

September 22, 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, Local Government Assessment Tool, Docket No. FR-5173-N-10 (August 23, 2016)

Dear Secretary Castro,

The undersigned organizations are pleased to submit our recommendations with regard to the evolving Local Government Assessment Tool, the details of which will be crucial to the rule's successful implementation. Our comments are informed by our continuing work with local communities and practitioners, as well as our collective experience in fair housing and related policy and enforcement.

The comments below respond specifically to the version of the Local Tool published on August 23, 2016, and the accompanying discussion and questions posed in the Federal Register, Docket No. FR-5173-N-10-B. A number of us previously submitted detailed commentary on additional topics that remain unaddressed, including with regard to the need for questions on gentrification, displacement, replacement housing; the need for full LIHTC data; and other topics. We link to those comments for reference and urge their reconsideration (as filed on May 23, 2016, in response to the March 23, 2016 Local Tool, 81 Fed. Reg. 15546).¹

1) Community participation; Consultation

The “community participation” component of the Local Tool remains too weak to ensure this process will be meaningful. Effective Assessments of Fair Housing will require robust community input to supplement HUD’s data, as HUD itself has acknowledged (81 Fed. Reg. 57601, 57603, addressing comments as to whether the tool is burdensome). Substantive community participation requirements should be inserted *in the tool itself* (rather than as mere suggestions offered by the Guidebook). This is needed in order to 1) sufficiently impress upon participants the full importance of broad and robust participation; 2) clearly communicate what constitute the parameters of meaningful participation, particularly for the spectrum of participant staff who are likely to look primarily to the tool to gauge HUD’s priorities, and who may lack previous training in this area; and 3) enable HUD staff, community members, and participant staff to understand what constitutes sufficient community participation for purposes of AFH evaluation and accountability.

¹ Comments *available at* www.prrac.org/pdf/Civil_Rights_comments_-_AFFH_Local_Government_Assessment_Tool_5-23-16.pdf. See also comments on the previous draft of the Local Tool (August 17, 2015), *available at* www.prrac.org/pdf/Civil_Rights_Comments_for_30-day_AFH_PRA.pdf; and comments on State Tool, *available at* www.prrac.org/pdf/Civil_Rights_Sign-On_State_AFH_Comment_Letter.pdf.

We strongly recommend that HUD include more substantive content within the tool’s community participation process and, in particular, direct program participants to assess whether outreach and engagement have occurred to multiple groups and stakeholders and specifically those from protected classes, for information relevant to each section of the Tool. As we stated in our previous comments, the cross-sectoral aspects of the AFH are both innovative and core to the rule’s design, so it should be considered equally fundamental that stakeholders from multiple sectors actively be solicited early on and throughout the AFH process—particularly as such stakeholders may be unaware of housing planning processes such as the AFH; and particularly as localities with the most severe fair housing issues may also suffer from the most severe deficits in equitable public engagement. The Tool should require, for example, that the participant

“Describe [its] efforts to include persons or organizations with local knowledge relating to public health, education, transportation, workforce development, or environmental quality.”

Similarly, the Local Government Tool should require documentation of compliance with applicable regulatory consultation requirements, e.g., 24 C.F.R. 91.100 (requiring consultation with local and regional agencies and governments, and with “organizations that have relevant knowledge or data to inform the AFH and that are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH, the consolidated plan, and their implementation... at various points in the fair housing planning process”).

2) Local data & knowledge

For the same reasons that support our recommendation on public participation and consultation, we also urge HUD to include a section that substantively guides and provides a basis for reflection upon participants’ efforts to include local data and knowledge. We appreciate that the scope and sophistication of such data or knowledge will vary depending on the participant’s resources. However, as contemplated by the language of the rule, such data and knowledge will in many cases be necessary for a complete AFH.² The Local Tool should communicate the responsibility to assess and fulfill this need, with participants documenting strategies such as (for example) outreach to other government agencies.

