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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109-115, 119 Stat. 2936, and Sec. 607, Pub. L. 109-162, 119 Stat. 3051.

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SOURCE: 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

Subpart A—Generally Applicable Definitions and Requirements; Waivers

AUTHORITY: 29 U.S.C. 794, 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. 12101 *et seq.*; 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.

§ 5.100 Definitions.

The following definitions apply to this part and also in other regulations, as noted:

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

ALJ means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

Department means the Department of Housing and Urban Development.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Elderly Person means an individual who is at least 62 years of age.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 *et seq.*).

Fair Market Rent (FMR) means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with

suitable amenities. This Fair Market Rent includes utilities (except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the FEDERAL REGISTER in accordance with part 888 of this title.

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

- (1) Public housing;
- (2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
- (3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
- (4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
- (5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
- (6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or
- (8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

Gender identity means actual or perceived gender-related characteristics.

General Counsel means the General Counsel of HUD.

Grantee means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

HUD means the same as *Department*.

MSA means a metropolitan statistical area.

NAHA means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*).

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

NOFA means Notice of Funding Availability.

OMB means the Office of Management and Budget.

Organizational Unit means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.

Other person under the tenant's control, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Public housing means housing assisted under the 1937 Act, other than

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under Section 8. “Public housing” includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Responsible entity means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;

(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

Section 8 means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Secretary means the Secretary of Housing and Urban Development.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201-4655).

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000; 66 FR 28791, May 24, 2001; 77 FR 5674, Feb. 3, 2012]

§ 5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

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(a) *Nondiscrimination and equal opportunity.* (1) The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women’s Business Enterprise).

(2) *Equal access to HUD-assisted or insured housing.* (i) *Eligibility for HUD-assisted or insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) Debarred, suspended, or ineligible contractors and participants. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000; 72 FR 73491, Dec. 27, 2007; 76 FR 45167, July 28, 2011; 77 FR 5674, Feb. 3, 2012]

§ 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of 2 CFR part 200, subpart F. For HUD pro-

grams, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997, as amended at 80 FR 75934, Dec. 7, 2015]

§ 5.109 Equal Participation of Religious Organizations in HUD Programs and Activities.

(a) *Purpose.* Consistent with Executive Order 13279 (issued on December 12, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 258), entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," this section describes HUD's policy for the equal participation of religious organizations in HUD's programs and activities. The equal participation policies and requirements contained in this section are generally applicable to religious organizations in all HUD programs and activities. More specific policies and requirements regarding the participation of religious organizations in individual HUD programs may be provided in the regulations for those programs.

(b) *Equal participation of religious organizations in HUD programs and activities.* Religious organizations are eligible, on the same basis as any other organization, to participate in HUD's programs and activities. Neither the Federal government, nor a State or local government, nor any other entity that administers any HUD program or activity shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(c) *Inherently religious activities.* Organizations that receive direct HUD funds under a HUD program or activity may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a HUD program or activity. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds and participation must be voluntary for the

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beneficiaries of the programs, activities or services provided under the HUD program.

(d) *Independence of religious organizations.* A religious organization that participates in a HUD program or activity will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services supported by direct HUD funds. Among other things, religious organizations may use space in their facilities to provide services under a HUD program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in a HUD program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(f) *Nondiscrimination requirements.* An organization that receives direct HUD funds shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(g) *Acquisition, construction, and rehabilitation of structures.* HUD funds may not be used for the acquisition, construction, or rehabilitation of struc-

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tures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. Sanctuaries, chapels, and other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after use for the authorized purpose, or any change in use of the property from the authorized purpose, is subject to governmentwide regulations governing real property disposition (see, e.g., 2 CFR 200.311).

(h) *Commingling of Federal and State and local funds.* If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State or local government is required to contribute matching funds to supplement a Federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this section. Some HUD programs' requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

[69 FR 41717, July 9, 2004, as amended at 80 FR 75934, Dec. 7, 2015]

§5.110 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision

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of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

AFFIRMATIVELY FURTHERING FAIR HOUSING

SOURCE: Sections 5.150 through 5.180 appear at 80 FR 42352, July 16, 2015, unless otherwise noted.

§ 5.150 Affirmatively Furthering Fair Housing: Purpose.

