

September 17, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500
Via regulations.gov

Re: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing

To Whom It May Concern:

The National Fair Housing Alliance applauds HUD for publishing the proposed rule on Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710 (“proposed rule”) and is pleased to have this opportunity to comment. (Please note that additional feedback on the beta version of the geospatial tool is provided in the addendum to these comments.) With its emphasis on overcoming segregation, addressing root causes of racially and ethnically concentrated areas of poverty, and seeking to improve access to community assets, the proposed rule constitutes a strong affirmation of the historical purposes of the Fair Housing Act and the power of the Congress and the Executive Branch to insist that recipients of federal funds comply with their statutory obligations to affirmatively further fair housing (“AFFH”).

Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents in the nation.

The publication of these proposed regulations by HUD represents a very important step toward achieving Congress’ vision of the Fair Housing Act as a means to create equal opportunity in our country. The Act requires that federal housing and community development programs be administered in ways that help overcome the problems associated with racial segregation and expand the housing choices available to families in America, regardless of race, color, religion, sex, familial status, national origin or disability. In the proposed rule, HUD clarifies that expanding the access to fundamental community assets and resources is a critical component of any effort to promote equal opportunity.



The proposed rule reflects a reality that civil rights and fair housing organizations have long understood: where a person lives has an enormous impact on the trajectory of his or her life. Residential location determines access to schools, jobs, transportation, recreation, healthy food, a healthy environment, and much more. The legacy of the long-standing residential segregation in America is that too often, neighborhoods where these assets and amenities are strong and plentiful have been barred to people of color, families with children, people with disabilities, and members of other protected classes. This runs counter to the value we all hold that what you look like, where you come from, what language you speak or whether you have children should not determine where you can live.

The detrimental effects of residential segregation are clear.

- Segregation has long-term generational effects on our nation's future. Discrimination in one generation negatively affects health, economic opportunities, and wealth accumulation and diminishes opportunities for future generations.¹
- Segregated communities experience slower economic growth. Racially segregated communities have lower economic growth, fewer jobs per capita, and slower job growth than diverse communities.²
- Concentrated poverty, racial segregation and persistent income disparities impede income growth.³

As a nation, our diversity is a source of strength. This is especially true as the global economy becomes ever more inter-connected. And as the diversity of our population increases, the importance of ensuring that each and every one of us has access to the opportunities we need to succeed also increases. We must topple barriers to opportunity, and ensure that entities that accept federal funding for housing and community development fulfill their obligation to protect fair housing and expand opportunity for all. By establishing a framework that holds recipients of federal funding accountable, this rule will promote thriving, diverse communities that can meet the challenges of the 21st century. We commend HUD for taking this step, and urge you to move quickly to put a final AFFH regulation in place.

There are a number of provisions in the regulation that are particularly important to its success. These include:

- the definition of affirmatively furthering fair housing, which is clearer, more robust, and makes the linkage between where people live and their access to opportunity;

¹ National Research Council, *Measuring Racial Discrimination*, Washington, DC: The National Academic Press, pp. 223-246, 2004.

² Eberts, Randall, et al., *Dashboard Indicators for the Northeast Ohio Economy*, Federal Reserve Bank of Cleveland, Working Paper 06-05, April, 2006.

³ Treuhaft, Sarah, et al., *America's Tomorrow: Equity is the Superior Growth Model*, PolicyLink, 2011.

- the requirement that participants (recipients of Community Development Block Grant and other specified program funds and Public Housing Authorities), as part of their assessment of fair housing issues in their jurisdictions, spell out how they will use not just their HUD funding, but all of their housing and community development resources, regardless of the source and including their zoning, planning, permitting and other powers and authorities;
- the requirement that participants submit their Assessments of Fair Housing (AFHs) to HUD for review and acceptance in order to be eligible to receive HUD funds;
- the requirement for consultation with fair housing organizations and organizations that represent protected classes in the development of the AFH;
- the requirement that the AFH be conducted in advance of the Consolidated Plan (ConPlan) or Public Housing Authority (PHA) plan, and that there be a direct link between the priorities set out in the AFH and the spending proposals described in the participant's ConPlan or PHA plan;
- the requirement that participants update their AFHs if significant changes take place in their communities, such as natural disasters, major demographic changes, substantial policy changes or significant civil rights findings; and
- HUD's provision of data for participants to use in conducting their AFHs, and HUD's encouragement of participants to include other relevant local data in their assessments.