Furthermore, we urge HUD to issue guidance on recommended practices for the use of local data and knowledge. These would include institutionalizing informational pipelines among agencies and enforcement entities; providing lists of common resources to consult; and collaborations with local stakeholders. Even pending the release of full guidance on this matter, however, HUD should incorporate the rule’s “local data and knowledge” component as part of its evaluation of whether the AFH is complete. This would be best accomplished by a section within the Tool that evaluates these efforts, similar to the “community participation” section.

We strongly support HUD’s addition of language throughout the Tool regarding use of local data and knowledge, including the addition to the Opportunity Indices as follows: “Informed by community participation, any consultation with other relevant government agencies, and the participant’s own local data and local knowledge, discuss whether there are programs, policies,

² See 24 C.F.R. § 5.152, defining “local data” and “local knowledge.”

or funding mechanisms that affect disparities in access to low poverty neighborhoods [or other index].” However, we recommend that HUD remove the term “participant’s own” in qualifying “local data and knowledge,” as this may mislead participants into using only the data and knowledge available within their own departments, and the term is otherwise unnecessary.

While important, the new language does not replace an independent section that evaluates the *effort and process* used to obtain local data and knowledge. Because we believe it is important that such processes be encouraged and institutionalized, and because HUD’s evaluation of the AFHs has a significant focus on process, we recommend inclusion of such a section.

3) Assessment of Past Goals and Actions

As well as being used to establish goals and actions, the AFH process is intended to inform planning processes.³ Taken together, these outcomes are at the very heart of the regulation: it is incumbent upon HUD to ensure that the AFH delivers concrete mechanisms for progress and accountability. This section should evaluate whether, and how, the participant has implemented the regulation’s provision regarding “planning processes.” Participants should be asked to describe relevant fair housing strategies, which of the plans listed in the regulation (as well as others) incorporate such strategies, and whether they have institutionalized mechanisms or relationships (such as interagency partnerships) that facilitate this process.

4) Opportunity indices

a. Transportation. The quality of transit services varies widely and significantly impacts whether the transit, in practical terms, actually connects people to other opportunity structures such as jobs. Transit is also entwined with community development in ways that vary widely among markets—for instance, high-quality transit may be a driver of revitalization, gentrification, or may bypass poorer communities. We recommend that this section prompt participants to use local data and knowledge to evaluate transportation *quality*, as well as cost and access.

The design and results of transportation policies around approval, financing, and civil rights oversight are important considerations that the tool should explicitly prompt participants to assess.

b. Education. The current questions in this section will fail to analyze the degree to which students have *actual access* to proficient schools, and the degree to which residential segregation is resulting in educational segregation within the participant’s locality and region. To ensure a meaningful analysis of this aspect of opportunity, questions must assess student presence or participation. This section should be revised with a series of simple and direct questions, including:

³ See 24 C.F.R. § 5.154, “. . . identifying goals to affirmatively further fair housing and to inform fair housing strategies in the consolidated plan, annual action plan, the PHA Plan and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environmental related plans.”

- Compare the distribution of children (by race and ethnicity) attending proficient schools in the region and jurisdiction (defined as schools above the average level of school quality, based on each state's system for measuring school performance)
- Describe the extent of racial segregation in public schools in the region and within the jurisdiction, and identify schools with greater than 75% and 90% minority enrollment
- Describe the extent to which public schools in the region and jurisdiction are economically segregated, and identify schools with greater than 50% and 75% poverty concentration (as measured by the percent of children receiving free or reduced price lunch).

c. Environmental health. We recommend that HUD add language prompting participants to assess additional “environmental-related policies,” including, for example: *“the operation and effect of siting and permitting processes, including availability of cumulative impact analyses; extent of legislative or regulatory protections such as health impact assessments; and funding distribution processes and incentives that impact relevant activities such as remediation.”* Such structural factors are critical to a full analysis. For example, evidence shows that poverty- and minority-concentrated populations are characteristically at greater risk of severe *cumulative impacts* of environmental burdens, but many localities fail to systematically account for this in making individual siting or permitting decisions. A realistic and comprehensive picture of environmental health within those neighborhoods could require that participants examine cumulative burdens and identify contributing factors and goals relevant to addressing such burdens.⁴ The existence and efficacy of such mechanisms are important inquiries that should be included in both the index and the “contributing factors” appendix.

