

# REGIONAL HOUSING NEEDS ALLOCATION



TO: Housing Methodology Committee

DATE: November 7, 2019

FR: Deputy Executive Director, Policy

RE: Local Jurisdiction Survey and Fair Housing Overview

## What is the Local Jurisdiction Survey?

The State of California requires each Council of Governments (COG) to survey its member jurisdictions during the Regional Housing Need Allocation (RHNA) process.<sup>1</sup> The survey's purpose is to gather information on the factors that the Housing Methodology Committee (HMC) must consider when developing the allocation methodology (**Attachment B**). The law states that the local jurisdiction survey cannot be administered more than six months prior to developing the allocation methodology.<sup>2</sup> The Association of Bay Area Governments (ABAG), the COG for the Bay Area, currently plans to distribute the survey electronically to Bay Area jurisdictions in January 2020. ABAG staff is seeking feedback from the HMC on the draft survey before it is presented to the ABAG Regional Planning Committee for approval in December 2019.

ABAG staff considered the following priorities when developing the local jurisdiction survey:

- **Minimize response burden for local jurisdiction staff:** ABAG staff seek to create a survey that can compile a range of meaningful data while enabling a high rate of completion and thorough responses from local jurisdictions.
- **Avoid asking local jurisdictions for publicly accessible and readily available data:** ABAG is cognizant of local staff's time constraints and intends for the survey responses to generate new information that ABAG and the HMC do not already have access to.
- **Focus on housing factors mandated by statute and most directly impacted by RHNA:** A variety of factors impact affordable housing and displacement issues in the Bay Area. While RHNA influences some aspects of regional housing policy, such as where housing is built, it does not directly affect other factors, such as policies to address the housing needs of specific populations. ABAG staff sought to create a survey focused on gathering information that relates most directly to the RHNA process.
- **Support local jurisdictions in their understanding of new Housing Element requirements:** Recent state legislation created new requirements for Housing Elements, such as the need to conduct an assessment of fair housing (discussed in more detail below). Accordingly, ABAG intends for this survey to assist local jurisdictions with compiling information that can be useful for future updates to their Housing Elements.

## New Survey Requirements for the 6<sup>th</sup> RHNA Cycle

In past RHNA cycles, ABAG and other COGs were required to survey local jurisdictions for information related to the factors in Government Code Section 65584.04(e). The list of factors for the current RHNA cycle are in Attachment B.

<sup>1</sup> See State of California [Government Code Section 65584.04\(b\)\(1\)](#).

<sup>2</sup> See State of California [Government Code Section 65584.04\(b\)\(1\)](#).

In 2018, Assembly Bill (AB) 1771 added a new RHNA objective: affirmatively furthering fair housing. Government Code Section 65584(e) provides the following definition for “affirmatively furthering fair housing” (AFFH):

“...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.”

Similarly, the law requires the local jurisdiction survey to collect information on jurisdictions’ fair housing issues as well as their strategies and actions for achieving fair housing goals.<sup>3</sup> Accordingly, the local jurisdiction survey for the 6<sup>th</sup> RHNA cycle includes questions specifically focused on topics related to affirmatively furthering fair housing.

### **Overview of Fair Housing Law and Affirmatively Furthering Fair Housing**

The Fair Housing Act is a federal law passed in 1968 that protects individuals from experiencing housing discrimination based on the following characteristics<sup>4</sup>:

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status
7. Disability

California expands on the protected classes defined by federal law by also prohibiting housing discrimination based on the following characteristics<sup>5</sup>:

1. Sexual orientation
2. Gender identity and gender expression
3. Genetic information
4. Marital status
5. Source of income
6. Citizenship
7. Primary language
8. Immigration status

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<sup>3</sup> See State of California [Government Code Section 65584.04\(b\)\(2\)](#).

<sup>4</sup> See [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_act\\_overview](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview) for an overview on the Fair Housing Act from the Department of Housing and Urban Development.

