). As the Second Circuit has stated, section 3608(d) requires that “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat.” *Otero*, 484 F.2d at 1134.

The Act leaves it to the Secretary to define the precise scope of the AFFH obligation for HUD’s program participants. Over the years, courts have provided some guidance for this task. In the first appellate decision interpreting section 3608, for example, the Third Circuit emphasized the importance of racial and socioeconomic data to ensure that “the agency’s judgment was an informed one” based on an

receive certain grants from HUD must develop a comprehensive housing affordability strategy to identify their overall needs for affordable and supportive housing for the ensuing 5 years, including housing for homeless persons, and outline their strategy to address those needs. As part of this comprehensive planning process, section 105(b)(15) of NAHA (42 U.S.C. 12705(b)(15)) requires that these program participants certify that they will affirmatively further fair housing. The Quality Housing and Work Responsibility Act of 1998 (QHWRA), enacted into law on October 21, 1998, substantially modified the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act), and the 1937 Act was more recently amended by the Housing and Economic Recovery Act of 2008, Public Law 110–289 (HERA). QHWRA introduced formal planning processes for PHAs—a 5-Year Plan and an Annual Plan. The required contents of the Annual Plan included a certification by the PHA that the PHA will, among other things, affirmatively further fair housing.

³ Reflecting the era in which it was enacted, the Fair Housing Act’s legislative history and early court decisions refer to “ghettos” when discussing racially concentrated areas of poverty.

institutionalized method to assess site selection and related issues. *Shannon*, 436 F.2d at 821–22. In multiple other decisions, courts have set forth how the section applies to specific policies and practices of HUD program participants. *See, e.g., Otero*, 484 F.2d at 1132–37; *Langlois v. Abington Hous. Auth.*, 207 F.3d 43 (1st Cir. 2000); *U.S. ex rel. Anti-Discrimination Ctr. v. Westchester Cnty.*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009).

In addition to the statutes and court cases emphasizing the requirement of recipients of federal housing and urban development funds to affirmatively further fair housing, Executive Orders have also addressed the importance of complying with this requirement.⁴

B. The Need To Refine the Current AFFH Planning Framework

HUD has approached the AFFH obligation in various ways,⁵ and this proposed rule is intended in particular to improve fair housing planning by more directly linking it to housing and community development planning processes currently undertaken by program participants as a condition of their receipt of HUD funds. At the jurisdictional planning level, HUD requires program participants receiving Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants (ESG), and Housing Opportunities for Persons With AIDS (HOPWA) formula funding to undertake an analysis to identify impediments to fair housing choice within the jurisdiction take appropriate actions to overcome the effects of any impediments, and keep records on such efforts. *See* 24 CFR 91.225(a)(1), 91.325(a)(1).⁶ Likewise,

⁴ Executive Order 12892, entitled “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” issued January 17, 1994, vests primary authority in the Secretary of HUD for all federal executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner that furthers the purposes of the Fair Housing Act. Executive Order 12898, entitled Executive Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, issued on February 11, 1994, declares that Federal agencies shall make it part of their mission to achieve environmental justice “by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”

⁵ These include requirements involving the evaluation of site and neighborhood conditions under which HUD-funded housing development occurs and the affirmative marketing of units to promote integrated residences. *See, e.g.,* 24 CFR 891.125, 941.202, 983.57.

⁶ For these programs, the Consolidated Plan is intended as the program participant’s comprehensive mechanism to gather relevant

PHAs must commit, as part of their planning process for PHA Plans and Capital Fund Plans, to examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with jurisdictions to implement any of the jurisdiction’s initiatives to affirmatively further fair housing that require PHA involvement, maintain records reflecting those analyses and actions, and operate programs in a manner that is consistent with the applicable jurisdiction’s consolidated plan. *See* 24 CFR 903.7(o), 903.15.

Over the past several years, HUD has reviewed the efficacy of these mechanisms to fulfill the AFFH mandate and has concluded that the AI process can be a more meaningful tool to integrate fair housing into program participants’ planning efforts. HUD’s Fair Housing Planning Guide (Planning Guide), a document issued in 1996, provides extensive suggestions but does not fully articulate the goals that AFFH must advance. In addition, HUD has never provided data to grantees to help frame their analysis, and AIs are not regularly submitted to HUD for review.

These observations are reinforced by a recent report by the GAO entitled “HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans,” GAO–10–905, Sept. 14, 2010. *See* <http://www.gao.gov/new.items/d10905.pdf> (GAO Report). In this report, the GAO found that there has been uneven attention paid to the AI by local communities in part because sufficient guidance and clarity was viewed as lacking. Specifically, GAO noted the uneven quality of existing AIs and found that “HUD’s limited regulatory requirements and oversight” contribute to many grantees placing a “low priority on ensuring that their AIs serve as effective planning tools.” *Id.* at 1.⁷ In its recommendations, GAO emphasized that HUD could assist program participants by providing more effective guidance and technical assistance and the data necessary to prepare fair housing plans.

Stemming from substantial interaction with program participants and

housing data, detail housing, homelessness, and community development strategies, and commit to specific actions. These are then updated annually through annual action plans.

⁷ The GAO noted that close to 30 percent of the grantees from whom it sought documentation had outdated AIs and that almost 5 percent of the grantees were unable to provide AIs when requested.

advocates, and the GAO Report, HUD’s analysis is that the current AI process is insufficiently integrated into the grantees’ planning efforts. Many program participants are actively grappling with how issues involving race, ethnicity, disability and other fair housing concerns do and should influence housing and community development planning and actions. HUD has found, however, that program participants must turn to outside consultants to collect data and conduct the analysis, and have little incentive to use this work as part of the consolidated plan or PHA Plan. Moreover, HUD believes that the current process does not fully incorporate refinements that have developed since the Planning Guide was promulgated in the way that innovators in the field address equity in the context of housing and urban development.⁸ Especially in a time of limited resources, HUD also believes that it can do more to support program participants in the process, especially through the provision of data, meaningful technical assistance, and guidance.

The need to rethink HUD’s approach to how program participants affirmatively further fair housing is reinforced by the fact that program participants are working in an America that is more diverse, with an increasing number of communities becoming more integrated. America has always been a demographically dynamic and diverse nation and its diversity is increasing, with over a third of the American population now nonwhite, Hispanic/Latino, or a combination of races.⁹ Within little more than a generation, America is poised to become a nation where traditional minorities are in the majority.¹⁰ The ramifications of this increased diversity encompass a broad array of dimensions, from the growing recognition of the correlation between negative health indicators and patterns of segregation and poverty to the increasing understanding regarding the importance of diversity in business, higher education, and elsewhere to prepare workers for the 21st century

⁸ *See, e.g.,* Department of Housing & Community Development Massachusetts, *Affirmative Fair Housing and Civil Rights Policy* (Apr. 2009), <http://www.mass.gov/hed/docs/dhcd/hd/fair/affirmativefairhousingpp.pdf>.

⁹ *See* U.S. Department of Commerce, U.S. Census Bureau, *The White Population: 2010*, (Sept. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>.

¹⁰ *See* U.S. Department of Commerce, U.S. Census Bureau, *An Older and More Diverse Nation by Midcentury Releases: CB08–123* (Aug. 14, 2008), <http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>.

economy.¹¹ HUD's proposed rule also recognizes other significant shifts, such as those related to persons with disabilities. Demographically, the aging of the population makes physically accessible housing and the preservation of housing choice for people with disabilities increasingly significant.¹²

Research indicates that disparities in access to community assets negatively impact educational and economic outcomes.¹³ Sustained exposure to highly distressed neighborhoods is associated with a reduction in children's odds of high school graduation by at least 60 percent,¹⁴ while low-income students who have access to asset-rich neighborhoods with good schools may realize math and reading gains that help close the achievement gap.¹⁵ Given this research, HUD hopes this proposed rule and other efforts would reduce disparities in access to community assets based on race, color, religion, sex, familial status, national origin, or disability.

C. The Proposed AFFH Planning Framework

To promote more effective fair housing planning and assist every program participant to meet requirements related to affirmatively furthering fair housing, HUD proposes in this rule to address directly concerns about the current fair housing planning process by making a number of key changes. These include: (1) A new fair housing assessment and planning tool, the AFH, which replaces the AI, (2) the provision of nationally uniform data that will be the predicate for and help

frame program participants' assessment activities, (3) meaningful and focused direction regarding the purpose of the AFH and the standards by which it will be evaluated, (4) a more direct link between the AFH and subsequent program participant planning products—the consolidated plan and the PHA Plan—that ties fair housing planning into the priority setting, commitment of resources, and specification of activities to be undertaken, and (5) a new HUD review procedure based on clear standards that facilitates the provision of technical assistance and reinforces the value and importance of fair housing planning activities.

In terms of the provision of greater clarity regarding the purpose of the fair housing assessment and planning process, the proposed rule will more clearly define the core goals involved in fulfilling program participants' affirmatively furthering fair housing mandate. In doing so, HUD begins with goals long associated with this mandate: addressing patterns of segregation while supporting integrated and integrating communities, as well as seeking to reduce disproportionate housing needs among protected class members.¹⁶ The proposed rule recognizes that segregation is due in part to a historical legacy of discrimination and continues to have adverse impacts, with the dual concentration of poverty and racial and ethnic populations still far too prevalent.¹⁷ Segregation carries a heavy social cost. Numerous studies indicate that segregation negatively impacts minorities' educational attainment, labor market outcomes, physical and mental health, and crime victimization.¹⁸ These negative outcomes translate to lower economic productivity for the Nation as a whole, and increased cost to society in a multitude of ways, from the justice system to the public health infrastructure. The importance of

overcoming patterns of segregation and supporting means to advance integration are equally important as applied to persons with disabilities. Programmatically, HUD recognizes and is implementing means to overcome a legacy related to persons with disabilities that reflects a history of inappropriate segregation, institutionalization, and otherwise limited equal access to housing choices.¹⁹

In refining the current AFFH framework, racially or ethnically concentrated areas of poverty are of particular concern because they couple fair housing issues with other significant local and regional policy challenges. These areas clearly fall in the domain of fair housing, as they often reflect legacies of segregated housing patterns. Of the nearly 3,800 census tracts in this country where more than 40 percent of the population is below the poverty line, about 3,000 (78 percent) are also predominantly minority. Racially or ethnically concentrated areas of poverty merit special attention because the costs they impose extend far beyond their residents, who suffer due to their limited access to high-quality educational opportunities, stable employment, and other prospects for economic success. Because of their high levels of unemployment, capital disinvestment, and other stressors, these neighborhoods often experience a range of negative outcomes such as exposure to poverty, heightened levels of crime, negative environmental health hazards, low educational attainment, and other challenges that require extra attention and resources from the larger communities of which they are a part. Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities.²⁰

The proposed rule acknowledges that the prospects for individual or familial success are influenced by a variety of neighborhood features far more extensive than just housing. These other neighborhood features must be important considerations in seeking to advance fair housing. HUD has consistently recognized that features

¹¹ See Dolores Acevedo-Garcia et al., *Future Directions in Residential Segregation and Health Research: A Multilevel Approach* Am. J. Public Health Vol. 93(2) p. 215–221 (Feb. 2003) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447719/?tool=pubmed>; David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health* Public Health Report Vol. 119 p. 404–416 (Sept.–Oct. 2001) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf>.

¹² See U.S. Department of Health & Human Services, Administration on Aging, *Aging Statistics* (Sept. 1, 2011, 1:17:40 p.m.), http://www.aoa.gov/aocaroot/aging_statistics/index.aspx.

¹³ See Megan A. Turner & Karina Fortuny, *Residential Segregation and Low-Income Working Families*, The Urban Institute (Feb. 2009), http://www.urban.org/uploadedpdf/411845_residential_segregation_liwf.pdf.

¹⁴ See Wodtke GT et al. (2011), *Neighborhood Effects in Temporal Perspective: The Impact of Long-Term Exposure to Concentrated Disadvantage on High School Graduation*. American Sociological Review. Vol. 76, No. 5, 713–736.

¹⁵ See Heather L. Schwartz, *Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland* A Century Foundation Report p. 57 (2010), http://www.rand.org/pubs/external_publications/EP201000161.html.

¹⁶ In setting forth these two goals, the proposed rule reinforces the proposition that a critical component of addressing segregation is providing support for those communities that are integrated or are integrating. Strategies and actions to promote the effective and long-term viability of these communities is an important component of these fair housing goals.

¹⁷ See http://www.economicmobility.org/assets/pdfs/PEW_NEIGHBORHOODS.pdf.

¹⁸ See, e.g., David Card & Jesse Rothstein, *Racial Segregation and the Black-White Test Score Gap*, 91 *Journal of Public Economics* 2158–218 (2007); Edward L. Glaeser & David Cutler, *Are Ghettos Good or Bad*, 112 *The Quarterly Journal of Economics* 827–872 (1997); David Weiner, Byron Lutz & Jens Ludwig, *The Effects of School Desegregation on Crime* National Bureau of Economic Research, Working Paper No. 15380 (2009).

¹⁹ It has been HUD's policy to encourage community-based rather than institutional residences for persons with disabilities. In furtherance of the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581(1999), and pursuant to regulations at 24 CFR 8.4(d), HUD promotes housing in the most integrated setting appropriate to the needs of persons with disabilities.

²⁰ See William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* 1996.

other than housing stock are important components assessing the quality of housing opportunities and land use and planning activities.²¹ Drawing upon pertinent research,²² the proposed rule incorporates a set of measures designed to assess the extent to which a particular area possesses or is linked to assets that correlate with an increased chance to improve an individual or family's life trajectory. It also proposes to provide program participants with the tools to assess the assets and stressors within a community that impact the quality of life of residents. In addition, the proposed rule notes that shifting residential and development patterns have significant implications for families with children, particularly impacting children's ability to receive a quality education. In setting forth this primary objective and commitment to providing relevant data tools and assessment techniques, the proposed rule attempts to follow the advice provided by the GAO report to give program participants more guidance and tools to prepare more effective fair housing plans.

A second core innovation in the proposed rule involves HUD's provision of data to program participants as a starting point in the fair housing assessment process. This data will be drawn from nationally uniform sources (including data related to education, poverty, transit access, employment, exposure to environmental health hazards, and other critical community assets, as well as nationally uniform local and regional data on patterns of integration and segregation; racial and ethnic concentrations of poverty; disproportionate housing needs based on protected class; and outstanding discrimination findings). The provision of this data will both enable program participants to more knowledgeably undertake their AFH and reduce the burden that currently exists for undertaking the AI. The HUD data may be supplemented by available local or regional information. HUD believes

that these broader data will greatly assist housing and community development strategies, investments, and other actions to affirmatively further fair housing at the jurisdictional and regional level.

By directly providing nationally uniform information about the fair housing dynamics of regions and communities to 1,200 local governments, all states, the insular areas, and more than 4,000 PHAs, HUD expects that officials, community members, and other stakeholders throughout the Nation will be able to have a more informed and transparent conversation about the fair housing potential of public and private investments, strategies, and initiatives. This offers significant opportunities for innovation and progress, especially given the ways in which this data is expected to enable communities to assess changes over time. Further, having a common, national baseline of fair housing indicators will facilitate coordination and connection with planning and assessment of civil rights implications in other domains closely related to housing and community development, such as transportation, education, employment, and health.

Under the proposed rule, program participants will use HUD data to evaluate patterns of integration and segregation, racial and ethnic concentration of poverty, and disparities in access to valuable community assets and disproportionate housing needs based on protected class and evaluate the primary determinants of these conditions. Program participants will also assess whether laws, policies, or practices limit fair housing choice, as well as the role of public investments in creating, perpetuating, or alleviating the segregation patterns revealed by the assessment. Examples of such laws, policies, or practices include, but are not limited to, zoning, land use, financing, infrastructure planning, and transportation.

A third critical innovation in the proposed rule that also responds directly to the GAO report is the AFH, which replaces the AI, and is completed by program participants with HUD data and guidance. The AFH will help program participants more effectively integrate fair housing concerns into the consolidated plan and PHA planning process. The proposed rule requires program participants to submit their AFH to HUD in advance of the consolidated plan and PHA Plan submission so that the AFH may then inform strategies and actions in those plans. HUD's review of an AFH will be based on standards for acceptance

contained in the proposed rule, and an accepted AFH and completion of corresponding requirements related to affirmatively furthering fair housing in the consolidated plan and PHA Plan will be required for HUD to approve those respective plans. HUD will either accept the AFH or provide the program participant with specific reasons for non-acceptance, the actions the program participant needs to take to meet the criteria for acceptance, and, as appropriate, technical assistance to meet AFH requirements.

Once accepted, the AFH will then inform consolidated plan and PHA Plan strategies, more directly and effectively incorporating fair housing planning into the comprehensive housing and planning processes that program participants now use.²³ Consolidated plan program participants will demonstrate how their affordable housing and community development priorities and objectives will affirmatively further fair housing. These program participants will also identify any additional strategies and actions not directly tied to the priorities they are setting forth to further goals of the AFH. Similarly, these program participants will describe actions to affirmatively further fair housing in their annual action plans.

