

November 4, 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, we are writing to offer our detailed comments on the Affirmatively Furthering Fair Housing (AFFH) Assessment Tool, published for comment at 79 Fed. Reg. 57949 (Friday, September 26, 2014). The Assessment Tool is an important step forward in the implementation of the final AFFH rule and will help jurisdictions provide meaningful assessments of their fair housing challenges, in a manner that reduces regulatory burden and uncertainty.

In these comments, we will underscore the positive elements of the Assessment Tool, and also highlight areas where improvements are needed. These comments are structured as follows:

1. General (overarching) comments
2. Response to specific questions raised by HUD in the Notice
3. Section-by-section analysis and comments on the Assessment Tool

Our comments on the published Assessment Tool are also applicable to the forthcoming supplemental forms, including the Assessment Tool for States, the Assessment Tool for PHA-only submissions, and the Assessment Tool for regional collaboratives. However, in addition to the present comments, we will also provide comments in a separate letter on the unique attributes of these additional forms, as well as the anticipated Program Guidance designed to accompany the Assessment Tools. We also anticipate that some of the undersigned groups may submit separate comments on the Maps and Tables accompanying the Assessment Tool.

Thank you in advance for the opportunity to comment, and we would be happy to meet to discuss any of these issues in more detail.

1. General comments

The Assessment Tool's strong focus on documenting patterns and determinants of housing segregation, both community-wide and in specific government housing programs, is consistent with the history and purpose of 42 USC §3608. This is a crucial step forward and will help communities engage in a constructive self-analysis and ultimately comply with their Title VIII obligations. Likewise, the Tool's emphasis on highlighting disparities in access to opportunity and key government services by neighborhood is an important step in transparency and fairness,

and will spark positive community dialogue and reform. To enhance these positive outcomes, we recommend that HUD focus on the following areas in improving the Assessment Tool.

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 policies and actions to address these challenges would severely undermine and marginalize the community engagement process and will not further the goals set out in the AFFH proposed rule.

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. See comments in Parts 2 and 3 of this comment letter, below.

Measuring community-wide and regional patterns of segregation: We strongly recommend the inclusion of multiple measures of segregation in the Assessment Tool. In addition to the “index of dissimilarity,” HUD should provide jurisdictions with the “exposure index” for their communities and regions (see discussion in Part 3, below). 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.

Measuring program-by-program segregation in the region: As noted above, an analysis of patterns of location and segregation within each government assisted housing program is crucial to the Assessment of Fair Housing (AFH), and this is an important element of the proposed Assessment Tool. This analysis should be required for all programs on a regional level in each jurisdiction’s and each recipient’s AFH, so that the pattern of government assisted housing distribution is placed in context.

Gentrification and economic 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. These issues should be specifically referenced in Section III (Community/Citizen Participation) and Section IV(B)(5) (Determinants of Segregation) of the Assessment Tool. See specific discussion of those sections of the Assessment Tool in Part 3 of this comment letter, below.

Relocation and replacement housing: There are critical fair housing implications and opportunities under the Uniform Relocation Act and Section 104(d) of the Housing and Community Development Act of 1974, where entities funded by HUD and other federal agencies undertake projects that require direct displacement and relocation of residents. In addition to potential adverse impacts from displacement, there are also opportunities to further fair housing by, for example, offering mobility counseling to displaced minority households, minimizing and mitigating adverse impacts on protected groups and ensuring that offers of comparable replacement housing include available opportunities for them to relocate to non-minority and low poverty communities.

Housing preservation: Preservation of existing affordable and assisted housing is already recognized as a general federal and state goal, but in some cases preservation may also affirmatively further fair housing – for example, where housing in high opportunity or gentrifying areas is threatened with redevelopment or resale, or where deterioration of a development threatens to displace residents without any of the relocation and housing replacement resources described above. We recommend that the Assessment Tool identify affordable housing developments threatened with loss and prioritize these developments from an AFFH perspective.

