

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL FAIR HOUSING ALLIANCE,  
*et al.*,

Plaintiffs,

v.

BEN CARSON, *et al.*,

Defendants.

Civ. Action No. 1:18-cv-1076-BAH

**DECLARATION OF FRANKLIN A. LENK**

1. My name is Franklin A. Lenk. I currently serve as Director of Research Services for the Mid-America Regional Council (MARC). I have a Ph.D. from the University of Missouri-Kansas City. On behalf of MARC, I have conducted research concerning the causes of poverty and the disparities generated by an uneven geography of opportunity. My dissertation discussed the underlying causes of institutional racism. I am over the age of eighteen and am competent to make this declaration. I have personal knowledge of the matters set forth herein.

2. MARC is the Kansas City area's officially designated metropolitan planning organization (MPO) and council of governments (COG). As such we have considerable experience conducting regional analyses and running collaborative processes involving substantial public engagement. MARC conducted a regional Fair Housing Equity Assessment (FHEA), a precursor to the Assessment of Fair Housing (AFH), as part of its Sustainable Communities Grant.

3. I led the technical analysis for the AFH for the Kansas City regional submission. This involved five jurisdictions in the Kansas City area, including Kansas City, Missouri; Kansas City, Kansas; Independence, Missouri; Blue Springs, Missouri; and Leavenworth, Kansas. Kansas City's regional AFH was part of the first cohort required to submit an AFH using the local government assessment tool ("the Tool"). Our time frame was very short. The Tool was

published in late December 2015 and the Kansas City AFH was due in September (later relaxed to October). While there were difficulties in meeting such an ambitious schedule, these difficulties did not arise from us not understanding the requirements for an AFH as set out in the Tool.

4. HUD's notice, "Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments" ("the May Notice") cites eight alleged deficiencies in the Tool. I will respond to those of which I have specific knowledge. In general, however, I believe the issues local governments experience in preparing an AFH stem not from any deficiency or lack of clarity in the Tool, but the challenge of conducting the kind of comprehensive analysis needed to perform an adequate assessment. The Tool simply makes clear what is required for an analysis to be truly comprehensive, to honestly consider all of the factors that create fair housing issues, and to fully conduct the analysis from the point of view of each of the protected classes, as well as to commit to meaningful goals. Because of the tight deadline for completing the AFH, we were fortunate to receive technical assistance from HUD to help expedite the work. However, we did not find the technical assistance necessary to understanding the basic requirements of the Assessment Tool.

- (a) Inadequate Community Participation. Local governments are fully aware of the need for public engagement in any plan if it is to be accepted by the public and implemented by their governing body. They have considerable experience with the public engagement required for their own comprehensive plans, as well as their Consolidated Plans. If anything, we found HUD's requirements to be less stringent than our standard practices. To create meaningful opportunities for input, we generally create public engagement activities at the beginning, middle, and end of a process, making sure we meet the community where they are rather than making them come to a public meeting in one location. Due to the compact time frame, we were

able to conduct only two rounds of public engagement, but this was sufficient to meet the clear requirements set out in the Assessment Tool.

(b) Insufficient Use of Local Data and Knowledge. Understanding which local data to use derives first from an understanding of the questions to be answered. These questions are clearly laid out in the Tool. But it also derives from local knowledge of which questions are the most relevant to understanding the fair housing issues affecting the community, and which data sources are 1) readily available and 2) provide the most relevant information. What the May Notice cites as a lack of specificity actually indicates that HUD desired to make the analysis as locally relevant as possible instead of prescribing a one-size-fits-all approach. We employed the allowed discretion many times, including on how HUD defined racially/ethnically-concentrated areas of poverty (R/ECAP), a fundamental unit of analysis in the AFH, in order to make the analysis relevant and recognizable by impacted communities and protected classes. We also benefited from examples and instructions in HUD's guidance document, the AFFH Rule Guidebook.