The proposed rule similarly creates a structure for PHAs to cooperate fully in the creation of the AFH and then to use the resulting AFH to inform the PHA planning process, all as a predicate to the PHA certification that it will affirmatively further fair housing. As with consolidated plan program participants, PHAs will incorporate the AFH into the PHA planning process in order to inform strategies and actions in their 5-Year PHA Plans and/or Annual Plans to affirmatively further fair housing. PHAs will have the choice to participate with their local government in preparing the AFH, prepare the AFH independently, or follow the state's AFH. PHAs may adjust their planning cycle over time to assure that the AFH is completed before their PHA Plan work begins. For PHAs that participate in the new collaborative AFH, the resulting analysis is designed to be sufficient to support a 5-year planning horizon, and PHAs will not have to undertake the same exercise every year. This will free up PHA resources to focus on implementation and long-term strategies.

²³ The consolidated plan is a 5-year planning instrument. The annual action plan is the plan submitted by consolidated plan program participants that describes the consolidated plan actions that participants intend to carry out in a calendar year.

²¹ See, e.g., HUD Fair Housing Planning Guide 5-9 (emphasizing that jurisdictions should strive to equalize services, including schools, recreational facilities and programs, social service programs, parks, roads, transportation, street lighting, trash collection, street cleaning, crime prevention, and police protection activities, in their fair housing plan); see also, e.g., 24 CFR 941.202 (requiring that, inter alia, environmental conditions, access to employment opportunities, and access to "social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services" be considered when choosing neighborhoods in which to locate public housing); 24 CFR 891.125.

²² See Xavier de Souza Briggs, *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (2005).

Many fair housing issues transcend local jurisdictional boundaries. Solutions to such issues often involve coordinated actions by multiple jurisdictions, and require creative collaboration across traditionally disconnected policy domains. Coordination between jurisdictions that undertake consolidated planning and PHAs can allow for more effective deployment of limited resources, which is important because PHA programs, including notably the Housing Choice Voucher Program, can frequently be significant mechanisms to enable families to access communities offering assets that are often difficult for voucher families to obtain. In this context, regional assessments can be an important means for effectively addressing these issues, as well as those that are local to independent jurisdictions. Regional assessments are therefore encouraged in this rule.

It is a statutory condition of HUD funding that program participants certify that they will affirmatively further fair housing, which, under the proposed rule, means that they will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of this rule, and that the program participant will take no action that is materially inconsistent with its obligation to affirmatively further fair housing. It is important to note, however, that neither the proposed rule nor the improved process that it will establish defines the strategies or actions program participants will take. In fact, the proposed rule emphasizes that there are diverse approaches that can be taken. A program participant's strategies and actions may include strategically enhancing neighborhood assets (for example, through targeted investment in neighborhood revitalization or stabilization) or promoting greater mobility and access to communities offering vital assets such as quality schools, employment, and transportation consistent with fair housing goals. Consistent with long-standing judicial guidance regarding AFFH, the proposed rule is designed so that program participants undertake a process that informs and engages the public and allows program participants to make educated judgments regarding the appropriate strategies and actions that are consistent with their obligations to affirmatively further fair housing. In doing so, it directs them to examine relevant factors, such as zoning and other land-use practices that are likely contributors to fair housing concerns,

and take appropriate actions in response.

D. Conclusion

The opportunity to choose where one lives free from obstacles related to race, color, religion, sex, familial status, national origin, or disability is essential to the ability to engage as a full member of one's community. This promise of fair housing choice requires vigorous enforcement of laws barring discrimination, and proactive planning, strategies, and actions.

In administering its programs and activities in a manner to affirmatively further fair housing, HUD is committed to taking active measures to build on progress made by communities across the country to affirmatively further fair housing, while confronting the reality that more must be done. This proposed rule, informed by local experience and the GAO report, offers such active measures.

III. Summary of Proposed Rule

This rule proposes to amend the regulations in 24 CFR parts 5, 91, 92, 570, 574, 576, and 903, as discussed in this section.

Affirmatively Furthering Fair Housing Regulations

This proposed rule would amend HUD regulations in 24 CFR part 5 that contain general HUD program requirements, and specifically 24 CFR part 5, subpart A, which contains generally applicable definitions and federal requirements that are applicable to all or almost all HUD programs. This rule proposes to add new §§ 5.150–5.180 under the undesignated heading of “Affirmatively Furthering Fair Housing.” These new sections will primarily provide the regulations that will govern the affirmatively furthering fair housing planning process by states, local governments, and PHAs, but reserves additional sections in subpart A for HUD to continue to provide regulations that will assist all HUD program participants in more effectively affirmatively furthering fair housing.

Purpose of Affirmatively Furthering Fair Housing Regulations (§ 5.150). New § 5.150 states that the purpose of HUD's new regulations (AFFH regulations) is to provide more effective means of meeting the statutory obligation imposed on HUD program participants to affirmatively further fair housing. The new AFFH regulations are intended to add clarity to the goals that are at the heart of affirmatively furthering fair housing, to provide for guidance and interaction between HUD and program participants and, to the extent

appropriate, inform other housing and urban development programs that are subject to AFFH requirements. The new regulations envision a process that is structurally incorporated into the consolidated plan and the PHA planning process, building upon what is already familiar to HUD program participants and thus reducing burden and connecting disparate planning processes.

Definitions (§ 5.152). New § 5.152 provides the definitions that are used in the AFFH regulations. Several terms defined in this section are defined in other HUD regulations, and this section contains cross-references to the regulations that define such terms. New terms defined in this section include “*affirmatively furthering fair housing*,” “*assessment of fair housing, community participation*,” “*disproportionate housing needs*,” “*fair housing choice*,” “*fair housing determinant*,” “*fair housing issue*,” “*fair housing enforcement and fair housing outreach capacity*,” “*integration*,” “*racially or ethnically concentrated area of poverty*,” “*segregation*,” and “*significant disparities in access to community assets*.” For disproportionate housing needs, integration, racially or ethnically concentrated area of poverty, segregation, and significant disparities in access to community assets, HUD will provide specific data sources and thresholds with the final rule and will update this information periodically through **Federal Register** notices, as data sources and methodologies improve.

The definition of “*affirmatively furthering fair housing*” clarifies that AFFH, while including antidiscrimination measures, requires proactive steps to foster more inclusive communities and access to community assets for all those protected by the Fair Housing Act. The definition incorporates the goals animating the proposed rule, as reflected in the categories of the AFH (see § 5.154) and described in the preamble, see Introduction, Parts I and II. It makes clear that the pursuit of these ends requires appropriate assessment and analysis, and actions based on this assessment and analysis. When compared to the definition of AFFH contained in the Planning Guide, this definition provides greater clarity about the purposes of AFFH, while retaining that AFFH will be accomplished through analysis and assessment and actions (including the investment of federal and other resources and implementation of strategies) based upon that analysis and assessment. The

proposed definition encompasses the key aspects of the definition incorporated in the Planning Guide, as satisfactory production of an AFH will require identifying what were previously called impediments, taking actions, and maintaining records. Certain terms that are in the Planning Guide definition do not need to be included in the proposed definition, as they are incorporated elsewhere in the rule.

The definition of “*fair housing choice*” sets forth elements required for individuals and families to be able to live where they choose without barriers related to the classes protected under the Fair Housing Act: Actual choice, protected choice, and enabled choice. As explained in more detail in the preamble (see Introduction, Part II (B)), these elements are necessary for individuals and families to be able to achieve fair housing choice given the legacy of segregation, ongoing discrimination, and residential patterns that offer different levels of access to community assets.

The definition of “*fair housing issue*” similarly builds on the core elements of AFFH as contained in that definition and fully explained in the preamble, and incorporates any other condition that impedes fair housing choice.

The definitions of “*integration*,” “*segregation*,” “*racially or ethnically concentrated areas of poverty*,” and “*significant disparities in access to community assets*” are included because they are key components of the goals contained in the proposed rule and central elements in the new AFH; see § 5.154. When appropriate, they identify cross-references to other legal standards that are relevant to how these terms apply to specific classes protected under the Act (e.g., integration and persons with disabilities). The definitions of “*integration*,” “*segregation*,” and “*racially or ethnically concentrated areas of poverty*” note that HUD will determine the appropriate data sources in addition to the decennial status to be used to identify such geographic areas.

Assessment of Fair Housing (AFH) (§ 5.154). New § 5.154 sets forth the key requirement for more effectively fulfilling the duty to affirmatively further fair housing—an assessment of fair housing (AFH) by program participants. As discussed earlier, HUD has determined that the current process for affirmatively furthering fair housing is insufficient to ensure that program participants are meeting their obligation in a purposeful manner as contemplated by law. The AFH, which will be developed with data and guidance from

HUD, will replace the AI previously required of program participants, which often required significant staff and other resources to complete without adequately informing subsequent planning and action. The result will not only be evidence that program participants have undertaken meaningful fair housing planning, but that they have a well-considered strategy to implement actions to affirmatively further fair housing. HUD believes that the process set forth in this proposed rule involving the submission and review of the AFH will thus lead to a more effective and collaborative fair housing planning process, especially since HUD is clarifying the goals and requirements of the process, providing data and other prerequisites, and integrating the AFH into other key planning documents for the use of HUD funds.

Paragraph (b) of this section lists the HUD program participants that must perform such assessment, and these entities are: (1) States, insular areas, and local governments participating in HUD programs that are covered by the consolidated plan submission requirements in HUD regulations in 24 CFR part 91; and (2) PHAs receiving assistance under sections 8 and 9 of the U.S. Housing Act of 1937. Currently, as noted, in support of the affirmatively furthering fair housing certification of the Consolidated Plan statute, 42 U.S.C. 10275(b)(15), HUD requires program participants that receive formula grants under the CDBG, ESG, HOME, and HOPWA programs to prepare an AI. See 24 CFR 91.2(a), 91.225(a), 91.325(a), 91.425(a). Also, in support of the civil rights certification of the PHA Plan statute, 42 U.S.C. 1437c–1(d)(15), HUD requires PHAs to examine their programs for impediments to fair housing choice. See 24 CFR 903.7(o).

Paragraph (c) provides that HUD will make available fair housing data to program participants to assist them in their assessment of the availability of fair housing choice in their jurisdictions and in overcoming barriers to such choice. In addition to any available local or regional information and information gained through community participation and consultation, HUD will provide, as a resource for program participants, a set of nationally uniform local and regional data on patterns of integration and segregation; racially and ethnically concentrated areas of poverty; access to neighborhood opportunities such as education, employment, low poverty, transportation, and environmental health, among others; disproportionate housing needs; data on individuals with disabilities and

families with children; and discrimination. HUD will also provide PHA site locational data (including, to the extent available, units accessible for persons with disabilities), the distribution of housing choice vouchers, and occupancy data.

HUD proposes using the data and thresholds specified in the data methodology appendix, the full details of which can be found at www.regulations.gov under docket number 5173–P–01–DM. To describe segregation dynamics, HUD will provide common social science measures of segregation, including the dissimilarity index and the isolation index. These measures will be accompanied by guidance to help program participants and others understand whether values suggest relatively low, moderate, or high levels of segregation. HUD will also provide data on disproportionate housing needs for protected classes, analogous to what is provided in HUD’s consolidated planning process. Further, HUD will provide data to program participants that reports on the existence of racially concentrated areas of poverty (RCAP) in their jurisdictions. These data will include a designation that identifies whether a given census tract is an RCAP, based on HUD-established joint thresholds for minority and poverty concentrations.

Finally, HUD has constructed key measures along an array of important categories. A simple poverty index captures the depth and intensity of poverty in a given neighborhood. The neighborhood school proficiency index uses school-level data on the performance of students on state exams to describe which neighborhoods have more proficient elementary schools and which have less proficient elementary schools. A labor market engagement index provides a summary description of the relative intensity of labor market engagement and human capital in a neighborhood. A job access index summarizes the accessibility of a given residential neighborhood as a function of its distance to all job locations, with distance to larger employment centers weighted more heavily. A health hazards exposure index summarizes potential exposure to harmful toxins emitted from industrial facilities at a neighborhood level. A transit index reflects a neighborhood’s proximity to transit stops. The input variables for each index are listed below, with more detail on the construction of each measure available in the data appendix referenced above.

Dimension	Input variables
Poverty Index	Percent of families living below the poverty line and percent of households receiving public assistance.
School Proficiency Index	Percent of elementary students who are proficient in reading and percent who are proficient in math according to state examinations.
Labor Market Engagement/Human Capital Index.	Neighborhood unemployment rate; neighborhood labor force participation rate; and percent of the population over the age of 25 with a bachelor's degree or higher.
Job Access Index	Number of jobs in a neighborhood; distance from a neighborhood to employment centers; and number of workers commuting to those employment centers.
Health Hazards Exposure Index	Distance to facilities in EPA's Toxic Release Inventory database; volume of releases; and toxicity of released chemicals.
Transit Access	Distance to nearest fixed-rail or bus rapid transit station.

As with all data metrics, the measures in each category have strengths, as well as limitations. Limitations arise in particular in this instance because the metrics must rely on nationally available data, which are often coarser than data available for some localities. For example, measures for schools are reliant on broadly available test score information and not detailed measures of instructional quality, while measures of transit may not reflect the multitude of transit options (bus, trolley, ferry) in some communities. Program participants will have the flexibility to supplement or replace HUD measures when better local alternatives exist. Moreover, because research on measuring access to community assets is continually evolving, HUD is committed to reviewing the data on an ongoing basis for potential improvements.

Specific solicitation of comment.

Because these data are important and novel, HUD is seeking input on these data metrics, both in the context of this rule, as well as in a separate upcoming public comment process. This supplemental process will focus more directly on technical aspects of the strengths and limitations of specific metrics. Nonetheless, HUD seeks comment on the strengths and limitations of the proposed data. HUD is also interested in potential quantitative or qualitative data that are not currently included in the indicators that might effectively complement or replace the HUD-provided data.

Paragraph (d) provides the content of the AFH that a program participant must submit to HUD. Paragraph (d) provides that the AFH must address segregation, concentration of poverty, disparities in access to community assets, and disproportionate housing needs based on race, color, religion, sex, familial status, national origin, or handicap. In addressing these subject areas, paragraph (d) provides that the AFH must include a summary of fair housing issues in the jurisdiction, including any findings or judgments related to fair housing or other civil rights laws and assessment of

compliance with existing fair housing laws, regulations, and guidance. Additionally, the AFH must assess the jurisdiction's fair housing enforcement and fair housing outreach capacity.

Paragraph (d) also provides for the AFH to include an analysis of the data concerning disparities in the jurisdiction's area, based upon HUD-provided fair housing data, as well as local or regional data available to the jurisdiction, and community input. Using this information, the program participant must identify, within the jurisdiction and region, integration and segregation patterns and trends across protected classes; racially or ethnically concentrated areas of poverty; whether significant disparities in access to community assets exist across protected classes within the jurisdiction and region; and whether disproportionate housing needs exist across protected classes.

Paragraph (d) further provides that, using an assessment tool provided by HUD, each program participant must: (1) Identify the primary determinants influencing conditions of segregation; concentrations of poverty; disparities in access to community assets; and disproportionate housing needs based on protected class; and the most significant determinants of these disparities; (2) identify fair housing priorities and general goals and articulate a justification for the chosen prioritization; and (3) set one or more goal(s) for mitigating or addressing the determinants. In recognition of the proposition that this assessment will be part of existing statutory planning processes, paragraph (d) provides that the specific strategies or funding decisions subject to the consolidated plan, PHA Plan, or other relevant planning processes are not required to be detailed in an AFH. It is HUD's expectation that the AFH will also serve as a valuable tool to inform other planning documents or processes in addition to the consolidated plan and PHA Plan, such as PHA Capital Fund Plans, and transportation or education plans, in this way facilitating and

supporting civil rights planning across policy domains.

Paragraph (e) addresses AFH requirements for specific types of program participants. This paragraph addresses the AFH required for: (1) PHAs that participate with the relevant consolidated plan program participant; (2) HOME Program Consortia; (3) Insular Areas; and (4) the District of Columbia. With respect to PHAs, this paragraph provides a process for submission and review of a dissenting statement or alternative views on an AFH created with a consolidated plan program participant. With respect to preparation and submission of an AFH, a HOME Program consortium is considered to be a single unit of general local government. An insular area jurisdiction may choose to prepare an AFH following either the abbreviated AFH procedures in 24 CFR 91.235, or the complete AFH procedures applicable to local governments in 24 CFR part 91, subpart C. The District of Columbia must follow the requirements applicable to local governments described in this subpart.

