

Introduction to Affirmatively Furthering Fair Housing (AFFH) and the New AFFH Rule



Introduction to the AFFH Rule



James Clifton Whiteside
U.S. Dept. of Housing & Urban Development
Office of Fair Housing & Equal Opportunity

1670 Broadway Street

Denver, CO 80210

PH: 800-877-7353

Direct: 303-672-5155

Fax: 303-672-5026

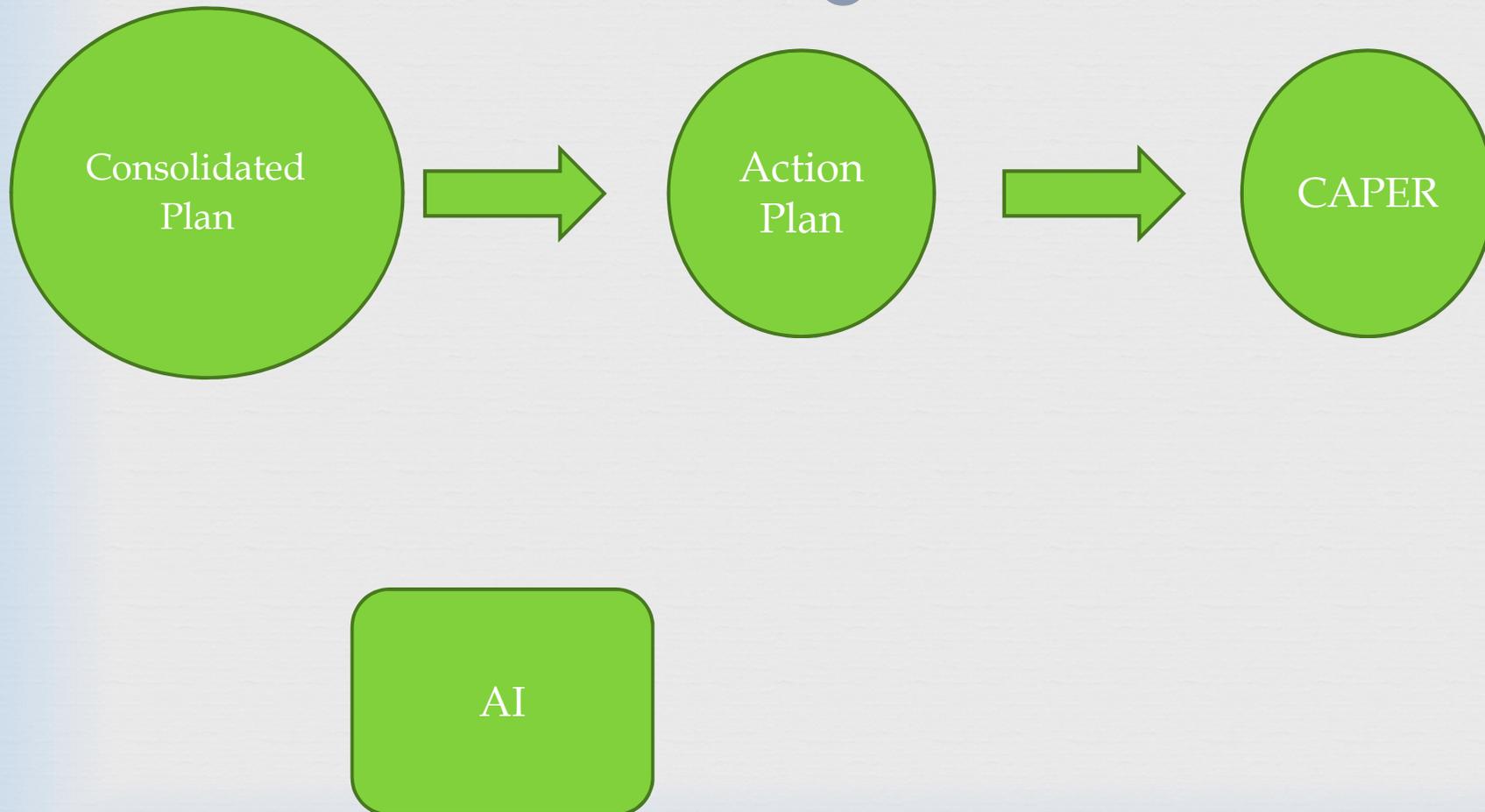
TDD: 303-672-5248

james.c.whiteside@hud.gov

www.hud.gov

www.espanol.hud.gov

Fair Housing Planning: AI in accordance with existing HUD Regulations



Fair Housing Planning: Under the AFFH Rule



Purpose of the AFFH Rule



- ☞ Provide for better fair housing planning and address issues raised with the Analysis of Impediments process
- ☞ To promote better understanding by program participants of AFFH
 - ☞ HUD is providing program participants with guidance, data, and an assessment tool they will use to conduct and submit an Assessment of Fair Housing (AFH).
- ☞ To address issues raised by HUD grantees, civil rights advocates, other stakeholders, and the Government Accountability Office

Addressing Key Fair Housing Issues



- ❧ Improve integrated living patterns and overcoming historic patterns of segregation
- ❧ Transform racially and ethnically concentrated areas of poverty (R/ECAPs) into areas with greater access to opportunity
- ❧ Reduce disparities in access to opportunity experienced by different protected classes
- ❧ Respond to disproportionate housing needs experienced by different protected classes

What is AFFH?

