

## Affirmative Fair Housing Marketing Plan Guidance

### Background

Affirmative Fair Housing Marketing Plans (AFHMP) and affirmative marketing procedures are required to be included in applications for Ohio Housing Finance Agency Multifamily Housing Programs (including state and federal funds). Affirmative marketing is not a separate marketing program, and should be an integral part of the overall project marketing effort. Through an affirmative marketing plan, a developer indicates what special efforts they will make to attract racial or ethnic groups who might not normally seek housing in their project or those “least likely to apply”.

### ***Affirmatively Furthering Fair Housing***

The Fair Housing Act has two goals: to end housing discrimination and to promote diverse, inclusive communities. The first goal prohibits that practices or policies of discrimination, such as exclusionary zoning practices; rental, sales, advertising, lending, appraisal, and other practices which may have resulted in discrimination. The second goal is referred to as Affirmatively Furthering Fair Housing (AFFH), and it embodies values of fair access and equal opportunity. Affirmatively Furthering Fair Housing includes:

- Taking proactive steps – not simply combating discrimination.
- Fostering more inclusive communities.
- Providing access to community assets for all persons protected by the Fair Housing Act.
- Addressing significant disparities in access to community assets.
- Overcoming segregated living patterns.
- Ending racially and ethnically concentrated areas of poverty.
- Ensuring compliance with civil rights and fair housing laws.

The Fair Housing Act established seven federally protected classes.

<b>Federally Protected Classes</b>	Color Race Sex	National Origin Religion	Disability Familial Status
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In addition to these protected classes, the Ohio Fair Housing Law ([Ohio Revised Code Section 4112](#)) offers legal protection based on:

- Ancestry: Your family's place of origin cannot disqualify you from access to housing.
- Military status: Your status as a veteran or active service military member cannot factor into a landlord's decision to rent you a property or to not rent you a property.

**There may also be additional protected classes for your local jurisdiction.** For more information on protected classes review the [advocacy and other resources](#) at the end of this document.

### ***Violence Against Women Reauthorization Act***

The Affirmative Fair Housing Marketing Plan provides a mechanism for showing some demonstration that Fair Housing Act is being followed, although fair housing is not as simple as AFHMP. There are many other related laws and regulations, which govern or impact fair housing. [Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#) is not directly part of the requirements of AFHMP but impacts fair housing. VAWA changes in 2013 expanded the federal HUD programs covered in the act and IRS requires that VAWA is followed at Housing Tax Credit properties. For more information on this and other regulations related to fair housing review the [Fair Housing Laws and Regulations](#) section at the end of this document.

## Projects Requiring AFHM Plans

Projects that are financed with OHFA multifamily funding which includes but is not limited to Housing Tax Credits, National Housing Trust Fund, Ohio Housing Trust Fund, and HOME funds. Any recipients of Federal funds such as Section 8, 202, 236, BMIR projects or USDA/RD Section 515 are required to have Affirmative Fair Housing Marketing Plans. Federal regulations for Affirmative Fair Marketing are in [24 CFR Part 200, Subpart M](#). Additional guidance and requirements for AFHMP come from the following resources:

- a) **IRS Regulation 1.42-5 (3) (c) (V)** - Certification and review provisions  
All units in the project were for use by the general public (as defined in Sec. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project.
- b) **Memorandum of Understanding IRS, HUD, & DOJ**  
The United States Departments of the Treasury (Treasury), Housing and Urban Development, and Justice enter into this memorandum of understanding ([MOU](#)) in a cooperative effort to promote enhanced compliance with the [Fair Housing Act \(Act\), 42 U.S.C. §§ 3601 et seq.](#), for the benefit of residents of low-income housing tax credit properties and the general public.
- b) **2015 Final Rule on AFFH**  
This [final rule on Affirmatively Furthering Fair Housing](#) provides additional guidance by HUD on effectively and efficiently incorporating into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act.
- c) **HUD Program and Assisted Units**  
An AFHM program, shall be in effect for each multifamily project throughout the life of the mortgage (24 CFR 200.620(a)). The AFHMP ([Form-935.2A](#)), once approved by HUD, must be made available for public inspection at the sales or rental offices of the respondent (24 CFR 200.625) and may not be revised without HUD approval.
- d) **USDA and Rural Development Properties**  
If an RD property has four or more units, the owner is required to prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) using [Form HUD 935.2](#) Affirmative Fair Housing Marketing Plan.