Regional AFHs (§ 5.156). New § 5.156 addresses and encourages regional assessments and fair housing planning, providing that that two or more program participants may join together to submit a single AFH to evaluate fair housing challenges, issues, and determinants from a regional perspective (Regional AFH). Regionally collaborating program participants need not be contiguous and may cross state boundaries, and a Regional AFH, like a local AFH, will examine regional data and account for regional dynamics. Regionally collaborating program participants must designate one member as the lead entity to oversee the development and submission of the assessment.

Program participants are encouraged to cooperate to develop regional AFHs to achieve the sharing of resources and the development of regional strategies, goals, and outcomes to improve fair housing choice for individuals within regional areas. A consolidated plan program participant choosing to

participate in a Regional AFH should consider the implications of this approach on its consolidated plan. Each cooperating consolidated plan program participant remains responsible for its own consolidated plan and its obligation to affirmatively further fair housing in accordance with the consolidated plan and applicable program requirements. This section does not preclude program participants from entering into other cooperative arrangements to undertake regional fair housing assessments and planning.

While new § 5.156 encourages regional assessments, a regional assessment does not relieve each regionally collaborating program participant from its obligation to analyze and address local fair housing issues and determinates that affect housing choice within its respective jurisdiction.

Community participation, consultation, and coordination (§ 5.158). New § 5.158 provides for community participation and consultation requirements for the purpose of ensuring that the AFH is informed by meaningful community participation and is integrated fully into the consolidated plan process, or other planning processes, as may be applicable. Section 5.158 specifies the minimum AFH community participation and consultation that must be undertaken, whether preparing the AFH singly or in combination with other program participants. For consolidated plan program participants, § 5.158 provides that a jurisdiction must follow the policies and procedures described in its applicable citizen participation plan adopted pursuant to the consolidated plan regulations in 24 CFR part 91 (specifically, 24 CFR 91.105, 91.115, 91.401). This section also requires that the jurisdiction consult with the agencies and organizations identified in consultation requirements at 24 CFR part 91 (specifically, 24 CFR 91.100, 91.110, 91.235, 91.401). For PHAs, § 5.158 provides that PHAs must follow the policies and procedures described in 24 CFR 903.7 and 903.19.

Paragraph (b) of § 5.158 addresses coordination and provides that PHAs may participate directly with jurisdictions, prepare their own AFH, or adopt a state's AFH.

AFH Submission Requirements (§ 5.160). New § 5.160 provides the requirements for submission of the AFH to HUD, and provides that the first time a program participant is undertaking the assessment, it must submit its AFH to HUD at least 270 calendar days before the start of the program year prior to the

start of the 3- or 5-year consolidated planning process. This section provides an exception for the date on which newly eligible jurisdictions under the HOME program must submit an AFH. Under 24 CFR 92.104, newly eligible jurisdictions shall submit an initial AFH not later than 90 calendar days after providing notification under § 92.103 that the jurisdiction intends to participate in the HOME program as a participating jurisdiction.

New § 5.160 provides that, after acceptance of a program participant's initial AFH, each program participant shall submit subsequent AFHs to HUD at least 195 calendar days before the start of the jurisdiction's program year in which they are submitting a consolidated plan. The submission dates set forth in this section, both for an initial AFH and subsequent AFHs, are established to allow the results of an accepted AFH to inform the consolidated plan and PHA planning process.

Specific solicitation of comment. HUD specifically invites comments as to whether these time frames will achieve that objective.

New § 5.160 also addresses late submission of an AFH. Paragraph (b) of this section provides that an AFH accepted by HUD is a precondition for acceptance of the AFFH certification that is required for the consolidated plan and the PHA Plan. Paragraph (b) also provides that, if a jurisdiction fails to submit its AFH in a timely manner, HUD may require that the jurisdiction submit its consolidated plan within a corresponding period of time after that. However, in no event will the deadline be extended past August 16 of the federal fiscal year in which grant funds are appropriated, as provided in 24 CFR 91.15. Thus, as provided under the consolidated plan regulations, the failure to submit the consolidated plan by August 16 results in the loss of covered funds for the program participant for that funding year. *See* 24 CFR 91.15 (a)(2).

Paragraph (c) of § 5.160 addresses the frequency of submission of an AFH, and provides that each consolidated plan program participant must submit an AFH at least once every 5 years, or at such time agreed upon by HUD and the program participants in order to coordinate AFH submission with time frames required of consolidated plans, cooperation agreements, or other plans. PHAs participating with their consolidated plan program participants in the AFH process will incorporate the resulting AFH into its PHA Plan every 5 years, and PHAs choosing to undertake their own AFH will further

have to update their AFH annually. Program participants will thus be in a position to coordinate the AFH process with existing planning processes.

Paragraph (d) of § 5.160 provides that a consolidated plan program participant or a PHA may request to change a program year start date or fiscal year beginning date to better coordinate the submission of the AFH, consolidated plan, and PHA Plan.

Review of AFH (§ 5.162). New § 5.162 addresses review of AFHs by HUD. HUD's review of an AFH is to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting as set forth in § 5.154(d). This section provides that the AFH will be deemed accepted 60 calendar days after the date that HUD receives the AFH for review, unless before that date HUD has notified the program participant that the AFH is not accepted. This section provides that HUD will notify program participants in writing that the AFH has not been accepted, and the written notification will specify the reasons that the AFH was not accepted and the actions that program participants may take to meet the criteria for acceptance. Section 5.162 allows program participants to revise and resubmit AFHs within 45 calendar days after the date of the first notification of non-acceptance. The revised AFH will be deemed accepted after 30 calendar days of the date by which HUD receives the revised AFH, unless before that date HUD has provided notification that HUD does not accept the revised AFH. These time frames generally parallel the framework through which HUD currently reviews consolidated plan submissions.

HUD's acceptance of an AFH means only that, for purposes of administering HUD program funding, HUD has determined that the program participant has provided the required elements of an AFH as set forth in § 5.154(d). HUD's acceptance does not mean that HUD has determined that a jurisdiction has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Act; or has complied with other civil rights laws, regulations or guidance.

Revising the AFH (§ 5.164). New § 5.164 establishes the minimum criteria that will require a program participant to revise its AFH.

Paragraph (a) of this section provides that if a program participant experiences a significant material change in circumstances that calls into question the continued validity of the AFH, then the program participant must revise its AFH.

Paragraph (a)(1) provides examples of what a significant material change in circumstances may be, which would include: The jurisdiction is in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act that is significant; the jurisdiction has experienced significant demographic changes; the jurisdiction has made significant policy changes, such as significant changes related to zoning, housing plans or policies, or development plans or policies; or the jurisdiction is subject to significant civil rights findings, determinations, Voluntary Compliance Agreements, or other settlements. This section also provides that a program participant must revise its AFH upon written notification by HUD in which HUD specifies the significant material change that HUD has found to have taken place, thus requiring a revision to the AFH. Required revisions will be practical and focused on the relevant underlying change in circumstances, rather than necessarily requiring revision to the entire AFH. This section recognizes that population, demographic, and other data may not be accurate when there are sudden shifts in circumstances, and it is important for program participants to examine the information that is available to them at the time.

Paragraph (a)(2) of § 5.164 requires consolidated plan program participants, in their citizen participation plans adopted in accordance with the consolidated plan regulations in 24 CFR part 91, to specify the criteria that the program participant will follow in determining which significant material changes will require revisions to AFH. Paragraph (a)(2) specifies that the criteria must include, at a minimum, the criteria described in paragraph (a)(1) of § 5.164.

Paragraph (b) of § 5.164 provides that revisions to the AFH are subject to community participation. This requirement underscores the importance of the jurisdiction's community being involved in the development of the AFH, including significant changes to the AFH. Paragraph (b) provides that the jurisdiction must follow the notice and comment process applicable to consolidated plan substantial amendments and the jurisdiction's citizen participation plan adopted in accordance with the consolidated plan regulations at 24 CFR part 91; specifically, §§ 91.105, 91.115. Paragraph (b) requires that a consortium must follow the participation process applicable to consolidated plan substantial amendments under the consortium's citizen participation plan

adopted pursuant to the consolidated plan regulations 24 CFR 91.401.

Paragraph (c) of § 5.164 provides that revisions to the AFH must be submitted to HUD and will be reviewed pursuant to the process set forth in § 5.162.

Paragraph (d) of § 5.164 provides that when an AFH is revised under this subpart, PHAs must revise their PHA Plan within 18 months pursuant to 24 CFR 903.15(e).

As this section reflects, HUD has established requirements for revisions to the AFH that closely follow the requirements for consolidated plan substantial amendments, thereby providing a process with which consolidated plan program participants are thoroughly familiar and that can readily be adopted by PHAs.

Recordkeeping (§ 5.166). This section establishes AFFH-related recordkeeping requirements for program participants. The maintenance of the information that formed the development of the AFH, including information obtained through consultation and community participation, is important for purposes of demonstrating why the AFH contains the strategies and actions that it does, and by inspection by HUD if HUD determines the need to examine the underlying information that resulted in the AFH. This section lists the specific documents that program participants are to maintain and provides that these records must be maintained for the period specified in program regulations.

As this preceding discussion of the new AFFH regulations reflect, these new regulations, and specifically the new AFH, are established not only to reflect the importance of undertaking fair housing planning well, but to underscore that fair housing planning is an integral part of the consolidated and PHA planning processes.

Conforming Amendments Consolidated Plan Regulations (24 CFR Part 91)

Because the AFFH regulations in 24 CFR part 5 build on existing consolidated plan regulations with respect to consultation, community participation, submission, and revisions, conforming amendments to the consolidated plan regulations must be made to reflect the incorporation of the AFH into the consolidated planning process.

Definitions (§ 91.5)

Section 91.5, the definition section of HUD's consolidated plan regulations, would be revised to reflect that the terms "affirmatively furthering fair housing," "Assessment of Fair Housing or AFH and protected class" are defined in 24 CFR part 5.

Consultation; Local Governments (§ 91.100)

Section 91.100 of HUD's consolidated plan regulations would be amended in paragraph (a) to include the AFH in the consultation that a local government is required to undertake. With respect to the AFH, paragraph (a) requires the local government to consult with the same public and private agencies that the local government consults with in preparing the consolidated plan, but adds that such consultation shall also include any community- and regionally-based organizations that represent protected class members or advance fair housing laws.

Paragraph (c) of § 91.100, which requires the local government to consult with the local PHA, would be amended to provide that the jurisdiction must consult with the PHA regarding the AFH, affirmatively furthering fair housing strategies, and proposed actions to affirmatively further fair housing.

The proposed rule adds a new paragraph (e) to § 91.100 to address the requirement to affirmatively further fair housing. Paragraph (e) provides that the local government shall consult with community- and regionally based organizations that represent protected class members or enforce fair housing laws, such as state or local fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP), fair housing organizations and other nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within its jurisdiction.

As noted in paragraph (e), this consultation will help provide a better basis for the local government's AFH, its certification to affirmatively further fair housing and other portions of the consolidated plan concerning affirmatively furthering fair housing. Paragraph (e) provides that the consultation required under this paragraph can occur with any organizations that have the capacity to engage with data informing the AFH and are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH, the consolidated plan, and their implementation. A Fair Housing Advisory Council, or similar group, that includes community members and advocates, fair housing experts, housing and community development industry participants, and other key stakeholders can meet this critical consultation requirement.

The proposed rule requires consultation to occur throughout the fair housing planning process, meaning that the jurisdiction will consult with the organizations described in this section in the development of both the AFH and the consolidated plan. The AFFH-related consultation on the consolidated plan shall specifically seek input into how the goals identified in the accepted AFH inform the priorities and objectives of the consolidated plan. This community input and consultation is critical to understanding fair housing issues through the AFH and incorporating that understanding into the consolidated plan.

Citizen Participation Plan; Local Governments (§ 91.105)

This section is amended to include the AFH in the requirements governing the local government's citizen participation plan. While reference to the AFH is made throughout § 91.105, the amendments to specifically note are as follows:

Paragraph (a)(2)(i) of this section would be amended to add explicit reference to residents and other interested parties that are encouraged to participate in the development of the AFH, and significant revisions to the AFH, along with participation in the development of the consolidated plan and substantial amendments to the consolidated plan.

Paragraph (a)(2)(ii), which encourages the participation of local and regional institutions, would be amended to reflect that such participation is not only important to the consolidated plan but to the AFH as well.

Paragraph (a)(2)(iii) of this section, which addresses consultation with PHAs, would be amended to include consultation with any resident advisory boards, resident councils, and resident management corporations.

The proposed rule adds a new paragraph (a)(4) to § 91.105 to require a local government to describe in its citizen participation plan the jurisdiction's procedures for assessing language needs in its area and to identify any need for translation of notices and other vital documents. New paragraph (a)(4) also provides that, at a minimum, the citizen participation plan shall require that the local government take reasonable steps to provide language assistance to ensure meaningful access to citizen participation by persons with Limited English Proficiency. This requirement reflects that local government across the Nation consist of individuals of many different backgrounds, including members of the community for which

English is not their first language and therefore they lack the proficiency that may be needed to be fully involved in community affairs. This requirement strives to have local governments involve these individuals to the maximum extent possible.

Paragraph (b) of § 91.105 would be amended to provide that the local government's citizen participation plan must require that, as soon as practical after HUD makes data for the AFH available to the local government, the local government must make such information, and any other supplemental information that the local government plans to incorporate into its AFH, available to the public, public agencies, and other interested parties.

Paragraph (c) of § 91.105 would be amended to divide the existing paragraph into two subparagraphs. Paragraph (c)(1)(i) addresses the existing requirement concerning the local government to specify the criteria that a jurisdiction will follow in determining what changes in the local government's planned or actual activities constitute a substantial amendment to the consolidated plan. Paragraph (c)(1)(ii) would provide that the local government must specify the criteria the local government will use for determining when significant revisions to the AFH will be appropriate, and provides that, at a minimum, the local government's criteria must include the criteria specified in 24 CFR 5.164.

Paragraph (e) of § 91.105 would be amended to revise paragraph (1) into two subparagraphs. Paragraph (e)(1)(i) addresses the existing requirement for the number of public hearings to hold on the jurisdiction's consolidated plan. Paragraph (e)(1)(ii) would address the public hearing for the AFH and requires the local government to provide at least one public hearing before the proposed AFH is published for comment.

Paragraphs (f), (g), (h), (i), (j), and (l) would each be revised to reference the AFH.

Consultation; States (§ 91.110)

This section would be revised to provide for the AFH to be subject to the same consultation requirements as state consolidated plans. Two new subparagraphs would be added to paragraph (a) of this section.

Paragraph (a)(1) would specifically address consultation pertaining to public housing, with the objective to ensure that the PHA Plan is consistent with the consolidated plan.

Paragraph (a)(2) would address consultation pertaining to affirmatively furthering fair housing, with the

objective to ensure that there is a meaningful assessment of fair housing.

Citizen Participation Plan; States (§ 91.115)

The proposed rule would amend paragraph (a)(1) of § 91.115 to provide for a new effective date for the new provisions being added to this section pertaining to the AFH. References to the AFH would also be added to paragraph (a)(2) of this section. The amendments to this section include adding a new paragraph (a)(4) that would require reasonable efforts to provide language assistance to non-English-speaking residents.

Paragraph (b) of this section, which addresses development of the consolidated plan, would be amended to address development of the AFH in addition to the consolidated plan.

Paragraph (c) of this section, which addresses criteria for amending the consolidated plan, would be revised to also address the criteria for amending the AFH.

Paragraphs (f), (g), and (h) of this section, which address availability of information to the public, access to records, and complaints, respectively, would be amended to reference the AFH.

Strategic Plan (§ 91.215)

This section of the consolidated plan regulations describes the prescribed content of the local government's strategic plan. This proposed rule adds to this section a new paragraph (a)(5) that requires the jurisdiction's consolidated plan to describe how the priorities and specific objectives of the jurisdiction will affirmatively further fair housing, and that the description should be done by setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with § 5.154. New paragraph (a)(5) provides that for issues not addressed by these priorities and objectives, the plan must identify additional objectives and priorities for affirmatively furthering fair housing.

Action Plan (§ 91.220)

This section of the consolidated plan regulations lists the items that comprise a local government's action plan. Paragraph (k) of § 91.220 is divided into two subparagraphs. Paragraph (k)(1) requires the action plan to address the actions that the local government plans to take during the next year to address fair housing issues identified in the AFH. Paragraph (k)(2) addresses the existing provision of paragraph (k), which is the requirement of the local

government to list the actions that it plans to take to address, among other things, obstacles to meeting underserved needs, and fostering and maintaining affordable housing.

Certifications (§ 91.225)

The proposed rule would amend paragraph (a)(1) of this section to provide that the local government's certification that it will affirmatively further fair housing means that the local government will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

Monitoring (§ 91.230)

The proposed rule revises this section to provide that a local government's monitoring of its activities carried out in furtherance of the consolidated plan, must include monitoring of strategies and actions that address the fair housing issues identified in the AFH.