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 historical 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 PHAs 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 AFFH 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 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 participation 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 (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

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.

[See 24 CFR § 5.152]

Which program participants are subject to the Rule?



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

☞ CDBG

☞ ESG

☞ HOME

☞ HOPWA

☞ PHAs receiving assistance under sections 8 or 9 of the United States Housing Act of 1937

[see 24 CFR § 5.154(b)]

CPD AFFH IMPLEMENTATION TIMELINES



30
DAYS



AFFH Final Rule
Published
July 16, 2015

AFFH Rule
Effective
August 17, 2015

1ST ROUND OF GRANTEE AFH SUBMISSIONS BY CDBG ALLOCATION

A. LOCAL GOVERNMENTS WHO RECEIVED MORE THAN \$500,000 IN FY2015



B. STATES, INSULAR AREAS, LOCAL GOVS WHO RECEIVED LESS THAN \$500,000 IN FY2015



AI v. AFH

The AI	The AFH
Regulatory requirement to conduct an AI, but no regulatory requirements on the content of the AI or the particular analysis necessary for a thorough fair housing assessment.	The AFFH rule creates a regulatory mandate for required content and analysis.
No standard submission format	Program participants will use an Assessment of Fair Housing (AFH) online assessment tool to answer required questions
No assistance with data and maps	HUD will provide data and maps
No mandate for HUD review and approval	The AFH will be reviewed and accepted or non-accepted by HUD

Key Points for Grantees/PHAs



- ☞ AFHs will not be due immediately.
- ☞ The due date for an AFH is based on each grantee's Consolidated Plan cycle or PHA Plan cycle, but may be based on which program participants work together to submit an AFH.

Key Points for Grantees/PHAs



HUD has created a model in which PHAs, units of local government, and/or States can work with each other in conducting and submitting an AFH.

- ✧ Participating with another grantee can reduce the burden on any one individual grantee, promote cost savings, and reduce duplication of efforts.
- ✧ Collaboration should provide a more comprehensive analysis.
- ✧ Collaborating during the planning process can lead to collaborative solutions.

Key Points for Grantees/PHAs



- ☞ HUD is allowing grantees to change their submission dates to align with other grantee submissions, creating flexibility that can reduce burden and timing concerns.

Key Points for Grantees/PHAs



HUD is providing additional time to begin the new Assessment of Fair Housing process for program participants who choose to submit an individual AFH:

- ☞ Smaller jurisdictions (those that received less than \$500,000 in CDBG funds in FY2015)
- ☞ States
- ☞ Insular Areas
- ☞ PHAs

Key Points for Grantees/PHAs



- ☞ HUD is providing certain nationally uniform data for grantees to use in conducting the Assessment, thus reducing the need for grantees to obtain that data from third-party sources.
- ☞ HUD will also provide guidance, targeted technical assistance, and training to assist program participants to develop AFH submissions.
- ☞ By using the Assessment Tool provided by HUD, program participants will be guided through specific analyses, eliminating the need for consultants.

The Final AFFH Rule



AFFH Rule Highlights



Program participants must:

- ☞ Engage the community in fair housing planning and adhere to community participation requirements. See 24 CFR § 5.158.
- ☞ Use the Assessment Tool provided by HUD. See 24 CFR § 5.154(d).
- ☞ Analyze fair housing issues and contributing factors in their jurisdictions and regions. See 24 CFR § 5.154(d)(3) and (4).

AFFH Rule Highlights



Program participants must:

- ☞ Set goals to address identified significant contributing factors and related fair housing issues and follow through on these goals in the Consolidated Plan and/or PHA Plan. See 24 CFR § 5.154(d)(4)(iii).
- ☞ Take meaningful actions that AFFH and not take any action that is inconsistent with the duty to AFFH. See 24 CFR § 5.150 and § 5.162.
- ☞ Look back and make adjustments to previously established fair housing goals to ensure that progress occurs. See 24 CFR § 5.154(d)(7).

AFFH Process



Options for submission:

- ❧ Individual participants: each program participant conducts and submits an AFH alone.
- ❧ Joint participants: two or more program participants conduct and submit a single AFH.
- ❧ Regionally collaborating participants: joint participants, at least two of which are consolidated plan program participants, conduct and submit an AFH.

