

November 18th, 2014

Secretary Julian Castro
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Affirmatively Furthering Fair Housing Assessment Tool, Docket No. FR-5173-N-02

Dear Secretary Castro,

On behalf of the undersigned civil rights and fair housing organizations, thank you for the opportunity to submit comments regarding the Department of Housing and Urban Development's Affirmatively Furthering Fair Housing Assessment Tool. We appreciate that HUD has undertaken this effort to help jurisdictions provide meaningful assessments of their fair housing challenges, in a manner that reduces regulatory burden and uncertainty. This Assessment Tool is an important step toward the goal of equal opportunity. While there are a number of other features of the Assessment Tool that the undersigned organizations endorse, we take this opportunity to offer suggestions necessary to strengthen the final Assessment Tool.

1. Ensure meaningful community participation: As HUD has acknowledged in the Notice, this section of the Assessment Tool is incomplete. A more robust and detailed set of expectations for community engagement is needed to conform to the ambitious goals of the proposed rule. In this section, we recommend that the template include:

- A detailed list (by date) of specific community outreach activities, including meetings with local advocates.
- A non-exhaustive checklist of types of groups that the program participant should attempt to contact and request comments from (including the local legal services office, the state or local FHIP agency, the local branches of the NAACP and the Urban League, state housing coalition and tenants' organizations, Centers for Independent Living, as well as the county and local health departments and metropolitan planning organizations).
- Listing of any local data and local knowledge received from the community engagement process that was not used in the AFH.
- A description of efforts to ensure that the citizen participation process is accessible to people with disabilities (location of meeting sites, written and web-based materials in alternative formats for people with visual disabilities, use of sign language interpreters, etc.) Also, the template should require jurisdictions to explain efforts to ensure people with disabilities living in institutions participated in the process.

2. Measuring community and regional patterns of segregation: We strongly recommend the inclusion of multiple measures of segregation in the Assessment Tool. Use of the index of dissimilarity alone is insufficient for a full understanding of residential segregation patterns in a community and region. In addition to the "index of dissimilarity" HUD should provide jurisdictions with the "exposure index" and "race and income index" for their communities and regions. There are several other valuable indices that have been created, and HUD should make each of these available to jurisdictions for analysis in the AFH.

- The exposure index, which should also be required in the AFH, indicates the share of residents for the typical member of one group that are members of another group. To illustrate the differences between the two indices, consider the following example. If a city had a population that was 90% black and each neighborhood was 90% black (even though the surrounding suburbs were all white), the index of dissimilarity for that city would be zero, suggesting complete integration. But the exposure index for blacks would be 10% indicating that the typical black person in that city lived in a neighborhood that was 10% white and 90% black, indicating a highly segregated community.¹
- The race and income index should also be required in the AFH. This index demonstrates the difference between the predicted and actual racial diversity shares in a jurisdiction adjusted for income in that jurisdiction. The index provides valuable insight as to whether income is a significant factor in racial diversity. If the predicted share is higher than the actual share for a particular group, the index demonstrates that affirmative marketing is necessary.

3. Gentrification and displacement: Fair housing impacts of gentrification and housing redevelopment will be significant in a number of the jurisdictions subject to the AFH process, but the Assessment Tool does not highlight this issue. To ensure gentrification is not an outcome of the Assessment Tool, there must be measures to sustain or create housing affordability to prevent large patterns of displacement. Furthermore, the Assessment Tool should specify that “displacement” includes both displacement resulting from acquisition and demolition and from increased rents and evictions resulting from gentrification. New construction affordable housing should also be dispersed throughout the region and not clustered in concentrated areas of poverty. Jurisdictions subject to the AFH requirement need to demonstrate, before any demolition or displacement occurs to make way for new development, that there is funding to redevelop the site on a timely basis, and that there are concrete plans to address displacement of protected classes in way to avoid re-segregation and an adverse disparate impact. One important example of this is the joint review protocol currently in place between the HUD Office of Fair Housing and Equal Opportunity (“FHEO”) and the HUD Office of Public and Indian Housing. HUD PIH 2012-7 sets for a joint review of any pending public housing demolition or disposition applications. FHEO is specifically tasked with ensuring that the proposed demolition or disposition does not result in the displacement of protected classes in violation of civil rights laws. As well, the recently issued proposed rule on public housing demolitions and dispositions, adds civil rights requirements on public housing authorities proposing to demolish or dispose of a public housing site, including documentation that the action will not violate nondiscrimination requirements and does not serve to maintain or increase segregation on the basis of race, ethnicity, or disability 79 Fed. Reg. 62,250 (October 16, 2014). The rule also requires a description of the civil rights related characteristics of both the residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and the residents on the public housing waitlist. These rules are important requirements that should be incorporated into the AFH process as well.