Affordable, sustainable homeownership: The Assessment Tool does not address homeownership. However, homeownership, when it is done in a fair and sustainable way, offers an important path to building wealth. This, in turn, provides economic security and allows homeowners to take advantage of opportunities such as education and entrepreneurship as well as to pass wealth along to the next generation. We recommend that the Assessment Tool require jurisdictions to analyze homeownership patterns and trends, including the loss of homeownership through foreclosure and the impact of concentrated foreclosures on particular communities.

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.

2. Response to specific questions raised by HUD in the Notice

Local data and local knowledge (page 57951): We strongly support the template’s required inclusion of reasonably available local data, as well as local data and local knowledge supplied to the jurisdiction during the community engagement process. This will enhance the relevance of the community engagement process, and will also improve the final AFH submitted by jurisdictions. To improve this section, we recommend that HUD list examples of reasonably available local data, such as neighborhood crime statistics, school demographic and school performance data, state and local health department data by neighborhood, lead paint hot spots, data about the institutionalization of persons with disabilities and the availability of community-based services from state and local Medicaid agencies and disability services departments, and reports and studies already completed by state and local research and advocacy groups.

The preamble to the Assessment Tool states that, “if HUD finds that an AFH analysis is materially inconsistent with data readily available and relevant to one or more questions in the Assessment Tool, or if priorities or goals are found to be materially inconsistent with available local data or local knowledge, HUD may find the AFH to be substantially incomplete and therefore unacceptable.” (See Preamble at p. 7). We applaud the notion that jurisdictions may

not simply ignore relevant local data or knowledge, but urge HUD to provide greater clarity about the definition of “materially inconsistent.”

Community participation process (pages 57951-57952): We agree that this section of the template is incomplete, and does not reflect the robust level of community engagement envisioned by the proposed AFFH 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. In addition to describing the types of outreach conducted, the Tool should require jurisdictions to describe the target audiences for each type of outreach, how successful each type of outreach was (i.e., the number of people reached, the number of people who participated in each relevant activity, etc.), and relevant demographic data on participants (e.g., percent who were people of color, low-income, etc).
- Jurisdictions should also be required to assess the number of residents who have limited English proficiency, the predominant languages spoken by LEP residents, and to describe the efforts undertaken to ensure that such residents are able to participate in the AFH process in a meaningful way. This would include the translation of key documents and the provision of qualified interpretation services at key community events. Similarly, jurisdictions should be required to describe their efforts to reach out to and facilitate participation by people who are blind or have low vision, or who are deaf or hard of hearing.
- A non-exhaustive checklist of types of groups that the program participant should attempt to contact and request comments from (including any state or local private fair housing organizations; the local legal services office; the local branches of the NAACP and the Urban League and other local community-based organizations that represent low-income communities and communities of color; fair housing and advocacy organizations serving specific populations; state and local FHAP agencies; state housing coalition and tenants’ organizations; state protection and advocacy systems and state and local independent living centers; local school district leadership, parent groups, and education advocacy organizations; county and local health departments; environmental justice groups; and the metropolitan planning organization with jurisdiction in the area).
- Listing of any local data and local knowledge received from the community engagement process that was not used in the AFH (with an explanation of why it was not used).
- A description of the substantive areas discussed in community engagement activities, including input on the planned data analysis as well as action planning to address fair housing challenges and goals that are identified.

It is also crucial that all local housing related policies and data of the entitlement jurisdiction and PHA be publicly available on publicly accessible websites prior to the commencement of the community participation process. HUD data tools and maps should also be fully available to the public during the process. In this regard, HUD should be mindful that many low income

individuals and communities still lag in broadband access, and local jurisdictions and PHAs should take steps to ensure that all stakeholders have the technical tools they need to participate in the process.

We agree with the template's requirement that all comments received be summarized, with the jurisdiction's agreement or disagreement noted, and that any specific written submissions and transcripts of comments made at public hearings be included in a publicly available appendix to the AFH.

Listing of determinants in the Assessment Tool (page 57952): It is important to provide a list of determinants in the Assessment Tool itself, to ensure that program participants do not avoid common and obvious issues. As HUD has noted, however, there are a wide variety of factual contexts experienced by different types of communities, and this should be explicitly acknowledged in the Assessment Tool, with a reference to a more detailed discussion in the Program Guidance. See further discussion in Part 3, below.

