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CHAPTER 1. INTRODUCTION

- 1-1. INTRODUCTION. This Handbook provides guidance for the implementation of the Affirmative Fair Housing Marketing (AFHM) Regulations (24 CFR Part 200, Subpart M) and the AFHM requirements in the Department's housing and community development programs. It instructs applicants on the preparation and implementation of AFHM Plans, and provides guidance to Fair Housing and Equal Opportunity (FHEO) Field Office staff on the processing of AFHM Plans and the monitoring of approved AFHM Plans. It also includes Regional Office staff procedures for conducting compliance reviews of applicants subject to AFHM requirements. In addition, the AFHM Plan procedures are updated to take into account:
- A. The fundamental changes in the structure and purposes of the Department's housing assistance and insurance programs during the last decade;
  - B. The current legal philosophy undergirding efforts to achieve equal housing choice and opportunity; and
  - C. The implementation of the Fair Housing Amendments Act of 1988, especially those provisions dealing with discrimination on the basis of handicap and familial status.
- 1-2. LEGAL AUTHORITIES. The following laws and Executive Orders are the legal bases for the affirmative fair housing marketing policies and provisions covered by this Handbook.
- A. The Fair Housing Act which prohibits discrimination in the sale, rental, financing, or other services related to housing on the basis of race, color, religion, sex, handicap, familial status or national origin. Section 808(e)(5) of this law mandates that HUD administer its programs in a manner to affirmatively further fair housing. Section 804(f) of this law prohibits discrimination because of the handicap of individual buyers, renters, and persons associated with such buyers or renters; discrimination in the terms, conditions, privileges and services connected with the sale or rental of dwelling units; refusal to allow the tenant to make reasonable modifications of existing dwellings to enable a handicapped person to enjoy fully

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the dwelling unit; refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy the dwelling; and failure to make covered multifamily dwelling units first occupied after March 13, 1991 accessible to disabled persons. The law defines "covered multifamily dwellings" as buildings consisting of four or more units if such building has one or more elevators; and ground floor units in other buildings consisting of four or more units.

B. Executive Order 11063, as amended, which provides that no person in the United States because of race, color, religion (creed), sex or national origin, shall be denied equal opportunity in housing or related facilities owned, operated or insured by the Federal government or provided with federal financial assistance; and that all Federal Executive Departments and agencies shall take action to promote the abandonment of discriminatory practices for:

1. Residential property and related facilities endowed with federal financial assistance, and
2. The lending practices connected with such property and facilities insofar as such practices relate to loans insured or guaranteed by the Federal Government.

C. Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

1-3. PURPOSE OF AFHM REQUIREMENTS. The purpose of the AFHM requirements is to promote a condition in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing, regardless of the individual's race, color, religion, sex, handicap, familial status or national origin. They are also a means to carry out the mandate of Section 808(e)(5)

of the Fair Housing Act and ensure positive outreach and informational efforts to those who are least likely to know about and apply for the housing in question. Each applicant for participation in housing programs of the Department of Housing and Urban Development (HUD) shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, and in advertising the availability of housing properties.

- 1-4. REGULATORY AND CONTRACTUAL REFERENCES. Legally binding obligations for AFHM may be found in regulations issued by HUD and in contract documents which describe the terms and conditions of Federal involvement in the provision of assisted housing. The Department has issued regulations to implement the functions, powers and duties imposed on it by the laws and Executive Orders listed in paragraph 1-2. Appendix 1 contains a list of these regulations. In addition, the following sections of Title 24 of the Code of Federal Regulations (CFR) pertain directly to affirmative fair housing marketing requirements:
  - A. "AFHM Regulations" (24 CFR Part 200, Subpart MI sets forth requirements for AFHM under HUD-subsidized and unsubsidized housing programs that received a conditional commitment after February 25, 1972. These regulations require submission of a Plan and outline the components of the AFHM Program (See Section 200.600 of the AFHM Regulation).
  - B. "Compliance Procedures for AFHM" (24 CFR Part 108) establishes procedures for determining whether or not an applicant's actions are in compliance with its approved AFHM Plan, AFHM Regulations at 24 CFR 200.600 and AFHM requirements contained in HUD program regulations. These procedures do not apply to programs which do not require AFHM Plans. Appendices 2, 3 and 4 contain references to requirements relating to AFHM which are found in program regulations, and affirmative marketing guidance found in the contractual documents, Notices and Handbooks for the respective housing programs.
- 1-5. APPLICABILITY AND DURATION.
  - A. Applicability. Except when specifically noted, AFHM requirements discussed in this Handbook apply to housing programs administered by HUD that are covered by the AFHM Regulations at 24 CFR 200.600. In many instances, these requirements are incorporated

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into regulations governing these programs. Appendix 5 lists the programs for which a written AFHM Plan submission is required and the programs for which applicants need to adopt AFHM procedures and incorporate them into their project management plans or procedures.