The index should prompt the participant to assess a wider range of environmental health factors, outside of air quality, for which local knowledge and data are commonly available. Participants are otherwise likely to overlook problems unrelated to air quality. We recommend that HUD add examples of local knowledge under this category to adequately capture a fuller cross-section of the issues that significantly impact neighborhood health, and to communicate the importance of their inclusion in participants’ analyses. Such examples include, for example *toxins in the soil and water, mold, standing water and water-borne illnesses due to inadequate drainage, high levels of violence, and inequitable distribution of benefits such as park space.*

d) Clarify the meaning of “access.” Throughout this section, the term “access” is vague and risks confusion or evasion among participants. HUD should clarify that *“access is measured by both the physical proximity to employment, educational, environmental, and transportation assets, and actual rates of participation in programs and institutions (such as actual rates of enrollment in proficient schools). Quality of transportation to these assets may also be relevant.”*

5) Civil rights enforcement

In addition to assessing fair housing enforcement, participants should be instructed to assess other civil rights enforcement. Just as housing is intertwined with other aspects of social equality

⁴ See, e.g., MD Dept. of the Environment, resources available at www.mde.state.md.us/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative_Impacts_Workgroup.aspx.

and opportunity, our nation’s body of civil rights protections work in concert. Enforcement of these laws directly impacts access to opportunity and other fair housing aims. Participants should therefore explicitly be instructed to examine the sufficiency of enforcement infrastructure in related areas, such as Title VI of the Civil Rights Act and environmental protections. As with fair housing enforcement, the AFH should include queries into pending complaints, resources, and efficacy of anti-discrimination protections, enforcement, and remedies.

6) Inserts

We recommend that the Inserts require a more substantive examination of the opportunity indices and require participants to identify contributing factors. While we understand that these participants lack the capacity of lead jurisdictions, these fundamental elements of the AFH are needed to identify fair housing issues and actions within the participants’ responsibility. In particular, these “secondary” participants should be explicitly instructed to examine their own policies and processes to identify whether they contribute to segregation, lack of access to opportunity indices, or other fair housing issues. These participants are best positioned to make these inquiries, and they have no less of an obligation to address fair housing barriers—particularly those raised by their own programmatic structures—than do larger entities.

These sections should be amended to provide that:

- Opportunity indices include the same sub-questions as in the main tool. In identifying “programs, policies, or funding mechanisms that affect disparities in access to low poverty neighborhoods [or other index],” the insert will not be overly burdensome if the participant is instructed to focus on its own programs.
- Both PHA and small local government participants should identify contributing factors. These participants, not the lead participants, are likely to be best positioned to identify the salient factors embedded within their own programs or borders.
- PHAs should examine a more comprehensive list of programmatic barriers. The current list is cursory and fails to address common issues that may severely curtail housing choice, but are firmly within even a small PHA’s capacity to identify. These include source of income and other discrimination, availability of landlord outreach programs, 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.
- With regard to community participation, joint participants should adopt explicit measures to ensure that the participation process includes the focused solicitation of information and recommendations pertinent to each individual participant, as well as the combined AFH.

7) Additional Data Issues

We remain concerned about the outstanding deficiencies in key fair housing data noted in our previous letter. Additionally, we recommend that raw data be made available through the portal

directly, so that it is more readily accessible to stakeholders without specialized training. We also recommend that voucher data be made available on the Census tract level.

Thank you for your consideration of these recommendations.

Sincerely,

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