Project level data (page 57953): It is crucial for each jurisdiction completing an AFH to assess the cumulative impacts of multiple assisted housing programs, and to understand how their jurisdiction relates to the larger region. Each AFH should include project level data for each separate housing program, and in each jurisdiction in the program participant's region. For example, an entitlement jurisdiction submitting an AFH without its local PHA should be required to report not just on the housing assistance programs it administers directly, but also the broader distribution of federally assisted housing programs in the region, including LIHTC developments and any PHA-administered programs in the region. If the HUD data tools are working properly, this should not present any additional burden for the jurisdiction, and will allow the community to engage in a constructive dialogue about its relation to the larger region.

Disability data (page 57953): We agree that there is value in highlighting fair housing challenges for persons with disabilities in a separate section of the Assessment Tool, but it is also important to ask jurisdictions to report (and for HUD to provide) cross-tabulated data on disability, race and poverty. This type of intersectional analysis can help to highlight particular types of discrimination and segregation that often remain hidden. The Assessment Tool should require jurisdictions to discuss and analyze fair housing issues affecting persons with disabilities throughout the AFH but also maintain a separate, disability-specific section for Housing Accessibility and Integration and *Olmstead*.

Additional fair housing issues (page 57954): The major federal housing subsidy in most jurisdictions is the federal mortgage tax deduction. HUD should provide data sufficient to enable reporting jurisdictions to estimate the value and impact of this tax subsidy in their region, and to estimate what proportion of homeowners qualify for the deduction (and in segregated metropolitan areas, to compare these estimates across jurisdictions).

Further, the Assessment Tool should require jurisdictions to assess the patterns and trends in homeownership, including the level of homeownership for each protected class and how that has changed over the past five years. This should include an analysis of the Home Mortgage Disclosure Act data for the jurisdiction (including the number, type and cost of loans made as

well as the denial rates and reasons for denial for members of protected classes), the levels of segregation among homeowners, access to homeowners insurance, foreclosure patterns, and the comparative maintenance and management of foreclosed properties in communities of color and other communities. In addition, because access to banking services is an important preliminary to homeownership, jurisdictions should examine the distribution of bank branches by neighborhood.

3. Section-by-section analysis and comments on the Assessment Tool (including responses to specific requests for comments)

I. Cover Sheet with Certification

The “Comments” section of the template, reserved for HUD use, should include a specific checklist of key compliance items. This will not only assist HUD regional staff but more importantly will enhance the community engagement process and signal to jurisdictions the importance of these elements. For example, the checklist might include:

- Does the AFH include local data and local knowledge?
- Does the AFH indicate which stakeholder comments were not accepted, and explain the areas of disagreement?
- Are goals and metrics included for each determinant identified?

II. Executive Summary

According to the Notice, the Executive Summary is intended to “present a general overview of the AFH’s findings *and recommended actions*.” However, the “recommended actions” section is not yet included in the template. For the community engagement process to be meaningful, and to enhance the effectiveness of the AFH as a planning tool, recommended action steps need to be discussed and considered throughout the AFH process, not just as an afterthought in the final AFH submission.

III. Community Participation Process

In addition to our comments on the community participation process noted above, this section is missing consideration of displacement. The Proposed Rule states that “[t]he citizen participation plan also must set forth the jurisdiction’s plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.” (§91.105(b)(ii)). However, the Assessment Tool makes no mention of this mandate in the Community Participation Process section. In order to ensure that a plan to minimize displacement is not excluded from the AFH, it is imperative that HUD include questions tracking the Proposed Rule’s language on the subject in this section. Furthermore, the Assessment Tool should specify that “displacement” includes both direct displacement resulting from acquisition and demolition as well as economic displacement caused

by increased rents and evictions. The role of political, economic, and cultural displacement should also be noted in this section.

IV. Analysis

A. 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.

B. Segregation/Integration and R/ECAPs

1. Dissimilarity Index

As noted in Part 1 of this comment letter, use of the index of dissimilarity alone is insufficient for a full understanding of residential segregation patterns in a community and region. The dissimilarity index indicates how equally (or unequally) different groups are spread out over a particular area and the number for the index indicates what percentage of one group or the other would have to move so each neighborhood (or census tract) had the same percentage of both groups as does the entire area (city or metropolitan area) in general.