Special Case: Abbreviated Consolidated Plan (§ 91.235)

Paragraph (c) of this section, which defines what is an abbreviated plan, is revised to provide that the abbreviated plan must describe how the jurisdiction will affirmatively further fair housing by addressing issues identified in an AFH conducted in accordance with 24 CFR 5.154.

Strategic Plan (§ 91.315)

This section of the consolidated plan regulations describes the prescribed content of the state government's strategic plan. The changes made to this section mirror the changes made to § 91.215.

Action Plan (§ 91.320)

This section of the consolidated plan regulations describes the prescribed content of the state government's action plan. The changes made to this section mirror the changes made to § 91.315, but are found in paragraph (j) of § 91.320.

Certifications (§ 91.325)

Similar to the amendment to § 91.225, the proposed rule would amend paragraph (a)(1) of § 91.325 to provide that the state's certification that it will affirmatively further fair housing means that the state will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its

obligation to affirmatively further fair housing.

Strategic Plan (§ 91.415)

This section of the consolidated plan regulations describes the prescribed content of a consortia's strategic plan. This section requires a consortia to comply with the provisions of § 91.215, which is proposed to be revised by this rule to incorporate the AFH in the strategic plan. The change that would be made to § 91.415 by this rule is to require the consortia to set forth, in its strategic plan, strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with new § 5.154.

Action Plan (§ 91.420)

This section of the consolidated plan regulations describes the prescribed content of a consortia's action plan. Paragraph (b) of § 91.420 is revised to provide that the action plan must include actions that the consortia plans to take during the next year that will address fair housing issues identified in the consortia's AFH.

Certifications (§ 91.425)

As with the amendments to §§ 9.225 and 91.325, the proposed rule would amend paragraph (a)(1) of this section to provide that the consortia's certification that it will affirmatively further fair housing means that the consortia will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

Amendments to the Consolidated Plan (§ 91.505)

This section lists the criteria and procedures by which a jurisdiction must amend its approved consolidated plan. The proposed rule adds a new paragraph (d) to this section that requires a jurisdiction to ensure that amendments to the plan are consistent with its certification to affirmatively further fair housing and the analysis and strategies of the AFH.

HOME Investment Partnerships (HOME) Program Regulations

Submission of a Consolidated Plan and Assessment of Fair Housing (§ 92.104)

This section of the HOME program regulations which addresses the responsibility of a participating jurisdiction to submit its consolidated plan to HUD is revised to provide that the jurisdiction must also submit its

AFH to HUD, in accordance with the AFFH regulations in 24 CFR part 5, subpart A.

Recordkeeping (§ 92.508)

The proposed rule would amend the recordkeeping requirements of the HOME program to provide in paragraph (a)(7)(i)(C) of this section to require as part of the documentation that the participating jurisdiction has taken actions to affirmatively further fair housing, documentation of the participating jurisdiction's AFH.

Community Development Block Grant (CDBG) Regulations (24 CFR Part 570)

Definitions (§ 570.3)

Section 570.3, the definition section of HUD's CDBG regulations, would be revised to reflect that the terms "Affirmatively Furthering Fair Housing," and "Assessment of Fair Housing or AFH" are defined in 24 CFR part 5.

Eligible Planning, Urban Environmental Design, and Policy Planning Management—Capacity Building Activities (§ 570.205)

This section which lists policy planning and capacity building activities would replace, in paragraph (a)(4)(vii), the reference to the AI with the AFH.

Citizen Participation—Insular Areas (§ 570.441)

This section would be revised to provide that a citizen participation plan is also applicable to the AFH.

General (§ 570.480)

Paragraph (c) of this section, which addresses HUD's review of state performance under the CDBG program, is revised to provide that such review includes review of the state's responsibility to affirmatively further fair housing.

Local Government Requirements (§ 570.486)

Paragraphs (a)(2), (a)(4), and (a)(5) of this section would be revised to reflect that the local government requirements addressed by these paragraphs include requirements necessary for effective assessment of fair housing.

Other Applicable Laws and Related Program Requirements (§ 570.487)

Paragraph (b) of this section, which addresses affirmatively furthering fair housing, provides that a state assumes responsibility for fair housing planning by taking meaningful actions to further the goals identified in an AFH undertaken in accordance with the

requirements of 24 CFR 5.154; and by not taking actions that are materially inconsistent with the state's obligation to affirmatively further fair housing.

Recordkeeping Requirements (§ 570.490)

Paragraph (a) of this section would be amended to provide that documentation of the state's AFH is one of the records that a state must maintain as part of its records supporting its administration of CDBG funds.

Records To Be Maintained (§ 570.506)

Similar to the amendment to § 570.490, the proposed rule would amend this section to provide in paragraph (g)(1) that documentation related to the recipient's AFH is part of the fair housing and equal opportunity records that a recipient is required to maintain.

Public Law 88–352 and Public Law 90–284; Affirmative Furthering Fair Housing; Executive Order 11063 (§ 570.601)

Paragraph (a)(2) of this section is amended to provide that the program participant's responsibility to undertake fair housing planning includes taking meaningful actions to further the goals identified in an AFH that is undertaken in accordance with the requirements of 24 CFR 5.154 and not taking actions that are materially inconsistent with its obligation to affirmatively further fair housing.

Equal Opportunity and Fair Housing Review Criteria (§ 570.904)

Paragraph (c) of this section is revised to provide that the review criteria for compliance with fair housing requirements includes review of a recipient's performance related to its responsibility to affirmatively further fair housing.

Housing Opportunities for Persons With AIDS (HOPWA) (24 CFR Part 574)

Recordkeeping (§ 574.530)

The proposed rule would amend this section of the HOPWA regulations to include documentation of a program participant's AFH as records that must be maintained for a period of 4 years.

Emergency Solutions Grants Program (ESG) (24 CFR Part 576)

Recordkeeping and Reporting Requirements (§ 576.500)

The proposed rule would amend paragraph (s) of this section to provide that documentation related to its AFH is additional documentation that an ESG recipient must maintain.

Public Housing Agency Plans (24 CFR Part 903)

What a PHA Must Do To Deconcentrate Poverty in Its Developments and Comply With Fair Housing Requirements (§ 903.2)

The proposed rule would amend § 903.2 by adding paragraph (a)(3), providing that for a PHA's development related activities, including affirmative marketing; tenant selection and assignment policies; applicant consultation and information; provision of additional supportive services and amenities; as well as construction, conversion, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility of its housing and other facilities under its PHA Plan, should be designed to reduce racially or ethnically concentrated areas of poverty, reduce segregation and promote integration, reduce disparities in access to community assets, and address disproportionate housing needs by protected class.

The proposed rule similarly would amend section (d) to specify that PHA policies that govern eligibility, selection, and admissions under its PHA Plan must be designed to reduce the concentration of tenants and other assisted persons by race, national origin, and disability in conformity with the applicable AFH. Moreover, any PHA plans for the construction, conversion, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility of its housing and other facilities must be consistent with the applicable AFH.

Information Provided in the Annual Plan (§ 903.7)

The proposed rule would revise § 903.7, paragraph (o), to indicate that each PHA must certify, among other things, that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

Relations of PHA Plan to Consolidated Plan (§ 903.15)

The proposed rule would revise § 903.15 in paragraph (a) to indicate that an AFH is required for the PHA Plan in accordance with 24 CFR part 5, subpart A, but that PHAs may take one of three approaches in meeting this requirement, as appropriate.

First, the PHA may participate with the relevant unit of general local

government in developing an AFH together. For this option, the PHA will work with the local government where 60 percent of the PHA's projects (i.e., hard units only) are located; however, if the majority is closer to 50 percent, the PHA may choose the local government that more closely aligns to its planning activities. For PHAs with only Section 8 tenant-based assistance, the PHA will coordinate with the jurisdiction that governs the PHA's operations (e.g., where the Mayor appoints the Board that hires the Executive Director). If the PHA disagrees with any aspect of the AFH, it may submit a dissenting statement or submission of alternative views, which will become part of the AFH and be reviewed through the same process as the AFH. HUD may then accept the entire AFH or either portion of the AFH representing the views of the unit of general local government or the PHA.

The second option is that the PHA conduct its own AFH with geographic scope and proposed actions scaled to the PHA's operations. Finally, as a third option, for PHAs that are covered by a state agency, the PHA may participate with the state in the preparation of the state agency's AFH but would be bound either way by the state agency conclusions contained in the state's AFH.

Paragraphs (b) and (c) would provide that a PHA may request to change its fiscal year to better coordinate its planning with the planning done under the consolidated plan process, by the state or local officials, as applicable. If the PHA selects the second option, it must update its own AFH every year.

Paragraph (d) would indicate that binding agreements such as a Recovery Agreement or Voluntary Compliance Agreement may incorporate the corrective actions that would require alternative AFH procedures, such as requiring that the PHA participate in its local jurisdiction's AFH.

Paragraph (e) would indicate that if a significant change necessitates a PHA Plan amendment, the PHA will have up to 18 months to make this change to its PHA Plan in accordance with the provisions of § 903.21.

Process for Reviewing Annual Plan (§ 903.23)

Finally, the proposed rule would add a new paragraph (f) to § 903.23 to require PHAs to maintain a copy of the AFH and records reflecting actions to affirmatively further fair housing as described in § 903.7(o).

IV. Questions for Commenters

HUD welcomes comments on all aspects of the proposal. In addition, HUD specifically requests comment on the following issues:

1. The field of geo-coded data is rapidly evolving and, as HUD works to refine data related to access important community assets, it welcomes suggestions for improvement. Such comments can include the description of cases or situations where the indicators may or may not appropriately portray neighborhood qualities. Are the nationally uniform data that HUD is providing to assist in the assessment of segregation, concentration of poverty, and disparities in access to community assets appropriate? Do these data effectively measure differences in access to community assets for each protected class, such as people with disabilities? To what extent, if at all, should local data, for example on public safety, food deserts, or PHA-related information, be required to supplement this nationally uniform local and regional data?

2. HUD requests comment on how the goals and priorities arising out of the AFH would influence local regulations, siting decisions, infrastructure investments, and policies, in comparison to the existing processes using the AI.

3. To what extent would the AFH and related public engagement and planning processes increase or decrease paperwork costs for program participants?

4. What experiences do HUD program participants have with the policy interventions considered in the Regulatory Impact Analysis (RIA) (please see full RIA at www.regulations.gov under the docket number 5173-P-01-RIA). What outcomes were observed? What data is available related to those outcomes?

5. Are there nonfinancial incentives that HUD should consider to encourage regional collaboration among local governments and states and greater engagement with public housing planning; for example, bonus points in specific grant programs? HUD welcomes comments about other potential incentives as well.

6. In terms of the cooperation of consolidated plan jurisdictions and PHAs, what are the best models and approaches and other considerations to facilitate that joint participation? What is the best method for consolidated plan program participants to use to begin their engagement with PHAs in the AFH process? Would a letter or other similar solicitation of involvement be sufficient?

7. In this regard, the proposed rule acknowledges that the 5-year planning cycles and program/fiscal years for PHAs and consolidated plan program participants might differ. While PHAs can adjust their 5-year planning cycles to more closely coincide with consolidated plan program participant planning cycles simply by submitting the 5-year plan early (e.g., after 3 years instead of 5), it is more difficult to adjust program/fiscal year ends. The AFH is an important input for the consolidated plan and the PHA Plan, and it should be conducted before the PHA and consolidated plan program participant cycles begin. What would be the best way to accomplish this?

8. Are there other planning efforts (for example, in transportation, education, health, and other areas) or other federal programs, such as the low income housing tax credit, that should be coordinated with the fair housing planning effort contemplated by this rule, and, if so, how and what issues would be best informed by this coordination? In recognition of the interdependent nature of how communities develop and what influences community progress related to the goals set forth in this rule, what are the appropriate scope of activities that should be considered “activities relating to housing and urban development” under the Fair Housing Act for purposes of this rule?

9. An analysis of disproportionate housing needs is currently required as part of the consolidated plan, and this proposed rule would make disproportionate housing needs an element of the AFH as well. If a disproportionate housing needs analysis is a part of the AFH, should it remain in the consolidated plan as well? Is this analysis most appropriate in either the AFH or the consolidated plan, or is it appropriate, as the current proposed rule contemplates, to have the analysis in both places, assuming the analysis is the same for both planning exercises?

10. Are there appropriate indicators of effectiveness that should be used to assess how program participants have acted with regard to the goals that are set out?

11. What forms of technical assistance would be most useful to program participants in undertaking the AFH called for in the proposed rule?

12. Are there any requirements of the new structure that the proposed rule will create that should be modified for states?

13. Are there any requirements of the new structure that the proposed rule will create that should be modified for small program participants, such as

small units of local general government and small PHAs?

14. Are there aspects of incorporation of the new AFH community participation and consultation process into analogous aspects of the existing consolidated plan process that could be improved? For example, is 15 days sufficient now for public comment on consolidated plan program participants’ annual performance report under 24 CFR 91.105(d)?

15. What length of time (such as 12, 18, or 24 months) is needed for PHAs to revise their PHA Plans to address AFH recommendations?

16. If the AFH is not acceptable after the back-and-forth engagement provided for in § 5.162 of the proposed rule because of disagreements between program participants collaborating on an AFH, what process should guide the resolution of disputes between program participants?

17. Should there be an end date for the technical assistance and back-and-forth engagement provided for in § 5.162 if a portion of an AFH that involves multiple program participants can be accepted, thus allowing an individual program participant to be accepted?

18. For program participants that have recently conducted a comprehensive AI, should HUD waive or delay implementation of the AFH requirement for those program participants?

19. Section 5.164 of the proposed rule recognizes that events outside the control of a program participant may require revising the AFH during the course of a 5-year planning cycle. This is especially true in the case of a significant natural disaster, although the rule contemplates other similar material changes in circumstances that might likewise require revising the AFH. What process and challenges will a program participant face when an unexpected occurrence, such as a natural disaster, dictates that it take actions that may be contrary to its applicable plan contents? What impact might a natural disaster or similar type of occurrence have on a program participant’s compliance with the AFH?

V. Findings and Certifications

Regulatory Planning and Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory

Review) directs executive agencies to analyze regulations that are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). HUD submits that the approach to fair housing planning proposed by this rule is consistent with the objectives of Executive Order 13563 to reduce burden, as well as the goal of modifying and streamlining regulations that are outmoded and ineffective. HUD completed a Regulatory Impact Analysis for this proposal, which can be found at www.regulations.gov, under the docket number 5173-P-01-RIA. This section summarizes the findings of that analysis.

Summary of the Regulatory Impact Analysis

This rule proposes to establish a regulatory framework for affirmatively furthering fair housing, as required by the Fair Housing Act. In accordance with the Fair Housing Act, program participants are required to use HUD funds in a manner that affirmatively furthers fair housing. In addition, these program participants have an independent statutory obligation to affirmatively further fair housing under several statutes. While to date, HUD has accepted, consistent with statutory requirements, a certification from these program participants that the program participant will affirmatively further fair housing, HUD has found, at times, that a program participant is either not affirmatively furthering fair housing or the program participant's affirmatively furthering fair housing strategy is inadequate.

Through this rule, HUD proposes to provide recipients of HUD funds with more information to assist them in fulfilling the charge to affirmatively further fair housing. This proposed rule is needed for two reasons: to overcome barriers to fair housing choice and to encourage improvements in the current planning process.

This rule is needed to facilitate efforts to overcome barriers to fair housing choice. There are many different types

of impediments to fair housing choice, including building and zoning codes, processes for site selection for low-income housing, lack of public services in low-income areas, less favorable mortgage lending for minority borrowers, and lack of public awareness of rights and responsibilities associated with fair housing. Some of these impediments may prevent people from moving out of racially concentrated areas of poverty and neighborhoods that perpetuate disparities in access to community assets. Other factors may prevent these neighborhoods from attracting a sufficiently broad distribution of people such that segregation and racial concentration of poverty dissipate over time. One purpose of this rule is to help program participants identify and alleviate these barriers to equality in access to important community assets.

A second reason that the proposed rule is needed is because some of the traditional means of fair housing planning have not been as effective as they could be and can be updated with currently available information and approaches. Recipients of HUD grant funding can be assisted with better tools to understand patterns of segregation, racial and ethnic concentrations of poverty, disparities in access to community assets by protected class, and disproportionate housing needs based on protected class so that such program participants can better develop strategies, plans, and actions to address these fair housing concerns. The need for a revision of the current planning process was recognized by the GAO Report, which recommended the establishment of rigorous standards for AIs, regular submission of AIs, checking and verifying AIs, and measuring grantees' progress in addressing identified impediments to fair housing.