There are also a number of ways in which the rule should be made stronger and more effective. We discuss these issues and make some recommendations in detail below. In summary, our main concerns are the following:

- I. Regulatory Standard
- II. Benchmarks, Timetables and Outcomes
- III. Providing for Both Place-Based Investments and Mobility Strategies
- IV. Enforcement
- V. Public Participation
- VI. Effective Review of AFHs
- VII. Data and Definitions
- VIII. Obligations of PHAs
- IX. Regional AFHs
- X. Scope of the Regulation

I. Do Not Weaken the Regulatory Standard for AFFH Compliance

The proposed rule's definition of AFFH is more robust than that provided in the current regulation, but the rule fails to carry this through to the requirements of the Assessment of Fair Housing, or AFH, raising the concern that participants will ultimately be held to a weaker

standard of performance than that in place now. This runs counter to the intent of Congress as expressed in the AFFH provisions of the Fair Housing Act.

As the legislative history of the Fair Housing Act makes clear, the Congress that passed the Act in 1968 was focused on using its Spending Clause power to require recipients of federal housing and community development funds to take active steps to combat racial segregation.⁴ Federal courts have long recognized that undoing racial segregation and discrimination is at the heart of the AFFH obligation.⁵ Since the early 1990s, HUD regulations and guidance have emphasized the obligation of participants to identify patterns of racial and ethnic concentration, and take steps to overcome them.⁶

On February 29, 1968, the National Advisory Commission on Civil Disorders (better known as the “Kerner Commission”) issued its final report, warning that “[o]ur nation is moving toward two societies, one black, and one white— separate and unequal.” With respect to recommendations involving housing, the Commission made clear that governmental policy must focus both on revitalization of segregated and distressed urban communities where racial and ethnic minorities had disproportionate housing needs, and on providing opportunities for families of color to move to high opportunity areas.

We still see entrenched segregation in our society today. The detrimental and long-term effects of that segregation are described earlier in this letter.

In its definition of AFFH, the proposed rule emphasizes that compliance requires action to increase fair housing choice, and not merely analysis:

⁴ See, e.g., Floor Statement of Sen. Walter Mondale, 114 Cong.Rec. 3422 (FHA designed to replace racially segregated ghettos “by truly integrated and balanced living patterns”); Floor Statement of Sen. Edward Brooke, *id.* at 2281 (“Today’s Federal housing official commonly inveighs against the evils of ghetto life even as he pushes buttons that ratify their triumph—even as he ok’s public housing sites in the heart of the Negro slums, releases planning and urban renewal funds to cities dead-set against integration, and approves the financing of suburban subdivisions from which Negroes will be barred.”)

⁵ *Shannon v. HUD*, 436 F.2d 809, 821 (3d Cir.1970) (“[HUD cannot] remain blind to the very real effect that racial concentration has had in the development of urban blight...[and] must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts.”); *NAACP v. Sec’y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987) (recognizing that the legislative history of §3608 reflects Congressional “desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases....”).

⁶ See, e.g., Fair Housing Planning Guide, at §2.17 (“In the AI, the jurisdiction should describe the degree of segregation and restricted housing by race, ethnicity, disability status, and families with children; how segregation and restricted housing supply occurred; and relate this information by neighborhood and cost of housing.”)

Affirmatively furthering fair housing means *taking proactive steps beyond simply combating discrimination* to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means *taking steps proactively to address* significant disparities in access to community assets, *to overcome* segregated living patterns and *support and promote* integrated communities, *to end* racially and ethnically concentrated areas of poverty, and *to foster and maintain compliance* with civil rights and fair housing laws. (proposed rule, §5.152 [emphasis added])

The proposed rule contains an important clarification and amplification of participants' AFFH obligations, drawing from the statute, existing AFFH regulations and HUD's *Fair Housing Planning Guide* and federal court decisions construing the AFFH mandate. By consolidating all of these authorities in one regulatory framework, at least as they pertain to recipients of CDBG, HOME, ESG and HOPWA funds and PHAs, HUD has reframed participants' obligations to be more consistent with those legal authorities.

While the definition of AFFH in the rule is strong, the proposed requirements for what a grantee must do under the AFH weaken the current standard. Current AFFH regulatory standards, HUD guidance and enforcement practice all require a participant to “conduct an analysis to identify impediments to fair housing choice within the jurisdiction, and take appropriate actions to overcome the effects of any impediments identified through that analysis...” (24 C.F.R. §91.225[a][1]) The proposed rule would require a jurisdiction only to “[i]dentify and prioritize fair housing issues arising from the assessment and justify the chosen prioritization” and “[i]dentify the most significant fair housing determinants related to those priority issues and set and prioritize one or more goal(s) for mitigating or addressing the determinants. (proposed rule, §5.154[d][4]) By requiring only that participants “mitigate or address” the determinants of fair housing issues rather than “take appropriate actions to overcome the effects of impediments,” HUD appears, perhaps inadvertently, to be taking a step back from the current standards to which participants are to be held.