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

A race and income index (based on the methodology developed by Harvard economist John Kain) 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 as compared to the racial diversity adjusted for income that would be expected if the jurisdictional diversity matched that of the metropolitan region. 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

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>. HUD's Data Documentation for the Proposed Rule included the isolation index, which is very closely related to the exposure index. Whereas the exposure index indicates the share of residents for the typical member of one group that are members of another group, the isolation index shows the proportion of residents for the typical member of one group that are members of the same group.

marketing is necessary. HUD's "Data Documentation" for the Proposed Rule included this index.

2. Geographic Analysis

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.

Another important component of the geographic analysis is the historical policies and practices that have contributed to current geographic patterns. These include, among others, the redlining policies of the Federal Housing Administration, banks and insurance companies, discriminatory zoning policies, urban renewal efforts that destroyed certain neighborhoods and displaced their residents, and highway or other development that isolated particular neighborhoods from the rest of the community. Jurisdictions should be required to describe this historical backdrop and any vestiges that may affect current geographic patterns.

3. (missing section)

4. Provide additional relevant information, if any, about segregation and R/ECAPs in the Jurisdiction and Region (e.g., information regarding LEP persons, color, religion, and families with children).

The geographic and demographic analysis in the AFH Assessment Tool, with its focus on unequal access to opportunity for minority families and families in R/ECAPS, is striking in its omission of any analysis of areas of extreme exclusion or concentrated privilege. This section of the AFH should require the jurisdiction to point out communities in the region are extremely disproportionately white in relation to the region as a whole, and communities where there are extreme disparities in wealth in comparison to the region as a whole. These communities have an important impact on segregation and opportunity in the region and should be included in any AFH analysis.

5. Determinants of Segregation/R/ECAPs

We recommend adding some additional common determinants of segregation to this list:

- discrimination by owners
- neighborhood crime levels
- local school quality
- racial identification of local schools
- school district lines and attendance zones
- school funding disparities
- siting or administration of publicly assisted housing
- location of multifamily housing developments
- disparities in access to rental housing

- disinvestment by private owners/investors
- historical factors
- displacement of persons and relocation, mitigation, and prevention activities
- zoning laws(including restrictions on multifamily or high density housing development; restrictions on rental housing development; restrictions on subsidized housing development or HCV use; lack of state or regional “fair share” planning obligations)
- appraisal practices
- steering
- redlining by lenders and insurers
- foreclosure patterns
- disparities in the maintenance, management and marketing of foreclosed properties

Another way of prompting meaningful responses would be to ask respondents to identify three specific policies or actions that could have been taken in the past to address issues of segregation in the jurisdiction, and to estimate what the impact of those policies might have been.

It would also be helpful to include a general statement in this section of the Assessment Tool that determinants of segregation may differ depending on local context (higher income suburban community, older diverse suburb, rural community, traditional high poverty central city in weak market area, central city facing gentrification pressures and rising housing costs, etc.), and refer program participants to the accompanying program guidance for further examples.

6. Publicly Supported Housing Patterns

It is very important that this section remain separate from the general discussion of segregation and determinants of segregation in the jurisdiction. Publicly supported housing is an area where entitlement jurisdictions, PHAs, and states have a unique role, and the analysis in this section will encourage a more fruitful community engagement process.

a. Publicly supported housing demographics

For maximum transparency, the Assessment Tool should include an appendix with the racial/ethnic makeup of each separate development in each assisted program area.

b. Publicly Supported Housing Location and Occupancy

The questions in this section of the Assessment Tool are generally excellent. We recommend the following additions:

- vi. Modify as indicated by the underlined [and highlighted] words: “Describe any patterns of HCV usage in particular neighborhoods or areas within the jurisdiction and region, including segregated neighborhoods and R/ECAPs, and identify the predominant race/ethnicity or national origin groups in such neighborhoods. If there are project-based vouchers in use within the jurisdiction and region, use local data to break down the description by tenant-based and project-based vouchers.

vii. Add at the end an additional question to be answered using local data: “Describe the extent to which tenant-based HCV holders are successful in using their vouchers in neighborhoods zoned to attend schools performing in the top half and top decile in the most recently available school performance rankings?”

viii. To what extent are tenant-based HCV holders successful in using their vouchers in LIHTC developments located outside of RECAPs?

