

Affirmatively Furthering Fair Housing Choice

- AHMA-NCNH Conference
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“Affirmatively Furthering Fair Housing Choice” in HUD Programs

- Where does the requirement originate?
- What does the term “AFFH” mean?
- To which programs does it apply?
- What are a recipient’s or grantee’s obligations?
- What are HUD staff’s monitoring obligations?

Legal Authority for AFFH requirement

- The Federal Fair Housing Act states that “The Secretary shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the Act.” (42 USC 3608(e)(5))
- In varying ways, AFFH requirements apply to *all* HUD programs (CPD, PIH, Housing, FHEO)
- Program-specific AFFH requirements & obligations are found in individual program regulations

Legal Authority for AFFH requirement, cont'd.

Federal Fair Housing Act

- (a) Prohibits *housing providers* from discriminating on basis of...
- (b) Requires *HUD* to administer its programs in such a way as to ensure *equal opportunity to participate*, without regard to an applicant's or beneficiary's...
 - Race
 - Color
 - National origin
 - Religion
 - Sex
 - Familial status (people with minor children)
 - Disability (physical, mental, developmental)

(42 USC 3608(e)(5); 24 USC 100, et seq.)

Legal Authority for AFFH requirement, cont'd.

Title VI of Civil Rights Act of 1964: prohibits recipients of HUD funding from *discriminating* on the basis of, or using methods of administration that *have the effect* of limiting or denying participation, on the basis of:

- Race
- Color
- National origin

(24 CFR 1, et seq.)

Legal Authority for AFFH requirement, cont'd.

Section 504 of Rehabilitation Act of 1973 prohibits recipients of HUD funding from *discriminating* on basis of, or using methods of administration *that have the effect of* limiting or denying participation, on the basis of:

- Disability (older law, uses term “handicap”)

(24 CFR 8, et seq.)

General Goals of AFFH

from Fair Housing Planning Guide

- Affirmatively Furthering Fair Housing Choice = a comprehensive strategy designed to:
 - ✓ Reduce Housing Discrimination
 - ✓ Promote public awareness of fair housing laws, rights, and obligations
 - ✓ Ensure a broad range of affordable housing opportunities
 - ✓ Ensure the *programmatic* accessibility of housing and programs to all protected classes
 - ✓ Ensure the *physical* accessibility of housing and programs to persons with disabilities

Affirmatively Furthering...

Does NOT mean establishing quotas.

DOES mean:

- Conducting analysis to identify groups least likely to participate (including development of AFHMP)
- Undertaking affirmative marketing and outreach to promote participation by “least likely” groups
- Taking actions to overcome patterns of segregation or concentration
- Eliminating methods of administration which may have effect of discrimination

Anti-Discrimination Center of Metro New York vs. Westchester County, NY

(this and next 2 slides with permission of Attorney Michael Allen)

- County received \$52M in CDBG, HOME, ESG funds from 2000-2006
- 40% of consortium municipalities have Black populations of 1% or less
- 60% of consortium municipalities have Black populations of 3% or less
- A few municipalities (Yonkers, New Rochelle, Mt Vernon, White Plains, Peekskill, Greenburgh) have Black populations of 16% or more