## Compliance Monitoring

Affirmative marketing procedures must continue throughout the affordability or compliance period. All recipients and sub recipients of funds for projects containing five or more units must comply with the affirmative marketing requirements to receive assistance. For single family homeownership dwellings, the plan remains in effect until the dwelling units are sold.

OHFA utilizes the OHFA [Affirmative Fair Housing Marketing Plan \(PC-E45\)](#) form to fulfill the affirmatively furthering fair housing and market plan requirements for the multifamily properties that it funds. This entails use by properties with OHFA multifamily funding which includes but is not limited to Housing Tax Credits, National Housing Trust Fund, Ohio Housing Trust Fund, and HOME funds. If the project is located in multiple census tracts review the [Importance of Current and Accurate Demographics](#) information in the next section.

On April 14, 2014, HUD's Office of Fair Housing and Equal Opportunity (FHEO) published a [memorandum](#) which clarifies when updated AFHMPs need to be submitted to FHEO for review and approval for HUD and USDA funded projects. **HUD provided clarification that existing AFHMP must be reviewed by the Owner when:**

- a) At least five years have elapsed since the last review; OR
- b) The local jurisdictions' Consolidated Plan is updated; OR

- c) Significant demographic changes have occurred in the housing market area.

**If the Owner's analysis finds that the plan is satisfactory**, including demonstrating that the current marketing/outreach is targeting diverse areas where individuals least likely to apply for housing currently live, then submitting an updated plan for approval is not required. For these properties the [OHFA AFHMP Review Verification \(PC-46\)](#) form should be used. This completed form should be attached to the AFHMP and be available for review.

**If the Owner's analysis determines that the current AFHMP requires modifications or updates**, the Owner must submit the updated AFHMP for approval.

**When required revised AFHMPs should be submitted to OHFA 60 days prior to expiration of the previous AFHMP or 60 days prior to 5 year anniversary of the plan.** This will allow sufficient time for OHFA to review, request additional materials if needed, and approve the plan.

Note, that properties with HUD or USDA Rural Development funding, may submit to OHFA the approved plan that was submitted to these agencies or documentation verifying that there was no changes that was submitted. *For both of these agencies the [HUD-935.2A Form](#) should be utilized, and submitted to respective agency.*

**The approved AFHMP must be available for public inspection**, and the owner or agent responsible for marketing should maintain current community contacts. The HUD Fair Housing Poster/local Fair Housing Poster is required to be prominently displayed in all offices in which sales or rental activity takes place; displayed from the start of construction; and properly maintained throughout the construction and sales/rental period.

### ***Properties receiving new OHFA funding***

If the plan approval date is 5 or more years old or within six (6) months of expiration, the applicant must submit the current plan with supporting documentation demonstrating that an updated plan needs, or does not need, renewal by HUD, USDA, and OHFA. Applicants that own a property with project based Section 8, HUD Section 236, or USDA contracts may submit an approved Affirmative Fair Housing Marketing Plan to satisfy the requirement.

If an approved plan is not already in place, the application will include a complete Affirmative Fair Housing Marketing Plan (OHFA Form PC-E45). If the project is located in multiple census tracts review [Importance of Current and Accurate Demographics](#) information in the next section.

### ***Action to be taken for Non-Compliance***

#### **Outdated or Unverified Plan**

- If the plan is outdated or does not comply with requirements listed above, the Analyst will make a note in the compliance report citing the need for an updated plan. If owner fails to address the citation, OHFA may consider adding the property to OHFA's Watch List.

#### **Fair Housing violation on Site Review**

- If a Fair Housing violation in advertising is found during the review, for example: failure to indicate the Equal Housing logo or language in written or published documents is problematic, the Analyst would list the infraction in the audit report. Management would then have to document their efforts to change their ads or literature to include the needed verbiage. Any other irregularities would also be written in the report that may include but are not limited to: irregularities with the waiting lists, clustering of residents by race, familial status, etc. Any suspected violations of the Fair Housing act should be discussed with the Fair Housing compliance designee or the manager for verification or clarification if there is any doubt. Management's failure to correct or address the issues would result in the Analyst sending a letter to the Fair Housing Agency in the county of the infraction. The list of [authorized Agencies](#) is found on the OHFA website and is updated periodically.

