

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 Assessment Tool for Public Housing Agencies, Docket No. FR-5173-N-09 (March 23, 2016)

Dear Secretary Castro,

We are writing on behalf of the undersigned civil rights, fair housing organizations, and other non-profit public policy organizations to comment on the Public Housing Agency (PHA) Assessment Tool, as set out in the Notice published at 81 Fed. Reg. 15549 (March 23, 2016). PHAs are at the front lines of fair housing – with enormous power to influence the housing opportunities available to low-income families eligible for federal assistance, and corresponding power to affect the demographics of the communities and regions in which they operate. It is important that the PHA Assessment of Fair Housing (AFH) tool fully explore these dynamics in the different geographic contexts in which they are manifested. HUD has done an excellent job in developing the PHA Assessment Tool, but it can be improved in a number of ways, as our comments below indicate.

I. Data deficiencies in the PHA Assessment Tool

We have noted several areas where key fair housing data is missing or inaccessible. It is critical that HUD take the necessary steps to provide these data for PHAs to use in conducting their Assessments:

First, we note that the 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 make 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 Low-Income Housing Tax Credits (LIHTCs). 42 U.S.C. § 1437z-8.¹ This data should be linked to the PHA tool to permit a full assessment of the concentration of subsidized units in each census tract, and the demographics of residents in each development. Given LIHTC's status as the largest assisted housing production program in

¹ “Collection of Information on Tenants in Tax Credit Projects,” provides that each state agency administering LIHTCs “shall furnish to the Secretary of Housing and Urban Development, not less than annually, information concerning the 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 ...”

the country, the absence of these data is a significant obstacle to PHAs' ability to effectively assess the fair housing implications of the LIHTC program in their communities.

Second, it appears that the data provided on demographics of non-LIHTC-assisted housing developments in "Table 8" does not directly link to census tract demographics – creating an additional burden on PHAs (or submitters) 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, these data are not provided in the assessment tool. And if PHA 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.

II. Restore the subsection on mobility for residents of publicly supported housing

The September 2014 version of the Assessment Tool for local governments included a specific section focusing on constraints to housing mobility for residents of publicly supported housing. HUD omitted this discussion from the July 2015 and the final versions of the Assessment Tool for local governments. But the analysis presented in this deleted subsection – assessing program issues that may affect the ability of Housing Choice Voucher families to access lower-poverty areas – is crucial for PHAs that administer HCV programs and is one of the most obvious fair housing issues facing most PHAs. Whether or not this section is included in the final state and local AFH tool, it definitely belongs in the PHA Assessment Tool, and should be restored with the following improvements and clarifications that we have previously recommended:²

To avoid confusion, this section should be retitled "Housing Choice Voucher administration and housing mobility programs," and rephrased as follows, including separating admissions issues from issues that affect where voucher holders live:

i. Describe how HCV policies or practices, including payment standards, landlord and apartment listings, search time, local preferences, portability issues between PHAs, and presence or absence of mobility counseling and incentives impact the types of neighborhoods and communities in the jurisdiction and the region that HCV families move to, and the ability of persons using HCVs to live in a broad range of neighborhoods of their choice. (discuss these issues by race/ethnicity, national origin, age, families with children, persons with disabilities, household size)

² See archived comments of civil rights groups at http://www.prrac.org/pdf/Civil_rights_comments_on_AFFH_Assessment_Tool_11-4-14.pdf

ii. Is there a housing mobility counseling program in place (other than the PHA's), central registry, listing of rental housing available to HCV holders, or other program to ensure that residents, particularly those living in low-asset/high poverty neighborhoods, become aware of public or private housing opportunities ~~outside their neighborhood,~~ in significantly lower poverty communities, and receive assistance in making moves to such areas? Are there any related initiatives (such as security deposit assistance or car access programs) designed to help families move to lower poverty neighborhoods. Explain.

iii. What barriers do persons using HCVs encounter when attempting to ~~utilize mobility and portability features~~ move to low poverty neighborhoods and communities throughout the region?

iv. Describe how HCV policies or practices, including waiting list practices and local preferences (including but not limited to residency preferences) affect the demographics of families issued HCVs in the jurisdiction and region.

III. Responses to specific questions in the Federal Register Notice

1. Can the instructions be made clearer so that PHAs can better understand what information HUD is seeking?

Yes, a number of the questions and sections of the AFH seem to “hide the ball” from PHAs that may not be intimately familiar with fair housing analysis. It would be reasonable for HUD to give examples of why a particular question is being asked – to identify the kinds of concerns that may underlie each set of questions. This approach would lead to a better community engagement process and a more forthright AFH submission. For example, in the publicly supported housing section, a prefatory sentence might say, “The questions in this section will help the PHA assess the degree to which publicly supported housing is over-concentrated in certain areas, contributing to racial segregation, and whether there are significant disparities in occupancy patterns in publicly supported housing developments in different types of neighborhoods.”