Pursuant to the affirmatively furthering fair housing mandate in section 808(e)(5) of the Fair Housing Act, and in subsequent legislative enactments, the purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations in §§ 5.150 through 5.180 is to provide program participants with an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The regulations establish 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 and implementation of that AFH into subsequent consolidated plans and PHA Plans in a manner that connects housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing. A program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as

quality schools, employment, and transportation.

§ 5.151 Affirmatively Furthering Fair Housing: Implementation.

Section 5.160 of the AFH regulations provides the date by which program participants must submit their first AFH. A program participant's AFH submission date is the date by which the program participant must comply with the regulations in §§ 5.150 through 5.180. Until such time, the program participant shall continue to conduct an analysis of impediments, as required of the program participant under one or more of the HUD programs listed in § 5.154, in accordance with requirements in effect prior to August 17, 2015.

§ 5.152 Definitions.

For purposes of §§ 5.150 through 5.180, the terms "consolidated plan," "consortium," "unit of general local government," "jurisdiction," and "State" are defined in 24 CFR part 91. For PHAs, "jurisdiction" is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.180 and related amendments in 24 CFR parts 91, 92, 570, 574, 576, and 903:

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.

Assessment of Fair Housing (assessment or AFH) means the analysis undertaken pursuant to § 5.154 that includes an

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analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH) or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).

Assessment Tool refers collectively to any forms or templates and the accompanying instructions provided by HUD that program participants must use to conduct and submit an AFH pursuant to § 5.154. HUD may provide different Assessment Tools for different types of program participants. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA), the Assessment Tool will be subject to periodic notice and opportunity to comment in order to maintain the approval of the Assessment Tool as granted by the Office of Management and Budget (OMB) under the PRA.

Community participation, as required in § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes. For HUD regulations implementing the Housing and Community Development Act of 1974, the statutory term for “community participation” is “citizen participation,” and, therefore, the regulations in 24 CFR parts 91, 92, 570, 574, and 576 use this term.

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

Contributing factor. See definition of “fair housing contributing factor” in this section.

Data. The term “data” refers collectively to the sources of data provided in paragraphs (1) and (2) of this definition. When identification of the specific source of data in paragraph (1) or (2) is necessary, the specific source

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(HUD-provided data or local data) will be stated.

(1) *HUD-provided data*. As more fully addressed in the Assessment Tool, the term “HUD-provided data” refers to HUD-provided metrics, statistics, and other quantified information required to be used with the Assessment Tool. HUD-provided data will not only be provided to program participants but will be posted on HUD’s Web site for availability to all of the public;

(2) *Local data*. As more fully addressed in the Assessment Tool, the term “local data” refers to metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the program participant’s geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool.

Disability. (1) The term “disability” means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment;

or

(iii) Being regarded as having such an impairment.

(2) The term “disability” as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008. This definition does not change the definition of “disability” or “disabled person” adopted pursuant to a HUD program statute for purposes of determining an individual’s eligibility to participate in a housing program that serves a specified population.

Disproportionate housing needs refers to a condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups or the total population experiencing that category of housing need in the applicable geographic area. For purposes of this definition, categories of housing need

are based on such factors as cost burden, severe cost burden, overcrowding, and substandard housing conditions, as those terms are applied in the Assessment Tool.

Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. Fair housing choice encompasses:

(1) Actual choice, which means the existence of realistic housing options;

(2) Protected choice, which means housing that can be accessed without discrimination; and

(3) Enabled choice, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual's needs as required under Federal civil rights law, including disability-related services that an individual needs to live in such housing.

Fair housing contributing factor (or contributing factor) means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues, as provided in §5.154.

Fair housing issue means a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing. Participation in "housing programs serving specified populations," as defined in this section, does not present a fair housing issue of segregation, provided that such programs are administered by program participants so that the programs comply with title VI of the

Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

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. This definition covers 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).

Geographic area means a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or another applicable area (e.g., census tract, neighborhood, Zip code, block group, housing development, or portion thereof) relevant to the analysis required to complete the assessment of fair housing, as specified in the Assessment Tool.

Housing programs serving specified populations. Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:

(1) Serve specific identified populations; and

(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the

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Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Insular area has the same meaning as provided in §570.405.

Integration means a condition, within the program participant's geographic area of analysis, as guided by the Assessment Tool, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities 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, appendix B (addressing 28 CFR 35.130 and providing guidance on the American with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

Joint participants refers to two or more program participants conducting and submitting a single AFH (a joint AFH), in accordance with §5.156 and 24 CFR 903.15(a)(1) and (2), as applicable.

