

October 20, 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 (30 day comment period), Docket No. FR-5173-N-09-B (September 20, 2016)¹

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 of Fair Housing (AFH) tool, recently re-issued for public comment as set out in the Notice published at 81 Fed. Reg. 64475 (September 20, 2016). We had previously commented on the initial release of the PHA AFH tool on May 23, 2016,² and we were pleased to see some of our comments adopted in the revised rule. There are still some outstanding gaps in the revised AFH from a civil rights perspective, and we will address these below.

As we noted in our earlier letter, Public Housing Agencies 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. The Assessment of Fair Housing should provide PHAs with the tools they need to improve their fair housing performance.

Positive improvements in the revised Assessment of Fair Housing form for PHAs

¶ The revised Assessment tool has been significantly improved by the clarification that PHAs are required to do a regional analysis. The myopic focus of some PHAs on their “area of operation” has been a significant fair housing obstacle for many decades, and the revised AFH will be one step toward broadening the perspective of those PHAs that are not yet thinking regionally.

¶ The inclusion of “admissions and occupancy policies and procedures” and “policies related to payment standards, FMR, and rent subsidies,” are welcome additions in the “Contributing Factors of Segregation” and “Contributing Factors of R/ECAPS” sections, but we would also recommend the inclusion of the excellent list of questions located in the “Housing

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-09-20/pdf/2016-22594.pdf>. The comments in this letter are based on the Federal Register Notice, the revised “Assessment of Fair Housing Tool For Public Housing Agencies,” available at <https://www.hudexchange.info/resources/documents/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies.docx> and the comparison version of the revised AFH Tool, available at <https://www.hudexchange.info/resources/documents/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies-Compare-Version.docx>.

² http://www.prrac.org/pdf/Civil_rights_comments_-_AFFH_PHA_Assessment_Tool_5-23-16.pdf.

Accessibility” section of part C, “Disability and Access Analysis,” because these practices affect access for persons of color just as they affect persons with disabilities:

“Describe the waitlist(s) policy of the PHA to include preferences, placement determination (e.g., first-come, first-served vs. lottery), program selection (e.g., agency-wide waitlist or by development), application method, length of time application window is open, and average wait time list.”

¶ Inclusion of information about current or recent fair housing liability determinations is also a valuable addition, and should be expanded to require information about *pending* fair housing or other civil rights complaints, which are often helpful in spotting emerging fair housing issues, even where the complaints have not yet been adjudicated.

¶ The requirement of consultation with related government agencies regarding access to opportunity in education, transportation, and environmental health is a positive improvement and consistent with HUD’s recent admonition to state and local housing agencies to collaborate with their sister agencies to promote greater diversity in schools and communities.³ This positive approach should also be extended into the AFH requirements for community engagement, as noted below.

Additional corrections and improvements needed in the revised Assessment of Fair Housing form for PHAs

¶ The “Community Participation Process” section of the AFH continues to be limited by HUD’s overly restrictive view of who is part of the community. In order to encourage a robust and meaningful AFH community participation process, HUD should amend question 2 to add: “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 really expects these housing-related issues of education, transportation, employment, and environmental health 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.

¶ In Section V (D), “Publicly Supported Housing Analysis,” there is still no separate analysis for the Housing Choice Voucher (HCV) program, and factors affecting the ability of families to use their vouchers across the region, including in higher cost, low poverty areas. HUD has requested comments on this question (page 64477 of the September 20th Federal Register Notice), and we want to strongly underscore that these are essential questions to include in the PHA AFH. We have repeatedly emphasized the importance of including a separate analysis of geographic mobility (or lack of mobility) in the HCV program. The HCV Program is HUD’s largest assisted housing program, it is highly segregated in most metro areas, and among all PHA programs, the HCV program is the most sensitive to AFFH interventions. HUD’s continuing reluctance to

³ See HUD-DOT-ED joint letter on interagency cooperation on affirmatively furthering fair housing (June 8, 2016), available at http://www.prrac.org/pdf/Joint_Letter_on_Diverse_Schools_and_Communities_AFFH.pdf.

include a separate section for this program is baffling, and has the effect of underplaying the significance of the voucher program in driving patterns of metropolitan segregation. As we have previously described, the AFH must include the following types of questions on what PHAs are, or are not doing, to promote geographic choice for their HCV families:

i. Describe how HCV policies or practices, including low payment standards, current landlord and apartment listings, search time limits, local preferences, portability issues between PHAs, and presence or absence of mobility counseling and landlord 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 in relation to race/ethnicity, national origin, age, families with children, persons with disabilities, female-headed households, and household size)

ii. Is there a housing mobility counseling program in place to ensure that residents, particularly those living in low-asset/high poverty neighborhoods, become aware of public or private housing opportunities 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 move to low poverty neighborhoods and communities throughout the region? Has the PHA requested exception payment standards or Small Area FMRs to expand choices for HCV families in low poverty neighborhoods?

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.