4. Action steps: Although the Notice and Preamble published in the Federal Register refer to “Action Steps” to be identified by jurisdictions, the Assessment Tool itself is missing this key section. Identifying fair housing challenges without beginning to identify concrete policies and actions to address these challenges will substantially reduce the likelihood jurisdictions will take concrete and meaningful steps to overcome impediments to fair housing choice. They will instead continue to rely upon generic, vague goals so often found within Action Plans and AIs. The Assessment Tool should provide examples of action steps based upon certain known impediments, common to many entitlement jurisdictions, such as zoning restrictions, the lack of affirmative marketing, residential segregation of Housing Choice Voucher populations, the lack of affordable home ownership programs to benefit protected classes, and the lack of accessible housing. For example, if the identified impediment is that the zoning is largely restricted single family or commercial development, the action step suggested could be to, within one calendar year,

¹ See Brown University’s US2010 website for demonstrations of the dissimilarity index, exposure index, and isolation index. <http://www.s4.brown.edu/us2010/Data/data.htm#WP>

review and amend the zoning code to permit and encourage more multifamily housing. We strongly support the inclusion of “metrics for measuring success” in reaching the identified goals in the AFH, but we urge HUD to require greater specificity in the goals and metrics identified – with an emphasis on increasing levels of integration, reducing levels of segregation, and increasing measurable access to equal community assets and resources for families residing in racially concentrated areas.

The supplementary information provided for section “Part V” states, “While actions and funding decisions are not a requirement of this section, the objective of the section is to concretely think through how significant fair housing determinants and fair housing issues would be addressed.” We strongly believe that actions, including funding decisions, should be a requirement of this section. Without action items, it will be very difficult to evaluate how well program participants are meeting goals and priorities. Therefore, in addition to the information proposed to be required for each Fair Housing Issue category, for each goal program participants should be required to specify actions that the program participant plans to take with a timetable for each action.

5. Timing of the release of the Assessment Tools: The AFFH rule has faced numerous delays over the past several years, and the finalizing of the Assessment Tools and accompanying guidance should not be another occasion for delay. Because of the substantial lead time built into the proposed rule between the commencement of the community engagement process, drafting of the AFH, and subsequent development of the Consolidated Plan, the Assessment Tools and Program Guidance do not need to be released at the same moment as the final AFFH rule. If the final AFFH rule is released later this year (2014), and the Assessment Tools and Guidance are finalized in early 2015, this will give jurisdictions with Consolidated Plans scheduled for 2016 ample time to prepare.

6. The inclusion of metric milestones: This is an important point because it strengthens the accountability of municipalities. Milestones should be aggressive and include benchmarks and a projected timeline for groups to reach these benchmarks. There is a thorough explanation of the process. However, specific outcomes or at least, efforts that will lead to improvements over time, must be required.

7. The disability analysis: The stand-alone section for disability analysis is a positive attribute of the Assessment Tool. We also conclude that although the other analyses, in limited instances, reference disability issues, the Assessment Tool should be modified in some areas to incorporate and require further discussion of disability. Finally, we recommend that HUD improve data collection on the housing needs of people with disabilities. These three points are explained below:

a. Recommended improvements to stand-alone section: The sub-section “Housing Accessibility” would benefit from an analysis of how source of income discrimination, the availability or absence of modification funding, and community resistance; affect the ability of people with disabilities to secure housing. The list of “Access Issue Determinants” is good but incomplete. We recommend that HUD add the following factors to the list: community resistance: availability of modification funding to make homes/apartments accessible; landlord resistance to disability-related income (e.g., social security and social security retirement) and/or housing choice vouchers; admission or participation preferences for public housing, housing choice voucher programs, or other subsidized housing; discrimination against people with disabilities; and community resistance.

b. Recommended improvements to other sections: The sub-section on “Publicly Supported Housing Patterns” should add “disability” to the description of patterns related to the occupancy of public housing. The sub-section on “Publicly Supported Housing and Mobility Policies” would benefit from a requirement that jurisdictions report on: efforts to ensure accessible units are used/reserved for people with disabilities who need such units, to include the extent to which such units are “recycled” to people with disabilities when a prior resident moves out; whether the jurisdiction, in order to meet the needs of people with physical or sensory disabilities, needs to formally increase the percentage of Section 504 units that are accessible to these populations; and the extent to which modification funding, if any, meets the needs of people with disabilities who participate in the housing choice voucher program. The sub-section on “Demographic Patterns” should add “disability” to the analysis of housing cost burden,

overcrowding, or substandard housing. The sub-section on “Schools” would benefit from a discussion of the extent to which schools in the jurisdiction are accessible to people/students with disabilities and its impact on segregation and opportunity. The sub-section on “Public Transportation” should address the accessibility, or lack thereof, of public transit options.

c. Data collection: On January 19, 2010, the National Council on Disability published a report titled *The State of Housing in America in the 21st Century: A Disability Perspective*.² The Report recommends improved data collection on the housing needs of people with disabilities. We endorse those recommendations and urge HUD to adopt them so that it can provide jurisdictions with more comprehensive information about disability-specific housing issues. The recommendations, summarized at page 157 of the report, follow:

