
CHAPTER 5. MONITORING

- 5-1. INTRODUCTION. This Chapter provides policy guidance to POD/FOD staff for the management and conduct of monitoring connected with affirmative fair housing marketing requirements. As applied to AFHM, monitoring is carried out for the following purposes:
- A. Good Faith Efforts. To assess the effectiveness of the applicant's good faith efforts to carry out the provisions of the Plan and achieve the objectives of AFHM, and to enable HUD to provide timely technical assistance and suggest modifications to AFHM Plans where such efforts have not resulted in the expected applicant pool. Such efforts include special outreach activities to those groups identified as least likely to apply, the advertising program, the use of community contacts, and the training in civil rights laws given to sales and project management staff.
 - B. Relationship to Programmatic Requirements. To assess how the applicant's AFHM program carries out the objectives of the AFHM Regulations and requirements, especially in those instances where such requirements are a component of HUD-assisted housing programs. AFHM requirements are built into a number of such programs and are implemented as part of the tenant selection and assignment process.
 - C. Affirmatively Furthering Fair Housing. Where appropriate, to assess how effective Affirmative Marketing is as a tool for affirmatively furthering fair housing. In many instances, an applicant will submit both an Affirmative Fair Housing Marketing Plan and a certification to affirmatively further fair housing. This concept is especially relevant when evaluating AFHM in the context of a total project management monitoring exercise (See HUD Handbook 4350.1, REV-1, Multifamily Asset Management and Project Servicing Handbook, Chapter 9).
 - D. Review of Subsequent AFHM Plans. To help the FHEO POD/FOD Staff carry out its review of subsequent AFHM Plans submitted by the applicant for future assisted housing projects and programs, and its evaluation of:

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1. The acceptability of certifications of compliance with civil rights laws. This exercise is especially relevant for applicants for programs such as the Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities Program, both of which require signed certifications of compliance with the AFHM Regulations and requirements.
 2. The relative effectiveness of the past performance of applicants and their agents when rating and ranking proposals submitted in response to Notices of Fund Availability (NOFA), e.g., HOPE 1, 2 and 3; Supportive Housing for the Elderly; and Supportive Housing for Persons with Disabilities.

- E. Compliance Activities. Monitoring helps surface problems which may warrant further action by the Regional FHEO Compliance Division, usually in the form of a compliance review or a Secretary-initiated investigation under the Fair Housing Act.

NOTE: The Director, Regional Office of FHEO, should be advised when FHEO monitoring has surfaced problems with an applicant's carrying out its HUD-approved AFHM Plan, the AFHM Regulations (Part 200, Subpart M), affirmative marketing requirements in the Department's programs not covered by Part 200, or with the reporting requirements of 24 CFR 108. Although targeting of compliance reviews by the Regional Office of FHEO is not totally dependent upon Field Office activities, monitoring conclusions will greatly assist the Regional FHEO compliance staff in determining whether to conduct a compliance review and which activities to examine if a review is conducted.

- 5-2. EVALUATION OF GOOD FAITH EFFORTS. Judgments about an applicant's performance shall be based on a review of the actions taken or not taken to carry out the provisions of the approved AFHM Plan or strategy and related provisions of laws, executive orders and regulations. The purpose of the entire monitoring process is to assess:

- A. Execution of the Program. Whether the applicant carried out the AFHM Plan and program or affirmative marketing strategy approved by HUD; and

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- B. Attracting the Eligible Population. Whether the good faith efforts of the applicant have attracted a significant cross-section of the eligible population, especially significant numbers from those eligible identified in the Plan or strategy as least likely to apply for the housing without special outreach activities.
- 5-3. COMMENCEMENT OF MONITORING. The Regulations at 24 CFR 108 require that the applicant notify the Field Office FHEO Director of his or her intent to begin marketing no later than 90 days prior to engaging in any marketing activities. The notification must be in writing and made part of the file. When the notification is received, FHEO staff should begin monitoring marketing activities. For rental housing, FHEO staff should utilize HUD-generated reports to track the status of construction activity as a means of keeping informed as to when units will be available for occupancy. For home mortgage programs, fewer than 90 days prior notification may be called for, depending on the status of sales activities at the time HUD approves the AFHM Plan. For example, if marketing of units in a subdivision is initiated prior to an application for HUD insurance on the first unit, monitoring should begin as soon as possible.
- 5-4. COLLECTION AND ANALYSIS OF AFFIRMATIVE MARKETING-RELATED DATA. The data collection and analysis responsibilities of both the Department and the applicant relating to monitoring of an applicant's AFHM activities require the following:
- A. Departmental Information Collection. The Department collects the following types of information which helps it make judgments about the quality of the applicant's implementation of its Affirmative Marketing program. This information is collected during either on-site monitoring visits, during off-site monitoring prior to the on-site visit, or during the initial rent-up or sales periods:
1. HUD-approved documents and applications connected with the project or subdivision being monitored, including the approved AFHM Plan, the Management Plan which may include procedures relating to the implementation of a residency preference, and the CHAS.