Intended to help program participants overcome these barriers and encourage improvements in planning, this rule proposes a "fair housing assessment" and planning process that will aid HUD program participants in improving access to community assets and housing of their residents. HUD will provide states, local governments, PHAs, and the communities they serve with local and regional data on patterns of integration, racially and ethnically concentrated areas of poverty, access to community assets in select domains, and disproportionate housing needs based on protected class. From these data, program participants would be required to evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, and set forth fair housing

priorities and goals and document these activities in an AFH report. The rule also proposes new procedures within HUD for evaluating grantees' fulfillment of their obligation to affirmatively further fair housing. While the change in compliance costs of the rule is expected to be small, the vast array of choices and strategies open to grantees make it difficult to be quantitatively precise beyond a qualitative description of the total and net benefits.

HUD does not expect a large change in compliance cost as a result of the rule, as states, local governments, and PHAs are already required to prepare analyses of impediments to fair housing choice, undertake activities to overcome such barriers, and maintain records of the activities and their impact. HUD estimates a marginal compliance cost impact of between \$3 million to \$9 million compared to existing requirements, arising from new proposed features, the primary of these being program participants formally submitting the AFH to HUD for review and feedback; the more precise definition of the contents of the AFH as compared to existing AI requirements; HUD's provision of data for further analysis; and a more precisely defined community participation process. Further, HUD anticipates a reallocation of staff resources towards AFFH-related tasks, resulting in a notional internal transfer of funds towards AFFH.

Regarding quantifiable benefits, the AFFH proposed rule is designed to help provide information and perspectives on fair housing issues to jurisdictions in a manner that is clearer and easier to elucidate. The goal is that the information, standards concerning the formulation of the AFH, and improved accountability will improve fair housing outcomes and thus the welfare of members of the protected classes and their communities. However, it is difficult to predict in order to quantify for the purposes of assessing regulatory impact exactly how a program participant will use the information, what decisions they will reach, and precisely how those decisions will affect members of protected classes. The AFFH process is only one factor that determines what actions are pursued and what impacts are ultimately achieved. At every step in the policy-making process there are uncertainties that have implications for both the types and size of effects that the rule may have.

First, the ultimate effect of the rule will depend upon the policy preferences of individual program participants, including whether it is favorably predisposed toward fair housing

policies, the character of the local bureaucracy, and whether the limited incentives of the rule will affect the program participant's active engagement in its fair housing obligations. There is a multitude of perspectives that can drive resident and, by extension, jurisdictional preferences, which makes predicting jurisdictional preferences difficult.

A second issue is whether the information emerging from the proposed process will be new for the jurisdiction. In some, but not all cases, the information will be new and shed light on issues that had not previously been emphasized, but which could now be understood to be important. In these instances, program participants might highlight additional goals or supplant existing goals with goals that are more effective and pertinent for fair housing outcomes. Importantly, the new goals could be of primary or secondary significance from a strategic perspective and compared to other competing legitimate public policy concerns, which has implications for the policies that are ultimately considered.

Even with information about the general course of action a program participant will take, it remains difficult to predict the exact policy choices that the program participant will make. There are typically many policy options for addressing a particular concern, such as the availability of affordable housing or public transportation, and the proposed rule does not prescribe or enforce specific local or PHA policies. Instead, it allows for a flexible approach that is appropriate to local needs and housing market conditions and recognizes that available resources may represent a constraint. Which among the various policy options is selected by a program participant will depend fundamentally on the local context and the particular circumstances that prevail when the issues are considered.

Despite the uncertainty regarding the precise actions that program participants might settle upon, it is possible to characterize the actions that program participants are likely to pursue. These can be grouped into four general categories, each defined by what they seek to accomplish in the local jurisdiction or by the relevant PHA, as appropriate. These categories are modifying local regulations and codes, constructing new developments, creating new amenities, and facilitating the movement of people. Each category features a large set of policy alternatives. After identifying fair housing issues and their root causes, prioritizing among them, and concluding which activities would be best to pursue, program

participants will consider these alternatives and decide which, if any, should be included in subsequent plans and implemented. For each class of activities, the Regulatory Impact Analysis offers examples of how this process might play out for program participants.

Finally, in terms of quantifying the effects of the proposed rule, there is uncertainty about the potential impacts of whichever policy is selected by a program participant. For example, inclusionary zoning policies—one potential action that jurisdictions might take in this context—have been implemented by a number of communities across the country, often for the purpose of advancing fair housing goals. Research assessing these efforts is mixed, with some studies suggesting they increase prices and decrease housing stock in the long run, some studies showing they have no effect, and other studies indicating they increase the supply of multifamily housing units. For this example, as well as the other policies program participants might consider in the course of their AFFH planning process, the impact will depend on a complex interaction of a broad set of judgments and decisions by the jurisdiction, other jurisdictions, private and non-profit actors, and families, both in protected classes and not. These can differ across regions and families in ways that are impossible to predict in advance. Accordingly, impacts will be revealed in the months and years following policy implementation.

In brief, the proposed rule presents an improved process for carrying out the statutory AFFH mandate, resulting in the potential to improve the lives of people in protected classes who are denied fair housing choice by barriers to such choice. The best outcome of the rule would be for each jurisdiction to not only undertake meaningful fair housing planning, but also to have capacity and a well-considered strategy to implement actions to affirmatively further fair housing. However, the specific actions of a local government or PHA that would generate benefits for protected classes are not prescribed, obligated, or enforced by the proposed rule. Instead, the rule encourages a more engaged and data-driven approach to assessing the state of fair housing and planning actions to affirmatively further fair housing than before.

Considering the overall impact of the proposed rule, estimates suggest the proposed rule will have relatively limited additional paperwork and planning costs. Program participants already are required to engage in

outreach and collect data in order to satisfy existing obligations, and HUD is reducing significant data burdens. While some additional outreach costs are possible, they are expected to be relatively small. Thus, compliance costs of the proposed rule are expected to be comparable to those under the current regime.

In terms of quantifying the community impacts of the proposed rule, this analysis has highlighted the uncertainty that exists regarding how the new information generated through the new AFH process will translate into different actions by program participants. In terms of estimating impact, this suggests that the probability that any particular outcome occurs is exceedingly small. Moreover, the analysis has identified uncertainty with respect to how much specific actions will advance fair housing goals.

However, any different actions that are taken by program participants are likely to represent new local and PHA approaches to reducing segregation, eliminating racially concentrated areas of poverty, reducing disparities in access to community assets, and addressing disproportionate housing needs by protected class. HUD is confident that some of these new approaches will be more successful in achieving the goals of fair housing, meaning that communities will be more integrated, fewer people will live in neighborhoods with both high poverty rates and high racial concentrations, and there will be fewer and smaller disparities in access to quality education, job opportunities, and other community assets.

Environmental Impact

This proposed rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule proposes to strengthen the way in which HUD and its program participants meet the requirement under the Fair Housing Act to take affirmative steps to further fair housing. The preamble identifies the statutes and executive orders that address this requirement and that place responsibility directly on certain HUD program participants, specifically, local governments, states, and PHAs, underscoring that the use of federal funds must promote housing choice and open communities. Although local governments, states, and PHAs must affirmatively further fair housing independent of any regulatory requirement imposed by HUD, HUD recognizes its responsibility to provide leadership and direction in this area, while preserving local determination of fair housing needs and strategies.

This rule primarily focuses on establishing a regulatory framework by which program participants may more effectively meet their statutory obligation to affirmatively further fair housing. The statutory obligation to affirmatively further fair housing applies to all program participants, large and small. The statutory obligation requires program participants to develop strategies to affirmatively further fair housing as part of statutorily imposed plans that address the use of HUD funds and that must be submitted to HUD for review and approval. This rule builds on the statutory requirements to affirmatively further fair housing in conjunction with the development of consolidated plans for state and local governments, and PHA Plans for PHAs and, in doing so, provides for all program participants to comply with their statutory requirements in a cost-efficient, but also effective manner.

The current statutory requirement imposed on states, local governments, and PHAs requires the program participant to certify that it is affirmatively furthering fair housing. While that certification is a simple and brief document to submit to HUD, it nevertheless represents the attestation of the program participant that it will take steps to affirmatively further fair housing. While the certification is an important component of a program participant's statutory obligation to affirmatively further fair housing, even more important is the specific actions that the program participant plans to take to affirmatively further fair housing. Because the Fair Housing Act requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Fair Housing Act, it is important for

HUD to review the plans that will guide the activities jurisdictions will undertake so that the Secretary can be assured that HUD program participants are in fact affirmatively furthering fair housing. The rule, therefore, provides for program participants to submit an AFH to HUD.

The rule proposes to reduce the administrative burden on program participants in preparing and submitting an AFH to HUD as compared to the current AI process by HUD providing fair housing related data. HUD will provide program participants with local and regional data on access to community assets through categories such as education, employment, low-poverty exposure, and transportation, as well as patterns of integration and segregation, racial and ethnic concentrations of poverty, and disproportionate housing needs based on protected class, and data on national trends in housing discrimination. With this data, program participants can perform an in-depth evaluation for their area of patterns of integration and segregation, disparities in access to community assets by members of protected classes, racial and ethnic concentrations of poverty, and disproportionate housing needs based on protected class; identify the areas for improvement revealed by this data; and develop the tools, strategies, and priorities that program participants intend to deploy in these areas to respond to these patterns. HUD will also be available to provide technical assistance to program participants in the development of their AFHs. It is HUD's position that this provision of data by HUD and HUD's more active role in assisting program participants with an AFH will reduce burden for all program participants large and small, in meeting their statutory obligation to affirmatively further fair housing.

Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities.

Specific solicitation of comment. HUD, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Executive Order 12612, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by

statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

The proposed rule will assist program participants of HUD funds to satisfactorily fulfill the statutory AFFH obligation. As HUD has noted in the preceding section discussing the Regulatory Flexibility Act, and in the Background section of this preamble, the obligation to affirmatively further fair housing is imposed by statute directly on local governments, states, and PHAs. As the agency charged with administering the Fair Housing Act, HUD is responsible for overseeing that its programs are administered in a manner that further purposes and policies of the fair housing and entities receiving HUD funds fulfill their affirmatively furthering fair housing obligation.

The approach taken by HUD in this rule is to help local governments, states, and PHAs meet this obligation in a way that is meaningful, but without undue burden. As noted throughout this preamble, HUD proposes to provide local and regional data on patterns of integration and segregation and access to community assets in education, neighborhood stability, credit, employment, transportation, health, and other community amenities, as well as national trends in housing discrimination. This approach, in which HUD offers data, clear standards, guidance, and technical assistance, is anticipated to reduce burden and costs that is involved in current regulatory schemes governing affirmatively furthering fair housing. Since federal law requires states and local governments to affirmatively further fair housing, there is no preemption, by this rule, of state law.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

HUD anticipates that the impact of this rule on document preparation time

is reduced from the burden that it may otherwise be because the rule integrates the AFH with the consolidated and PHA planning processes. Additionally, states, local governments, and PHAs are required already to undertake an AI, prepare written AFFH plans, undertake activities to overcome identified barriers to fair housing choice, and maintain

records of the activities and their impact. The principal differences imposed by the proposed rule are that program participants would submit the plan to HUD for review and feedback, the contents of the plan would be more defined, HUD would provide data for further analysis, and there would be a more defined community participation

process. Because the fair housing planning process is tied to existing consolidated plan and PHA Plan processes, local governments, states, and PHAs would not have to establish wholly new procedures.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 5.154 (Assessment of Fair Housing) & § 5.158 (AFH Submission Requirements including Recordkeeping), including § 5.158 (Community participation and consultation); § 91.100 (ConPlan Consultation; local governments, requirements specific for AFH); § 91.105 (ConPlan Citizen participation plan, requirements specific for AFH); § 92.104 (HOME Program—Submission of the AFH); § 570.441 (CDBG—Inclusion of AFH in citizen participation plan for insular areas) and § 903.15 (PHA Plan—Options for meeting requirements to prepare AFH) [This reporting requirement consolidates the recipients and burden hours for the consolidated plan jurisdictions (1,150), and PHAs (3,400), and builds on the response time and burden hours specified for preparation and submission of the consolidated plan, and PHA Annual Plan, respectively.]	4,550	1	200.00	910,000.00
§ 5.156 (Regional AFHs) [This information collection requirement contemplates that perhaps a third of the 4071 PHAs will initially partner with jurisdictions to prepare a Regional AFH.]	1,542	1	100.00	154,200.00
§ 5.164 (Revising the AFH) [This information collection requirement contemplates that perhaps a quarter of all respondents may have to, at any given point, be required to revise the AFH.]	1,000	1	50.00	50,000.00
§ 91.215 (Local Government—Strategic plan, requirements specific for AFH)	1,000	1	270.00	270,000.00
§ 91.220 (Local Government—Action plan, requirements specific for AFH)	1,000	1	150.00	150,500.00
§ 91.315 (States—Strategic plan, requirements specific for AFH)	50	1	700.00	35,000.00
§ 91.320 (States—Action plan, requirements specific for AFH)	50	1	450.00	22,500.00
§ 91.415 (Consortia—Strategic plan, requirements specific for AFH)	150	1	200.00	30,000.00
§ 91.420 (Consortia—Action plan, requirements specific for AFH)	150	1	100	15,000.00
Total Burden				1,637,200.00

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the

information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR-5173) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947, and

Colette Pollard, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 2204, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Grant

programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend parts 5, 91, 92, 570, 574, 576,

and 903 of title 24 of the Code of Federal Regulations as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

■ 1. The authority citation for part 5, subpart A, is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437c–1(d), 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub.L. 109–115, 119 Stat. 2936; 42 U.S.C. 3600–3620; 42 U.S.C. 5304(b); 42 U.S.C. 12704–12708; E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

■ 2. Subpart A is amended to by adding §§ 5.150–5.180 under the undesignated heading of “Affirmatively Furthering Fair Housing” to read as follows:

* * * * *

Affirmatively Furthering Fair Housing

Sec.

5.150 Affirmatively Furthering Fair Housing; purpose.

5.152 Definitions.

5.154 Assessment of Fair Housing (AFH).

5.156 Regional assessments and fair housing planning.

5.158 Community participation, consultation, and coordination.

5.160 AFH submission requirements.

5.162 Review of AFH.

5.164 Revising the AFH.

5.166 Recordkeeping.

5.167–5.180 [Reserved]

Affirmatively Furthering Fair Housing

§ 5.150 Affirmatively Furthering Fair Housing; purpose.

The purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations in §§ 5.150–5.180 is to improve fair housing choice for all through fair housing planning, strategies, and actions. The regulatory framework does this by providing clearer standards, greater technical assistance from HUD, and a stronger accountability system governing fair housing planning, strategies, and actions. In furtherance of the statutory obligation to affirmatively further fair housing under the Fair Housing Act; Title VIII of the Civil Rights Act of 1968; as well as, as applicable, the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Housing Act of 1937, the regulations establish the specific requirements for the development and submission of an Assessment of Fair Housing (AFH) by program participants (including local governments, states, and public housing agencies (PHAs)), and the incorporation

of that AFH into subsequent consolidated plans and PHA Plans. In this way, the AFFH regulatory framework provides program participants a way to assess issues related to fair housing choice and identify fair housing goals that will inform housing and community development policy and investment planning. A program participant’s strategies and actions may include strategically enhancing neighborhood assets (e.g., through targeted investment in neighborhood revitalization or stabilization) or promoting greater mobility and access to areas offering vital assets such as quality schools, employment, and transportation, consistent with fair housing goals.

§ 5.152 Definitions.

For purposes of this subpart, the terms “*consolidated plan*”, “*consortium*”, “*unit of general local government*”, “*jurisdiction*”, and “*state*” are defined in 24 CFR part 91. The following additional definitions are provided for this subpart:

Affirmatively furthering fair housing means taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws. For participants subject to this subpart, these ends will be accomplished primarily by making investments with federal and other resources, instituting strategies, or taking other actions that address or mitigate fair housing issues identified in an assessment of fair housing (AFH) and promoting fair housing choice for all consistent with the policies of the Fair Housing Act.

Assessment of Fair Housing (assessment or AFH) means the document that is submitted to HUD pursuant to § 5.154 that includes fair housing data analysis, an assessment of fair housing issues and determinants, and an identification of fair housing priorities and general goals.

Assessment tool. See definition of “*Instructions*” below.

Community participation means a solicitation of views and recommendations from the public (including citizens, residents, and other interested parties), a consideration of

the views and recommendations received, and a process for incorporating such views in decisions and outcomes.

Consolidated plan program participant means any entity specified in § 5.154(b)(1).

Disproportionate housing needs exists when the percentage of extremely low-income, low-income, moderate-income, and middle-income families in a category of housing need who are members of a protected class is at least 10 percent higher than the percentage of persons in the category as a whole. For this purpose, categories of housing need are cost burden and severe cost burden, overcrowding (especially for large families) and substandard housing conditions. The terms cost burden, severe cost burden, overcrowding, extremely low-income family, low-income family, moderate-income family, and middle-income family are defined in 24 CFR 91.5.