Local knowledge. As more fully addressed in the Assessment Tool, local knowledge means information to be provided by the program participant that relates to the participant's geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool.

Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

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

Protected characteristics are race, color, religion, sex, familial status, national origin, having a disability, and having a type of disability.

Protected class means a group of persons who have the same protected characteristic; e.g., a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.

Qualified public housing agency (Qualified PHA). Refers to a PHA:

(1) For which the sum of:

(i) The number of public housing dwelling units administered by the PHA; and

(ii) The number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the PHA is 550 or fewer; and

(2) That is not designated under section 6(j)(2) of the United States Housing Act of 1937 as a troubled PHA, and does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.

Racially or ethnically concentrated area of poverty means a geographic area with significant concentrations of poverty and minority populations.

Regionally collaborating participants refers to joint participants, at least two of which are consolidated plan program participants. A PHA may participate in a regional assessment in accordance with PHA Plan participation requirements under 24 CFR 903.15(a)(1). Regionally collaborating participants conduct and submit a single AFH (regional AFH) in accordance with §5.156.

Segregation means a condition, within the program participant's geographic area of analysis, as guided by the Assessment Tool, in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area. For persons with disabilities, segregation

includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance 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, appendix B, addressing 25 CFR 35.130.) Participation in "housing programs serving specified populations" as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs): The Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Significant disparities in access to opportunity means substantial and measurable differences in access to educational, transportation, economic, and other important opportunities in a community, based on protected class related to housing.

§5.154 Assessment of Fair Housing (AFH).

(a) *General.* To develop a successful affirmatively furthering fair housing strategy, it is central to assess the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs. 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 plans.

(b) *Requirement to submit an AFH.* In furtherance of the statutory obligation to affirmatively further fair housing, an AFH must be developed following the AFH consultation, content, and submission requirements described in §§5.150 through 5.180, 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) program (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 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C.1437g).

(c) *Fair housing data.* Program participants will use HUD-provided data, as defined within the definition of "data" in §5.152, and supplement the HUD-provided data, as needed, with local data and local knowledge, as guided by the Assessment Tool.

(d) *Content.* Using the Assessment Tool prescribed by HUD, each program participant shall conduct an AFH for the purpose of examining its programs, jurisdiction, and region, and identifying goals to affirmatively further fair housing and to inform fair housing strategies in the consolidated plan, annual action plan, the PHA Plan and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environmental related plans. The AFH's analysis, goals, and priorities will address integration and segregation; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs based on race, color, religion, sex, familial status, national origin, and disability. 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.* The AFH must include a summary of fair housing issues in the jurisdiction, including any findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or other civil rights laws, an assessment of compliance with existing

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fair housing laws and regulations, and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.

(2) *Analysis of data.* Using HUD-provided data, local data, local knowledge, including information gained through community participation, and the Assessment Tool, the program participant will undertake the analysis required by this section. This analysis will address the following to the extent the data or local knowledge are informative of the following:

(i) Identification of integration and segregation patterns and trends based on race, color, religion, sex, familial status, national origin, and disability within the jurisdiction and region;

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

(iii) Identification of significant disparities in access to opportunity for any protected class within the jurisdiction and region; and

(iv) Identification of disproportionate housing needs for any protected class within the jurisdiction and region.

(3) *Assessment of fair housing issues.* Using the Assessment Tool provided by HUD, the AFH will identify the contributing factors for segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs as identified under paragraph (d)(2) of this section.

(4) *Identification of fair housing priorities and goals.* Consistent with the identification of fair housing issues, and the analysis and assessment conducted under paragraphs (d)(1) through (3) of this section, the AFH must:

(i) Identify and discuss the fair housing issues arising from the assessment; and

(ii) Identify significant contributing factors, prioritize such factors, and justify the prioritization of the contributing factors that will be addressed in the program participant's fair housing goals. In prioritizing contributing factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance; and

(iii) Set goals for overcoming the effects of contributing factors as prioritized in accordance with paragraph (d)(4)(ii) of this section. For each goal, a program participant must identify one or more contributing factors that the goal is designed to address, describe how the goal relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify the metrics and milestones for determining what fair housing results will be achieved. For instance, where segregation in a development or geographic area is determined to be a fair housing issue, with at least one significant contributing factor, HUD would expect the AFH to include one or more goals to reduce the segregation.

