



United States
Department of
Agriculture

Rural
Development

Rural Business-Cooperative Service
Rural Housing Service
Rural Utilities Service

WASHINGTON AN 916 (1930-C)

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July 1, 2003

SUBJECT: Submission Requirements for Affirmative Fair Housing Marketing Plans in Multi-Family Housing Programs

TO: MFH Program Director, MFH Program Staff
USDA, Rural Development, Washington

PURPOSE/INTENDED OUTCOME:

Reviews of Rural Development (RD) Instruction 1930-C and 1901-E, as well as questions from management companies and borrowers indicate a need to clarify the frequency of submittals of Affirmative Fair Housing Marketing Plans (AFHMPs). This Administrative Notice (AN) provides guidance on borrower compliance as well as Agency staff review and monitoring of AFHMPs.

COMPARISON WITH PREVIOUS AN:

This AN replaces Washington AN 860, dated October 4, 2001.

IMPLEMENTATION RESPONSIBILITIES:

Previous Washington Administrative Notices for MFH have required submittals of AFHMPs every 3 years, whether the plans needed to be updated or not. Further review of Rural Development Instructions 1901-E and 1930-C resulted in a modification of a previous interpretation of those regulations.

An approved AFHMP by Rural Development or the U.S. Department of Housing and Urban Development (HUD) or a voluntary affirmative marketing agreement signed by the participant and approved by HUD will satisfy the requirement for the initial AFHMP as described in 1901-E and 1930-C. In addition, MFH staff will no longer automatically require a new AFHMP every 3 years from borrowers.

MFH staff will require borrowers to update the AFHMP when modifications to the plan are required by changes in population, ownership, management, or other such changes that hinder implementation of the plan.

Expiration Date: July 31, 2004

Filing Instructions: Preceding
FmHA Instruction 1930-C

USDA, Rural Development is an Equal Opportunity Lender, Provider, and Employer
Complaints of discrimination should be sent to:
Director, Office of Civil Rights, Washington, DC 20250-9410

HUD Submittals by Borrowers

RD Instruction 1901.203(c)(3) permits borrowers to submit an AFHMP to Rural Development for approval. This same provision also permits the borrower to submit a voluntary affirmative marketing agreement signed by the participant and approved by HUD. RD Instruction 1930-C does not address submittals of voluntary affirmative marketing agreements approved by HUD; therefore, there is no conflict between 1901-E and 1930-C. MFH staff will now accept borrower submittals of voluntary affirmative marketing agreements signed by the participant and approved by HUD for new loans and grants as allowed by 1901.203(C)(3).

MFH staff can also accept an AFHMP approved by HUD. An approved AFHMP by HUD meets Rural Development's purposes and requirements in all material respects. In addition, accepting an AFHMP approved by HUD for new loans and grants will help reduce government red tape and paperwork for the borrower.

Voluntary affirmative marketing agreements are not the same as an AFHMP approved by HUD. These are two different documents. Voluntary affirmative marketing 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 and national officers of the industry groups. State and local member affiliates adopt the national agreement.

If a borrower wants to submit a voluntary affirmative marketing agreement, MFH staff will accept a certification from an authorized representative or certification from an appropriate affiliate of the signatory organization that the applicant has signed the voluntary affirmative marketing agreement and the applicant has agreed in writing to implement all terms of the agreement applicable to member signatories. MFH staff will monitor compliance with the voluntary affirmative housing agreement during Compliance Reviews and Supervisory Visits.

Frequency of Submittals

1901-E does address frequency of submittals for multiple-family projects, including rural rental housing, labor housing, cooperative housing, technical assistance grants, and site development loans.

1901.203(c)(4)(ii) states that an AFHMP or voluntary affirmative marketing agreement must be submitted initially with the Application for Federal Assistance or with the letter of application. The provision also requires a new or updated plan with a subsequent loan or grant.

1901.203(c)(5)(ii) states that an AFHMP for multiple family projects will cover the period of the date of application until the loan is paid in full or for so long as the project is being used for the same or similar purpose for which the funds were extended, whichever is later.

1930-C, Exhibit B, (VI)(C) states that borrowers must maintain records reflecting their efforts to implement the AFHMP and update their records regarding the AFHMP during Compliance Reviews. This provision also states that MFH staff will review these records during a Compliance Review.

The plain meaning of the words that lie within the four corners of both 1901-E and 1930-C make it clear that:

1. MFH borrowers must submit an AFHMP with their initial application for federal

- assistance. This plan is in existence from the date of application until the loan is paid in full.
2. MFH borrowers must submit a new or updated AFHMP when they receive a subsequent loan or grant of federal assistance.
 3. MFH borrowers must maintain records on their implementation of the AFHMP.
 4. MFH borrowers will update their records during Compliance Reviews.