Fair housing choice means that individuals and families have the information, options, and protection to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or handicap. It encompasses actual choice, which means the existence of realistic housing options; protected choice, which means housing that can be accessed without discrimination; and enabled choice, which means the availability and realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice includes access to accessible housing, and, for disabled persons in institutional or other residential environments, housing in the most integrated setting appropriate as required under law, including disability-related services that an individual needs to live in such housing.

Fair housing determinant means a factor that creates, contributes to, or perpetuates one or more fair housing issues.

Fair housing enforcement and fair housing outreach capacity means the ability of a jurisdiction, and organizations located in the jurisdiction, to accept complaints of violations of fair housing laws, investigate such complaints, obtain remedies, engage in fair housing testing, and educate community members about fair housing laws and rights and includes any state or local agency that enforces a law substantially equivalent to the Fair Housing Act (see 24 CFR part 115) and any organization participating in the

Fair Housing Initiative Programs (see 24 CFR part 125).

Fair housing issue means ongoing local or regional segregation or the need to support integrated communities; racial or ethnic concentrations of poverty; disparities in access to community assets; disproportionate housing needs based on race, color, religion, sex, familial status, national origin, or handicap; and evidence of illegal discrimination or violations of existing civil rights law, regulations, or guidance, as well as any other condition that impedes or fails to advance fair housing choice.

Instructions and assessment tool refer to guidance that HUD will issue to program participants providing directions on how to use the data to be provided and the assessment to be conducted pursuant to § 5.154, and such guidance will be updated periodically as may be necessary.

Insular area means any of the following: Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Integration means, based on the most recent decennial Census and other data sources as determined by HUD to be statistically valid, that particular geographic areas within a jurisdiction do not contain high concentrations of persons of a particular race, color, religion, sex, familial status, national origin, or handicap when compared to the jurisdiction or Metropolitan Statistical Area as a whole. For individuals with disabilities, integration also means that such individuals are housed in the most integrated setting appropriate. The most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR, part 35, App. A (2010) (addressing 25 CFR 35.130).

Program participants means any entities specified in § 5.154(b).

Protected class means a class of persons who are protected from housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or handicap under the Fair Housing Act.

Racially or ethnically concentrated area of poverty (RCAP or ECAP) means a geographic area based on the most recent decennial Census and other data sources as they are determined by HUD to be statistically valid, with significant concentrations of extreme poverty and minority populations.

Regionally collaborating program participants means those program participants collaborating to conduct a Regional AFH pursuant to § 5.156.

Segregation means geographic areas, based on the most recent decennial Census and other data sources determined by HUD to be statistically valid, with high concentrations of persons of a particular race, color, religion, sex, familial status, national origin, or with a disability in a particular housing development, or a jurisdiction, compared to the jurisdiction or Metropolitan Statistical Area, as a whole resulting from fair housing determinants or other causes. For persons with disabilities, segregation includes the failure to provide housing in the most integrated setting possible.

Significant disparities in access to community assets means measurable differences in access to educational, transportation, economic, and other important assets in a community based on housing unit location and race, color, religion, sex, familial status, national origin, or disability, based on the most recent decennial Census and other data sources determined by HUD to be statistically valid, program participant-provided supplemental or replacement data that has an empirical basis, or both.

§ 5.154 Assessment of Fair Housing (AFH).

(a) *General.* To effectively meet the statutory obligation to affirmatively further fair housing, an assessment of the elements and factors that cause or maintain disparity, segregation, and racially or ethnically concentrated areas of poverty is central to the development of a successful affirmatively furthering fair housing strategy (AFFH strategy). For HUD program participants already required to develop plans for effective uses of HUD funds consistent with the statutory requirements and goals governing such funds, an AFH will be integrated into such planning.

(b) *Requirement to submit AFH.* In furtherance of the statutory obligation to affirmatively further fair housing, an AFH must be developed and submitted in a manner and form prescribed by HUD by the following entities:

(1) Jurisdictions and Insular Areas that are required to submit consolidated plans for the following programs:

(i) The Community Development Block Grant (CDBG) programs (see 24 CFR part 570, subparts D and I);

(ii) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(iii) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(iv) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(2) Public housing agencies (PHAs) receiving assistance under sections 8 and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f and 42 U.S.C. 1437g).

(3) Such other participants in HUD programs that may be subject to the AFFH regulations after [effective date of final rule] and announced by HUD through **Federal Register** notice.

(c) *Fair housing data provided by HUD.* HUD will provide program participants with nationally uniform local and regional data on patterns of integration and segregation; racially and ethnically concentrated areas of poverty; access to assets in education, employment, low-poverty, transportation, and environmental health, among others; disproportionate housing needs; data on individuals with disabilities and families with children; and data on discrimination. HUD will also provide PHA site locational data (including, to the extent available, accessible units), the distribution of housing choice vouchers, and occupancy data. Program participants shall use this information, in addition to any available local or regional information and information gained through community participation and consultation undertaken in accordance with § 5.158 to conduct an AFH.

(d) *Content.* In accordance with instructions prescribed by HUD, each program participant shall conduct an AFH for the purpose of identifying goals to affirmatively further fair housing and to inform fair housing strategies in the consolidated plan, the PHA Plan, other public housing related program plans such as Capital Fund Plans, community plans including, but not limited to, education, transportation, or environmental related plans. The AFH will address integration and segregation, concentrations of poverty, disparities in access to community assets, and disproportionate housing needs based on race, color, religion, sex, familial status, national origin, or handicap. In addition, the AFH will assess the jurisdiction's fair housing enforcement and fair housing outreach capacity. At a minimum, the AFH will include the following elements:

(1) *Summary of fair housing issues and capacity to address.* The AFH must include a summary of fair housing issues in the jurisdiction, including any findings or judgments related to fair housing or other civil rights laws and assessment of compliance with existing fair housing laws, regulations, and guidance, and an assessment of the

jurisdiction's fair housing enforcement and fair housing outreach capacity.

(2) *Analysis of data.* Based upon HUD-provided fair housing data, available local or regional data, and community input, the analysis will:

(i) Identify integration and segregation patterns and trends across protected classes within the jurisdiction and region;

(ii) Identify racially or ethnically concentrated areas of poverty within the jurisdiction and region;

(iii) Identify whether significant disparities in access to community assets exist across protected classes within the jurisdiction and region; and

(iv) Identify whether disproportionate housing needs exist across protected classes within the jurisdiction and region.

(3) *Assessment of determinants of fair housing issues.* Using an assessment tool provided by HUD, the assessment will identify the primary determinants influencing conditions of integration and segregation, concentrations of poverty, disparities in access to community assets, and disproportionate housing needs based on protected class as identified under paragraph (d)(2) of this section.

(4) *Identification of fair housing priorities and general goals.* Consistent with the analysis and assessment conducted under paragraphs (d)(2) and (3) of this section, the AFH must:

(i) Identify and prioritize fair housing issues arising from the assessment and justify the chosen prioritization; and

(ii) Identify the most significant fair housing determinants related to these priority issues and set and prioritize one or more goal(s) for mitigating or addressing the determinants. The strategies or funding decisions subject to the consolidated plan, PHA Plan, or other relevant planning processes are not required to be detailed in an AFH.

(5) *Summary of community participation.* The AFH must include a concise summary of the community participation process, public comments, and efforts made to broaden community participation in the development of the assessment. A summary of the comments or views received in writing, or orally at public hearings, in preparing the final AFH, and a summary of any comments or views not accepted and the reasons why, must be attached to the final AFH.

(e) *Specific types of program participants—(1) PHAs.* If a PHA participating with the relevant consolidated plan program participant, pursuant to 24 CFR 903.15(a)(1), disagrees with any aspect of the AFH, including, but not limited to,

assessments, strategies, or priorities, the PHA may submit to HUD and the unit of general local government a dissenting statement or submission of alternative views by the PHA's governing board or commission. The dissents and alternative views will become part of the AFH and will have the same deadline and review process as the AFH. In the case that all of the differentiated sections of the AFH are acceptable, the PHA and the consolidated plan program participant will be considered to have accepted the AFH. If a subset of the differentiated sections is not accepted, then the AFH for the PHA or the consolidated plan program participant associated with those sections will be considered not to be accepted. The determination of whether the AFH is accepted for the consolidated plan program participant, for the PHA or for both, is a determination to be made by HUD.

(2) *HOME program consortia.* This paragraph (e)(2) applies to HOME program consortia, as defined in 24 CFR 91.5 (see 24 CFR part 92). For purposes of the AFFH regulations, a HOME consortium is considered to be a single unit of general local government.

(i) *Home and CDBG consortia.* Units of local government that participate in a HOME consortium must participate in submission of an AFH for the consortium, prepared in accordance with this section. CDBG entitlement communities that are members of a consortium must provide such additional information as necessary for the consortium's AFH.

(ii) *Community participation.* The consortium must have a plan for community participation that complies with the requirements of this subpart. If the consortium contains one or more CDBG entitlement communities, the consortium must provide for community participation within each CDBG entitlement community, either by the consortium or by the CDBG entitlement community, in a manner sufficient for the CDBG entitlement community to certify that it is following a citizen participation plan.

(3) *Insular Areas.* (i) An insular area must follow the AFH consultation, content, and submission requirements described in this subpart.

(ii) *Community participation.* An insular area shall comply with the citizen participation requirements described in 24 CFR 570.441 if it submits an abbreviated consolidated plan under 24 CFR 91.235. The insular area shall follow the citizen participation requirements of 24 CFR 91.105 and 91.100 (with the exception

of § 91.100(a)(4)), if it submits a complete consolidated plan.

(4) *District of Columbia*. The District of Columbia must follow the requirements applicable to units of general local government described in this subpart.

§ 5.156 Regional assessments and fair housing planning.

(a) *General*. Two or more program participants (regionally collaborating program participants) may, and are encouraged to, collaborate to conduct and submit a single regional AFH to evaluate fair housing issues and determinants from a regional perspective (Regional AFH). The Regional AFH must be prepared in accordance with this subpart. Regionally collaborating program participants need not be contiguous and may cross state boundaries. Regionally collaborating program participants must designate one member as the lead entity to oversee the development and submission of the assessment.

(b) *Coordinating program years and submission deadlines*. To the extent practicable, all regionally collaborating program participants must be on the same program year and fiscal year (as applicable) before submission of the Regional AFH. (See § 5.160; 24 CFR 91.15; and 24 CFR 903.5.) The applicable procedures for changing consolidated plan program participant program year start dates, if necessary, are described in 24 CFR 91.15. The applicable procedures for changing PHA fiscal year beginning dates, if necessary, are described in 24 CFR part 903. If program year and/or fiscal year alignment is not practicable, the submission deadline for a Regional AFH must be based on the designated lead entity's program year start date, or fiscal year beginning date (as applicable). Within 18 months after the date of AFH acceptance, each regionally collaborating program participant that has a program year start date, or fiscal year beginning date, earlier than the designated lead entity must make appropriate revisions or amendments to its consolidated plan, or PHA Plan, to incorporate strategies and proposed actions consistent with the fair housing goals, issues, and other elements identified in the Regional AFH.

(c) *Community participation*. The regionally collaborating program participants must have a plan for community participation that complies with the requirements of this subpart. The community participation process must include citizens, residents, and other interested parties of all regionally collaborating program participants, not

just those of the lead entity, and be conducted in a manner sufficient for each collaborating consolidated plan program participant to certify that it is following its applicable citizen participation plan and each collaborating PHA to satisfy the notice and comment requirements in 24 CFR part 903. To the extent that public notice and comment periods differ, the longer period shall apply. A significant revision required of any regionally collaborating program participant will trigger a requirement to revise the Regional AFH.

(d) *Content of the Regional Assessment*. The Regional AFH must include the elements required under § 5.154(d). A Regional AFH does not relieve each regionally collaborating program participant from its obligation to analyze and address local fair housing issues and determinants that affect housing choice within its respective jurisdiction.

§ 5.158 Community participation, consultation, and coordination.

(a) *General*. To ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other planning documents as may be applicable. At a minimum, whether preparing an AFH singly or in combination with other program participants, AFH community participation must include the following for consolidated plan program participants and PHAs (as applicable):

(1) *Consolidated plan program participants*. The consolidated plan program participant must follow the policies and procedures described in its applicable citizen participation plan adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401) in the process of developing the AFH, obtaining community feedback, and addressing complaints. The jurisdiction must consult with the agencies and organizations identified in consultation requirements at 24 CFR part 91 (see 24 CFR 91.100, 91.110, 91.235, and 91.401).

(2) *PHAs*. PHAs must follow the policies and procedures described in 24 CFR 903.7 and 903.19 in the process of developing the AFH, obtaining community feedback, and addressing complaints.

(b) *Coordination*. A PHA may participate directly with a consolidated plan program participant, prepare its own AFH, or adopt the state's AFH (see 24 CFR 903.15(a)). If the PHA and

consolidated plan program participant prepare a single AFH, the program participants will work closely together to provide a forum for consideration of mutual issues affecting fair housing choice and exchange information as necessary to achieve coordination of AFH priorities and goals. The PHA and the consolidated plan program participant must actively participate in AFH community participation consistent with paragraph (a) of this section, and such participation will be in a cohesive manner. The PHA and consolidated plan program participant will exchange information pertaining to housing and community development programs within their respective responsibilities as necessary to assist in developing the AFH.

§ 5.160 AFH submission requirements.

(a) *General*. (1) In order to ensure that fair housing considerations fully inform the consolidated planning and PHA Plan processes and provide accountability to the community, each program participant (including PHAs that choose to prepare their own AFH pursuant to 24 CFR 903.15) shall submit an initial AFH to HUD at least 270 calendar days before the start of the program participant's program year, except that newly eligible jurisdictions under the HOME program shall submit an initial assessment as provided in 24 CFR 92.104.

(2) After acceptance of its initial AFH, each program participant (including PHAs that choose to prepare their own AFH) shall submit subsequent AFHs to HUD at least 195 calendar days before the start of the jurisdiction's program year.

(3) Program participants that participate in a Regional AFH shall submit initial and subsequent assessments as provided in § 5.156(d).

(b) *Late submission*. An accepted AFH, or portion thereof, is a precondition for approval of a consolidated plan (see 24 CFR part 91) and of a PHA Plan (see 24 CFR part 903). If a consolidated plan program participant fails to submit an AFH in a timely manner, HUD may establish a date after AFH acceptance for the jurisdiction to submit its consolidated plan, but in no event past the August 16 deadline provided in 24 CFR 91.15. Failure to submit a consolidated plan by August 16 of the federal fiscal year for which funds are appropriated will automatically result in the loss of the CDBG funds to which the jurisdiction would otherwise be entitled. If a PHA preparing its own AFH fails to submit the AFH in a timely manner, the PHA must submit its AFH no later than 75

calendar days before the commencement of the PHA's fiscal year to avoid any impact on their funding.

(c) *Frequency of submission.* Each consolidated plan program participant must submit an AFH at least once every 5 years, or as such time agreed upon by HUD and the program participant in order to coordinate the AFH submission with time frames used for consolidated plans, cooperation agreements, or other plans. (See 24 CFR 91.15(b)(2).) PHAs participating with their consolidated plan program participants in the AFH process will incorporate the resulting AFH into its PHA Plan every 5 years, and PHAs choosing to undertake their own AFH will further have to update their AFH annually. (See 24 CFR 903.15(b), (c)).

(d) *Coordination of program years and PHA fiscal years.* A consolidated plan program participant or PHA may request to change its program year start date, or fiscal year beginning date, to better coordinate the submission of the AFH, consolidated plan and PHA Plan. For consolidated plan program participants, procedures for changing program years are described in 24 CFR part 91. For PHAs, procedures for changing both program and fiscal years are described in 24 CFR part 903.

§ 5.162 Review of AFH.

(a) *General.* (1) HUD's review of an AFH is to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting as set forth in § 5.154(d). The AFH will be deemed accepted 60 calendar days after the date that HUD receives the AFH, unless before that date HUD has provided notification that HUD does not accept the AFH. In its notification, HUD must inform the program participant in writing of the reasons why HUD has not accepted the AFH and the actions that the jurisdiction may take to address these reasons.

(2) HUD's acceptance of an AFH means only that, for purposes of administering HUD program funding, HUD has determined that the program participant has provided the required elements of an AFH as set forth in § 5.154(d). HUD's acceptance does not mean that HUD has determined that a jurisdiction has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Act; or has complied with other civil rights laws, regulations or guidance.

(b) *Standard of review.* HUD may choose not to accept an AFH, or a portion of the assessment, if it is inconsistent with fair housing or civil

rights laws or if the assessment is substantially incomplete. The following are examples of assessments of fair housing that are substantially incomplete:

(1) An assessment that was developed without the required community participation or the required consultation;

(2) An assessment that fails to satisfy required elements in this part. Failure to include a required element includes an assessment whose priorities or goals are materially inconsistent with the data and other evidence available to the jurisdiction.

(c) *Revisions and resubmission.* The program participant may revise and resubmit the AFH to HUD within 45 calendar days after the date on which HUD provides written notification that it does not accept the AFH. The revised AFH will be deemed accepted after 30 calendar days of the date by which HUD receives the revised AFH, unless before the date HUD has provided notification that HUD does not accept the revised AFH.

