

CHAPTER 3. PROCESSING OF AFFIRMATIVE FAIR HOUSING MARKETING  
PLANS AND RELATED DOCUMENTS

SECTION 1: INTRODUCTION

- 3-1. INTRODUCTION. This Chapter discusses the responsibilities of FHEO staff in the review of AFHM Plans and related documents during the processing of applications for HUD's housing programs. The Chapter includes a discussion of:
- A. Actions prior to the submission of an AFHM Plan; and
  - B. Review and approval of the AFHM Plan, related documents and affirmative marketing procedures required under programs such as the HOME Investment Partnerships Program.

SECTION 2: ACTIONS PRIOR TO THE SUBMISSION OF AN AFHM PLAN

- 3-2. TECHNICAL ASSISTANCE TO APPLICANTS. The Field Office POD/FOD provides information and technical assistance on civil rights and equal opportunity matters to applicants for all HUD-assisted housing programs. Guidance may be given in individually scheduled meetings with applicants or through participation in Office-wide conferences where a number of the offices involved in the review and approval of program applications explain their respective roles and sets of requirements. Such guidance shall include the following:
- A. Explanation of AFHM Requirements. FHEO staff shall explain the objectives of the AFHM Regulations and the Plan; the submission requirements; reporting and recordkeeping requirements; the eligibility and any certification requirements.
  - B. Instructions for the Preparation of AFHM Plans and Strategies. FHEO staff shall provide technical assistance to:
    - 1. Applicants, i.e., nonprofit organizations, corporations, developers or individuals in preparing AFHM Plans; and

2. Applicants for programs for which an AFHM Plan is not required in developing comprehensive affirmative marketing strategies.

3-3. CONTENT OF TECHNICAL ASSISTANCE. For programs requiring the submission of an AFHM Plan, the Housing Division staff prepares a "developer's packet" which contains forms and documents to be submitted as part of an application for participation in a HUD housing program. This packet includes information on AFHM and other civil rights requirements. The POD/FOD shall cooperate with the Housing Division to ensure that copies of the AFHM Plan Form HUD-935.2 and the instructions are part of the developer's packet for each program. For programs for which AFHM Plans are not required, but which do require an AFHM strategy as part of the plan for identifying and selecting eligible families, instructions on preparing the strategy should be included in any application package to which the requirement applies.

3-4. REVIEW OF PAST PERFORMANCE. The Department reviews an applicant's past performance in the area of affirmative fair housing marketing in the following ways:

- A. Previous Participation Review. Individuals participating in HUD's multifamily housing programs must submit a Previous Participation Certificate, Form HUD-2530, with each application for Site Appraisal and Marketing Analysis for Insured Programs, in order to provide the Department with a full disclosure of the past experience of all principals involved in the proposed project. Principals subject to this review include applicants, sponsors, owners, managing agents, general contractors and consultants. As part of the Department's review, the POD/FOD shall obtain information about the applicant's record in civil rights and equal opportunity, including past experience and performance, if any, regarding the implementation of AFHM Plans and requirements. FHEO staff shall review monitoring reports and consult with the Regional FHEO Compliance Division regarding pending complaints

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and compliance reviews and charges issued by the Secretary under the Fair Housing Act. Where there are substantive deficiencies, FHEO staff shall inform the Director of the Housing Division. Appropriate sanctions may be imposed in accordance with the Debarment Handbook (1300.13) and Regulations (24 CFR

Part 24 - Debarment, Suspension and Ineligibility of Contractors and Grantees).

- B. Ranking and Review of Proposals. In programs where FHEO participates in the application review process FHEO evaluates each proposal based on the applicant's record in complying with civil rights laws and equal opportunity requirements, including affirmative marketing. FHEO reviews but does not rank proposals that are not funded because of insufficient funds in the prior years, since they have been previously ranked.

SECTION 3: REVIEW AND APPROVAL OF AFHM PLAN AND RELATED DOCUMENTS

3-5. PURPOSE OF AFHM PLAN REVIEW. The Director, Program Operations Division/Field Operations Division, has the responsibility for the review and approval of the AFHM Plan during the processing stages specified below for each program. The Director shall approve or disapprove the Plan based on the factors outlined in Paragraphs 3-7 through 3-11 below. The Director shall base the determination on the information found in the Review Record (Appendix 11).

- A. Effectiveness of Marketing Program. In reviewing the Plan, the Director shall determine:
  - 1. whether all required information has been included in the Plan;
  - 2. whether the marketing program has the potential for effectively attracting buyers or renters from the majority and minority groups, regardless of gender, represented in the population of the housing market area; and
  - 3. whether the marketing program has the potential to attract persons with disabilities and their families to the project;

- B. Fair Housing Instructions. The Director shall obtain a description and determine the adequacy of the fair housing instructions prepared for the staff of the developer, contract management company or sales firms; and
- C. Residency Preferences. In cases where the applicant submits a request for a residency preference, the

Director shall determine whether the residency preference is consistent with the objectives of AFHM and the goals of the Plan.