### **Adverse decision in a Fair Housing complaint from HUD**

- If the Agency receives notification of an adverse decision in a Fair Housing complaint from HUD, the DOJ, a federal court or a local or state Fair Housing authorized Agency, the property will be cited for noncompliance with OHFA multifamily funding programs. If it has HTC as part of the funding an 8823 will be issued which will be sent to the IRS. A property's Annual Owner Report (AOR), is a good source document for use by Analysts to check for notification of a Fair Housing complaint/violation. The Analyst must discuss the issues and findings of the notifying Agency with their manager to assure that the violation meets the non-compliance criteria for the OHFA multifamily funding programs at the property.

## **Completing the AFHMP**

The Affirmative Fair Housing Marketing Plan provides a way to document marketing efforts and as well as steps being taken to affirmatively further fair housing. This section focuses on the parts of the AFHMP form can be challenging to complete but are vital to having successful marketing plan.

### **Key Considerations as you begin working on the AFHMP**

- **INCLUSIVE AND DIVERSE** – Strive to have similar or greater demographics as the housing marketing area. Balance to ensure that the majority regardless of race or ethnicity is accompanied with minorities and underserved populations.
- **ATTRACT TARGETED APPLICANTS** – Ensure that all persons have knowledge of housing opportunities and are offered housing without discrimination for persons who qualify.
- **ONGOING DIRECT MARKETING** – Demonstrate meaningful attempts to increase underserved populations. (Race, ethnicity, Persons with Disabilities, Families with Children, etc.)
- **REVIEW AND ADJUST** – Review demographics by making a conscience effort to understand the community and changes in underserved populations then adjusting, if needed, after the initial plan has been completed and approved.

## **Selecting a Housing Marketing Area**

When completing the marketing plan, demographics for the Housing Marketing Area must be defined. This is typically defined as the census tract, city, county, or even possibly the MSA where the property is located. The area that is covered for marketing is highly dependent on the density of the population in an area. For a higher density region the area will typically be the Census Tract where the property is located. A lower density area will typically include a whole city or county as the Housing Marketing Area.

When a property is located across multiple sites a list of census tracts should be included. If demographics vary dramatically across census tracts a summary of demographics should be included. If the demographics are fairly consistent, city or county level demographics can be used for the Housing Marketing Area.

### **Importance of Current and Accurate Demographics**

The more current the demographics information collected is the more likely the AFHMP is an effective tool over the five or more years that it is in place. The US Census Bureau is the primary source for gathering demographics information that is required to complete the marketing plan or to evaluate the accuracy of an existing marketing plan (<http://factfinder2.census.gov/main.html>). Refer to the [OHFA AFHMP Census Guide](#) for steps on using the American Factfinder website. Alternatively, the [Affirmatively Furthering Fair Housing Tool \(AFFH-T\)](#), contacting a local planning office, or other official source can be used as sources.

## **Determining Least Likely to Apply**

By comparing the property demographics (including waiting list) to the Housing Marketing Area the demographics groups that are least likely to apply at the property will be determined. These groups will

need additional outreach and/or marketing efforts. Least Likely to Apply information is completed in section on of the AFHMP form.

*In addition to the federally required populations included Fair Housing Act, in the AFHMP space is provided to identify if any state or local protected classes are identified as a population that is least likely to apply.*

### Majority/Represented Populations

The highest percentage of a race or other demographic is the majority population. The majority will not typically need special outreach and because general advertising methods and word of mouth will likely reach the majority population. These populations will typically be represented at the property.

### Least Likely to Apply/Underserved Populations

Least Likely to Apply populations have lower percentages. These populations will typically not be represented at the property. Evaluate the demographics using a reliable method of measure. Keep in mind that checking all groups that are least likely to apply does not mean identifying every group as least likely to apply. When considering which groups are “Least Likely to Apply” keep in mind that typically:

**1% or Greater & Under Represented= MARKET SPECIFICALLY TO**

**Less Than 1% = No Specific Marketing Required\*\*\***

\*\*\*Generally, there is not sufficient opportunity to directly reach populations with less than 1%, but there may be reasons to target those identified as less than one percent of the population.

Some possible reasons to include those identified as less than 1%:

- If demographics do not show underserved populations with 1 percent or greater, then either expand the demographic area to find a population of greater than 1% or include those identified as less than 1% percent as least likely to apply. This should be done based on what makes the most sense for the area.
- If an underserved population is known to exist in the housing area yet the demographics do not represent them in the census data, your knowledge of the community should be considered for direct marketing opportunities.