- B. Duration of AFHM Requirements. The duration of AFHM requirements varies with each housing program:
1. In home mortgage programs, AFHM requirements apply through the completion of initial sales transactions on units covered by the approved AFHM Plan.
  2. In insured rental programs, AFHM requirements apply throughout the life of the mortgage, including those periods when the project does not maintain sustaining occupancy.
  3. In privately-owned insured and uninsured rental housing assisted under Section 8 of the United States Housing Act of 1937, AFHM requirements apply throughout the duration of the Housing Assistance Payments Contract with HUD. Although no new Housing Assistance Payments Contracts are being entered into for New Construction, Substantial Rehabilitation and State Agency projects, monitoring of the Affirmative Marketing Plans connected with contracts presently in force still should take place and applicants should continue to carry out Affirmative Marketing activities appropriate to the post-initial occupancy environment. (See Paragraph 4-11 for a more detailed description of such post-occupancy activities.)

1-6. EXEMPTIONS FROM AFHM PLAN REQUIREMENTS.

- A. Certification of Intent Not to Market. Any applicant that buys land, installs streets and other improvements, sells lots to builders and receives a HUD subdivision report, but neither applies for conditional commitment nor submits requests for insurance endorsement under the Direct Endorsement Program, is

exempt from submitting a written AFHM Plan. Such applicants are required to file a Certification of Intent Not to Market Housing, Form HUD-935.3 (Appendix 26). However, the builder who buys the land from the developer for the purpose of building housing units must submit a plan, if HUD mortgage insurance is to be used.

- B. Voluntary Affirmative Marketing Agreements (VAMAs). These agreements are negotiated between HUD Headquarters and national associations that represent components of the housing industry. A national agreement is signed by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) and national officers of the industry groups. State and local member affiliates adopt the national agreement. Signatories to HUD-approved VAMAs are exempt from the submission of an AFHM Plan in connection with the programs identified in Appendix 2.

FHEO staff will accept either a certification from the authorized representative of the signatory organization that has a valid VAMA with HUD or an appropriate affiliate of that organization that the applicant has signed the VAMA and has agreed in writing to implement all terms of the Agreement applicable to member signatories. FHEO staff may monitor and conduct compliance reviews on these projects, pursuant to criteria established for VAMA monitoring.

- C. Property Disposition. Owners of multifamily projects that are sold by the Department under the Multifamily Property Disposition Program where the Department is either the owner or mortgagee in possession, and purchasers of HUD-owned multifamily projects purchased at a foreclosure sale are also exempt.
- D. Other Programs. Programs which by Regulation do not require the submission of an AFHM Plan.

NOTE: Appendix 5, Section B lists those programs that are exempt from the AFHM requirements of 24 CFR Part 200, Subpart M.

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1-7. DEFINITIONS. The definitions of terms used throughout this Handbook are the following:

- A. Applicant. For the purposes of this Handbook, a person

remains an "applicant" from the date of application for mortgage insurance or subsidy assistance through the duration of the mortgage or other assistance provided for covered housing assistance. Such applicants include:

1. All persons, as defined in Paragraph 1-7L., whose applications are approved for the development and rehabilitation of:
  - a. Single-family subdivisions of five or more units when those units have not gone into escrow or been committed for sale to a buyer; and in initial submissions by a Direct Endorsement lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision;
  - b. Multifamily projects of five or more units for which the applicant applies for HUD mortgage insurance and/or subsidy;
  - c. Mobile home parks of five or more lots, units or spaces; or
  - d. Dwelling units, when the applicant's participation in HUD-assisted housing programs has exceeded or would exceed development of five or more such dwelling units during the year preceding the application. For example, the small builder who builds five or more individual dwelling units during a twelve-month period must submit an AFHM Plan for those units.
2. Purchasers of multifamily projects which are owned by the Department or are sold under a foreclosure procedure who purchase the project with HUD mortgage insurance or Section 8 subsidy.

