

May 23, 2016

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

Re: Affirmatively Furthering Fair Housing, renewal of Local Government Assessment Tool,
Docket No. FR-5173-N-10 (March 23, 2016)

Dear Secretary Castro,

We are writing on behalf of the undersigned civil rights and fair housing organizations to comment on the revised Local Government Assessment Tool, as set out in the Notice published at 81 Fed. Reg. 15546 (March 23, 2016). The Local Government Assessment Tool is a critical component of the Affirmatively Furthering Fair Housing (AFFH) process, and it must be structured so as to provide a meaningful assessment of jurisdictions' fair housing challenges. Our observations are informed by our experience in reviewing the initial December 31, 2015, release of the tool, our review of the recently released Assessment Tools for states and public housing agencies, and our work with local jurisdictions and local civil rights advocates preparing for the upcoming Assessment of Fair Housing (AFH) process.

I. Missing questions in the local government tool

Community participation: The community participation section of the AFH tool is extraordinarily weak – particularly in its failure to encourage a wide range of stakeholders in the AFH process. Throughout the AFH, there is an emphasis on obtaining local knowledge on education, transportation, employment, environmental conditions, and public health, and there are specific questions about access to opportunity in these specific areas. The final regulation also states that the AFH should identify goals to “inform...community plans including, but not limited to, education, transportation, or environmental related plans.” Yet there is no suggestion that the community participation process should include local stakeholders with local knowledge or interest in these housing-related areas. In order to encourage a robust and meaningful AFH community participation process (page 1), HUD should amend question 2, as follows: “Provide a list of organizations consulted during the community participation process, including stakeholders who are working in the areas of public health, education, workforce development, environmental planning, or transportation.” If HUD expects these housing-related issues to be addressed in the AFH, HUD should be “encouraging” local governments to reach out and include participants with local knowledge and expertise in these areas. The community participation section of the AFH tool should also specifically reference civil rights and fair housing organizations, and other groups providing legal assistance to families affected by HUD programs.

Questions relating to the Housing Choice Voucher program: As set out in the AFFH final rule, the AFH for local governments includes an assessment of all local housing programs, including the Housing Choice Voucher (HCV) program. Furthermore, the goals and timelines set out in the local government's AFH are intended to inform the public housing agency (PHA) Plan process, a

central aspect of which is the Section 8 Administrative Plan, which governs policies for the HCV program. But for some reason, the current draft of the Local Government Assessment Tool is missing the most basic HCV policy issues that may affect fair housing, including low payment standards, portability restrictions, inspection delays, refusal to extend search times, lack of notice to families of their choices, lack of assistance to families in locating housing in opportunity areas, and geographic concentration of apartment listings provided to HCV families by the PHA. The tool should be revised to include questions about these issues.

Additional unresolved issues: There are also a number of unresolved issues raised by civil rights and fair housing advocates in their August 17, 2015, comments on the previous draft version of the local government assessment tool.¹ The most important issues addressed in those comments which are should be addressed in the current release, include:

- The assessment tool should require local governments to set as many goals as are necessary to address each contributing factor
- The assessment tool should ask more specific questions about gentrification and displacement
- The assessment tool should ask specific questions about the administration of relocation assistance and the location of replacement housing
- The assessment tool should provide recommendations on use of local data and knowledge, particularly with regard to the fair housing issues facing persons with disabilities, for whom the data that is currently provided is extremely limited
- The assessment tool should provide recommendations on use of fair housing goals to inform planning processes

Details relating to these omitted areas can be found in our earlier submission on the local government assessment tool,² or in our recent comments on the state assessment tool.³

II. Data deficiencies in the local government tool

We have noted several areas where key fair housing data is missing or inaccessible. We hope that these data issues will be relatively easy for HUD to resolve:

First, we note that the Low-Income Housing Tax Credit (LIHTC) data does not include data on race, ethnicity, and other demographic data by project. This data is collected by HUD annually, pursuant to Section 2002 of the Housing and Economic Recovery Act (HERA) of 2008, which requires that, at least annually, State Housing Finance Agencies provide to HUD and HUD makes publicly available data regarding the race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments for households residing in all properties receiving LIHTCs. 42 U.S.C. § 1437z-8.⁴ This data should be linked to the PHA tool to permit a full assessment of the

¹ Comments posted at www.prrac.org/pdf/Civil_Rights_Comments_for_30-day_AFH_PRA.pdf.

² Ibid.

³ http://www.prrac.org/pdf/Civil_Rights_Sign-On_State_AFH_Comment_Letter.pdf.

⁴ “Collection of Information on Tenants in Tax Credit Projects,” provides that each state agency administering LIHTC “shall furnish to the Secretary of Housing and Urban Development, not less than annually, information concerning the

concentration of subsidized units in each census tract, and the demographics of residents in each development.

Second, it appears that the data provided on the demographics of non-LIHTC-assisted housing developments in “Table 8” does not directly link to census tract demographics – creating an additional burden on respondents and undermining a key element of fair housing analysis (specifically, the comparison of project and neighborhood racial composition, which is basic in assessing fair housing compliance).

Third, we are concerned by limitations in the Housing Choice Voucher (HCV) data. Part of a basic fair housing analysis of HCV distribution involves assessing *which* PHAs have vouchers placed within a jurisdiction. However, the data provided in the assessment tool does not include this data. And if program participant staff seek to look further for this data, the alternative data set that includes the number of vouchers by PHA (the “Resident Characteristics Report,” or RCR) is missing data for “Moving to Work” (MTW) jurisdictions, which are often the largest PHAs in their regions. This data should be restored and made available in the AFH data tool to permit a more fine-grained analysis of concentration patterns in the HCV program.