In addition, the language directing participants to set “one or more” goals also appears to set a lower standard for participants' performance. Unlike the *Fair Housing Planning Guide*, which instructs participants that they must conduct “[a]n assessment of conditions, both public and private, affecting fair housing choice *for all protected classes*, *Planning Guide*, at §2.3 (emphasis added), the language of the proposed rule quoted in the paragraph above suggests that a participant can limit its AFH to a report concerning certain “priority issues.” And unlike current regulatory language which requires “appropriate actions to *overcome the effects of any impediments*,” (24 C.F.R. §91.225[a][1], emphasis added), the proposed rule would appear to suggest that a participant could get away with identifying only “the most significant” fair

housing determinants, and set just one goal for “mitigating or addressing” them. (proposed rule, §5.154[d][4])

RECOMMENDATIONS

1. In order to clarify and strengthen participants’ AFFH obligations, HUD must not undercut the effective provisions of current AFFH regulations and we do not believe that HUD means to do so by this Proposed Rule. NFHA strongly urges HUD to amend the proposed rule to ensure that the needs of all protected classes are truly addressed, and that participants remain obligated to take effective steps to *overcome* each identified fair housing barrier, and not merely to mitigate, manage or address them. HUD should maintain the existing standard requiring participants to overcome all of the impediments to fair housing choice identified in the AFH, and its review of AFHs, pursuant to §5.162, and any compliance audits HUD conducts, should incorporate that existing standard.
2. In addition, the proposed rule should be amended to require grantees and PHAs to consider the housing needs and barriers faced by lesbian, gay, bisexual and transgender (LGBT) individuals and families. This would make it consistent with HUD’s March, 2012 regulations prohibiting discrimination against LGBT individuals and families in HUD-funded or Federal Housing Administration-insured housing.⁷

II. Require Use of Benchmarks, Timetables, Outcomes, and Additional Local Data

The concept of AFFH requires that a participant commit to a plan of action to reduce fair housing barriers and increase housing choice for members of all of the Fair Housing Act’s protected classes. Such a plan must take full account of the fair housing barriers in a community, and must “establish strong performance goals to measure the success of [fair housing planning].” (*Fair Housing Planning Guide*, at §1.3). The provisions in the proposed rule addressing goals are inadequate.

Once grantees and PHAs have analyzed fair housing issues and their determinants, the proposed regulations require them to set only “one or more” goals to overcome those issues.

Identify the most significant fair housing determinants related to these priority issues and set and prioritize *one or more goal(s)* for mitigating or addressing the determinants. (proposed rule §5.154 [d][3][ii] emphasis added)

⁷ Equal Access to Housing in HUD Programs – Regardless of Sexual Orientation or Gender Identity, 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891, 982 (2012).

The final rule should clarify that one goal, or even two, will not be sufficient to ensure progress toward ending segregation and increasing access to community assets. Instead, the number of goals set should be reasonably related to the number of fair housing concerns identified in the AFH.

The proposed rule further lacks the requirement, embodied in the *Fair Housing Planning Guide*, that a participant establish “milestones, timetables, and measurable results,” *Guide*, at §2.2, as the hallmark of successful fair housing planning. To be effective, each barrier to fair housing choice identified in the AFH should be explicitly linked to benchmarks, timetables and outcomes. Without adequate goals and the appropriate milestones and timetables for meeting them, neither the public nor HUD nor the participant itself can ever know whether fair housing choice is increasing, decreasing or remaining static in a jurisdiction. This will make it extremely difficult to hold grantees and PHAs accountable, and to determine whether the strategies they have adopted are effective.

Nor does the proposed rule **require** participants to utilize information at their disposal to identify barriers to fair housing. For example, the AFH of a jurisdiction with a high number of foreclosures that neglects to include data on where foreclosures are occurring and the fair housing impact of the foreclosures – a common problem with Analyses of Impediments during the height of the foreclosure crisis - should be deemed insufficient.

In order to measure the progress a participant is making toward meeting its identified goals, or to identify strategies that may not be working as intended, it is critical to have information about the impact of the implementation strategies the participant has adopted. The rule anticipates that such information will be incorporated into the annual reports required as part of the ConPlan or PHA reporting process. However, it provides no specifics about the information to be reported. The final rule should spell out what information grantees and PHAs must report on an annual basis, as part of their ConPlan or PHA reporting, about the progress they have made toward meeting their fair housing goals. These reports should address both the grantees’ and PHAs’ use of their full range of financial resources for housing and community development (i.e., CDBG, HOME, ESG, HOPWA and other federal, state and local resources), and any actions they have taken with respect to their policies, practices and non-financial resources (these might include their zoning, planning and permitting policies and practices, among others).

The rule does not address the standards HUD will use to determine whether grantees and PHAs are making sufficient progress toward meeting their fair housing goals to justify continued funding under CDBG, HOME, HOPWA and ESG and, for PHAs, public housing funding. Such standards are another important component in holding participants accountable, and describing them in the rule would enable participants and the public to understand HUD’s expectations for participants’ performance. It would also help insure that the standards are applied consistently across regions and over time.