7. Publicly Supported Housing and Mobility Policies

a. Publicly supported housing policies

“Affirmative marketing, tenant selection, and application and waitlist procedures, including the use of site-based waiting lists” should be added to subsection (i).

b. Mobility policies

This section is very important, but the title of the section is misleading – as it suggests that Housing Choice Voucher programs and Housing Mobility programs are the same thing, which they are not. 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, 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)

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.

8. Provide additional relevant information, if any, about publicly supported housing and mobility programs in the Jurisdiction and Region

(no comments in this section)

9. Determinants of Segregation/R/ECAPs related to Publicly Supported Housing Location and Occupancy

We recommend adding “including project-based vouchers” to the bullet on “Siting decisions for other publicly supported housing.”

10. Determinants of Segregation/R/ECAPs related to Mobility

The following well known determinants should be added to the list of determinants in this section:

- Discrimination against families with vouchers
- Fair market rents (FMRs) and payment standards
- difficulty in exercising voucher portability rights between PHAs
- restrictions on voucher portability rights adopted by PHA
- Screening or rescreening of tenants
- Landlord and apartment listings provided by the PHA
- Racial/ethnic discrimination
- Disability discrimination
- Limited availability of rental units outside of RECAPs

And the 4th bullet in the draft should be modified to read “PHAs’ lack of support for voucher mobility”.

C. Disproportionate Housing Needs

1. Demographic Patterns

(no comments in this section)

2. 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.

3. Provide additional information, if any, about groups experiencing disproportionate housing needs in the jurisdiction (e.g., religion, color, families with children).

We recommend that this section be retitled as follows: “Provide additional information, if any, about groups experiencing disproportionate housing needs in the region and the actions taken by the jurisdiction to meet that need (e.g., religion, color, persons with disabilities, families with children).”

4. Determinants of Disproportionate Housing Needs

(no comments in this section)

D. Disparities in Access to Community Assets and Exposure to Adverse Community Factors

This section represents a major step forward in HUD’s approach under the rule, to encourage residential integration and access to opportunity while at the same time seeking to equalize community resources and investment in communities that have been subject to segregation. To enhance this analysis, we would recommend the inclusion in Table 14 of local crime data, ratings from the CDFI distress index, data on bank branches, and data on access to parks and recreational facilities. The assessment tool should also indicate whether low income neighborhoods (and public housing developments) have equal access to high quality broadband infrastructure and affordable broadband services and the extent to which residents adopt broadband at home or through another means.²

1. Disparities in Access to Community Assets

a. Schools

This section 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 show to increase

² National Broadband adoption data is available on a nationwide basis, from the results of the Current Population Survey (CPS) Computer and Internet Use Supplement, collected by the Census Bureau at the request of the Department of Commerce. See National Telecommunications and Information Agency, Exploring the Digital Nation (October 2014) at 16 available at: http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_embracing_the_mobile_internet_10162014.pdf.

school segregation. Such programs, if they exist in a jurisdiction, would be captured by the broader catch-all term “other school choice policies.”

b. Access to jobs and unemployment

(no comments in this section)

c. Public transportation

This section should analyze the distribution of the benefits and burdens of transportation within the jurisdiction, and connecting the jurisdiction to the larger metropolitan 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, accessibility to persons with disabilities, pedestrian and cycling support, financial investment, and sources of air and noise pollution. Using data on ridership demographics that transit systems are required to compile by FTA’s Title VI Circular, these comparisons should be disaggregated by route and/or by mode (e.g., local bus, light rail, commuter rail, etc.), where those lines or modes serve substantially different demographic groups. Analysis of transportation benefits and burdens should examine cumulative benefits and burdens incurred by various 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.

d. Other community assets

As the recent events in Ferguson, Missouri have reminded us, the increasing integration of a community does not necessarily indicate increasing access to political power and governance. This is a basic component of social inclusion. The AFH tool should address this issue by comparing community demographics to rates of voter registration and participation, representation of different racial and ethnic groups on elected and appointed board and commissions, and representation among staff in the school district, police force, and other municipal departments.