[See 24 CFR § 5.162]

AFFH Process: Collaboration



To combine resources and address 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.

[See 24 CFR § 5.156]

AFFH Process: Community Participation



The AFFH rule links existing community participation, consultation, and coordination requirements to the AFH process.

Community participation as required in 24 CFR § 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.”

[See 24 CFR § 5.152]

AFFH Process:

Link to Subsequent Planning



The AFFH rule establishes specific requirements for incorporating the analysis and goals in the AFH into consolidated plans and PHA Plans.

☞ 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.

[See 24 CFR § 5.154(d)(5)]

Determining Submission Dates



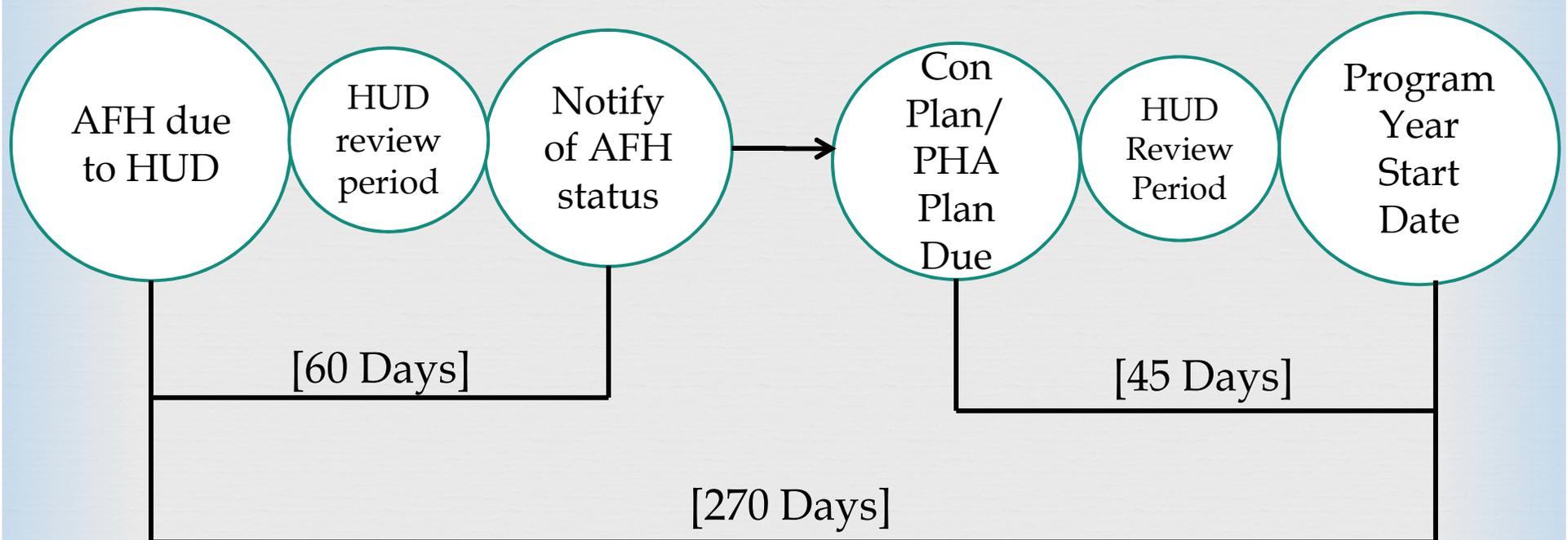
General Submission Requirements



- ✧ The first AFH shall be submitted no later than 270 calendar days prior to the start of their program year for which a new 3-5 year consolidated plan or 5-year PHA plan is due.
- ✧ 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).

[See 24 CFR § 5.160]

Initial AFH Timeline



The AFH



The AFH



The AFH is intended to help communities understand and identify local barriers to fair housing choice and disparities in access to opportunity.

- ❧ Analyze and discuss HUD-provided data as well as local data and knowledge.
- ❧ Identify fair housing issues in the jurisdiction and region and related contributing factors.
- ❧ Create goals that are designed to overcome significant contributing factors and related fair housing issues.

[See 24 CFR § 5.154(c) and (d)]

HUD's Review of an AFH



☞ 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).

[See 24 CFR § 5.162]

Acceptance of an AFH



☞ The AFH will be deemed accepted **60 calendar days** after the date that HUD receives the AFH, unless on or before that date, HUD has provided notification that HUD does not accept the AFH.

[See 24 CFR § 5.162]

When Would HUD Not Accept an AFH?