(5) *Strategies and actions.* To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' consolidated plans, Annual Action Plans, and PHA Plans (including any plans incorporated therein), and need not be reflected in their AFH. Strategies and actions must affirmatively further fair housing and may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, including HUD-assisted housing.

(6) *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 AFH; a summary of the comments, views, and recommendations, received in writing, or orally at public hearings, during the community participation process; and a summary of any comments, views, and recommendations not accepted by the program participant and the reasons for nonacceptance.

(7) *Review of progress achieved since submission of prior AFH.* For each AFH submitted after the first AFH submission, the program participant will provide a summary of progress achieved in meeting the goals and associated

metrics and milestones of the prior AFH, and identify any barriers that impeded or prevented achievement of goals.

§ 5.156 Joint and Regional AFHs.

(a) *General.* For the purposes of sharing resources and addressing fair housing issues from a broader perspective, program participants are encouraged to collaborate to conduct and submit a single AFH, either a joint AFH or regional AFH (as defined in § 5.152), for the purpose of evaluating fair housing issues and contributing factors.

(1) Collaborating program participants, whether joint participants or regionally collaborating participants, need not be located in contiguous jurisdictions and may cross State boundaries, provided that the collaborating program participants are located within the same Core Based Statistical Area (CBSA), as defined by the United States Office of Management and Budget (OMB) at the time of submission of the joint or regional AFH.

(2) Program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The collaboration may proceed upon approval by HUD.

(3) Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants. When collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. Collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

(4) Program participants that intend to prepare either a joint or regional AFH shall promptly notify HUD of

such intention and provide HUD with a copy of their written agreement.

(b) *Coordinating program years and submission deadlines.* (1) To the extent practicable, all collaborating program participants must be on the same program year and fiscal year (as applicable) before submission of the joint AFH or regional AFH. (See § 5.160 and 24 CFR 91.10 and 903.5.) The applicable procedures for changing consolidated plan program participant program year start dates, if necessary, are described in 24 CFR 91.10. The applicable procedures for changing PHA fiscal year beginning dates, if necessary, are described in 24 CFR part 903.

(2) If alignment of a program year or fiscal year is not practicable, the submission deadline for a joint AFH or regional AFH must be based on the designated lead entity's program year start date or fiscal year beginning date (as applicable), as provided in § 5.160(c). Within 12 months after the date of AFH acceptance, each 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 to its full consolidated plan (as described in § 91.15(b)(2) of this chapter), or PHA Plan and any plan incorporated therein, to incorporate strategies and proposed actions consistent with the fair housing goals, issues, and other elements identified in the joint AFH or regional AFH.

(c) *Procedures for withdrawal from a joint or regional collaboration.* A program participant that, for any reason, decides to withdraw from a previously arranged collaborative AFH must promptly notify HUD of the withdrawal. HUD will work with the withdrawing program participant, as well as the remaining collaborative participants, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date that is as close as feasible to the originally intended submission date and is no later than the original joint or regional submission date unless good cause for an extension is shown.

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(d) *Community participation.* Collaborating program participants must have a plan for community participation that complies with the requirements of §§5.150 through 5.180. The community participation process must include residents, and other interested members of the public, in the jurisdictions of each collaborating program participant, and not just those of the lead entity. In addition, the community participation process must be conducted in a manner sufficient for each consolidated plan program participant collaborating in a joint AFH or regional AFH to certify that it is following its applicable citizen participation plan, and for each PHA, collaborating in a joint AFH or regional AFH, to satisfy the notice and comment requirements in 24 CFR part 903. To the extent that public notice and comment periods provided in §§5.150 through 5.180 or in the consolidated plan or PHA plan regulations differ, the longer period shall apply. A material change that requires any collaborating program participant to revise its AFH pursuant to §5.164(a)(1) will trigger a requirement to revise the joint or regional AFH.

(e) *Content of the joint or regional AFH.* A joint or regional AFH must include the elements required under §5.154(d). A joint or regional AFH does not relieve each collaborating program participant from its obligation to analyze and address local and regional fair housing issues and contributing factors that affect housing choice, and to set priorities and goals for its geographic area to overcome the effects of contributing factors and related fair housing issues.