HUD would assist participants if it were to provide, in the proposed rule itself, a non-exhaustive list of concrete examples of measurable actions a participant could take to expand housing choice, addressing barriers erected by segregation, racially and ethnically concentrated areas of poverty and unequal access to community assets. Additional examples could be provided by way of sub-regulatory guidance for participants. This non-exhaustive list would also be helpful to educate stakeholder community members, so that they can be informed participants in the process. NFHA understands the importance of modeling effective fair housing planning techniques for participants, and stands ready to work with HUD in crafting such guidance to supplement and update the *Guide*.

RECOMMENDATIONS

1. Amend the proposed rule to **require** participants to utilize, and not allow them to ignore, information at their disposal to identify barriers to fair housing.
2. Clarify that one goal, or even two, will not be sufficient to ensure progress toward ending segregation and increasing access to community assets, and that the number of goals set must be reasonably related to the number of fair housing concerns identified by the participant.
3. Amend the proposed rule to provide that HUD will not accept an AFH that does not organize its actions to overcome fair housing barriers pursuant to milestones and timetables, and that does not propose to show measurable results in overcoming such barriers.
4. In the final rule, spell out the specific information grantees and PHAs must report on an annual basis, as part of their ConPlan or PHA reporting, about the progress they have made toward meeting their fair housing goals. This reporting should address both the ways that funds (federal and other) have been spent and any non-spending actions (such as actions to revise or amend zoning codes, planning, permitting practices and the like) that participants have undertaken.
5. Specify in the rule the standards HUD will use to determine whether grantees and PHAs are making sufficient progress toward meeting their fair housing goals
6. Assist participants and other stakeholders by providing, in the proposed rule itself, a non-exhaustive list of concrete examples of measurable actions that can be taken to expand fair housing choice in various circumstances.

III. Ensure that Participants Both Invest in RCAPs/ECAPs and Increase Mobility and Access to Community Assets

The proposed rule recognizes the persistence of segregation and discrimination in housing markets across the country and acknowledges that there are – in the same regions - both

communities that contain affordable housing but lack other assets, and communities that have a variety of assets but lack affordable housing. It states

[P]articipant’s strategies and actions may include strategically enhancing neighborhood assets (e.g., through targeted investment in neighborhood revitalization or stabilization) or promoting greater mobility and access to areas offering vital assets such as quality schools, employment, and transportation, consistent with fair housing goals. (proposed rule, §5.150, 78 Fed. Reg. 43710, 43729 [col. 3])

This statement seems to suggest that participants face a choice: either invest in neighborhood revitalization or stabilization (that is, adopt place-based strategies), or promote greater mobility and access to vital assets. This is a false choice, one that undermines the purpose of the Fair Housing Act and this rule. To fulfill the purpose of the affirmatively further fair housing, the rule must not suggest that participants are expected to choose one or the other of these approaches.

RECOMMENDATION

1. The final rule must clarify that grantees and PHAs are expected to employ **BOTH** strategies to stabilize and revitalize neighborhoods that constitute racially/ethnically concentrated areas of poverty **AND** strategies to enhance mobility and expand access to existing community assets. In addition, it would be very helpful to include examples of a variety of strategies that might be appropriate for different circumstances that participants may encounter, as mentioned above.

IV. Enforcement: Strengthen the Link between the AFH and Participants’ Resource Allocation and Related Actions and Clarify the Sanctions for Noncompliance

The proposed rule sensibly leaves in place HUD’s enforcement powers with respect to the AFH and compliance with participants’ AFFH obligations. *See, e.g.*, 24 C.F.R. §§91.500(b)(HUD approval action); 570.304 (making of grants); 570.485(c)(making of grants); 570.601 and 570.602 (civil rights certification requirements); 570.904 (equal opportunity and fair housing review criteria); 570.910—570.913 (corrective and remedial actions).

As can be seen in HUD’s AFFH enforcement efforts involving Westchester County (New York), the State of Texas, Marin County (California) and Sussex County (Delaware), participants are given incentives to comply with their AFFH obligations when it becomes clear that they may lose federal funds because of noncompliance. The proposed rule is laudable for connecting the AFH to participants’ plans for spending housing and community development resources (the

Consolidated Plan and the PHA Plan), and for specifying that spending priorities in those Plans and their annual updates must reflect the goals set out in the AFH.

The proposed rule makes it clear that HUD can reject noncompliant AFHs, and impose a range of sanctions for noncompliance, up to and including withholding federal funds. But it does not adequately articulate the standards or process HUD will use to enforce compliance. By providing greater detail about the standards HUD will use to assess the adequacy of the spending to overcome fair housing barriers and the corrective actions HUD will take to cure the inadequacy of a participant's expenditure of resources focused on that objective, the rule could clarify and strengthen the linkage between a jurisdiction's AFFH obligations and the manner in which it conducts its housing and community development activities.