- ☞ The AFH is inconsistent with fair housing/civil rights laws
- ☞ The AFH is substantially incomplete

[See 24 CFR § 5.162]

Process for an AFH That is Not-Accepted



- ☞ HUD will provide written notification to the program participant of HUD's non-acceptance
- ☞ Notification will **specify the reasons** why the AFH was **not accepted**
- ☞ Notification will **provide guidance** on how the AFH should be revised in order to be accepted

Revision and Resubmission



- Program participant can **revise and resubmit** the AFH within **45 calendar days**
- Revised AFH will be **deemed accepted 30 calendar days after resubmission**, unless HUD provides non-acceptance notification

[See 24 CFR § 5.162(c)]

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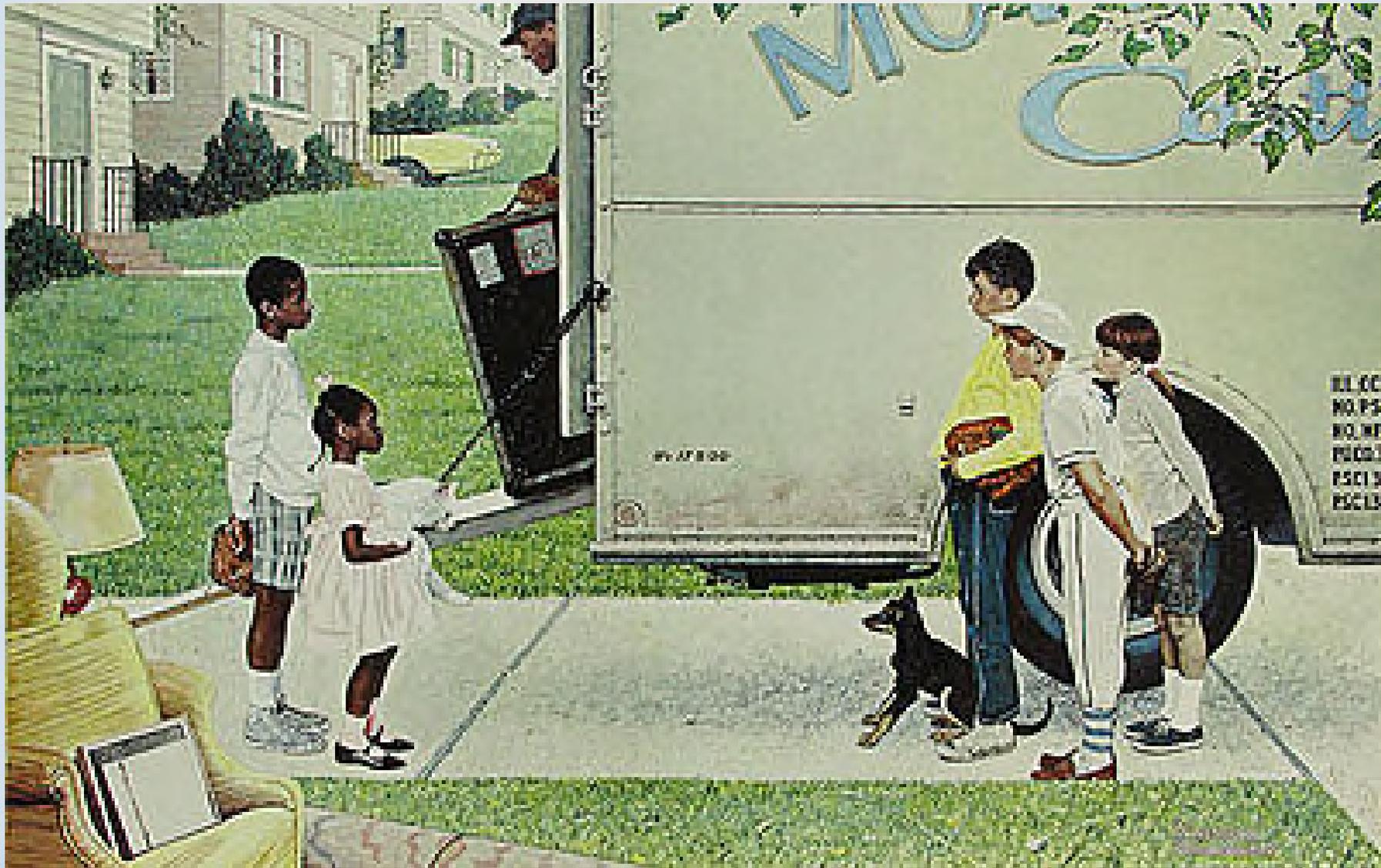


QUESTIONS?



- 🌀 <https://www.hudexchange.info/programs/affh>
- 🌀 [Ask an AFFH Question](#)

Moving Day



Region VIII - FHEO



James C. Whiteside
Program Compliance Branch Chief
U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
1670 Broadway Street
Denver, CO 80202
Direct: 303-672-5155
TDD: 303-672-5248
E-mail: james.c.whiteside@hud.gov