2. How can the Assessment Tools be improved to encourage collaboration between PHAs or between PHAs and Jurisdictions?

The most important issue here is the divergence of questions between the PHA Assessment Tool and the Local Government Assessment Tool. If there is a proposed collaboration between a PHA or PHAs and a Local Jurisdiction, it should be made clear that the cumulative questions in both AFHs should be applied to the collaboration, so that key information is not omitted based on which entity is in the “lead.” The easiest way to accomplish this would be a new AFH collaborative tool that incorporates all of the questions and data in both the PHA and local jurisdiction tools.

3. Whether there are important areas of information for conducting a meaningful fair housing analysis that HUD may have overlooked?

The most crucial area of information that is missing from the PHA Assessment Tool is the

subsection on housing mobility that was originally included in the September 2014 draft assessment tool. As noted above, the analysis in this subsection is crucial for any PHA running a Section 8 Housing Choice Voucher Program and should be restored in the PHA Assessment Tool.

In addition to the analysis of tenant based HCVs, many PHAs also administer project-based vouchers (PBVs). Because of important fair housing issues relating to site selection of PBVs, the location of PBV developments should be analyzed separately from the location of tenant-based vouchers. The simplest approach would be to define "the PHA's developments" to include developments where the PHA has project-based vouchers, in addition to properties the PHA owns. This suggestion could be incorporated in part D(1)(b)(i) on p. 9 of the PHA tool. The explanation of the Publicly Supported Housing analysis, beginning on p. 27, should also be revised to include specific references to project-based vouchers.

There are a number of additional areas of information that should be included in the PHA Assessment Tool:

- 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 any stakeholders 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” PHAs to reach out and include participants with local knowledge and expertise in these areas.
- The PHA should be asked directly (for example, in the initial “Contributing Factors of Segregation” section, on page 3) the extent to which PHA programs are contributing to segregation and concentration in the service area and region.
- In the section on “Access to Environmentally Healthy Neighborhoods” (pages 4-5), include a specific question about the access of families in PHA programs (public housing and HCV) to environmentally healthy neighborhoods.
- In the section on “Public Housing Agency Program Analysis” (page 9), PHAs should be asked whether tenants in RAD developments have been informed about their choice/mobility rights, and whether the PHA has offered tenants any assistance in making moves to lower-poverty areas.
- In the section on “Public Housing Agency Program Analysis” (page 9), all of the questions on housing mobility previously included in the September 2014 Assessment of Fair Housing draft discussed earlier.
- In the section on “Other Publicly Supported Housing Programs” (page 10), there should be a question or data reporting opportunity that looks at the overall concentration of assisted housing in particular neighborhoods (including public housing, HCVs, Project Based Section 8, PBRA developments, LIHTC developments, and any state housing programs).
- In the section on “Fair Housing Enforcement, Outreach Capacity, and Resources Analysis” (pp 11-12), the reporting of fair housing complaints and investigations should

include any consent decrees, settlement agreements, or Voluntary Compliance Agreements that are still in effect. As this section is currently drafted, PHAs may feel empowered to omit this important information from their AFH.

- Has the PHA changed its admission/screening procedures for persons with past involvement with the criminal justice system, in compliance with recent HUD guidance?
- Does the PHA have a policy to protect victims of domestic violence from evictions related to abuse or evictions in response to police calls for protection?
- Does the PHA have a policy designed to protect tenants from racial or sexual harassment?

4. Whether certain questions from the AFH for local jurisdictions that were removed from the PHA Assessment Tool should be restored?

Yes, there are several questions that are particularly relevant to PHAs and would be important to restore:

- In “General Issues-Segregation/Integration (page 2), restore “Explain how these segregation levels have changed over time.”
- “Private Discrimination” should be restored as a contributing factor in each section of the AFH.

5. Whether adding a specific focus on PHA programs is a valuable addition to the AFH?

Yes, but many of these questions should also be included in the local government AFH tool.

6. What is the best method for HUD to obtain information about each PHA’s service area?

HUD should ask PHAs for this information directly, separate and apart from the AFH, in a uniform format that permits GIS mapping. The data received through the AFH should be entered into a national database, similar to the data on local school zone boundaries maintained by the Department of Education. Service area definition should also be requested in the AFH.