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3. All other persons subject to AFHM requirements in HUD's housing and community development programs which are not covered by the AFHM Regulations at 24 CFR 200.600, but are subject to separate AFHM requirements set forth in the programmatic, statutory or regulatory provisions.

- B. Covered Housing. For the purposes of this Handbook, covered housing is all rental and sale housing units insured and/or subsidized under programs administered by the Department of Housing and Urban Development to which the AFHM Regulations apply.
- C. Field Office. This term includes all Field Offices collocated with the ten Regional offices, all Category A offices and those Category B Offices which have FHEO staff (Charleston, Sacramento, Houston).
- D. Good Faith Effort. Good faith efforts are recorded activities and documented outreach to those individuals identified as least likely to apply. Examples of such efforts include:
  - 1. Advertising in print and electronic media that are used and viewed or listened to by those identified as least likely to apply;
  - 2. Marketing housing to specific community, religious or other organizations frequented by those least likely to apply;
  - 3. Developing a brochure or handout that describes facilities to be used by buyers or renters, e.g., transportation services, schools, hospitals, facilities, industry, recreation facilities. The brochure should also describe how the proposed project will be accessible to physically handicapped persons and describe any reasonable accommodations made to persons with disabilities; and
  - 4. Insuring that the sales/management staff has read and understood the Fair Housing Act, and the purposes and objectives of the AFHM Plan.
- E. Housing Market Area. That geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily housing project or single family subdivision. A housing market area most often corresponds to a Metropolitan Statistical Area (MSA).

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- F. Individual with Handicaps. A person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an

impairment; or is regarded as having such an impairment. This basic definition is found in both Section 504 of the Rehabilitation Act of 1973 (See also 24 CFR 8.3) and in the Fair Housing Act at Section 804(f). (See HUD Handbook 4350.3, Occupancy Requirements for Insured Housing Programs, for information on eligibility for applicable programs.)

G. Initial Rent-Up Period. That period beginning with the date on which the applicant is granted permission by both HUD and the local government to begin occupancy or rent-up, and ending on the date sustaining occupancy (usually 95 percent) is attained.

H. Minority. An individual who is a member of any one of the following racial or ethnic groups:

1. Black. An individual having origins in any of the Black racial groups of Africa or the Caribbean, but not of Hispanic origin.
2. American Indian or Alaskan Native. An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition.
3. Hispanic. An individual of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
4. Asian or Pacific Islander. An individual having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

I. Minority Area. (Reserved)

J. Minority Media. (Reserved)

K. Non-Minority Area. (Reserved)

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L. Person. One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.



- M. Subsidized Housing. Units funded under programs in which either the rent applicable to the unit or the tenant is subsidized in accordance with a statutory formula.
  - N. Target Group. Identifiable segments of the population eligible for the housing by virtue of their income, and where applicable as an eligibility criterion, the age of household head, handicap status, race and ethnicity.
- 1-8. ROLES AND RESPONSIBILITIES. The following paragraphs describe the roles and responsibilities of Departmental officials in the administration of AFHM requirements:
- A. Assistant Secretary for Fair Housing and Equal Opportunity has the delegated responsibility for the administration of the Fair Housing Act and Executive Order 11063 in all of the Department's programs, including AFHM Regulations and requirements. The Assistant Secretary is responsible for making a finding of compliance or noncompliance pursuant to the outcome of a compliance review, and the determination of actions to be taken, including the imposition of sanctions, when there is evidence of a failure to comply with the AFHM Plan or the AFHM Regulations. The Assistant Secretary is also responsible for administering Affirmative Fair Housing Marketing procedures contained in those programs which do not require the submission of AFHM Plans.
  - B. Regional Administrator administers within the defined geographic boundaries of each region all of the Department's programs and activities in accordance with the program direction of, and subject to the delegations of authority from, the Secretary and/or Assistant Secretaries; serves as liaison to other Federal agencies and State governments; and oversees the administration of the Regional and Field Offices.

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- C. Director of the Regional Office of Fair Housing and Equal Opportunity is responsible for determining possible noncompliance with the provisions of the AFHM Plan, the AFHM Regulations and 24 CFR 108, as well as the Fair Housing Act and Executive Order 11063. He/she conducts complaint investigations and compliance reviews pursuant to these provisions. The Director also is responsible for investigating and conciliating

all complaints filed under the Fair Housing Act, including those involving provisions of the Act and Regulations relating to advertising and marketing.