WESTCHESTER COUNTY, NY

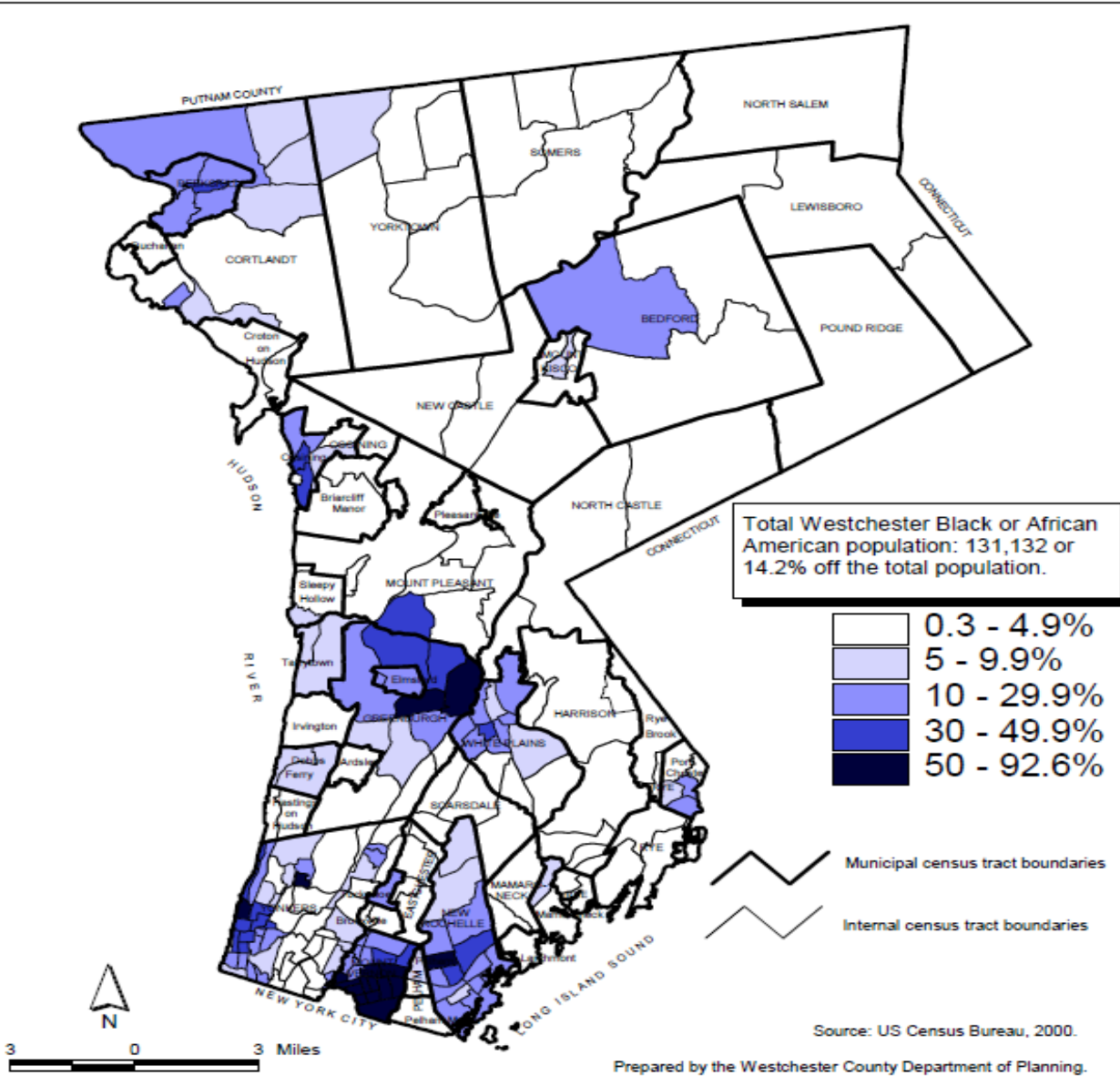