- HUD should work with Congress and the Administration to establish new initiatives that produce improved data collection on the housing needs of people with disabilities;
- HUD and USDA, on an annual basis, should collect data on the extent to which their respective inventories of housing units are accessible and on how many of these units are actually occupied by people with disabilities in need of accessible housing;
- HUD should improve its Worst-Case Housing Needs research by gathering information from the American Community Survey and Survey of Income and Program Participation (SIPP). This information would be used to supplement the Annual Housing Survey data already used;
- HUD should work with Congress to include people living in group situations, such as nursing homes, psychiatric hospitals, and group homes, to improve the analyses of worst-case needs and other assessments that already include people with disabilities; and
- HUD should work with the U.S. Census Bureau to develop SIPP reports that examine important housing data for households of people with disabilities, rather than just individuals with disabilities.

8. Group home concentration: Group homes are often primarily located in RCAP’s and ECAP’s. HUD should encourage the mapping of group homes to determine if they are located in either area. Zoning ordinances often prohibit group homes from being placed within a community. Therefore, zoning code should be examined and made sure that it does not prevent group homes from being located within communities or forcing group homes to be located in low opportunity areas.

9. Disparities in access to quality schools: The Assessment Tool should include data on access to *low poverty* schools – a primary determinant of success for low income students. In subsection iii, the terms “interdistrict school transfer programs,” and the term “other school choice policies” should be added to the list. We also recommend the removal of the term “school vouchers” in subsection iii, as these programs are quite rare, highly controversial, of doubtful constitutionality, and have been shown to increase school segregation. Such programs, if they exist in a jurisdiction, would be captured by the broader catch-all term “other school choice policies.”

10. Disparities in access to transportation + proximity to jobs: We are glad to see that transit is included, however the transit mapping does not mention access to jobs. It is common to observe segregated communities close to transit, but isolated from job opportunities. This section should analyze the distribution of the benefits and burdens of transportation throughout the region. This should include demographic and neighborhood comparisons along multiple indices including (but not limited to) service quality and frequency, average commute length, transit type, pedestrian and cycling support, financial investment, and sources of air and noise pollution. Analysis of transportation benefits and burdens should examine cumulative benefits and burdens incurred by various

² Available at <http://www.ncd.gov/publications/2010/Jan192010>>HTML

populations. This requirement should be emphasized and made explicit. The transportation analysis should require cross-reference to Title VI, Environmental Justice, and other civil rights obligations under federal transportation guidance, including (but not limited to) relevant Federal Transit Administration circulars. Additionally, this section should analyze the distribution of, and trends in, transit-oriented development throughout the region. This should include the degree to which both private- and government-supported TOD includes affordable housing, and whether the geographic distribution of such housing furthers integration and fair access to employment and educational resources. Finally, this section should not just measure all jobs; it should measure the type of jobs and the length of commute by public transportation. Transit is often focused to go into a central business district that primarily hosts “white collar” jobs, but that transit may not provide access to “blue collar” jobs. The measure should show the number of jobs and travel distance that support different levels of income.

11. Demographic Summary: This section of the template should more clearly indicate which demographic patterns and trends in the jurisdiction and region should be described – including increases or decreases in the number of census tracts with greater than 20%, 30%, and 40% poverty, and increases or decreases in the number of persons residing in such census tracts. We recommend explicit inclusion of local school race and poverty demographics for each elementary school, middle school, and high school in the jurisdiction. This data is readily accessible at the National Center for Education Statistics (www.ed.gov) and in state department of education databases in most states.

12. The inclusion of language barrier data and accountability: Efforts to prevent language barriers and ensure accountability should be incorporated throughout the AFFH Assessment Tool. As HUD requires Public Housing Authorities to ensure their LEP populations are properly identified and served, the Assessment Tool should also include specific guidance to LEP data gathering and analysis for all those required to AFH.

13. Geographic Patterns: The emphasis of this section raises concerns, as it seems to imply that small geographic areas with the greatest housing needs should be the primary recipients of additional low income housing assistance, while small geographic areas with the least need are “off the hook.” Such an implication is inconsistent with the requirements of 42 USC §3608, and would undermine the purposes of the AFFH Rule. This section should be eliminated from the Assessment Tool, or replaced with a more meaningful regional fair share analysis – asking for an estimate of the overall present and future housing need for low and moderate income housing in the region (based on the analysis in §C.1) and which jurisdictions (and neighborhoods) in the region are meeting or exceeding their proportionate share of this need.

The Chicago Area Fair Housing Alliance and undersigned organizations appreciate the opportunity to share our views on the Affirmatively Furthering Fair Housing Assessment Tool. If you have questions or need additional information regarding our comments, please do not hesitate to contact the Chicago Area Fair Housing Alliance.

Sincerely,

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