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2. Field Office Generated Reports. Reports generated by Field Office staff which track the implementation of programs covered by the AFHM requirements. These reports include:
 - a. Those generated from the Department's data systems which track the progress of the implementation of HUD programs and the occupancy patterns of projects.
 - b. Reports from prior monitoring visits made by FHEO staff and Housing Management staff contain useful information. FHEO staff should review any letters to applicants regarding implementation of the approved Plans.
 - c. Pre-Occupancy Conference Reports. (Appendix 17).
 3. Regional Office Generated Reports, such as Regional FHEO Complaint Investigation or Compliance Review Findings against the applicant, if any; and resulting Agreement.
 4. Information Supplied by the Applicant as required by the Regulations at 24 CFR 108.20 which requires the submission of reports and other documentation of the implementation of the Plan, including the Form HUD-935.5.

NOTE: In collecting information from applicants subject to AFHM Regulations, FHEO staff shall utilize forms, questionnaires or other materials which (1) have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act (Public Law 96-511) and Executive Order 12291 or (2) have been approved by the Department as part of its Reports Management System. Only through these mechanisms are applicants required to respond to requests for identical information which would affect ten or more respondents. In cases where the specific information requested is limited to a particular owner or applicant, the Field Office may request additional information from that applicant.

B. Review of Applicant's Reports and Other Documentation. The Regulations at 24 CFR 108.20 require that the applicant submit to the Field Office reports which document the implementation of the AFHM Plan. During initial rent-up and sales, all projects covered by a AFHM Plan shall be subject to "desk monitoring", which is the gathering, review and analysis of reports and other documentation submitted by the applicant to provide evidence of performance under the approved AFHM Plan. Copies of such documentation shall be forwarded to the Regional Director of FHEO, as requested. Documentation shall be reviewed as it is received to determine whether the applicant, in implementing the Plan, has met the standards outlined in paragraph 5-2. When the reports, e.g., the Form HUD-935.5, or other documents indicate that outreach efforts have been ineffective in informing persons identified as least likely to apply, FHEO staff shall contact the applicant to ascertain whether there are problems in the marketing program and to offer technical assistance. As a result of this technical assistance, the Department may recommend changes in the direction of marketing activity or the marketing methods. This assistance will hopefully result in increased participation of renters/buyers from the target groups and better performance by the applicant of marketing activities.

NOTE: If surveys are taken of persons who express an interest in the project or subdivision, including visitors and renters/buyers, the FHEO Division may request information about the results of the surveys from logs or other records which should include the racial/ethnic designations of all such visitors and renters/buyers. The results of these surveys should be discussed with the applicant and be used as the basis along with other information, for determining the need for changes in marketing activities.

5-5. PLANNING AND SCHEDULING MONITORING VISITS. Monitoring and compliance activities shall be closely coordinated in order to maximize the impact of HUD's reviews of the implementation of affirmative marketing efforts. The Field Office and Regional Office FHEO Directors shall share schedules of monitoring and compliance reviews to be undertaken. Appendix 16 outlines the factors to consider in scheduling monitoring reviews pertaining to AFHM. Prior to a visit, the FHEO staff should:

- A. Review all reports and other available documentation with respect to implementation of the AFHM Plan. (See Paragraph 5-4 for a description of pertinent reports.)
- B. Notify the applicant of the visit. The applicant should be given the date of the visit, the names of FHEO staff who will visit, the files or information which will be examined and who on the applicant's (or agent's) staff should be available for consultation during the visit.
- C. Schedule appointments to meet with persons, community organizations, employment centers and other groups which were identified in the marketing program (Part 5) of the approved Plan.

5-6. PROVISIONS OF THE PLAN TO BE MONITORED. A monitoring visit involves an examination of records, visual inspection of the project and interviews with rental/sales agents and staff, occupants, and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected renters or buyers), waiting lists, and documentation related to advertising. The provisions of the Plan to be monitored and the performance standards on which judgments are to be based include, but need not be limited to, the following:

- A. Indicators of Successful Implementation. FHEO staff should review available records of any surveys taken of responses to outreach activities by members of the groups identified by the applicant as least likely to apply. This review assists FHEO staff in determining the effectiveness of good faith efforts which are targeted to all segments of the eligible population and particularly to members of the group(s) identified as least likely to apply for the housing without special outreach activities.
- B. Advertising Through Commercial Media. In addition, FHEO staff should determine whether the advertising strategy as a whole conforms with the approved Plan and the Fair Housing Advertising Regulations (24 CFR Part 109), and whether the applicant has actually carried out the advertising activities specified in the Plan.