There are two exceptions under the plain meaning or four corners rule of interpretation: ambiguity and absurd results. If a regulation is ambiguous, then Rural Development would have to look at external sources to resolve the ambiguity and determine intent. If a plain meaning interpretation of the provisions leads to an absurd result, then the Administrative Notice would produce a more reasonable result.

In this case, there are no ambiguous words or phrases. 1901-E specifically requires an AFHMP with the initial application for federal assistance, then a new or updated AFHMP upon a subsequent loan or grant. 1930-C requires that records be kept on the implementation of the AFHMP and that records be updated during Compliance Reviews which occur no earlier than 90 days or later than three years from the date of the last review. The regulations do not state that an AFHMP must be submitted every three years.

A review of the regulations of the agency with congressionally appointed enforcement jurisdiction over the Fair Housing Act also demonstrates that there is no requirement for submittals of the AFHMP every three years. The AFHMP is an obligation of requirement of Section 808(e)(5) of the Fair Housing Act for HUD to administer its housing programs affirmatively so that individuals of similar income levels in the housing market area have housing choices available to them regardless of race, color, religion, sex, national origin, disability, or familial status. Rural Development adopted the same Fair Housing Act obligation in 1901.203(c). There is no requirement in the HUD regulations implementing 42 U.S.C. § 3601, et seq. to establish a frequency of submittals every three years, i.e., 24 C.F.R. Part 200, Subpart M; 24 C.F.R. Part 108; HUD Handbook 8025.1 REV-2.

Finally, no absurd result would come from following the plain language interpretation of 1901-E and 1930-C. Borrower's are still under an obligation to implement their AFHMPs and to keep and update their records regarding the AFHMP. If changes occurred that would necessitate a correction of the record, the borrower would be required to prepare a new form with the corrections. In addition, Compliance Reviews require a thorough review of the borrower's records on implementation and a finding of noncompliance can trigger a corrective action plan as well as a potential for a complaint of discrimination regarding the AFHMP.

Examples

Existing Project

XYZ Apartments has received federal financial assistance from RD since 1990. The borrower submitted an initial AFHMP in 1990 and has submitted a new plan every three years. XYZ Apartments is scheduled for a Supervisory Visit and Compliance Review next month.

The MFH loan specialist would:

1. Not require a new AFHMP prior to conducting the on-site visit.
2. Review implementation records during the on-site visit to ensure that the owner is implementing the last approved plan.

3. Ensure that the plan is posted.
4. Require that the record and AFHMP be updated if population changes have rendered implementation of the plan ineffective for reaching those least likely to apply without special outreach efforts.
5. Require that the record and AFHMP be updated if the identified community contacts in the plan are no longer in existence; therefore, making implementation of the plan ineffective for reaching those least likely to apply without special outreach efforts.
6. Require that the record and AFHMP be updated if the market area has changed.
7. Require that the record and AFHMP be updated if ownership or the management company has changed.
8. Require that the record and AFHMP be updated if other conditions exist that render implementation of the plan ineffective for reaching those least likely to apply without special outreach efforts.

New Project with Voluntary Affirmative Marketing Agreement

An applicant has applied for and received a loan to build a new MFH complex in Forks, Washington. The borrower will also have Section 8 and has become a signatory to an approved voluntary affirmative marketing agreement from HUD. The borrower wants to submit evidence of their participation in the voluntary affirmative marketing agreement approved by HUD to satisfy Rural Development civil rights requirements.

The MFH loan specialist will:

1. Accept certification or other evidence of the borrower's participation in the agreement.
2. During the initial Compliance Review, ensure that implementation efforts are/will be underway.
3. Three years later, during the next Compliance Review, inspect the implementation records and determine whether the borrower is making a good faith effort to implement the agreement.

New Project with HUD Approved AFHMP

An applicant has applied for and received a loan to build a new MFH complex in Forks, Washington. The borrower will also have Section 8 and has an AFHMP approved by HUD. The borrower wants to submit the AFHMP approved by HUD to satisfy Rural Development civil rights requirements.

The MFH loan specialist will:

1. Accept the HUD approved AFHMP.
2. During the initial Compliance Review, ensure that implementation efforts are/will be underway.
3. Three years later, during the next Compliance Review, inspect the implementation records and determine whether the borrower is making a good faith effort to implement the agreement.

Questions regarding either this AN or the completion of the AFHMP should be directed to the State Civil Rights Manager at (360) 704-7722. Additional information regarding AFHMPs can be found

in HUD Form 935.2 (1/2001) Instructions; HUD Handbook No. 8025-1, Rev.-2; FmHA Instruction 1901-E; FmHA Instruction 1930-C; RD AN No. 3601 (1930-C) dated January 4, 2001.

/s/
JACKIE J. GLEASON
State Director