Some aspects of these questions are now included in the section on “Qualified Public Housing Agencies,” but appear to be absent from the main section of questions for larger PHAs, where the problem of geographic concentration of Housing Choice Vouchers has greater impact.

¶ The continuing absence of LIHTC demographic data in the AFH is unacceptable. As the Federal Register Notice admits (page 64484), this data is collected annually by HUD pursuant to the Housing Economic Recovery Act of 2008, and it includes project level demographic data by race, ethnicity and a variety of other factors. HUD’s first explanation for not including this data is that HUD has failed, after eight years, to demand reliable data from state HFAs. If this is indeed true, HUD should at least provide that data for those states that have complied with the law, and it should actively enforce the data reporting requirements in the remaining states. HUD’s second explanation for not providing this data is that some LIHTC developments are so small that they trigger privacy protections affecting release of tenant demographic data. As we understand HUD’s privacy guidelines, less than 10% of all LIHTC units are in properties so small as to raise privacy issues, and should not be a bar for inclusion of demographic data on the other 90%+ units in the LIHTC inventory. If HUD is unable to provide publicly available

HUD data for LIHTC projects, the instructions for the tool should be revised to direct PHAs to use state LIHTC data that is provided to HUD, and to consider their own demographic data for any LIHTC-assisted PHA properties.

¶ PHA waiting lists (page 64485): HUD notes that it has eliminated fair housing questions relating to PHA waiting lists, because some PHAs do not have adequate or reliable data on waitlist demographics. This is a curious reason to eliminate such a basic fair housing inquiry. Maintaining waitlist data by race is a basic fair housing practice (see 24 CFR § 982.204(b); 24 CFR §903.7(a)(1)(iii)), and the fact that some PHAs do not maintain the data should not be a bar to asking for it in the AFH. It is particularly important to be able to compare the demographics of a PHA waitlist with the demographics of eligible families in their region, and with families actually receiving assistance from the PHA, as these data often reveal discriminatory practices of which the PHA may not even be aware. We urge HUD to reinstitute these questions - with the option for some PHAs to report that they do not keep such data (and to explain why they do not).

Other issues to be considered

¶ On page 64481 of the Federal Register Notice, HUD goes out of its way to reassure PHAs that the AFFH rule supports a “balanced approach” that may in some cases justify investment in housing preservation and rehabilitation in highly segregated areas. We completely agree with and support a “balanced” approach to fair housing, but in most of the regions we work in, we are not even close to seeing any actual balance in location of affordable housing.; We are concerned that HUD’s repeated reassurances to PHAs will justify their attempts to continue to pursue the status quo – similar to Westchester County’s claims that they were promoting fair housing by building much-needed affordable housing in already segregated neighborhoods.⁴ When HUD revises the AFFH Rule Guidebook, we urge the department to keep this “balance” theme in perspective, and consider the degree of balance that actually exists in all of our federal affordable housing programs. In a similar vein, if HUD is considering surveys of existing tenants’ viewpoints on “relocation and mobility from neighborhoods of concentration to more integrated areas” (page 64481), it is important that these surveys be limited to questions affecting the specific development in question (as we have supported in the past), that they be administered by a disinterested party, and that they not dictate where *other* families are forced to live by future housing investment decisions.

¶ In Section V (B) (iii), “Disparities in Access to Opportunity,” part 3 “Contributing Factors of Disparities in Access to Opportunity,” we recommend the inclusion of “access to reliable automobile transportation” after the item on public transportation.

¶ In Section V (D) (1)(b)(i), insert the word “voucher” to make clear that the new phrase “including project-based *voucher* developments” refers to properties where the PHA has entered into a contract to provide project-based voucher assistance, whether or not the PHA owns the property.

⁴ *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, 668 F.Supp.2d 548 (S.D.N.Y. 2009).

¶ In Section V (D) (2)(b)(iv)(A), insert at the end “, and whether there are differences in the neighborhood attributes of LIHTC developments where the PHA’s vouchers are in use by members of particular protected classes.”

¶ As we noted in our earlier comments, for PHAs participating in the RAD program (page 64487), it is crucial to assess whether tenants are being informed of their Choice/Mobility options as required in the program, and whether they are being offered any assistance with their moves. Reporting such information will not constitute a burden, as the answers are readily known to PHA staff.

¶ PHA service areas: HUD incorrectly states (at page 64493) that it needs to separately comply with the Paperwork Reduction Act to ask PHAs what their service area is. To the contrary - this question is intimately connected to the AFFH process, and can easily be added to the PHA Assessment of Fair Housing tool as a specific question, along with the dozens of other questions in the AFH. And it will not constitute any additional burden for PHAs, as every PHA executive director, and most staff members, already know their PHA’s service area.

We appreciate all of HUD’s efforts to improve the Affirmatively Furthering Fair Housing process, and we hope that the agency continues to maintain a high bar for all respondents, including Public Housing Agencies. Thank you once again for the opportunity to share our comments.

Sincerely,

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