- 5-7. MONITORING MULTIFAMILY RENTAL PROJECTS IN CONTINUING OCCUPANCY. Although priority is given to monitoring projects which are in initial rent-up or sales, rental projects may be monitored throughout the life of the mortgage in the case of insured projects and throughout the duration of the Housing Assistance Payments Contract under the Section 8 programs.
- A. Review of Occupancy Reports. FHEO staff shall review the annual occupancy reports in order to ascertain whether the occupancy pattern existing after initial rent-up is consistent with the original expectations for occupancy or whether one or more groups appear to be underrepresented. The AFHM Plan should be updated and modified according to changes in the housing market area or project.
- B. Focus of Visit. The focus of the monitoring visit shall be those actions taken by the applicant to fill vacancies as they occur after the project has been initially occupied (Section 6 of the Plan).
- 5-8. LIMITED REVIEW BY STAFF OF THE HOUSING DIVISION. Chapter 9 of Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, entitled "Enforcement of Civil-Rights Related Requirements; Nondiscrimination Against Individuals with Handicaps in Employment", describes the limited role of the Field Office Housing Management Division in identifying possible signs of discrimination during a housing management review. It also provides for coordination between Housing and FHEO in resolving FHEO-related findings that also may be violations of Housing's program requirements. As part of its review, Housing Management ascertains whether an AFHM Plan is required for the project being reviewed; whether the owner has a HUD-approved AFHM Plan; and whether the owner or manager is following the Plan.
- 5-9. DOCUMENTATION OF MONITORING CONCLUSIONS. All monitoring conclusions must be properly documented, including those conclusions based on personal interviews and telephone conversations, as well as conclusions based on a review of written reports, project and HUD records and other material.

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- A. Compiling Record of Visit. After a monitoring visit, FHEO staff must document the names of all persons

interviewed, files examined, and other written evidence of performance reviewed (e.g., reports on applicant pool composition, brochures, newspaper advertisements). Appendix 18 contains a format for documentation of conclusions reached as a result of on-site monitoring visits.

B. Content of Monitoring Letters. Applicants are to be advised in writing within a reasonable time (not to exceed one month) of all conclusions reached as a result of monitoring. The letter to the applicant should include the following elements:

1. Name and number of project monitored;
2. Field Office staff who monitor;
3. Date of visit;
4. Purpose of visit;
5. Persons interviewed;
6. Monitoring conclusions, including findings and concerns;
7. Recommendations of corrective and/or remedial actions which may be taken by the applicant;
8. Offer of technical assistance, if appropriate; and
9. A warning that failure to comply with AFHM requirements will result in a referral to the Regional office of FHEO for possible compliance action, if appropriate. To follow up, FHEO staff should request that the applicant respond in writing by a specific date regarding the steps that will be taken to address identified deficiencies. FHEO staff also may schedule another visit.

C. Distribution of Monitoring Letter.

1. A copy of all monitoring letters shall be sent to the Field office Manager, Attention: Field Office Director of Housing.
2. A copy of all monitoring letters that identify deficiencies in implementation of AFHM requirements

shall be sent to the Director, Regional Office of FHEO.

- 5-10. ACTIONS TAKEN ON MONITORING CONCLUSIONS. When on the basis of an applicant's performance it is determined that the applicant has not conformed with the approved AFHM Plan and/or AFHM Regulations, actions should be taken appropriate to the circumstances. In each instance, these actions should be designed to prevent a continuance of the nonconformance; to mitigate adverse effects of the deficiency (to the extent possible under the circumstances) and to prevent a recurrence of the same or similar deficiencies. The applicant must be given an opportunity to correct any identified deficiencies. Actions taken on negative monitoring conclusions include the following:
- A. Notification to the applicant of the deficiencies found as a result of monitoring with a request that the applicant submit additional information or a statement of steps which will be taken to correct the deficiencies and a timeframe for action;
 - B. Notification to the Director, Housing Division; and
 - C. Referral to the Regional Director of FHEO for possible compliance actions where deficiencies appear to raise question(s) appropriate for a compliance review.
- 5-11. FIELD OFFICE MAINTENANCE OF RECORDS. After initial occupancy (rent-up or sales) is completed, it is generally not necessary to retain a complete project file within the FHEO Division.

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- A. Purposes of Retention of Information. Certain information should be retained:
 - 1. for subsequent monitoring during continued occupancy of rental housing;
 - 2. for possible compliance activities;
 - 3. in the event of possible litigation; and
 - 4. for previous participation reviews of the applicant and the applicant's agents
 - B. The documents and correspondence listed below should

be retained.

1. The HUD-approved AFHM Plan. The Plan should be retained in the file on a permanent basis;
2. Record of the Preoccupancy Conference(s);
3. The most recent Annual Occupancy Report and the Form HUD-935.5 report submitted at the time initial rent-up was completed. Where an annual report is not required (sales housing), the final occupancy report received;
4. Samples of advertising--e.g., brochure, newspaper advertisements;
5. Monitoring checklists and monitoring letters to the applicant;
6. Letters from the applicant with respect to implementation of the AFHM Plan or related requirements;
7. Correspondence related to compliance actions by the Regional Office of FHEO; and
8. Administrative complaints or litigation connected with marketing or tenant selection in the housing.

NOTE: All other records may be discarded.