2. Exposure to Adverse Community Factors

This section should require a description of public health issues and health disparities among neighborhoods within the jurisdiction and between the jurisdiction and the region, including

disparities in low birth weight, infant mortality, sentinel health conditions, deaths due to fire, homicide and gun violence, pedestrian auto fatalities, rates of premature death and life expectancy

a. Exposure to Neighborhood Poverty

(no comments in this section)

b. Environmental Health hazards

The Environmental Health Hazards Index focuses exclusively on point source air pollution. In addition, this section should direct jurisdictions to consider local data on exposure to other adverse environmental factors including but not limited to water pollution, flooding caused by loss of wetlands, and mobile sources of air pollution (such as diesel trucks). Further, this section should direct jurisdictions to consider local data on foreclosed or otherwise vacant properties which, when not well-maintained, can cause a host of health problems including increases in asthma and stress. Where cumulative impact data is available (e.g., environmental justice screening tools developed by EPA and others), disparities in those cumulative impacts should also be analyzed.

c. Other adverse community factors

(no comments in this section)

3. Identify and discuss any overarching patterns of access to assets and exposure to adverse community factors based on race/ethnicity, national origin and familial status. For example, identify neighborhoods that experience an aggregate of poor access to assets and high exposure to adverse factors.

(no comments in this section)

4. Provide additional relevant information, if any, about disparities in access to community assets and services and exposure to adverse community factors (e.g., addressing religion, color, LEP, familial status).

(no comments in this section)

5. Determinants of Disparities in Access to Community Assets and Adverse Community Factors

The following well known determinants should be added to the list of determinants in this section:

- Industrial siting policies and incentives
- Zoning provisions that co-locate industrial uses and multi-family housing
- Highway construction and related transportation policies
- Transit fares and service levels

E. Disability and Access

1. Population profile

This section should direct jurisdictions to identify and consider local data that paints a more robust picture of the population of persons with disabilities than is possible with Census data. In particular, jurisdictions should identify local data concerning the population of persons with psychiatric disabilities.

2. Housing accessibility

Question (a) should refer to “individuals with mobility disabilities” rather than “individuals who use wheelchairs.” In addition, this section should describe any efforts they undertake to ensure that new construction complies with the accessibility requirements of the Fair Housing Act and Section 504.

3. Integration and Olmstead: Enabling Persons with Disabilities to Live in Apartments and Houses instead of Institutions and Other Segregated Settings

In this section, HUD should define “integrated settings” through reference to HUD’s *Olmstead* guidance and the word “large” should be removed from in front of “group homes” in question (a). HUD should direct jurisdictions to estimate the number of people with disabilities living in institutions within their jurisdictions who want integrated housing. Additionally, the Assessment Tool should include lists of policies that are known to promote community integration or perpetuate segregation for persons with disabilities.

Well-known policies that promote community integration include:

- The Administration of state or locally-funded tenant-based rental assistance programs
- Applying for funds under the Section 811 Project Rental Assistance program
- Implementing special population preferences in the Housing Choice Voucher program
- Incentivizing the development of supportive housing through the LIHTC program
- Ordinances banning housing discrimination on the basis of source of income
- Coordination between housing and disability services agencies
- Increasing the availability of accessible mass transit

Policies that perpetuate segregation include:

- Inadequate Medicaid services
- Restrictions on the supply of housing available with FMR limits
- Conditioning access to housing on willingness to receive supportive services
- Incentivizing the development or rehabilitation of segregated settings

4. Disparities in access to community assets and exposure to adverse community factors

(no comments in this section)

5. Disability and access issue determinants

[See comments in Part 2, above]

F. Fair Housing Enforcement and Infrastructure

This section of the Assessment Tool is incomplete. It should require jurisdictions to conduct a more thorough assessment of the capacity and performance of the local fair housing enforcement infrastructure, including both public and private organizations. It should also require jurisdictions to examine a variety of types of complaints and other evidence that point to any trends or emerging issues in fair housing compliance. Further, it should capture information about any protected classes under state or local law in addition to those protected under federal law.