III. Responses to specific questions in the Federal Register Notice

1. Should the racially/ethnically concentrated areas of poverty (R/ECAPs) analysis be amended to exclude college students from the calculation of poverty rate?

The fair housing implications of “counting” college students and prison inmates in local area population counts are dependent on local context, and we do not support an across-the-board approach. Rather, the issue should be flagged as related to local knowledge and local data.

2. Should HUD provide additional data on homeownership and rental housing, including maps and tables (e.g. data on percent of owner- and renter-occupied housing by area, maps showing patterns of home ownership and renter-occupied housing together with demographics of race/ethnicity, and homeownership/rental rates by protected class group)?

Yes, this is basic fair housing data.

3. Are there changes or improvements that can be made to the Opportunity Index measures? For example, should HUD include additional national data related to schools and education? Should HUD change the variables included in the Labor Market Engagement Index? Are there changes to the transportation indices (currently Transit Trips and Low Transportation Costs) that can be made

race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. ...The Secretary shall establish standards and definitions ... provide States with technical assistance in establishing systems to compile and submit such information, and, in coordination with other Federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs...[and] shall, not less than annually, compile and make publicly available the information ...”

to better inform a fair housing analysis of transportation access and whether transportation provides access to areas of opportunity? Should HUD adjust the Environmental Health Index with new variables and/or a revised formula?

In regard to national data related to schools and education, we recommend adding five- and ten-year trend data on the percentage of students by poverty and race in each district and in each school. This national data is readily available and is arguably more relevant to an AFFH analysis than a snapshot of current 4th grade test score data. We also recommend adding high school graduation rates for the school district(s) covering the jurisdiction.

With respect to environmental data, HUD should not limit the data it provides to air quality indicators. Other useful data for program participants would include hazardous waste sites, Superfund sites, brownfields, and EPA air pollution sources. These would all help program participants pinpoint specific locations that may be of concern. In addition, there are environmental concerns that are not related to pollution that should be considered in the AFH process, such as areas exposed to flooding during heavy rain. While HUD may not be able to provide data on this type of environmental hazard, it should direct program participants to rely on local data and knowledge to identify geographic areas exposed to such hazards.

We would also note that the way that all of the indices included in the data are displayed in the mapping tool is confusing and difficult to understand. It is hard to distinguish among the ten shades of gray that are used to show the different levels for each index. A smaller number of categories would be easier to visualize. Further, the ranges shown (0-10, 10-20, etc.) do not convey any meaning and are very confusing to the viewer. A better alternative would be to label the different categories as very low, low, moderate, etc. That would make it easier for viewers to understand what the maps of the opportunity indices are showing.

Because the only way to print the maps is by using the computer's print screen function, we would also recommend revisions to the way the legends are displayed. The use of a single scroll bar for the variables displayed on the map results in many of those variables being hidden from view at any given time. This, in turn, means they are not displayed on the printed version of the map. This aspect of the mapping tool should be redesigned to make it possible to print the maps with complete legends visible.

5. Should HUD add Home Mortgage Disclosure Act (HMDA) data to inform a fair housing analysis of lending practices and trends? Which types of HMDA data would be most useful (e.g., loan origination data, data on conventional loans compared to FHA loans, etc.)?

Yes, this is basic fair housing data which is now routinely included in many Analyses of Impediments to Fair Housing, and there is no reason to drop it from the new AFH process. In addition to loan origination data and comparisons of FHA to conventional loans, the analysis in this section should include the prevalence of high-cost loans, reasons for loan denial by neighborhood, and presence or absence of bank branches in R/ECAPs.

6. Should HUD distinguish between 9 percent and 4 percent tax credits in the LIHTC data being provided, including in maps of development locations?

Yes, distinguishing these two program types will help the local jurisdiction and the state better understand how the LIHTC program is affecting each community.

7. Should HUD make any other changes to the Local Government Assessment Tool to facilitate joint or regional collaboration or facilitate a meaningful fair housing analysis and priority and goal setting?

The most important step HUD can take is to conform the Local Government Assessment Tool to the PHA Assessment Tool. If a local government takes the lead in a regional consortium, or with its local PHA, it will undermine the assessment if detailed PHA analyses are omitted from the form.

Likewise, to encourage meaningful *regional* AFHs, the Local Government Assessment Tool should include some of the data embedded in the Assessment Tool for state governments – in particular, detailed questions regarding the LIHTC program, and questions on “disparities related to public health services” and “disparities related to public safety.”

For smaller, less diverse suburban jurisdictions, whether or not a regional collaboration is involved, it is important to place the local jurisdiction’s demographics in the larger regional context. For example, in the Segregation/Integration section of the tool, the AFH should ask jurisdictions to describe and compare population percentages of different racial and ethnic groups in relation to the metropolitan area and to adjacent communities; determine which groups are under-represented in the jurisdiction compared to representation across the metropolitan area; and describe how these disparities have changed over time.

For jurisdictions coming together in a regional collaboration, we would recommend a supplemental section to be completed separately by each jurisdiction in the regional AFH, that indicates that jurisdiction’s role in the fair housing issues identified, and specific goals that each jurisdiction can take to contribute to the regional goals identified in the regional AFH.

Thank you for the opportunity to present these comments.

Sincerely,

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