In its current form, the proposed rule requires participants to take "meaningful action to further the goals identified in the AFH," but it does not define meaningful action, establish any mechanism for measuring progress toward a recipient's fair housing goals, or establish any consequences for failure to make progress. HUD, entitlement jurisdictions and the public cannot determine whether progress is being made under the guidance in the proposed rule. As mentioned above, HUD should require recipients to detail in the Consolidated Plan and Annual Action plans what progress they expect to make within the timeframe covered by the AFH and the benchmarks they will use to measure such progress. HUD should also be more definitive in describing the consequences a jurisdiction may encounter for not making progress toward its fair housing goals.

NFHA strongly supports the provision in the proposed rule emphasizing that a participant's AFFH obligation is not bounded by what it can do with the HUD funds it has received. The strategies and actions "will be accomplished primarily by making investments with federal *and other resources...*" §5.152; 78 Fed. Reg. 43716. This regulatory language reinforces a provision that has been in HUD's *Fair Housing Planning Guide*, at p. 1-3, since 1996:

Applicability: Although the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-funded programs at the State or local level. The AFFH obligation extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded.

In the Preamble, HUD says the proposed rule is "intended in particular to improve fair housing planning by more directly linking it to housing and community development planning processes currently undertaken by program participants *as a condition of their receipt of HUD funds.*" (proposed rule, Preamble, at 43713 [col. 1][emphasis added]). The text of the proposed rule, however, seems to suggest that "[a]n accepted AFH, *or portion thereof*, is a precondition for approval of a consolidated plan ... and of a PHA Plan." (proposed rule, §5.160[b] emphasis

added). It does not explain how much or which portion(s) of an AFH must be accepted in order for the participant to be eligible to receive future funds.

Such flexibility undermines the benefit of the strict time limits set out in the proposed rule and weakens the link between the AFH and HUD funding. NFHA encourages HUD to amend the Proposed Rule to provide that an AFH must be accepted **in full** before a participant is eligible to receive any HUD funds. This approach would reinforce that portion of the proposed rule which disallows CDBG funds to a participant that fails to submit a consolidated plan prior to August 16th of the relevant program year.

To create a strong and effective the link between the AFFH obligations and the receipt of HUD funding, the rule must also address the relationship between states and their sub-recipients. Since 1995, with few exceptions, statewide Analyses of Impediments to Fair Housing Choice (“AIs”) have fallen far short of the mark necessary to meaningfully comply with AFFH requirements. While the proposed rule makes clear that states are obligated to submit their own AFHs as a condition of receiving HUD funds, it falls short of requiring a state to ensure that its sub-recipients (typically smaller, non-entitlement jurisdiction) comply with AFFH mandates as a precondition to receiving such funds. This leaves a big gap in the rule’s coverage and undermines its effectiveness. Similar concerns apply to other entities that pass HUD funds through to sub-recipients, such as certain counties or consortia.

RECOMMENDATIONS

1. Clarify and strengthen the linkage between a participant’s AFFH obligations and the receipt of HUD funding by providing greater detail in the rule about the standards HUD will use to assess the adequacy of the participant’s spending and other activities to overcome fair housing barriers. Similarly, the rule should provide greater detail about the corrective actions HUD will take to cure the inadequacy of a participant’s expenditure of resources and other actions focused on that objective.
2. As described above, the rule should require recipients to detail in the Consolidated Plan and Annual Action plans what progress they expect to make within the timeframe covered by the AFH and the benchmarks they will use to measure such progress. In addition, the rule should describe more definitively the consequences a jurisdiction may encounter for not making progress toward its fair housing goals.
3. Amend the Proposed Rule to provide that an AFH must be accepted **in full** before a participant is eligible to receive any HUD funds.
4. Clarify that a sub-recipient that cannot demonstrate its AFFH compliance will be barred from receiving funds through the relevant state or other entity.

V. Increase and Further Enhance Public Participation

The proposed rule enhances the public participation and consultation requirements, §5.158, and aligns the AFH regulations on this topic with those relevant to the expenditure of block grant funds under the Consolidated Plan process. §§91.100, 91.105, 91.110, 91.115 and the PHA Plan process. §903.15. While it appreciates HUD's efforts to enhance public participation, proposed rule, §5.158, NFHA believes that additional steps must be taken to make such participation truly effective.

Active public participation in the AFH process is critical to its success. Participants do not have a monopoly on information about fair housing barriers and, historically many have closed their eyes to the existence and extent of such barriers, to the detriment of the very people the Fair Housing Act was designed to protect. The rule provides that ConPlan jurisdictions consult with a wide range of organizations that have an interest and expertise in some aspect of fair housing and experience with the housing needs and barriers experienced by members of protected classes. However, while this consultation requirement applies to states and local jurisdictions that are required to produce ConPlans (see §§ 91.110(a)(2) and 91.100(e), respectively), this consultation requirement does not appear to apply to PHAs. This should be corrected in the final rule.