Some of the questions that we would suggest here include:

What agencies that provide fair housing enforcement in the jurisdiction are funded under the FHAP and FHIP programs?

- How much funding has the jurisdiction provided to these agencies over the past five years to conduct fair housing-related activities?
- Has this funding been consistent over that time period?
- What level of staffing do these agencies have, and how much staff turnover have they experienced?
- How much and what type of training have the staff of these agencies received in conducting fair housing investigations, evaluating testing and other evidence, and applying that evidence to their investigations of fair housing complaints?
- How many and what types of fair housing complaints have these agencies received over the past five years, and how have these been resolved?
- How many of the FHIP-funded agencies are full-service fair housing organizations that provide both education and outreach and also complaint intake and investigation services?

In addition to the seven protected classes under the federal Fair Housing Act, what protected classes, if any, exist under relevant state or local laws? What steps has the jurisdiction taken to do education and outreach about those additional protected classes?

What steps have been taken in the past 5 years to educate both housing providers and those seeking housing of their rights and responsibilities under the fair housing laws?

To the extent that there are significant number of people in the community with limited English proficiency, what efforts have been made to provide fair housing education and outreach to those residents?

What problems and trends in fair housing compliance are indicated by any complaints received by local fair housing agencies, cases filed in state or federal court, and housing market audits or

other research conducted within the last five years?

Does the jurisdiction have a fair housing law that is substantially equivalent to the federal Fair Housing Act?

- Have there been any challenges to the substantial equivalency status within the past 5 years?
- If so, have any statutes or policies been modified as a result of such challenges, and how?

Other fair housing resources

- If exclusionary land use policies have been identified as a determinant of segregation, are there attorneys who are available to represent developers and community based organizations in zoning challenges? Please identify these resources.
- If administration of federal or housing programs has been identified as a determinant of discrimination or segregation, are there fair housing advocates, including legal services offices in the community who have challenged these practices? Please identify these resources.
- Have community based organizations and groups representing communities of color prioritized housing discrimination and segregation as an advocacy or organizing priority? In what way?
- Are there local university-based or other expert resources available to assist fair housing organizations, legal services offices, and community based groups in analyzing local demographics and the impacts of fair housing determinants in the community? Please identify these resources.

4. Fair Housing Enforcement and Infrastructure Determinants

We recommend modifying the sixth determinant listed to say, “Lack of or inconsistent resources for fair housing agencies and organizations.”

In addition, we recommend modifying the fourth determinant to say, “Current discrimination or vestiges of discriminatory historical policies or practices in the housing market.”

V. Fair Housing Goals and Priorities

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 measurable goals for increasing levels of integration, reducing levels of segregation, increasing the number of affordable housing units outside areas of minority and poverty concentration (and increasing access to these units by protected groups, voucher holders and extremely low income households), and increasing access to equal community assets and resources for families residing in racially concentrated areas. There should be some requirement that goals selected by a jurisdiction are significant and not de minimus, and it is important to link indicators of integration/desegregation to indicators of displacement and gentrification. Note also that “Fair Housing Compliance and Infrastructure” is included in the table but inadvertently left out of questions 1 and 2.

Finally, the absence of “Action Steps” in this section is striking, and we hope this is an inadvertent oversight. Taking recommended action steps out of the AFH process undermines the community engagement process, and would provide no fair housing guidance to the subsequent Consolidated Plan process or the PHA Plan process. Jurisdictions should be required to identify action steps to address all significant determinants of segregation and disparities in access to opportunity.

Thank you for the opportunity to comment on this important step toward the final adoption of the Affirmatively Furthering Fair Housing Rule. As noted above, some of us will be submitting separate comments and recommendations regarding the maps and tables, and the supplemental forms not yet released (the Assessment Tool for States, Assessment Tool for PHA-only submissions, Assessment Tool for regional collaboratives, and the Program Guidance).

We look forward to working with HUD to successfully implement the final rule.

Sincerely,

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