NOTE: At this time, the AFHM Regulations have not been amended to include handicap and familial status. When the amended Regulations are published in the Federal Register, the Form HUD-935.2 will be revised to reflect the need to consider these new classes in formulating and implementing any affirmative marketing program.

3-6. TIMING OF THE REVIEW. The AFHM Plan must be approved prior to a commitment to insure or otherwise fund housing. The Plan shall be reviewed at the following processing stages:

- A. Final Proposal Stage. For projects subsidized under the Section 8 Loan Management Set-Aside program, the Plan is reviewed with the final proposal.
- B. Conditional Commitment Processing Stage. For unsubsidized insured multifamily projects as well as projects funded under the Section 202/8 Direct Loan Program, the Supportive Housing for the Elderly Program and the Supportive Housing for Persons with Disabilities Program, the Plan is reviewed during the processing stage prior to the approval of the Conditional Commitment. For individual or Master Conditional Commitment applications involving five or more single family dwelling units, the Plan must be reviewed prior to the issuance of an Environmental Review Letter. Where applicable, the Certification of Intent Not to Market, Form HUD 935.3 (Appendix 26) must be submitted and accepted prior to issuance of the Environmental Review Letter. The FHEO Division shall obtain from the Housing Division and record on Form HUD-935.2 the name of the subdivision and the case or project number.

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NOTE: For the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities Programs the review of an AFHM Plan does not have to occur at the time of the submission of an initial application. Reviewing the AFHM Plan may be unnecessary because the application containing the Plan may not be one of the applications eventually selected for funding. If the AFHM Plan is not reviewed, HUD shall note

such on the Notification of Selection for a Fund Reservation and state that the AFHM Plan is subject to approval prior to issuance of a Conditional Commitment.

C. Programs with No Final Proposal. The Plan for projects subsidized by Section 8 and funded under Section 515 of the Housing Act of 1949 is reviewed in accordance with the provisions of 7 CFR 1901.203 by the official authorized to approve the Farmers Home Administration insurance. The Plan for the Additional Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C), is reviewed with each bid submitted.

3-7. COMPLETENESS OF INFORMATION. The reviewer shall ascertain whether the applicant has supplied all the required information on Form HUD-935.2 (Appendix 7). The reviewer may use a checklist similar to that found in Appendix 10. The information shall be consistent with the provisions of the AFHM Regulations and this Handbook. The FHEO Division shall notify the applicant of any deficiencies in the information and shall give the applicant sufficient time to remedy the deficiencies.

3-8. DIRECTION OF MARKETING ACTIVITY. The reviewer shall determine whether the applicant has identified the appropriate group(s) for special outreach. In examining the basis for the choice, the reviewer should also note whether the selection of target group(s) is consistent with generally available facts and data regarding the factors described in Paragraph 2-8.

A. Least Likely to Apply. The following are examples of group(s) that might be identified as least likely to apply for the housing in given situations:

1. Non-minority persons for a project located in a predominantly minority area;

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2. Minority groups for a project located in a non-minority area; and

3. Blacks and Non-Minorities for a project located in a neighborhood which is predominantly Hispanic.

B. Individuals with Disabilities. In cases where the owner has identified persons with disabilities as

requiring special outreach activities, the reviewer shall note whether the basis for such designation was appropriate.

3-9. APPROPRIATENESS OF THE MARKETING PROGRAM. The reviewer shall examine the information contained in Part 5 of the Plan and determine whether the proposed marketing program includes actions which are appropriate for attracting the target group(s) (Part 4 of the Plan) and whether the actions are likely to achieve the objectives of the Plan. The following factors should be considered in determining acceptability under the criterion:

A. Commercial Media and Brochures.

1. Whether the choice of commercial media is appropriate to the choice of groups identified as least likely to apply for the housing. Where Blacks, Hispanics, Asian-Americans or other racial/ethnic groups have been identified as requiring special outreach, and minority media are available in the housing market area, the reviewer should carefully review any Plan that proposes a marketing program which does not include use of such media. This review would determine whether the marketing program as a whole is likely to be effective without use of such outlets;
2. Whether the advertising is planned in languages other than English where FHEO believes it necessary to attract target groups, e.g., Hispanics;
3. Whether the advertising conveys an easily understood message that members of the target groups are welcome in the area in which the proposed project is located. For example, the brochures may include information about the proximity of schools, public facilities (e.g., recreation centers), public transportation, and

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community facilities. However, in stating this information, the advertising should not imply that the project area is restricted to persons of a particular race, color, creed, sex or national origin, or that families with children and handicapped persons would feel unwelcome;

4. Whether both majority and minority group models are represented where the applicant plans to use

pictorial advertising and whether women are depicted in such advertising in non-sex-stereotyped roles;