§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 required planning documents. To ensure that the AFH, the consolidated plan, and the PHA Plan and any plan incorporated therein are informed by meaningful community participation, pro-

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gram participants should employ communications means designed to reach the broadest audience. Such communications may be met, as appropriate, by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the program participant's official government Web site, and as well at libraries, government offices, and public places. Program participants shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable. At a minimum, whether a program participant is preparing an AFH individually 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, and 91.235).

(2) *PHAs.* PHAs must follow the policies and procedures described in 24 CFR 903.13, 903.15, 903.17, and 903.19 in the process of developing the AFH, obtaining Resident Advisory Board and community feedback, and addressing complaints.

(b) *Coordination.* (1) As described in 903.15, a PHA may fulfill its responsibility to conduct an AFH by:

(i) Participating with a consolidated plan program participant, including State jurisdictions; or

(ii) Participating with one or more PHAs in the planning, and preparation of the AFH; or

(iii) Preparing its own AFH.

(2) When working with other program participants, PHAs are encouraged to enter into Memorandums of Understanding (MOUs) to clearly define the functions, level of member participation, method of dispute resolution, and decisionmaking process of the program participants, in the creation of the AFH.

§ 5.160 Submission requirements.

(a) *First AFH*—(1) *Submission deadline for program participants.* (i) For each program participant listed in this paragraph (a)(1)(i), the first AFH shall be submitted no later than 270 calendar days prior to the start of:

(A) For consolidated plan participants not covered in paragraph (a)(1)(i)(B) or (C) of this section, the program year that begins on or after January 1, 2017 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and

(B) For consolidated plan participants whose fiscal year (FY) 2015 CDBG grant is \$500,000 or less, the program year that begins on or after January 1, 2018 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and

(C) For consolidated plan participants that are Insular Areas or States, the program year that begins on or after January 1, 2018 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and

(D) For PHAs, except for qualified PHAs, the PHA's fiscal year that begins on or after January 1, 2018 for which a new 5-year plan is due, as provided in 24 CFR 903.5; and

(E) For qualified PHAs, the PHA's fiscal year that begins on or after January 1, 2019 for which a new 5-year plan is due, as provided in 24 CFR 903.5; and

(F) For joint or regional program participants, the date provided under this paragraph (a)(1) or under paragraph (a)(2) of this section, dependent upon the program participant that is selected to be the lead entity, as provided in § 5.156(b)(2).

(ii) If the time frame specified in this paragraph (a)(1) would result in a first

AFH submission date that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or lead entity, the participant(s)' submission deadline will be extended as specified in that Assessment Tool publication to a date that will not be less than 9 months from the date of publication of the Assessment Tool.

(2) *Exceptions to the first submission deadline for recently completed Regional Analysis of Impediments (RAI).* An entitlement jurisdiction subject to the submission deadline in paragraph (a)(1) of this section is not required to submit an AFH by the deadline specified in such paragraph if the entitlement jurisdiction has completed a HUD-approved RAI in accordance with a grant awarded under HUD's FY 2010 or 2011 Sustainable Communities Competition and submitted the RAI within 30 months prior to the date when the program participant's AFH is due as provided under this section.

(3) *Compliance with existing requirements until first AFH submission.* Except as provided in paragraph (a)(4) of this section, until such time as program participants are required to submit an AFH, the program participant shall continue to conduct an analysis of impediments, as required of the program participant by one or more of the HUD programs listed in § 5.154, in accordance with requirements in effect prior to August 17, 2015.

(4) *New program participants.* For a new program participant that has not submitted a consolidated plan or PHA plan as of August 17, 2015, HUD will provide the new program participant with a deadline for submission of its first AFH and the strategies and actions to implement an accepted AFH, which shall be incorporated into the program participant's consolidated plan or PHA plan, as applicable, within 18 months of the start date of its first program year or fiscal year, as applicable.

(b) *Second and subsequent AFHs.* After the first AFH, for all program participants, subsequent AFHs are due 195 calendar days before the start of the first year of the next 3 to 5-year cycle (as applicable), as described in paragraph

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(a)(1) of this section; that is, the subsequent AFH is to precede the next strategic plan under 24 CFR 91.15(b)(2) or 5-year plan under 24 CFR 903.5.

(c) *Collaborative AFHs.* All collaborative program participants, whether joint participants or regionally collaborating participants, will select a lead entity and submit the AFH according to that entity's schedule.

