

§5.110

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-

24 CFR Subtitle A (4-1-16 Edition)

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

Office of the Secretary, HUD

§ 5.152

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