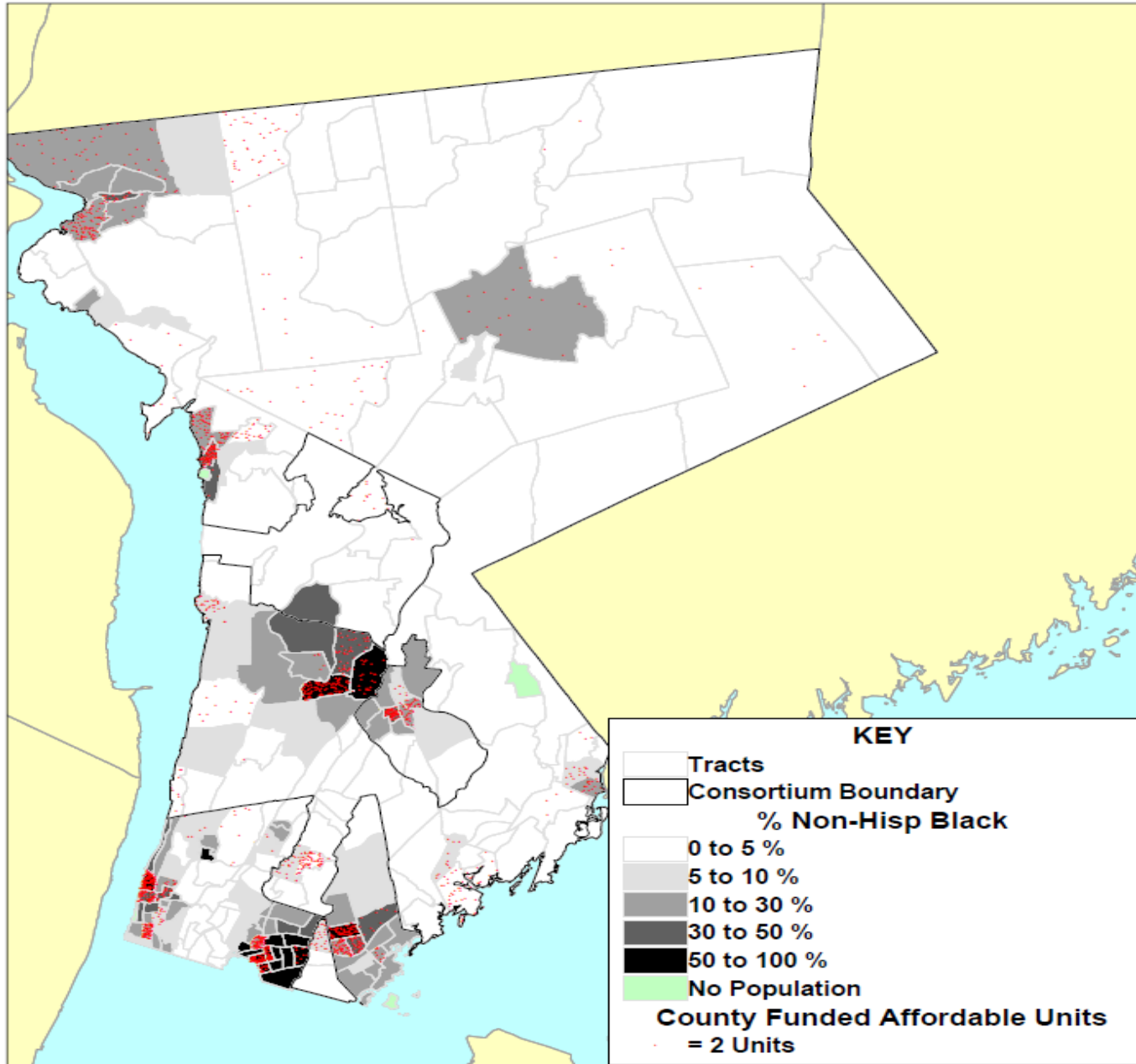