5. Whether the advertising conveys the message that families with children are encouraged to apply for the housing. For example, the brochures or site signs depict parents and children together in play areas or other gathering places;
  6. Whether the advertising depicts units which have been made accessible to individuals with disabilities or conveys the message that reasonable accommodations can be made so that individuals with disabilities can fully enjoy the project's services and facilities on the same basis as non-disabled individuals; and
  7. Whether the Equal Housing Opportunity Logotype and Slogan are displayed on all advertising materials.
- B. Community Contacts. To determine the potential effectiveness of the proposed community contacts, the following questions should be considered:
1. Do the community organizations or individuals identified as community contacts have frequent contact with the target groups?
  2. Are the functions that the community contacts are expected to perform in implementing the outreach program appropriate to their size and influence in the community?
  3. Where applicable, does the applicant utilize organizations which have contact with those persons identified as expected to reside in the community?
  4. In cases where organizations or individuals have previously served as community contacts, were these groups or individuals effective as such contacts?

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- 3-10. EVALUATING THE EFFECTIVENESS OF MARKETING EFFORTS. Applicants are encouraged to formulate their own methods of measuring the effectiveness of the Plan and FHEO staff shall review the appropriateness of such methods. Such measures might include a survey questionnaire or other method of gathering information and may relate to any of the issues described in Paragraph 3-9. The reviewer

shall assess the appropriateness of such indicators by using knowledge of the operation of the market and of how people hear about housing opportunities. The reviewer must conclude that the indicators are realistic and measurable.

3-11. ASSESSING AN APPLICANT'S FAIR HOUSING TRAINING PROGRAM.

FHEO staff is also responsible for assessing all written instructions to staff and the content of the applicant's fair housing training program as stated in Part 8 of the Plan. The assessment process is intended to produce information and data to be used by FHEO in making judgments about the adequacy of the applicant's fair housing training program. The following factors should be considered in making this determination:

- A. Manner of Instruction. Whether the applicant plans to instruct all employees and agents in writing and orally about the Department's fair housing policies through regularly scheduled sessions to assure the participation of all sales and rental staff;
- B. Legal Components. Whether the training includes an explanation of the following civil rights authorities as they relate to activities of sales and rental staff:
  - 1. The Fair Housing Act and 24 CFR Part 100;
  - 2. Executive Order 11063 and 24 CFR Part 107;
  - 3. The Affirmative Fair Housing Marketing Regulations, 24 CFR 200, Subpart M;
  - 4. Any state or local fair housing and equal credit opportunity law and its applicable complaint processing procedure;
  - 5. Title VI of the Civil Rights Act of 1964, where applicable;

- 6. Section 504 of the Rehabilitation Act of 1973, as amended, where applicable, and 24 CFR Part 8; and
- 7. Civil rights related program requirements relating to AFHM.

- C. Other Components. Whether the training is designed to



acquaint participants with the substantive requirements of the Fair Housing Act related to financing and advertising, expected real estate broker conduct, redlining and zoning practices and discriminatory appraisal practices.

3-12. APPROVAL OF THE AFHM PLAN. The POD/FOD Director shall approve or disapprove the Plan based upon an evaluation of each criterion for which FHEO must maintain an administrative record. An approved Plan must be acceptable in all areas. The POD/FOD Director shall notify the Housing Division Director and the applicant of the approval of the Plan. The letters of approval (see Appendix 13) for rental housing and for sales housing (Appendix 12) shall remind the applicant of the obligation to implement the Plan in accordance with 24 CFR 200, Subpart M, or other applicable program regulations. In the event that the review reveals deficiencies in the Plan, the POD/FOD shall notify the applicant of the nature of the deficiencies and request any additional information (see sample, Appendix 14).

A. Signature and Distribution. The POD/FOD Director shall sign the Plan and distribute it as follows:

1. Original to the applicant;
2. Copy to the Field Office central file;
3. Copy for the POD/FOD files; and
4. Copy to the Director of Housing Management.

B. Contents. The letter of approval to the applicant shall include information concerning:

1. Notifying the POD/FOD Division of the intent to begin marketing in accordance with 24 CFR 108.15 no later than 90 days prior to the commencement of marketing activities;

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2. Submission to the POD/FOD of copies of advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and
  3. Submission of recruited reports and training materials.

3-13. MANAGEMENT PLAN. The Department does not require owners to maintain a management plan as a recordkeeping requirement. It does, however, require owners to comply with the requirements set forth in the Management Certification, Forms HUD-9839-A (Project Owner's Certification for Owner-Managed Multifamily Housing Projects), HUD-9839-B (Project Owner's and Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents) and HUD-9839-C (Project owner's/Borrower's Certification for Elderly Housing Projects Managed by Administrators). Under these certifications owners agree to comply with the Department's civil rights laws and regulations implementing those laws. These include the Affirmative Fair Housing Marketing Regulations. The owner also agrees to furnish the Office of Fair Housing and Equal Opportunity any reports and information required to monitor the project's compliance with fair housing and affirmative marketing requirements.