<sup>5</sup> See <https://www.dfeh.ca.gov/housing/> for information from California’s Department of Fair Employment and Housing on state fair housing protections.

**State and Local Fair Housing Planning:** Federal fair housing laws obligate state and local jurisdictions receiving block grant funding from the Department of Housing and Urban Development (HUD) to reduce barriers to fair housing. Block grant recipients must submit a Consolidated Plan to HUD every five years, and this process requires conducting an Analysis of Impediments to Fair Housing Choice (AI).<sup>6</sup> Currently, the State of California and 39 Bay Area cities and counties participate in the Consolidated Plan process and have submitted AI reports to HUD.

**Federal Regulations Related to Affirmatively Furthering Fair Housing:** The Fair Housing Act not only prohibits housing discrimination, but also requires affirmatively furthering fair housing. In 2015, HUD released a final rule on AFFH to clarify grantees' obligations to promote fair housing and equal opportunity. The 2015 AFFH rule provided updated guidelines for assessing fair housing issues and created a new Assessment of Fair Housing (AFH) tool to replace the AI process. HUD intended the AFH to improve community planning around fair housing issues, as this new tool required public participation and increased data analysis related to local housing dynamics, patterns of segregation, and access to opportunity. The 2015 AFFH rule also mandated that jurisdictions set fair housing goals and incorporate the goals into their Consolidated Plans.<sup>7</sup>

In 2018, HUD issued a notice suspending the AFH tool. The withdrawal of this tool limits implementation of the 2015 AFFH rule. HUD grantees are no longer required to submit an AFH as part of the Consolidated Plan process, and the previous requirement to complete an AI report has been reinstated.<sup>8</sup> Prior to the 2018 decision, HUD received only one AFH from Bay Area jurisdictions, which was completed in 2017 as a collaborative effort by the Cities of Daly City, San Mateo, South San Francisco, and Redwood City along with the County of San Mateo.<sup>9</sup>

**State Regulations Related to Affirmatively Furthering Fair Housing:** Two bills passed by the state legislature in 2018 mirror the requirements set by HUD in its 2015 AFFH rule. AB 686 requires public agencies to administer housing and community development programs in a way that affirmatively furthers fair housing, and the law mandates that Housing Element revisions after January 1, 2021 include an assessment of fair housing. AB 686 also states that AFFH obligations must be interpreted in a manner consistent with HUD's 2015 AFFH rule regardless of subsequent amendments to or suspensions of the rule.<sup>10</sup> As noted previously, AB 1771 adds AFFH as a RHNA objective and requires COGs to survey local jurisdictions to compile information related to this objective.<sup>11</sup> Consequently, the 2015 AFFH regulations continue to impact California jurisdictions despite the 2018 changes to the rule, and the new requirements for the 6<sup>th</sup> RHNA cycle reflect these AFFH obligations.

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<sup>6</sup> See <https://www.hudexchange.info/programs/consolidated-plan/consolidated-plan-process-grant-programs-and-related-hud-programs/> for more information on the Consolidated Plan process.

<sup>7</sup> See <https://files.hudexchange.info/resources/documents/AFFH-Fact-Sheet.pdf> and <https://www.hudexchange.info/programs/affh/overview/> for more information on the 2015 AFFH rule and the AFH tool.

<sup>8</sup> See <https://files.hudexchange.info/resources/documents/FR-Notice-AFFH-AI-Notice.pdf> for a copy of the 2018 HUD notice.

<sup>9</sup> See [https://housing.smcgov.org/sites/housing.smcgov.org/files/\\_SMC%20Regional%20AFH%20Final%20Report%2020171002.pdf](https://housing.smcgov.org/sites/housing.smcgov.org/files/_SMC%20Regional%20AFH%20Final%20Report%2020171002.pdf) for a copy of the San Mateo County Regional AFH.

<sup>10</sup> See [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB686](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686) for the text of AB 686.

<sup>11</sup> See [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1771](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1771) for the text of AB 1771.