Exhibit R-2. Placement of Proposed and Built County Funded Affordable Housing Units, 1996 through 2007



Discussion of Westchester case, cont'd

- Virtually all affordable housing built in areas of existing minority concentration
- Few new affordable housing planned or built outside of areas of minority concentration
- Westchester county allowed richer, predominately-White municipalities to opt out of affordable housing development

Discussion of Westchester case, cont'd

- 2000 & 2004 **Analysis of Impediments** described the unmet housing needs of persons with disabilities and families with children as impediments, but did not **identify any racial or ethnic factors, such as lack of affordable housing outside of areas of minority concentration, as an impediment**
- **Annual certifications made to HUD as condition of funding that it had undertaken actions to affirmatively further fair housing choice**

Discussion of Westchester case, cont'd.

- Westchester had made false certifications
- Westchester to build 750 new affordable housing units over 7 years, of which 660 to be built in municipalities where:
 - Black population < 3%
 - Hispanic population < 7%
- Westchester to repay HUD \$30M

AFFH actions in FHA insured or subsidized **HOUSING** programs

- Data collection, monitoring & ongoing analysis by recipients to identify underserved persons (24 CFR 121 & 24 CFR 880.601)
- Development of housing that includes choices outside of areas of concentration (24 CFR 891.125)
- Outreach & marketing to underserved persons (“methods of administration which have *effect* of discrimination, Title VI and Section 504 regulations at 24 CFR 1.4 & 8.4)

AFFH actions in FHA insured or subsidized **HOUSING** programs, cont'd.

- Analysis of special needs of persons with LEP (Title VI regs, 1/22/07 LEP Notice)
- Physical accessibility of meeting sites & funded activities, including housing (Section 504 regs at 24 CFR 8.20, et seq.)
- Sign certification that recipient will AFFH, obtain HUD approval of AFHMP (24 CFR 108 & 200.600; Multifamily Occupancy Manual 4350.3, Paragraph 4-12)

Affirmative Fair Housing Marketing Plans

- What is purpose of an AFHMP?
- When does it need to be updated?
- How do I develop an effective one?

What affirmative marketing is *not*

- If your tenants love you, you may never need to undertake marketing to keep your waiting list full ...

but

- “Word of mouth” is not an acceptable affirmative marketing methodology because it will very likely lead to a racially- or ethnically-segregated housing development.

When to update your AFHMP

- AFHMPs required if built Feb 1972/>
- Review every 5 yrs
- Update if changes to city's ConPlan or other significant demographic changes to city or neighborhood of the development
- Update if demographics of current residents and/or applicants is not equivalent to HMA
- New projects: 90 days before marketing

Major steps in development of an effective AFHMP

- Obtain demographics of current residents and applicants vs. Housing Marketing Area.
- Identify racial, ethnic or other protected classes that are under-represented and therefore “least likely to apply” without affirmative marketing to attract them to this housing opportunity.
- Devise marketing strategy to attract them.
- Get HUD’s written approval of your plan.
- **Implement** the affirmative marketing that you have committed to in your plan.

Step 1: Background information - responsibility for marketing (blocks 1a – 1g)

- Identify project (block 1a)
- Identify management agent (block 1f)
- Identify owner (block 1g)
- Identify person who is responsible for affirmative marketing certification (block 1h + signature block 9)

Note: e-mail addresses help FHEO expedite

Background information (Step 1, cont'd)

- Block 2a: initial or update plan + date
- Block 2b: type: elderly/family/disabled
- Block 2c: date of initial occupancy
- **Block 2d: advertising start date**

Note: If *existing* development, indicate approximate date when next marketing campaign will begin.

What are racial/ethnic groups?

Ref: HUD memo 8/13/02

ETHNICITY

- Hispanic
- Non-Hispanic
- *Ask ethnicity question before race question*

RACE

- Am Ind/AK native
- Asian
- Bl/African-American
- Nat Haw/Oth Pac Isl
- White
- *Do not use “other” exc for 2/more races in HH.*

Step 2: Collect census data for census tract, city, county, HMA

- Go to www.census.gov/American Factfinder
- Insert address to identify census tract
- Use table HT-PL (race/ethnicity data)
- Use table SF-4/DP1 (familial status data)
- Use table SF-4/DP2 (disability data)
- Download data for **census tract**, **city**, **county/HMA**
- **Enter percentages onto Worksheet 1**

Step 3: Collect demographics for your development

- Number/percentage of current residents by race/ethnicity
- Number/percentage of applicants by race/ethnicity
- Enter percentages in blocks on **worksheet 1**
- Note: best to analyze data for all residents, but head of household data is acceptable

Step 4: Identify Housing Market Area (block 1e)

- HMA = the entire area from which people would be willing to move to in consideration of the benefits of achieving affordable housing
- May be city, county, all or parts of several counties depending upon whether urban, rural; presence of jobs, schools, amenities; geography and availability of transportation

Step 5: Analyze to identify under-represented groups (Worksheet 1)

Is there an under-representation here?