(d) *Frequency.* All program participants shall submit an AFH no less frequently than once every 5 years, or at such time agreed upon in writing by HUD and the program participant, in order to coordinate the AFH submission with time frames used for consolidated plans, participation in a regional AFH, cooperation agreements, PHA Plans, or other plans. (See 24 CFR 91.15(b)(2) and 903.15.)

(e) *Certification.* Each program participant, including program participants submitting a joint or regional AFH, must certify that it will take meaningful actions to further the goals identified in its AFH conducted in accordance with the requirements in §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable. The certification will be required at the time a program participant submits its first AFH and for each AFH thereafter. If a PHA Plan, consolidated plan, Action Plan, or other submission requiring a civil rights-related certification is due prior to the time of submission of the AFH, the participant will complete a certification, in a form provided by HUD, that it will affirmatively further fair housing, or complete such other certification that HUD may require in accordance with applicable program regulations in effect before August 17, 2015.

[80 FR 42352, July 16, 2015; 80 FR 46487, Aug. 5, 2015]

§ 5.162 Review of AFH.

(a) *Review and acceptance of AFH—(1) General.* 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 after 60 calendar days after the date that HUD receives the AFH, unless on or be-

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fore that date, HUD has provided notification that HUD does not accept the AFH. In its notification, HUD will inform the program participant in writing of the reasons why HUD has not accepted the AFH and the actions that the program participant may take to resolve the nonacceptance.

(2) *Meaning of "acceptance".* 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 an AFH that meets the required elements, as set forth in § 5.154(d). Acceptance does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and regulations.

(b) *Nonacceptance of an AFH.* (1) HUD will not accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete. In connection with a regional or joint AFH, HUD's determination to not accept the AFH with respect to one program participant does not necessarily affect the acceptance of the AFH with respect to another program participant.

(i) The following are examples of an AFH that is inconsistent with fair housing and civil rights requirements:

(A) HUD determines that the analysis of fair housing issues, fair housing contributing factors, goals, or priorities contained in the AFH would result in policies or practices that would operate to discriminate in violation of the Fair Housing Act or other civil rights laws;

(B) The AFH does not identify policies or practices as fair housing contributing factors, even though they result in the exclusion of a protected class from areas of opportunity.

(ii) The following are examples of an AFH that is substantially incomplete:

(A) The AFH was developed without the required community participation or the required consultation;

(B) The AFH fails to satisfy a required element in §§ 5.150 through 5.180. Failure to satisfy a required element

includes an assessment in which priorities or goals are materially inconsistent with the data or other evidence available to the program participant or in which priorities or goals are not designed to overcome the effects of contributing factors and related fair housing issues.

(2) HUD will provide written notification to the program participant, including each program participant involved in a collaborative AFH (joint or regional AFH), of HUD's nonacceptance of the AFH and the written notification will specify the reasons why the AFH was not accepted and will provide guidance on how the AFH should be revised in order to be accepted.

(c) *Revisions and resubmission.* HUD will provide a program participant, including each program participant involved in a collaborative AFH, with a time period to revise and resubmit the AFH, which shall be no less than 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 on or before that date HUD has provided notification that HUD does not accept the revised AFH.

(d) *Accepted AFH as requirement for consolidated plan and PHA Plan approval.* If a program participant does not have an accepted AFH, HUD will disapprove a consolidated plan (see 24 CFR 91.500) or a PHA Plan (see 24 CFR 903.23) except where delayed submission is otherwise permitted under § 5.156 or § 5.160.

(1) If a consolidated plan program participant fails to submit an AFH as required by § 5.160, HUD may establish an alternative date 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.

(2) If a PHA fails to submit the AFH in accordance with § 5.160, the PHA must have an accepted AFH no later than 75 calendar days before the com-

mencement of the PHA's fiscal year to avoid any potential impacts on funding.

§ 5.164 Revising an accepted AFH.

(a) *General—(1) Minimum criteria for revising the AFH.* An AFH previously accepted by HUD must be revised and submitted to HUD for review under the following circumstances:

(i) A material change occurs. A material change is a change in circumstances in the jurisdiction of a program participant that affects the information on which the AFH is based to the extent that the analysis, the fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances. Examples include Presidentially declared disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in the program participant's area that are of such a nature as to significantly impact the steps a program participant may need to take to affirmatively further fair housing; significant demographic changes; new significant contributing factors in the participant's jurisdiction; and civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders; or

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

(2) *Criteria for revising the AFH.* The criteria that will be used in determining when revisions to the AFH are appropriate must be specified in the citizen participation plan adopted under the consolidated plan pursuant to 24 CFR part 91, and the public participation procedures and significant amendment process required under 24 CFR part 903. Such criteria must include, at a minimum, the circumstances described in paragraph (a)(1) of this section.