- D. Field Office Manager is responsible for overall direction of housing programs within the geographic jurisdiction of the Field Office and must assure that processing is carried out in accordance with program regulations, the AFHM Regulations, the instructions in this Handbook and the processing requirements for the respective programs covered by this Handbook.
- E. Program Operations Division Director/Field Office Director of Fair Housing and Equal Opportunity (POD/FOD) is responsible for providing technical assistance to applicants in the preparation or modification of AFHM Plans during the period of development and initial implementation, i.e., through initial occupancy. The POD/FOD FHEO Director also is responsible on a day-to-day basis for the review and approval of AFHM Plans and for monitoring implementation of AFHM Plans and requirements.
- F. Field Office Director of Housing/Director of Loan Management/Director of Assisted Housing Management cooperates with the POD/FOD Division Director/Equal Opportunity Specialist in many aspects of administering the AFHM requirements, including:
  - 1. Informing applicants about AFHM requirements;
  - 2. Obtaining an acceptable AFHM Plan; and
  - 3. Assuring that outreach activities and all application processing activities, including residency preferences (where applicable) are conducted in accordance with the approved AFHM Plan, the AFHM Regulations and, where applicable, the affirmative marketing requirements of programs which do not call for the submission of a written AFHM Plan.

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Also, the Director or designee requests the attendance of the POD/FOD Director or designee at the pre-occupancy conference.

- G. Applicant is responsible for the development and the implementation of the AFHM Plan or affirmative marketing procedures. The applicant has the ultimate

responsibility for marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of his/her responsibilities and the applicant must assure that such agents will carry out affirmative marketing and nondiscrimination requirements.

1-9. OTHER RELATED ACTIVITIES.

A. Voluntary Affirmative Marketing Programs. Section 809 of the Fair Housing Act authorizes the Secretary of HUD to undertake educational and conciliatory activities to further fair housing objectives. Voluntary affirmative marketing activities may be undertaken by private sector housing industry groups, business organizations and professional associations; and by state and local elected officials and public agencies in the areas of housing, planning and community development.

1. Voluntary Affirmative Marketing Agreements (VAMA) and Plans. Voluntary Affirmative Marketing Agreements and Plans commit signatory parties to collective action in support of affirmative marketing programs to achieve the goals of equal housing opportunity. Sectors of the housing industry which have executed such VAMAs at the national level with HUD include homebuilders, real estate agents, apartment managers and mortgage lenders. On the local level the VAMA serves as a substitute or alternative to the AFHMP. (See discussion at Paragraph 1-6B.).
2. Community Housing Resource Boards (CHRB). Community Housing Resource Boards are locally-based coalitions of fair housing groups, housing industry groups, lenders and other organizations that are involved in fair housing issues. These Boards undertake informational and other activities which serve to inform the public about the goals of fair housing and the VAMA; assess community fair housing needs; expand minority involvement in the housing industry at the local level; expand public awareness of housing opportunities in the

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community; and develop cooperative solutions to problems associated with the implementation of the VAMA. The CHRB also comments on the effectiveness of compliance with the VAMA when a signatory uses the VAMA as an exemption to the AFHM requirements.

- B. Comprehensive Housing Affordability Strategy (CHAS). Title I of the National Affordable Housing Act requires that States and localities applying for assistance under certain HUD programs have a HUD-approved housing strategy. The CHAS identifies a jurisdiction's overall needs for affordable and supportive housing and outlines a strategy to address those needs. The Act requires each jurisdiction's CHAS to contain fourteen elements that describe the jurisdiction's housing needs and market conditions, set out a five-year strategy that establishes priorities for meeting those needs, identify resources anticipated to be available for the provision of affordable and supportive housing, and establish a short-term investment plan that outlines the intended uses of resources. The CHAS replaced the Housing Assistance Plan (HAP) required for Community Development Block Grant Program funding and the Comprehensive Homeless Assistance Plan (CHAP) required by the McKinney Act Homeless Assistance Programs. The programs which are subject to the CHAS requirements are listed in Appendix 6, and several of these programs include requirements to submit AFHM Plans in accordance with 24 CFR Part 200, Subpart M. Other NAHA programs require the applicant to carry out affirmative outreach activities to groups of eligible persons identified as least likely to apply for the housing, but not submit a Plan for review and approval by HUD.