	Appl's	Tenants	CT	HMA
White	80%	80%		
Black	10%	2%		
Asian	2%	5%		
Hispanic	12%	5%		

Step 5: Analyze to identify under-represented groups, continued (Worksheet 1)

	Appl's	Tenants	CT	HMA
White	80%	80%	50%	59%
Black	10%	2%	29%	7%
Asian	2%	5%	8%	18%
Hispanic	12%	5%	13%	20%

Step 6: Identify direction of marketing activity

- FHEO generally considers a deviation of 10% or more to be a *significant* under-representation requiring affirmative outreach/marketing (though dependent upon number of residents/applicants)
- Check under-represented groups in block 3b of AFHMP form.

Step 7: Identify Outreach & Marketing Programs

- For each group identified as under-represented in block 3b, you must identify an outreach or marketing campaign that will be effective in attracting applications from that group.
- Worksheet 3: Identify **community contact groups** (identify at least 2 for each under-represented group, include *specific* POCs)
- Worksheet 4: Identify **marketing/advertising** methodolgies + submit copies of ads/flyers

Outreach/Marketing, cont'd

- If groups you're targeting for affirmative marketing are **LEP**, use **multi-lingual outreach materials/ads**
- Include **EHO logo/statement** on each
- Consider asking minority residents how *they* learned about this housing opportunity
- Attach copies of ads/flyers to your AFHMP when you submit to HUD

Step 8: Residency Preference (block 4a)

- **Residency preferences may have discriminatory impact** if demographics of local community vary significantly from those of the HMA
- Complete worksheet 2 if you have or propose to use a residency preference
- Please be thorough in your response to block 4a questions (1) – (5)

Step 9: Poster, Site Sign, AFHMP posted

- Block 5a: Post your Fair Housing Poster - available from HUD in English & other languages (24 CFR 110)
- Block 5b: Your AFHMP must be available to public (24 CFR 200.625)
- Block 5c: The Equal Housing Opportunity logo or slogan must be permanently affixed to the site sign

Step 10: Evaluation of affirmative marketing activity (block 6)

- Include narrative statement of effectiveness of affirmative marketing techniques – if prior affirmative marketing wasn't particularly successful in attracting new applications from under-represented groups, what are you going to do differently this time?
- Note: Racially/ethnically-segregated developments reflect ineffective affirmative marketing strategies, and can jeopardize competitive award of future Section 202/811 grants!

Step 11: Staff experience (blocks 7a-7d)

- In-house or contracted FH training staff has received
- Non-discrimination notices to all employees
- Non-discrimination clauses in employment contracts
- Remember: state fair housing laws may be broader than federal laws—so training should address all applicable FH laws

Additional considerations

(block 8)

- Senior or elderly-designated housing (ref: block 2b) – are minor children being allowed in? What about non-elderly disabled?
- Be frank! It's much better to have an AFHMP returned for adjustments, than to be subject to a housing discrimination complaint or lawsuit.

Step 12: Signature of person responsible for affirmative marketing

- AFHMP is not valid until FHEO has signed the plan indicating it as approved.
- **Maintain records** of affirmative marketing: FHEO may do compliance review.
- **Person who signs AFHMP has committed that affirmative marketing described has or will occur.**
- **Failure to affirmatively market as committed to doing in the plan = liability for a violation of FHA and may also constitute a false certification.**

Final Note

- Remember: the approved AFHMP is only the game-plan, not the game. Once your AFHMP is approved by FHEO, you must actually *undertake* the outreach and marketing described in your plan, and continually analyze its effectiveness, in order to be in compliance with the Federal Fair Housing Act.

For more information . . .

References:

- HUD 935.2 (always download newest version)
- 24 CFR 200.600, 24 CFR 108, 24 CFR 880.601
- MF Occupancy Manual 4350.3, paragraph 4-12

For more help in completing AFHMP form:

- your MF Housing representative
- patricia.j.miskovich@hud.gov or 415/489-6527
- jeff.jackson@hud.gov or 415/489-6538