(3) *Revised AFH.* A revision pursuant to paragraph (a)(1) of this section consists of preparing and submitting amended analyses, assessments, priorities, and goals that take into account the material change, including any new fair housing issues and contributing factors that may arise as a result of the material change. A revision may

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not necessarily require the submission of an entirely new AFH. The revision need only focus on the material change and appropriate adjustments to the analyses, assessments, priorities, or goals.

(b) *Timeframe for revision.* (1) Where a revision is required under paragraph (a)(1)(i) of this section, such revision shall be submitted within 12 months of the onset of the material change, or at such later date as HUD may provide. Where the material change is the result of a Presidentially declared disaster, such time shall be automatically extended to the date that is 2 years after the date upon which the disaster declaration is made, and HUD may extend such deadline, upon request, for good cause shown.

(2)(i) Where a revision is required under paragraph (a)(1)(ii) of this section, HUD will specify a date by which the program participant must submit the revision of the AFH to HUD, taking into account the material change, the program participant's capacity, and the need for a valid AFH to guide planning activities. HUD may extend the due date upon written request by the program participant that describes the reasons the program participant is unable to make the deadline.

(ii) On or before 30 calendar days following the date of HUD's written notification under paragraph (a)(1)(ii) of this section, the program participant may advise HUD in writing of its belief that a revision to the AFH is not required. The program participant must state with specificity the reasons for its belief that a revision is not required. HUD will respond on or before 30 calendar days following the date of the receipt of the program participant's correspondence and will advise the program participant in writing whether HUD agrees or disagrees with the program participant. If HUD disagrees, the program participant must proceed with the revision. HUD may establish a new due date that is later than the date specified in its original notification.

(c) *Community participation.* Revisions to an AFH, as described in this section, are subject to community participation. The jurisdiction must follow the notice and comment process applicable

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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 24 CFR 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.

(d) *Submission to HUD of the revised AFH.* Upon completion, any revision to the AFH must be made public and submitted to HUD at the time of the revision.

(e) *PHAs.* Upon any revision to the AFH pursuant to §§ 5.150 through 5.180, PHAs must revise their PHA Plan within 12 months, consistent with the AFH revision, and pursuant to 24 CFR 903.15(c).

§ 5.166 AFFH certification.

(a) *Certifications.* Program participants must certify that they will affirmatively further fair housing when required by statutes and regulations governing HUD programs. Such certifications are made in accordance with applicable program regulations. Consolidated plan program participants are subject to the certification requirements in 24 CFR part 91, and PHA Plan program participants are subject to the certification requirements in 24 CFR part 903.

(b) *Procedure for challenging the validity of an AFFH certification.* (1) For consolidated plan program participants, HUD's challenge to the validity of an AFFH certification will be based on procedures and standards specified in 24 CFR part 91.

(2) For PHA Plan program participants, HUD's challenge to the validity of an AFFH certification will be based on procedures and standards specified in 24 CFR part 903.

§5.168 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)(3) 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; and any policies, procedures, or other documents relating to the analysis or preparation of the AFH;

(2) Records demonstrating compliance with the consultation and community participation requirements of §§5.150 through 5.180 and applicable program regulations, including the names of organizations involved in the development of the AFH, summaries or transcripts of public meetings or hearings, written public comments, 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 goals and strategies set forth in its AFH, consolidated plan, or PHA Plan, and any plan incorporated therein; and the actions the program participant has carried out to promote or support the goals identified in accordance with §5.154 during the preceding 5 years;

(4) Where courts or an agency of the United States Government or of a State government has found that the program participant has violated any applicable nondiscrimination and equal opportunity requirements set forth in §5.105(a) 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) 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]

Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

AUTHORITY: 42 U.S.C. 3535(d), 3543, 3544, and 11901 *et seq.*

SOURCE: 61 FR 11113, Mar. 18, 1996, unless otherwise noted.

§ 5.210 Purpose, applicability, and Federal preemption.

(a) *Purpose.* This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs). This subpart B also enables HUD and PHAS