**All selected groups shall be identified in the community contact and advertising method sections of the AFHMP.**

## **Marketing Program and Fair Housing**

### Equal Housing Opportunity Advertising

All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity (EHO) logo, statement, or slogan as a means of educating the home seeking public that the property is available to all persons. The choice of logo, statement or slogan will depend on the type of media used (visual or auditory) and size of the advertisement. See HUD's [Part 109 Fair Housing Advertising](#) for additional information on use of EHO and fair housing with marketing.

### Section 504 and Accessibility Requirements

[Section 504](#) of the Rehab Act makes it illegal for federal agencies, programs or activities that receive federal financial assistance or are conducted by a federal agency, to discriminate against qualified individuals with disabilities. Requirements under Section 504 include reasonable accommodation for employees with disabilities, program accessibility, effective communication with people who have hearing or vision disabilities, and accessible new construction and alterations. HOME, National Housing Trust Fund, Ohio Housing Trust Fund, and LIHTC properties are required to meet or exceed Section 504 accessibility requirements in that 5% of the total units must be fully accessible for mobility impairments and 2% of the total units must be accessible for persons with visual and hearing impairments. Accessible facilities which meet the Uniform Federal Accessibility Standards (UFAS) 4.1 Minimum Requirements may use the international symbol of accessibility.

### Language Barriers

For advertising and marketing language barriers can have a significant impact. The use of alternative formats or multiple languages can help make housing more accessible with materials that can reach a more diverse group. Possible options include Braille, large print, multiple languages, or other alternatives.

### Advertising Methods

As advertising is reviewed and considered, here are few tips and suggestions for having effective advertising to populations underserved:

- When possible list each targeted group separately.
- Advertising methods used for each targeted population selected should be listed.
- Advertising sources should be known to reach targeted populations prior to advertising.
- Use advertising sources, if any, before moving to county, region or state level advertising.
- Will alternate format(s) be used? (Example: Braille, large print, multiple language)
- For Advertising on Internet, will this reach underserved populations?

### Community Contacts

Community contacts for outreach are an important part of having effective marketing to underserved populations. Here are some considerations for community contacts:

- When possible list each targeted group separately.
- Use local contacts, if any, before moving to county, region or state contacts.
- Develop positive relationships and have continued communication with these contacts.
- Consider maintain a file of contacts, to help establish:
  - How you determined what outreach was needed.
  - What was done to make a special effort.
  - When actions were taken.
  - Why decisions were made to change or expand efforts.

### **Staff Trainings**

Any employees or agents involved with marketing must be provided verbal and written instructions regarding policies of non-discrimination and fair housing. The training should include federal regulations for Affirmative Fair Marketing found in [24 CFR Part 200, Subpart M](#) and compliance with the [Fair Housing Act \(Act\)](#). The AFHMP requires basic information about the trainings that are attended or anticipated and who attended the trainings. Copies of training materials should be kept, and are required as part of the [AFHMP](#) submission or the [AFHMP Review \(PC-46\)](#) that is done every 5 years.

### **Common Errors!**

#### Identifying Least Likely to Apply

- All Race and Ethnicity boxes were checked. Please review your demographic data. It is highly unlikely that *direct* marketing will be done for all demographic groups.

#### Community Contact Table

- Underserved populations in column do not include those who are directly marketed to.
- Contact information for outreach is incomplete or explanation is not provided to why the organization is well suited for targeting the population identified. *Note: Low income does not describe experience working with a specific Race, Ethnicity, Persons with Disabilities, etc.* Explain how they will assist you to reach the populations identified.

#### Methods of Advertising Table

- Underserved population is generalized or listed as all for every media used. List specifically what underserved population is being targeted by the advertisement method.

- Copies of advertisements were not attached.

#### Evaluation of Marketing Activities

- Information provided in this section does not describe how marketing is evaluated as being effective. This section should clearly convey steps involved with evaluation of marketing efforts and how this will impact future marketing.

#### Staff Training Samples and Dates

- The only training provided does not include a sufficient quantity of fair housing related information. *Note: OHFA Tax Credit Compliance Trainings can not be used as staff training for the AFHMP.*
- Samples or proof of training were not provided.