(c) Lack of Regional Analysis. The Tool is quite clear that all jurisdictions are required to look to their larger region in analyzing fair housing issues. In Kansas City, we took this one step further and engaged in a collaborative regional fair housing assessment, encouraged by HUD to reflect that housing markets operate at a metropolitan scale and often require coordinated policy to address fair housing issues, as well as to reduce burden. Our local jurisdictions turned to us to assist them with a regional AFH because, as a COG and MPO, we have extensive experience working with them on prior collaborative planning efforts. But even in communities without prior collaborative experiences, the Tool explicitly recommends consulting with organizations such as regional planning agencies, academic institutions, and other

local government agencies in conducting a regional analysis, as well as clearly laying out the benefits of taking a regional approach. Taking a regional view takes a certain capacity for understanding underlying forces that shape metropolitan regions, and that is a capacity that must be developed over time. For communities in which the AFH is their first regional planning collaboration, it is understandable that they would experience some difficulty as they begin to build the required capacities. Again, this is not a deficiency of the Tool, but an advantage as it promotes developing capacities needed to address fair housing on a wider scale.

(d) Identification of Contributing Factors. The Tool was very explicit in suggesting potential contributing factors to be considered, and asked communities to identify others they thought were important. The contributing factors must first be unearthed, which is captured in one portion of the AFH, before the participant uses them to draw up its goals. Developing a step-by-step analytical framework for assessing fair housing issues is an overarching goal of the AFH so as to raise the analytical capabilities of local communities. Through the AFH, HUD is raising the bar on the kind of analysis required. A quality analysis is hard work. The value of it though, is to provide a sounder basis for meaningful local actions that gradually reduce fair housing issues.

(e) Prioritization of Contributing Factors. Prioritization of the factors to be addressed is the next step in an analytical framework. In a regional analysis, this means coming to consensus on both what is most important to address and what can local public policy reasonably impact within the time-frame of the plan. The Tool gives local governments the discretion to make these determinations themselves. Frankly, it is often the case that these kinds of discussions and considerations uncover factors that may not have been adequately analyzed earlier and so that part of the analysis must

be expanded. That this may not have been done in some cases seems more like inexperience in conducting these kinds of analyses and planning efforts than a result of deficiencies in the Tool itself.

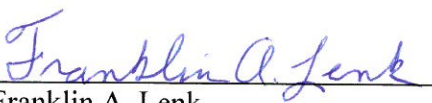
- (f) Goals Section was Problematic. The Tool was very clear that the goals must be specific and measurable. However, it is often very difficult to come up with meaningful measures of progress toward fair housing. It is easy to measure activities undertaken, but much harder to measure whether protected classes are actually experiencing benefits from those activities. It is not surprising that communities had the most difficulty here, and that HUD required them to think harder and be more specific. Developing quality progress measures is an area of ongoing research, and the collaborative environments being fostered by the Tool offer the chance for greater experimentation and exchange of best practices.

5. In sum, while performing the Kansas City regional AFH was challenging, the challenges did not arise from a lack of guidance in the Tool. The Tool effectively clarifies what it means to fully conduct an analysis of the fair housing issues facing all protected classes and develop effective, meaningful local actions committed to by local governing boards. The challenges we faced mostly arose from being part of the first cohort, resulting in only having nine months to conduct the required analysis. In addition, identifying specific goals and strategies that could be implemented over the five year timeframe of the AFH and achieve meaningful outcomes was challenging for individual local governments given very limited resources. Identifying regional goals and strategies that all five of our participating communities could support was even more challenging. Subsequent cohorts won't face this same time constraint, and have the benefit of

using prior AFH's as models. This doesn't mean their work will be easy. An AFH requires a higher level and more comprehensive analysis than is typical. The work is hard, but the need is great, making the benefits to protected classes worth the cost.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration.

Executed within the United States on May 29, 2018.

  
Franklin A. Lenk