7. Fair housing issues relating to families on the PHA waiting list

Certain types of tenant selection and waitlist management policies can have a discriminatory impact on persons in protected classes, by making it more difficult for out of town families to gain admission, or by creating barriers to people with disabilities. The following questions would help the PHA to assess whether its policies have a discriminatory effect.³

- Does the PHA require in-person applications at the PHA offices, or can applications be obtained by mail or online or at multiple locations?
- Does the PHA use a first-come, first-served waitlist, or a lottery to determine placement

³ See Megan Haberle, Ebony Gayles, and Philip Tegeler, *Assessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012).

on the waitlist?

- Does the PHA keep the waitlist open for a long enough time to permit applicants from outside the service area to apply?
- Are there any local preferences for program admission? If so, please list.
- Is there a local residency preference?
- How does the PHA make information available to people with limited English proficiency, and what accommodations it makes for people with disabilities?

IV. Other missing analyses and improvements needed in the Assessment Tool

We have noted a number of specific questions or issues that could be clarified or improved in the PHA Assessment Tool:

In the “Assessment of Past Goals, Actions, and Strategies” section (page 1), the PHA is asked about its past Analyses of Impediments to Fair Housing (AIs) – but PHAs have not in the past been required to submit AIs. We recommend rephrasing this question to ask about PHA issues identified in past AIs conducted by the local jurisdiction, and also to ask the PHA whether it has ever developed fair housing goals in its PHA Plan, and if so, to describe those goals.

In the “Disparities in Access to Opportunity” section (page 3), the references to “students” are misleading, and should be changed to “school-aged children.”

In the “Public Housing Agency Program Analysis” (page 9), the term “affordable housing” should be replaced or more clearly defined – as written, the term is unclear (what rent levels is HUD asking about?) and ambiguous (it is often used interchangeably with “assisted housing”). The apparent goal of this section is to compare the distribution of HCVs in the service area and region with the distribution of available apartment units. To make this clearer, we would recommend changing the term “affordable housing” to “rental housing at or below 120% of the Section 8 Fair Market Rent for the region,” or “rental housing at or below the most recently published Small Area FMRs for each zip code in the region.”

There are also a number of other issues raised by civil rights and fair housing advocates in their August 17, 2015, comments on the initial version of the local government assessment tool that have not been addressed.⁴ Several of these are particularly relevant to the PHA Assessment Tool:

The Assessment Tool should require PHAs to set as many goals as are necessary to address each contributing factor: The draft Assessment Tool has retained language from the local government tool that directs PHAs to “set one or more goals” for each significant contributing factor. This language sets an extremely low bar and appears to condone an unambitious approach to addressing contributing factors. HUD should change the language of Question 2 in the Fair Housing Goals and Priorities section to clarify that PHAs must set

⁴ Comments posted at www.prrac.org/pdf/Civil_Rights_Comments_for_30-day_AFH_PRA.pdf.

as many goals as are necessary to meaningfully address each contributing factor with a view toward actually overcoming the underlying fair housing issues.

The Assessment Tool should ask more specific questions about gentrification and displacement: The draft Assessment Tool does not solicit information designed to meaningfully address the issue of gentrification and the displacement of long-time residents of color from revitalizing neighborhoods due to economic forces and public investments. In some high-cost cities, patterns of gentrification and displacement pose a risk of contributing to the re-segregation of city neighborhoods.

The Assessment Tool should ask specific questions about the administration of relocation assistance and the location of replacement housing: When households are displaced because of activity funded by HUD or other federal agencies, significant fair housing issues can result, both because of potential infringements on autonomy and enabled resident choice and because of the perpetuation of segregation. Federal agencies and their grantees have a duty to ensure that their administration of relocation assistance and replacement housing programs affirmatively furthers fair housing.

The Assessment Tool must include robust instructions for the community participation process: Despite the Affirmatively Furthering Fair Housing regulation's focus on robust community participation, HUD's successive iteration of draft and final assessment tools has failed to deliver on that promise. The questions in the tool alone provide little meaningful guidance about what steps PHAs should be taking to solicit meaningful input and what steps they should be taking in response to that feedback.

The Assessment Tool should provide recommendations on use of local data and knowledge: Program participants still have little detailed guidance with regard to the incorporation of local data and knowledge – for instance, pertaining to a recommended scope of issues, best practices for information-gathering, and coordination with other local agencies (and other prospective sources). All of these topics should be presented in-depth to participants. Such recommendations should be issued without delay, either as part of the assessment tools or in accompanying guidance.

The Assessment Tool should provide recommendations on use of fair housing goals to inform planning processes: The regulation states that the AFH is to identify goals that are to “inform...community plans including, but not limited to, education, transportation, or environmental related plans.” Participants should be given detailed recommendations regarding the types of plans this provision contemplates, examples of relevant goals, and steps that can be taken to connect fair housing with community and interagency planning.

Thank you for the opportunity to present these comments, and please feel free to contact us for further information on any of these points.

Respectfully submitted,

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