#### Signature and Date

- The Affirmative Fair Housing Marketing Plan is not signed or dated. The person responsible for implementing and reviewing the plan is required to sign and date the plan prior to approval.

### **Supplement - Fair Housing Laws and Regulations** – affecting multifamily housing programs.

If property is subject to more than one law and the requirements differ, the most stringent requirements will be followed.

Referenced in this policy:

- [Fair Housing Act](#) – amended in 1988 – which prohibits discrimination in housing
- [IRS Regulation 1.42-5 \(3\) \(c\) \(V\)](#)
- [Memorandum of Understanding IRS, HUD, & DOJ](#) – August 2000
- [Section 504 of the Rehabilitation Act of 1973](#)
- [Subpart M—Affirmative Fair Housing Marketing Regulations](#) – HUD regulation on affirmative fair housing marketing
- [Final Rule on Affirmatively Furthering Fair Housing \(AFFH\)](#) – July 2015
- [Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#) – [New Housing Protections Memo](#)
- [VAWA 2013: Implementation in HUD Housing Programs](#)

Additional laws and regulations:

- [Title II of the Civil Rights Act of 1964](#) – prohibits discrimination in certain places of public accommodation
- [Title VI of the Civil Rights Act of 1964](#) – prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance
- [Age Discrimination Act of 1975](#) – prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance
- [Executive Order 11063](#) – Nov. 1962, amended by [Executive Order 12259](#) Dec. 1980– Non-discrimination and Equal Opportunity in Housing
- [Uniform Federal Accessibility Standards](#) – August 1984
- [Executive Order 12892](#) – January 1994 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing
- [Executive Order 12898](#) – February 1994 – Environmental Justice
- [Housing of Older Persons Act](#) – December 1995
- [Group Homes, Land Use, and the Fair Housing Act](#) – August 1999 – Joint Statement of the Departments of Justice and of Housing and Urban Development
- [Servicemembers Civil Relief Act](#) – October 1940, amended 2003
- [Reasonable Accommodations under the Fair Housing Act](#) – May 2004 – Joint Statement of the Department of Housing and Urban Development and the Department of Justice

- [Reasonable Modifications under the Fair Housing Act](#) – March 2008 – Joint Statement of the Department of Housing and Urban Development and the Department of Justice
- [Equal Credit Opportunity Act \(ECOA\)](#) – March 1976, amended 2010
- Justice Department Issues Policy Statement on the [Religious Land Use and Institutionalized Persons Act](#) – September 2010
- [Americans with Disabilities Act \(ADA\)](#) – update [Revised Regulations](#), September 2010, includes ADA Standards for Accessible Design
- MOU between the Consumer Financial Bureau and the United States Department of Justice Regarding [Fair Lending Coordination](#) – December 2012
- [Guidance for PHAs and Owners on Excluding the Use of Arrest Records](#) – November 2015
- [HUD Guidance on Fair Housing Act Standards to the Use of Criminal Records](#) – April 2016
- [Equal Access Final Rule](#) - March 2012, amended by [Equal Access Final Rule 2016](#)

## Supplement - Advocacy and Contacts

HUD Fair Housing and Equal Opportunity (FHEO) Offices:

[https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/fheodir](https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/fheodir)

Ohio Association of Area Agencies on Aging: <http://www.ohioaging.org/Pages/Area%20Agencies>

Ohio Civil Rights Commission: <http://crc.ohio.gov/>

Ohio Civil Rights Commission Regional Offices: <http://crc.ohio.gov/AboutUs/RegionalOffices.aspx>

Ohio Legal Aid: <http://www.ohiolegalhelp.org/>

Ohio private fair housing agencies:

<http://portal.hud.gov/hudportal/HUD?src=/states/ohio/working/fheo/fhagencies>

NAACP Local Units: <http://www.naacp.org/find-local-unit/>

National Fair Housing Alliance Resources: <https://fairhousingresourcecenter.wordpress.com/>

Examples of Word Choice in Advertising:

<http://www.ranww.org/documents/resources/nonowords.pdf>

<http://nynewspapers.com/wp-content/uploads/2014/05/FairHousingTerms.pdf>

[http://www.mvfairhousing.com/ad\\_word\\_list.php](http://www.mvfairhousing.com/ad_word_list.php) (note some words to avoid are specific to the Dayton area in this example)