§ 5.164 Revising the AFH.

(a) *General*—(1) *Minimum criteria for revising the AFH.* The AFH must be revised under the following circumstances:

(i) Whenever a significant material change in circumstances occurs that calls into question the continued validity of the AFH, such as the program participant is in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) that is significant, significant demographic changes, significant policy changes (such as significant changes related to zoning, housing plans or policies, or development plans or policies), or significant civil rights findings, determinations, Voluntary Compliance Agreements, or other settlements; or

(ii) Upon HUD's written notification specifying a significant material change that requires the revision.

(2) *Criteria for revising the AFH.* The consolidated plan program participant citizen participation plan adopted pursuant to 24 CFR part 91, PHA Resident Advisory Board requirements pursuant to 24 CFR 903.13, the PHA public comment process pursuant to 24 CFR 903.17, and the PHA amendment or modification process pursuant to 24 CFR 903.21 must specify the criteria that will be used for determining which significant material changes will require revisions to the AFH. Such criteria must include, at a minimum, the

circumstances described in paragraph (a)(1) of this section.

(b) *Community participation.* Revisions to an AFH are subject to community participation. The jurisdiction must follow the notice and comment process applicable to consolidated plan substantial amendments under the jurisdiction's citizen participation plan adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401). A consortium must follow the participation process applicable to consolidated plan substantial amendments under the consortium's citizen participation plan adopted pursuant to 24 CFR 91.401. Insular areas submitting an abbreviated consolidated plan shall follow the citizen participation requirements of § 570.441. The PHA must follow the notice and comment process applicable to significant amendments or modifications pursuant to 24 CFR 903.13, 903.15, 903.17, and 903.21.

(c) *Submission to HUD.* Upon completion, the revision must be made public and submitted to HUD either at the time of the revision or at the time a consolidated plan substantial amendment must be submitted to HUD pursuant to 24 CFR 91.505(c) or, for PHAs preparing their own AFH pursuant to 24 CFR 903.15(a)(2), at the time a PHA Plan substantial amendment must be submitted to HUD pursuant to 24 CFR 903.23. Letters transmitting copies of revisions must be signed by the official representative of the jurisdiction authorized to take such action. A review by HUD of a revised AFH pursuant will be in accordance with the process provided under § 5.162.

(d) *PHAs.* Upon any revision to the AFH pursuant to this subpart, PHAs must revise their PHA Plan within 18 months pursuant to 24 CFR 903.15(e).

§ 5.166 Recordkeeping.

(a) *General.* Each program participant must establish and maintain sufficient records to enable HUD to determine whether the program participant has met the requirements of this subpart. A PHA not preparing its own AFH in accordance with 24 CFR 903.15(a)(2) must maintain a copy of the applicable AFH and records reflecting actions to affirmatively further fair housing as described in 24 CFR 903.7(o). All program participants shall make these records available for HUD inspection. At a minimum, the following records are needed for each consolidated plan program participant and each PHA that prepares its own AFH:

(1) Information and records relating to the program participant's AFH and any significant revisions to the AFH, including, but not limited to, statistical data, studies, and other diagnostic tools used by the jurisdiction, any policies, procedures, or other documents incorporated by reference into the AFH, and significant material changes that led to a significant revision of the AFH pursuant to § 5.164;

(2) Records demonstrating compliance with the consultation and community participation requirements of this subpart and applicable program regulations, including the names of organizations involved in the development of the AFH, summaries or transcripts of public meeting or hearings, public notices, and other correspondence, distribution lists, surveys, or interviews (as applicable);

(3) Records demonstrating the actions the program participant has taken to affirmatively further fair housing, including activities carried out in furtherance of the assessment; the program participant's AFFH strategy set forth in its AFH, consolidated plan, or PHA Plan; and the actions the program participant has carried out to promote or support the goals identified in § 5.154 during the preceding 5 years;

(4) Where courts or the United States Government have found that the program participant has violated any applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) of this subtitle or any applicable civil rights-related program requirement, documentation related to the underlying judicial or administrative finding and affirmative measures that the program participant has taken in response.

(5) Documentation relating to the program participant's efforts to ensure that housing and community development activities (including those assisted under programs administered by HUD) are in compliance with applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) of this subtitle and applicable civil rights related program requirements;

(6) Records demonstrating that consortium members, units of general local government receiving allocations from a state, or units of general local government participating in an urban county have conducted their own or contributed to the jurisdiction's assessment (as applicable) and documents demonstrating their actions to affirmatively further fair housing; and

(7) Any other evidence relied upon by the program participant to support its

affirmatively furthering fair housing certification.

(b) *Retention period.* All records must be retained for such period as may be specified in the applicable program regulations.

[§§ 5.167–5.180—Reserved]

PART 91—CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 4. In § 91.5, the introductory text is revised to read as follows:

§ 91.5 Definitions.

The terms *Affirmatively Furthering Fair Housing*, *Assessment of Fair Housing* or *AFH*, *elderly person*, and *HUD* are defined in 24 CFR part 5.

* * * * *

■ 5. In § 91.100, paragraphs (a)(1), (a)(5), and (c) are revised and paragraph (e) is added to read as follows:

§ 91.100 Consultation; local governments.

(a) *General.* (1) When preparing the AFH and the consolidated plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons), community- and regionally based organizations that represent protected class members, and organizations that enforce fair housing laws.

* * * * *

(5) The jurisdiction also shall consult with adjacent units of general local government, including local government agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

* * * * *

(c) *Public housing.* The jurisdiction shall consult with local public housing agencies (PHAs) operating in the jurisdiction regarding consideration of public housing needs, planned programs and activities, the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing in the consolidated plan. (See also 24 CFR 5.158 for coordination when preparing an AFH jointly with a PHA.) This

consultation will help provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the local government's description of its strategy for affirmatively furthering fair housing and the manner in which it will address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to a troubled PHA to improve the PHAs operations and remove the designation of troubled, as well as obtaining PHA input on addressing fair housing issues in public housing and the Housing Choice Voucher Programs. It will also help ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the local jurisdiction should work with or consult with the PHA, as appropriate, to identify actions it may take, if any, to assist the PHA in implementing the required remedies. A local jurisdiction may use CDBG funds for eligible activities or other funds to implement remedies required under a Voluntary Compliance Agreement.

* * * * *

(e) *Affirmatively furthering fair housing.* The jurisdiction shall consult with community and regionally based organizations that represent protected class members, and organizations that enforce fair housing laws, such as State or local fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP), fair housing organizations, and other nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent that such entities operate within its jurisdiction. This consultation will help provide a better basis for the jurisdiction's AFH, its certification to affirmatively further fair housing and other portions of the consolidated plan concerning affirmatively furthering fair housing. This consultation must occur with any organizations that have the capacity to engage with data informing the AFH and be sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH,

the consolidated plan, and their implementation. A Fair Housing Advisory Council, or similar group, that includes community members and advocates, fair housing experts, housing and community development industry participants, and other key stakeholders is an acceptable method, among others, to meet this consultation requirement. Consultation must occur throughout the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (e) in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.

■ 6. In § 91.105, paragraphs (a)(1) and (a)(2)(i) through (iii) are revised, paragraph (a)(4) is added, and paragraphs (b), (c), (e)(1), (f), (g), (h), (i), (j) and (l) are revised to read as follows:

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan.* (1) The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation. (Where a jurisdiction, before [effective date of the final rule], adopted a citizen participation plan but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by [date to be determined]).

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens, residents, and other interested parties to participate in the development of the AFH, any significant revisions to the AFH, the consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction must take appropriate actions to encourage the participation of all its citizens, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, the Continuum of Care and

other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) in the process of developing and implementing the AFH and the consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations) in the process of developing and implementing the AFH and the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the public housing agency (PHA) about the AFH, AFFH strategy, and consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Planning process.

* * * * *

(4) The citizen participation plan shall describe the jurisdiction's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to citizen participation by non-English-speaking persons.

(b) *Development of the AFH and the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the AFH and the consolidated plan.

(1)(i) The citizen participation plan must require that, as soon as practical after HUD makes AFH-related data available to the jurisdiction pursuant to 24 CFR 5.154, the jurisdiction will make such information and any other supplemental information the jurisdiction plans to incorporate into its AFH available to the public, public agencies, and other interested parties.

(ii) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive

(including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.

(iii) The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed AFH and the proposed consolidated plan in a manner that affords citizens, public agencies, and other interested parties a reasonable opportunity to examine its contents and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed AFH and the proposed consolidated plan and give reasonable opportunity to examine each document's contents. The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available at libraries, government offices, and public places. The summary must describe the contents and purpose of the AFH and/or the consolidated plan (as applicable), and must include a list of the locations where copies of the entire proposed document may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan and/or the assessment (as applicable) to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing during the development of the AFH and/or the consolidated plan (as applicable). See paragraph (e) of this section for public hearing requirements, generally.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens on the consolidated plan and/or the AFH (as applicable).

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at the public hearings, in preparing the final AFH and/or the final consolidated plan (as applicable). A summary of these comments or views, and a summary of

any comments or views not accepted and the reasons why, shall be attached to the final AFH and/or the final consolidated plan (as applicable).

(c) *Consolidated plan amendments and AFH revisions.* (1)(i) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the use of CDBG funds from one eligible activity to another.

(ii) *Criteria for revision to the AFH.* The jurisdiction must specify the criteria the jurisdiction will use for determining when significant revisions to the AFH will be appropriate. (At a minimum, the specified criteria must include the situations described in 24 CFR 5.164.)

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan and significant revisions to the AFH. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment or significant revision before the amendment or revision is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan or significant revision to the AFH (as applicable). A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan or significant revision to the AFH (as applicable).

(e) *Public hearings.* (1)(i) *Consolidated plan.* The citizen participation plan must provide for at least two public hearings per year to obtain citizens' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH, and review of program performance.

(ii) To obtain the views of citizens on housing and community development needs, including priority nonhousing community development needs and affirmatively furthering fair housing, the citizen participation plan must provide that at least one of these hearings is held before the proposed consolidated plan is published for comment.

(iii) *Assessment of Fair Housing.* To obtain the views of the community on AFH-related data and affirmatively furthering fair housing in the jurisdiction's housing and community development programs, the citizen participation plan must provide that at least one public hearing is held before the proposed AFH is published for comment.

(f) *Meetings.* The citizen participation plan must provide citizens with reasonable and timely access to local meetings, consistent with accessibility requirements.

(g) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, the HUD-accepted AFH, significant revisions, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(h) *Access to records.* The citizen participation plan must require the jurisdiction to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's AFH, consolidated plan, and use of assistance under the programs covered by this part during the preceding five years.

(i) *Technical assistance.* The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in commenting on the AFH and in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) *Complaints.* The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, the AFH, revisions, and performance reports. At a minimum, the citizen

participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).

(l) *Jurisdiction responsibility.* The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its consolidated plan or AFH.

■ 7. In § 91.110, paragraph (a) is revised to read as follows:

§ 91.110 Consultation; States.

(a) When preparing the AFH and the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any state housing agency administering public housing), health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons), state- and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws during preparation of the consolidated plan. With respect to public housing:

(1) The State shall consult with any state housing agency administering public housing (PHA) concerning consideration of public housing needs, planned programs and activities, the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing. This consultation will help provide a better basis for the certification by the authorized state official that the PHA Plan is consistent with the consolidated plan and the State's description of its strategy for affirmatively furthering fair housing, and the manner in which it will address the needs of public housing and, where applicable, the manner in which it will provide financial or other assistance to a troubled PHA to improve its operations and remove such designation, as well obtaining PHA input on addressing fair housing issues in public housing and the Housing Choice Voucher programs. It will also help ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program and those funded under a program covered by the consolidated

plan, are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the State should consult with the PHA and identify actions it may take, if any, to assist the PHA in implementing the required remedies.

(2) The State shall consult with state- and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws, such as state fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within the State. This consultation will help provide a better basis for the State's AFH, its certification to affirmatively further fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing. This consultation must occur with any organizations that have the capacity to engage with data informing the AFH and be sufficiently independent and representative to provide meaningful feedback on the AFH, the consolidated plan, and their implementation. A Fair Housing Advisory Council or similar group that includes community members and advocates, fair housing experts, housing and community development industry participants, and other key stakeholders is an acceptable method, among others, to meet this consultation requirement. Consultation must occur throughout the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (a)(2) in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.

* * * * *

■ 8. In § 91.115, paragraphs (a)(1) and (2) are revised, paragraph (a)(4) is added, and paragraphs (b), (c), (f), (g), and (h) are revised to read as follows:

§ 91.115 Citizen participation plan; States.

(a) * * *

(1) The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation. (Where a State,

before [effective date of final rule], adopted a citizen participation plan but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by [date to be determined].

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens, residents, and other interested parties to participate in the development of the AFH, any significant revisions to the AFH, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods. A State must take appropriate actions to encourage the participation of all its citizens, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities.

(ii) The State shall encourage the participation of statewide and regional institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan in the process of developing and implementing the AFH and the consolidated plan.

(iii) The State should also explore alternative public involvement techniques that encourage a shared vision of change for the community and the review of program performance, e.g., use of focus groups, and use of Internet.

* * * * *

(4) The citizen participation plan shall describe the State's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require the State to make reasonable efforts to provide language assistance to ensure meaningful access to citizen participation by non-English speaking persons.

(b) *Development of the AFH and the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the AFH and consolidated plan.

(1)(i) The citizen participation plan must require that, as soon as practical

after HUD makes AFH-related data available to the State pursuant to 24 CFR 5.154, the State will make such information and any other supplemental information the State intends to incorporate into its AFH available to the public, public agencies, and other interested parties.

(ii) The citizen participation plan must require that, before the State adopts an AFH or consolidated plan, the State will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed AFH and the proposed consolidated plan in a manner that affords citizens, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine the document's contents and to submit comments. The citizen participation plan must set forth how the State will publish the proposed AFH and the proposed consolidated plan and give reasonable opportunity to examine each document's contents. The requirement for publishing may be met by publishing a summary of the proposed AFH and/or the proposed consolidated plan (as applicable) in one or more newspapers of general circulation, and by making copies of the proposed document(s) available at libraries, government offices, and public places. The summary must describe the contents and purpose of the AFH and/or the consolidated plan (as applicable), and must include a list of the locations where copies of the entire proposed document(s) may be examined. In addition, the State must provide a reasonable number of free copies of the plan and/or the assessment (as applicable) to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs and proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH before the proposed consolidated plan is published for comment. To obtain the public's views on AFH-related data and affirmatively furthering fair housing in the State's housing and community development

programs, the citizen participation plan must provide that at least one public hearing is held before the proposed AFH is published for comment.

(i) The citizen participation plan must state how and when adequate advance notice will be given to citizens of the hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(ii) The citizen participation plan must provide that the hearing be held at a time and accessible location convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(iii) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens and units of general local government on the consolidated plan and/or the AFH (as applicable).

(5) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general received in writing, or orally at the public hearings, in preparing the final AFH and the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final AFH and/or the final consolidated plan (as applicable).

(c) *Amendments.* (1)(i) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the State will use for determining what changes in the State's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the method of distribution of such funds.

(ii) *Criteria for revision to the AFH.* The State must specify the criteria it will use for determining when significant revisions to the AFH will be appropriate. (At a minimum, the specified criteria must include the situations described in 24 CFR 5.164.)

(2) The citizen participation plan must provide citizens and units of

general local government with reasonable notice and an opportunity to comment on substantial amendments and significant revisions to the AFH. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment or significant revision before the amendment or revision is implemented.

(3) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general local government received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan or significant revision to the AFH (as applicable). A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan or significant revision to the AFH (as applicable).

(f) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, the HUD-accepted AFH, significant revisions, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(g) *Access to records.* The citizen participation plan must require the State to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the State's AFH, consolidated plan and use of assistance under the programs covered by this part during the preceding five years.

(h) *Complaints.* The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, the AFH, significant revisions and performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient).

* * * * *

■ 9. In § 91.215, paragraph (a)(5) is added to read as follows:

§ 91.215 Strategic plan.

(a) * * *
(5)(i) Describe how the priorities and specific objectives of the jurisdiction under § 91.215(a)(4) will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.154.

(ii) For issues not addressed by these priorities and objectives, identify additional objectives and priorities for affirmatively furthering fair housing.

* * * * *

■ 10. In § 91.220, paragraph (k) is revised to read as follows:

§ 91.220 Action plan.

* * * * *

(k)(1) *Affirmatively furthering fair housing.* Actions it plans to take during the next year that address fair housing issues identified in the AFH.

(2) *Other actions.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies (see § 91.215(a), (b), (i), (j), (k), and (l)).