In addition, the requirements cited above state that states and jurisdictions must consult with “any organizations that have the capacity to engage with data informing the AFH and be sufficiently independent and representative to provide meaningful feedback on the AFH, the consolidated plan, and their implementation.” However, the rule provides no guidance about what is meant by these qualifications. NFHA is concerned that these qualifiers may be used by some participants to exclude from the AFH process organizations that have meaningful experience to share but lack sophisticated data analysis expertise. However, an organization's ability to engage with data may depend to a large degree on how the data are presented and their interpretation is explained. The rule should not imply that groups that lack the ability to conduct data analysis themselves cannot participate meaningfully in a discussion about the implications of such analysis or the steps that should be taken to overcome problems identified through such analysis. Similarly, it is not clear what the rule means by “sufficiently independent.” Many organizations that rightfully should be included in the AFH consultation process receive funding under one or more programs that trigger the AFH requirement, and public housing residents and voucher holders clearly have a relationship with their PHAs. As it stands, this language in the rule could be read to suggest that such groups should not be consulted in the development of the AFH. This must be clarified in the final rule.

Further, while the description of the AFH consultation process requires participants to seek input from fair housing stakeholders, this requirement does not carry through to the citizen participation provisions. These are much more general, and only require that citizen

participation plans “provide for and encourage citizens, residents and other interested parties to participate in the development of the AFH, any significant revisions to the AFH, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. To ensure a strong linkage between the AFH and the consolidated plan and public housing plan, the consultation provisions of the AFH should also be applied to the citizen participation plans for the applicable programs.

Given the critical importance of public participation, NFHA expresses strong reservations that the “Fair Housing Advisory Councils” described in §91,100(e) of the Proposed Rule, may actually serve to limit input from other organizations and could be manipulated locally if HUD does not further clarify that such Councils cannot be a substitute for active outreach and efforts to involve members of the community.

Effective public participation rests on ready and timely access to critical information, both the data being used to inform the planning process and information about the timing of the planning and the opportunities for public input. Further, the information must be made available in a format that is accessible to the members of the public. Many NFHA members report that local Consolidated Plan, AI and PHA Plan processes are effectively closed to public participation, by virtue of late distribution of draft documents, lack of community outreach and notice about public meetings, or resistance on the part of local officials to incorporate community input. The rule does not address these important aspects of public participation adequately.

The rule allows participants to decide on the manner in which they will make much information available to the public, without setting any minimum requirements or standards for assessing the adequacy of the participants’ actions in this regard. A few simple additions to the rule would go far to enhance the public’s ability to participate in the AFH, ConPlan and public housing planning processes. For example, HUD should require participants to make their draft AFHs, their final AFHs, and all related documents available to the public in a timely manner on an accessible (Sec. 508-compliant) website. This might not be the only means by which a participant chooses to make information available, but in this day and age, it should be a threshold standard.

The rule should also require participants to provide for translation of AFH-related documents into appropriate languages for community residents with limited English proficiency (LEP) and interpretation at public hearings on AFHs, as it does for the citizen participation plans. Similarly, the rule should require that participants provide for American Sign Language interpretation at all AFH, ConPlan and public housing plan public hearings.

With respect to public access to data, the rule should go beyond providing access to the data used in developing the AFH, and require that information about benchmarks and a participant’s

progress in reaching the stated goals be made available in a public format so that stakeholders can assist the jurisdiction in its compliance with its AFFH obligations.

In addition, HUD has a significant role to play in ensuring that the public has ready access to important information about AFHs. Currently, the process that interested parties must go through to get basic information about the timing for ConPlan submission (and, once this rule becomes effective, AFH submission) is very cumbersome and time-consuming. The same is true for obtaining copies of participants' ConPlans. It is not clear to us what information, if any, is available centrally about the timing and content of public housing plans. HUD can and should help overcome this barrier to public participation by establishing a page on its website where members of the public can find information about the dates on which all participants must submit their AFHs and copies of all AFHs have been submitted. This would greatly facilitate public participation in the AFH process.