* * * * *

■ 11. In § 91.225, paragraph (a)(1) is revised to read as follows:

§ 91.225 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 12. Section 91.230 is revised to read as follows:

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the AFH, and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority

business outreach and the comprehensive planning requirements.
 ■ 13. In § 91.235, paragraphs (c)(1) and paragraph (4) are revised to read as follows:

§ 91.235 Special case; abbreviated consolidated plan.

* * * * *

(c) *What is an abbreviated plan?*—(1) Assessment of needs, resources, planned activities. An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD. The plan must describe how the jurisdiction will affirmatively further fair housing by addressing issues identified in an AFH conducted in accordance with 24 CFR 5.154.

* * * * *

(4) *Submissions, Certifications, Amendments, and Performance Reports.* An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of 24 CFR 570.440. This includes certification that the grantee will affirmatively further fair housing, which means it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 14. In § 91.315, paragraph (a)(5) is added to read as follows:

§ 91.315 Strategic plan.

(a) * * *

(5)(i) Describe how the priorities and specific objectives of the State under § 91.315(a)(4) will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.154.

(ii) For issues not addressed by these priorities and objectives, identify additional objectives and priorities for affirmatively furthering fair housing.

* * * * *

■ 15. In § 91.320, paragraph (j) is revised to read as follows:

§ 91.320 Action plan.

* * * * *

(j)(i) *Affirmatively furthering fair housing.* Actions it plans to take during the next year that address fair housing issues identified in the AFH.

(ii) *Other actions.* Actions it plans to take during the next year to implement its strategic plan and address obstacles to meeting underserved needs, foster and maintain affordable housing (including the coordination of Low-Income Housing Tax Credits with the development of affordable housing), evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, enhance coordination between public and private housing and social service agencies, address the needs of public housing (including providing financial or other assistance to troubled public housing agencies), and encourage public housing residents to become more involved in management and participate in homeownership.

* * * * *

■ 16. In § 91.325, paragraph (a)(1) is revised to read as follows:

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 17. Section 91.415 is revised to read as follows:

§ 91.415 Strategic plan.

Strategies and priority needs must be described in the consolidated plan in accordance with the provisions of § 91.215 for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members of the consortium. The consortium must set forth its priorities for allocating housing (including CDBG and ESG, where applicable) resources geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.154, describing the reasons for the consortium's allocation priorities, and identifying any obstacles

there are to addressing underserved needs.

■ 18. In § 91.420, paragraph (b) is revised to read as follows:

§ 91.420 Action plan.

* * * * *

(b) *Description of resources and activities.* The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan, including actions it plans to take during the next year that address fair housing issues identified in the AFH. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

* * * * *

■ 19. In § 91.425, paragraph (a)(1)(i) is revised to read as follows:

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 20. In § 91.505, add paragraph (d) to read as follows:

§ 91.505 Amendments to the consolidated plan.

* * * * *

(d) The jurisdiction must ensure that amendments to the plan are consistent with its certification to affirmatively further fair housing and the analysis and strategies of the AFH.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 21. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 22. Revise § 92.104 to read as follows:

§ 92.104 Submission of a consolidated plan and Assessment of Fair Housing.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91 and an Assessment of Fair Housing in

accordance with 24 CFR part 5, subpart A.

■ 23. In § 92.508, revise paragraph (a)(7)(i)(C) to read as follows:

§ 92.508 Recordkeeping.

- (a). * * *
- (7) * * *
- (i) * * *

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing, including documentation related to the participating jurisdiction's Assessment of Fair Housing as described in 24 CFR part 5, subpart A.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 24. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

■ 25. In § 570.3, revise the introductory text to read as follows:

§ 570.3 Definitions.

The terms *Affirmatively Furthering Fair Housing*, *Assessment of Fair Housing* or *AFH*, *HUD*, and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

* * * * *

■ 26. In § 570.205, paragraph (a)(4)(vii) is revised to read as follows:

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

- (a) * * *
- (4) * * *
- (vii) Assessment of Fair Housing.

* * * * *

■ 27. In § 570.441, paragraphs (b) introductory text and (b)(1) introductory text, and paragraphs (b)(2), (b)(3), (b)(4), (c), (d), and (e) are revised to read as follows:

§ 570.441 Citizen participation—insular areas.

* * * * *

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the AFH and statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set forth the jurisdiction's policies and procedures for:

(1) Giving citizens, residents, and other interested parties timely notice of local meetings and reasonable and timely access to local meetings consistent with accessibility requirements, as well as information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(2) Providing technical assistance to groups that are representative of persons of low- and moderate-income that request assistance in commenting on the Assessment of Fair Housing (AFH) and developing proposals. The level and type of assistance to be provided is at the discretion of the jurisdiction. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program year. Together, the hearings must address affirmatively furthering fair housing, community development and housing needs, development of proposed activities, proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH, and review of program performance. There must be reasonable notice of the hearings, and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The jurisdiction must specify in its citizen participation plan how it will meet the requirement for hearings at times and accessible locations convenient to potential or actual beneficiaries;

(4) Assessing its language needs, identifying any need for translation of notices and other vital documents and, in the case of public hearings, meeting the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate. At a minimum, the citizen participation plan shall require the jurisdiction to make reasonable efforts to provide language assistance to ensure meaningful access to citizen participation by non-English speaking persons;

(c) *Publication of proposed AFH and proposed statement.* (1) The insular area jurisdiction shall publish a proposed AFH and a proposed statement consisting of the proposed community

development activities and community development objectives (as applicable) in order to afford affected citizens an opportunity to:

- (i) Examine the document's contents to determine the degree to which they may be affected;
- (ii) Submit comments on the proposed document; and
- (iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed document in one or more newspapers of general circulation and by making copies of the proposed document available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed document and must include a list of the locations where copies of the entire proposed document may be examined.

(d) *Preparation of the AFH and final statement.* An insular area jurisdiction must prepare an AFH and a final statement. In the preparation of the AFH and final statement, the jurisdiction shall consider comments and views received relating to the proposed document and may, if appropriate, modify the final document. The final AFH and final statement shall be made available to the public. The final statement shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements and significant revisions to AFHs, the insular area grantee shall:

- (1) Furnish citizens information concerning the amendment or significant revision (as applicable);
- (2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment or significant revision;

(3) Develop and publish the proposed amendment or significant revision in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment or significant revision;

(4) Consider any comments and views expressed by citizens on the proposed amendment or significant revision and, if the grantee finds it appropriate, make modifications accordingly; and

(5) Make the final amendment to the community development program or significant revision to the AFH available to the public before its submission to HUD.

* * * * *

■ 28. In § 570.480, paragraph (c) is revised to read as follows:

§ 570.480 General.

* * * * *

(c) In exercising the Secretary's responsibility to review a State's performance, the Secretary will give maximum feasible deference to the State's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's enforcement responsibilities to achieve compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a State has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the State are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, the State's community development objectives, and the State's responsibility to affirmatively further fair housing (see § 570.487(b)).

* * * * *

■ 29. In § 570.486, paragraphs (a)(2), (a)(4), and (a)(5) are revised to read as follows:

§ 570.486 Local government requirements.

(a) * * *

(2) Ensure that citizens will be given reasonable and timely access to local meetings consistent with accessibility requirements, as well as information and records relating to the unit of local government's proposed and actual use of CDBG funds;

* * * * *

(4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals (including proposed strategies and actions to affirmatively further fair housing) in accordance with the procedures developed by the State. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs (including affirmatively furthering fair housing), development of proposed activities and a review of program performance. The public hearings to cover community

development and housing needs must be held before submission of an application to the State. There must be reasonable notice of the hearings and they must be held at times and accessible locations convenient to potential or actual beneficiaries, with accommodations for persons with disabilities. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

* * * * *

■ 30. In § 570.487, paragraph (b) is revised to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) *Affirmatively furthering fair housing.* The Act requires the State to certify to the satisfaction of HUD that it will affirmatively further fair housing. The Act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Taking meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.154;

(2) Not taking actions that are materially inconsistent with its obligation to affirmatively further fair housing (see 24 CFR 5.150); and

(3) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

* * * * *

■ 31. In § 570.490, paragraph (a)(1) and paragraph (b) are revised to read as follows:

§ 570.490 Recordkeeping requirements.

(a) *State records.* (1) The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.493. The content of records maintained by the State shall be as jointly agreed upon by HUD and the States and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include documentation related to the State's

AFH, as described in 24 CFR part 5, subpart A. The records shall also permit audit of the States in accordance with 24 CFR part 85.

* * * * *

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include documentation related to the State's AFH as described in 24 CFR part 5, subpart A.

* * * * *

■ 32. In § 570.506, paragraph (g)(1) is revised to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(g) * * *

(1) Documentation related to the recipient's AFH, as described in 24 CFR part 5, subpart A.

* * * * *

■ 33. In § 570.601, paragraph (a)(2) is revised to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) * * *

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.154 and take no action that is materially inconsistent with its obligation to affirmatively further fair housing (see 24 CFR 5.150).

* * * * *

■ 34. In § 570.904, paragraph (a)(1) introductory text, paragraph (a)(2), and paragraph (c) are revised to read as follows:

§ 570.904 Equal opportunity and fair housing review criteria.

(a) *General.* (1) Where the criteria in paragraphs (b), (c), and (d) of this section are met, the Department will

presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:

* * * * *

(2) In such instances, or where the review criteria in paragraphs (b), (c), and (d) of this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under title VI of the Civil Rights Act of 1964 or section 109 of the Act.

* * * * *

(c) *Review for fair housing.* (1) See the requirements in the Fair Housing Act (42 U.S.C. 3601–20), as well as § 570.601(a).

(2) *Affirmatively furthering fair housing.* The Department will review a recipient's performance to determine if it has administered all programs and activities related to housing and community development in accordance with § 570.601(a)(2), which sets forth the grantee's responsibility to affirmatively further fair housing.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 35. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 36. Section 574.530 is revised to read as follows:

§ 574.530 Recordkeeping.

Each grantee must ensure that records are maintained for a four-year period to document compliance with the provisions of this part. Grantees must maintain the following:

(a) Current and accurate data on the race and ethnicity of program participants.

(b) Documentation related to the formula grantee's Assessment of Fair Housing, as described in 24 CFR part 5, subpart A.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 37. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 38. In § 576.500, add paragraph (s)(5) to read as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(s) * * * (5) Documentation related to the recipient's Assessment of Fair Housing as described in 24 CFR part 5, subpart A.

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 39. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

■ 40. Section 903.2 is revised by adding paragraph (a)(3) and revising paragraphs (d)(2) and (3) to read as follows:

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

(a) * * *

(3) In accordance with the PHA's obligation to affirmatively further fair housing, the PHA's policies that govern its "development related activities" including affirmative marketing; tenant selection and assignment policies; applicant consultation and information; provision of additional supportive services and amenities; as well as construction, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility of its housing and other facilities under its PHA Plan should be designed to reduce racial and national origin concentrations, including racially or ethnically concentrated areas of poverty, and to reduce segregation and promote integration, reduce disparities in access to community assets, and address disproportionate housing needs by protected class. Any affirmative steps or incentives a PHA Plans to take must be stated in the admission policy and be consistent with the applicable Assessment of Fair Housing conducted in accordance with the requirements of 24 CFR 5.150 through 24 CFR 5.166.

* * * * *

(d) * * *

(2) *Affirmatively Furthering Fair Housing.* PHA policies that govern eligibility, selection and admissions

under its PHA Plan must be designed to reduce the concentration of tenants and other assisted persons by race, national origin, and disability in conformity with any applicable Assessment of Fair Housing as defined at 24 CFR 5.150–5.166 and the PHA's assessment of its fair housing needs as defined in this part at § 903.7(o). Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy. Any PHA plans for the construction, rehabilitation, modernization, demolition, disposition, designation, or physical accessibility of its housing and other facilities must be stated in the appropriate Capital Fund and 5-Year Plan as required by HUD and must be consistent with the applicable Assessment of Fair Housing.

(i) HUD regulations provide that PHAs must take affirmative steps to overcome the effects of discrimination and should take affirmative steps to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin, disability, or other prohibited basis (24 CFR 1.4(b)(6)).

(ii) Such affirmative steps may include but are not limited to, appropriate affirmative marketing efforts; use of tenant selection and assignment policies that lead to desegregation (e.g., use of minimum/ceiling rents, narrowly tailored site-based waiting lists and residency preferences such as those designed to assist in deinstitutionalizing individuals with disabilities); additional applicant consultation and information; and provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community).

(3) *Validity of certification.* (i) A PHA's certification under § 903.7(o) will be subject to challenge where it appears that a PHA Plan or its implementation:

(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing;

(B) Is creating new segregation in housing; or

(C) Fails to meet the affirmatively furthering fair housing requirements at 24 CFR 5.150 through 5.166.

(ii) If HUD challenges the validity of a PHA's certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in paragraph (d)(2)(ii) of this section.

* * * * *

■ 41. In § 903.7, paragraph (o) is revised to read as follows:

§ 903.7 What information must a PHA provide in the Annual Plan?

* * * * *

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, that will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and determinants in its programs in accordance with paragraph (o)(3) of this section.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan, including any plan incorporated therein, including but not limited to tenant and participant selection, occupancy, and capital activities.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(d) and:

(i) Examines its programs or proposed programs;

(ii) Identifies any fair housing issues and determinants within those programs;

(iii) Addresses those issues and determinants in a reasonable fashion in view of the resources available;

(iv) Works with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement;

(v) Operates programs in a manner consistent with any applicable consolidated plan under 24 CFR part 91 and with any order or agreement to comply with the authorities specified in paragraph (o)(1) of this section;

(vi) Complies with any contribution or consultation requirement with respect to any applicable AFH under 24 CFR 5.150–5.166; and

(vii) Maintains records reflecting these analyses, actions, and the results of these actions.

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■ 42. Section 903.15 is revised to read as follows:

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and the Assessment of Fair Housing?

(a) The preparation of an Assessment of Fair Housing (AFH) is required in accordance with 24 CFR 5.154–5.166. The PHA, as appropriate, has three options in meeting its AFH requirements. The PHA must notify HUD 60 days before its certification is due of the option it chooses. The options are:

(1) *Option 1.* The PHA may participate with its unit of general local government and ensure that the PHA Plan is consistent with the applicable Consolidated Plan and AFH for the unit of general local government in which the PHA is located. For purposes of determining the applicable Consolidated Plan and AFH, the PHA will use the unit of general local government where 60 percent of the PHA's projects (counting hard units) are located. However, if the majority is closer to 50 percent, the PHA may choose the unit of general local government that more closely aligns to its planning activities under this part 903 and 24 CFR part 905. For PHAs with only Section 8 tenant-based assistance, the PHA must coordinate with the jurisdiction that governs the PHA's operation (e.g., where the Mayor appoints the Board that hires the Executive Director). The PHA must submit a certification by the appropriate officials that the PHA Plan is consistent with the applicable Consolidated Plan and AFH. (See also 24 CFR 5.158 for coordination when preparing an AFH jointly with a jurisdiction.)

(2) *Option 2.* The PHA may conduct its own AFH with geographic scope and proposed actions scaled to the PHA's operations. The PHA would certify that its PHA Plan is consistent with the AFH and is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.154, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

(3) *Option 3.* For PHAs that are covered by state agencies, the applicable Consolidated Plan and AFH are the State's Consolidated Plan and AFH. The PHA may choose whether to participate or not with the State in the preparation of the state agency's AFH but will be bound either way by the state agency conclusions contained in the State's AFH. These PHAs must demonstrate that their development related activities affirmatively further fair housing and must submit a certification by the appropriate officials that the PHA Plan is consistent with the applicable Consolidated Plan and AFH.

(b) PHAs may request to change their fiscal years to better coordinate their planning with the planning done under the Consolidated Plan process, by State or local officials, as applicable.

(c) If the PHA selects Option 2, it must update its own AFH every year. PHAs that select Option 1 are required to participate in the AFH process every 5 years. PHAs that select Option 3 are required to incorporate their State's Consolidated Plan and AFH once every 5 years.

(d) PHAs may select one of the three options, unless their obligations are prescribed in a binding agreement with HUD such as a Recovery Agreement or Voluntary Compliance Agreement which may incorporate the corrective actions that would require alternative AFH procedures such as that the PHA must participate in their unit of local government's AFH.

(e) If a significant change necessitates a PHA Plan amendment, the PHA will have up to 18 months to make this change to its PHA 5-Year Plan in accordance with the provisions of § 903.21.

■ 43. In § 903.23, paragraph (f) is added to read as follows:

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

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(f) *Recordkeeping.* PHAs must maintain a copy of the Assessment of Fair Housing as described in 24 CFR part 5, subpart A and records reflecting actions to affirmatively further fair housing as described in § 903.7(o).

Dated: June 25, 2013.

Shaun Donovan,
Secretary.

[FR Doc. 2013–16751 Filed 7–18–13; 8:45 am]

BILLING CODE 4210–67–P