RECOMMENDATIONS

1. Apply the AFH consultation requirements currently embodied in the proposed rule for ConPlan jurisdictions to PHAs.
2. Clarify that the requirement for participants to consult with organizations that have the “capacity to engage with data and are sufficiently independent and representative to provide meaningful feedback” should not exclude from consultation organizations that receive funding from the participant, public housing residents or voucher holders.
3. Apply the AFH consultation requirements to the ConPlan program (CDBG, HOME, HOPWA and ESG) citizen participation plans.
4. Clarify that the “Fair Housing Advisory Councils” described in §91,100(e) of the Proposed Rule, may not be used to limit input from other organizations and may not substitute for active outreach and efforts to involve members of the community.
5. Require participants to make their draft AFHs, their final AFHs, and all related documents available to the public in a timely manner on an accessible (Sec. 508-compliant) website.
6. Require that information about a participant’s benchmarks and progress in meeting them, as well as a participant’s progress in reaching its stated goals be made available in a public format so that stakeholders can assist the jurisdiction in its compliance with its AFFH obligations.
7. Require participants to provide for translation of AFH-related documents into appropriate languages for community residents with limited English proficiency (LEP).
8. Require participants to provide American Sign Language interpretation for all AFH, ConPlan and public housing public hearings, when needed.
9. Establish a page on HUD’s website where members of the public can find information about the dates on which all participants must submit their AFHs and copies of all AFHs that have been submitted.

VI. Ensure HUD's Capacity to Review AFHs and Provide for Compliance and High Quality

NFHA has long advocated for some level of HUD review of participants' fair housing planning documents, and identified the absence of such review and/or approval as a major weakness of the AI process established by current law.⁸ Therefore, NFHA applauds the provisions of the proposed rule requiring submission to, and "acceptance" by HUD as a precondition for a participant's receipt of federal funds. (proposed rule, §§5.160, 5.162) NFHA further appreciates the language in the rule stating that "acceptance" of an AFH by HUD "does not mean that HUD has determined that a participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act, but only that HUD has determined that the participant has "provided the required elements of an AFH as set forth in §5.154(d). (see proposed rule, §5.162(a)(2)) Nonetheless, NFHA has strong concerns that HUD lacks the necessary staff and resources to provide consistent, meaningful review of AFHs.

NFHA has not been able to obtain information about the timing for submission of PHA plans or the number of PHAs currently subject to the annual plan requirement, but the information about the number and timing of ConPlan submissions underscores our capacity concerns. Our information indicates that as many as 55% of block grant recipients have program years beginning in July, and nearly 40% of all such jurisdictions (or nearly 500) have program years beginning in July, 2015. This means that, according to the schedule set out in §5.160 of the proposed rule, HUD will receive nearly 500 AFHs for review on October 1, 2014, and must complete the review of those by November 30, 2014 or they will be automatically deemed accepted. The number of participants with July 1 ConPlan program year start dates will result in large numbers of submissions on October 1 of other years, as well. The PHA plan submission date requirements, regardless of when they occur during the calendar year, will only add to this workload, and it appears that HUD lacks sufficient staff to shoulder this load.

For example, HUD's Office of Fair Housing and Equal Opportunity staff has gone from 750 full-time employees (FTEs) in 1994 to 580 FTEs currently. The National Commission on Fair Housing and Equal Opportunity wrote in its final report that, "At least 750 FTEs (Full Time Equivalent positions) are necessary for the existing fair housing work alone. HUD's staffing of the entire Office of Fair Housing and Equal Opportunity (FHEO) office, which has responsibility for enforcement as well as program compliance monitoring, has not reached that staffing level since FY 1994. At 579 FTEs in FY 2007, the staffing numbers for FHEO are wholly inadequate

⁸ See for example, National Fair Housing Alliance, *A Step in the Right Direction: 2010 Fair Housing Trends Report*, May 26, 2010, p. 6.

and at their lowest levels since 1989.”⁹ To allow for meaningful implementation of the AFFH regulation, the FTEs assigned to FHEO must be increased.

The glut of AFHs at HUD regional offices and headquarters in July of each year (and particularly in July 2015) will surely overwhelm any existing FHEO capacity to provide even cursory reviews. NFHA’s concerns are amplified in the context of the proposed rule providing that an AFH will be deemed “accepted” if not rejected within 60 days of submission. Practically speaking, these provisions will result in the “acceptance” of many AFHs falling far short of the statutory obligation to AFFH.

There are a number of steps HUD can take to address this problem. One simple step is to extend the review period from 60 to 90 days. This would still provide for timely response to participants, but would give HUD staff more time to conduct thorough reviews when numerous AFHs are submitted at the same time. Because the review time laid out in the regulation is a maximum, not a minimum, when the workload is lighter, HUD would still have the latitude to complete reviews in fewer than the maximum number of days.

The proposed rule permits block grant participants to request a change in “program year start date . . . to better coordinate the submission of the AFH,” Proposed Rule §5.160(d), and provides that same option to PHAs. Rather than awaiting such requests, NFHA strongly encourages HUD to establish a more workable schedule for submission and review of AFHs. HUD should use its regulatory authority to change the calendar quarter “start date” of the 1,200 block grant entitlement jurisdictions and the more than 3,000 PHAs affected by the proposed rule.

In addition, we recommend that HUD adopt a phase-in plan for the regulation that will allow HUD to deploy its staff resources most effectively to provide the highest possible level of review for all AFHs. This phase-in plan should result in AFH submission dates that are spread out more evenly over the course of the year, and more evenly over a number of years. At the same time, the plan should ensure that most AFHs will come up for review within two years after the effective date of the AFFH regulation.

Given the large number of AFHs that must be reviewed, the limited time period for conducting those reviews, and the resource constraints under which HUD operating now and for the foreseeable future, it is important to build into the rule a backstop to prevent acceptance of inadequate AFHs. To accomplish this, the rule should provide a process by which interested members of the public can file a challenge with HUD in cases where they raise legitimate concerns and provide evidence that indicates that a participant has failed to meet the requirements of the regulation or failed to meet its obligation to affirmatively further fair housing. Such a challenge should trigger HUD’s reconsideration of the AFH that was submitted,

⁹The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity, December 2008, p. 30.

in light of the information provided by the party bringing the challenge. NFHA strongly urges HUD to amend the proposed rule to provide for such a complaint/challenge process.

Beyond private sector enforcement assistance, HUD should amend the proposed rule to specify that HUD will conduct periodic audits of a subset of participants to evaluate their AFHs in more significant detail, along with the extent to which they are taking effective action to address the issues and goals identified.

Further, we recommend that the rule clarify how the AFH review will be conducted, including which divisions within HUD will play a role and what those roles will be. It is critical that staff of HUD's Office of Fair Housing and Equal Opportunity play a lead role in AFH reviews, and that this office receive additional staff resources to carry out this important new responsibility.

RECOMMENDATIONS

1. Increase the number of FTEs assigned to HUD's Office of Fair Housing & Equal Opportunity to ensure that it has the staff necessary to conduct complete and consistent reviews of AFHs within the timeframe allotted.
2. Extend the review period from 60 to 90 days to permit staff more time to conduct thorough reviews while still providing a timely response to participants.
3. Establish a more workable schedule for submission and review of AFHs, providing for a more consistent AFH-review workload throughout the year and minimizing the number of AFHs required to be submitted in any single month or any single quarter.
4. Adopt a phase-in plan for the regulation that will allow HUD to deploy its staff resources most effectively to provide the highest possible level of review for all AFHs and also ensure that the majority of participants will submit an AFH for review during the two years after the effective date of the regulation.
5. Amend the proposed rule to allow the public to challenge acceptance of an AFH by HUD where evidence indicates that the acceptance was in error. Such a challenge should trigger an immediate in-depth review of the AFH by HUD.
6. Amend the proposed rule to specify that HUD will conduct periodic audits of selected AFHs.
7. Clarify how the AFH review will be conducted and what role(s) the various departmental divisions will play in the process.

VII. Provide for Further Public Review of Assessment Tool and Data Tool Before Finalized

NFHA is pleased that HUD will be providing "nationally uniform local and regional data on patterns of integration and segregation" and other measures, Proposed Rule, §5.154(c). HUD

also recognizes that there may be other data available locally or regionally that is important to incorporate into the AFH. The rule properly encourages participants to use such additional data, and requires that such data be available to the public. However, there may be data that members of the public believe are important to the AFH, but which the relevant participant chooses not to include. Therefore, it is also important for members of the public to have access to a version of the geospatial tool to which they can upload data, even if the grantees and PHAs in their area do not choose to utilize that data. Building this capacity into the geospatial tool will enhance the public's ability to assist in identifying important fair housing issues and determinants and developing goals and strategies to overcome them.

Just as important as the data themselves is the analysis performed with the data. Over the past 15 years, many AIs have been long on reporting of data and short on analysis and recommendations about actually overcoming fair housing barriers. HUD's provision of data will permit participants to spend time and resources on the analysis of such data, rather than on its collection. To facilitate analysis, the rule indicates that HUD will provide participants with an assessment tool. With this tool, participants will be required to:

Identify the primary determinants influencing conditions of segregation; concentrations of poverty; disparities in access to community assets; and disproportionate housing needs based on protected class; and the most significant determinants of these disparities; (2) identify fair housing priorities and general goals and articulate a justification for the chosen prioritization; and (3) set one or more goal(s) for mitigating or addressing the determinants. (proposed rule §5.154[d][2-4])

The assessment tool is described only as "guidance that HUD *will issue* to program participants providing directions on how to use the data to be provided and the assessment to be conducted pursuant to § 5.154." *Id.*, §5.152 (definition of "Instructions and assessment tool")(emphasis supplied). NFHA is concerned that this important tool, which is at the heart of a meaningful AFH, is not described in any greater detail in the proposed rule. Without being able to review the assessment tool itself, the public cannot judge its effectiveness in helping participants and members of the public to identify fair housing barriers, determinants, priorities and goals. Without being able to test the validity of the assessment tool, no party can assess whether the actions a participant proposes to take to overcome fair barriers are adequate. Before it is finalized and participants begin using the assessment tool, it must be made available to the public for review and comment.

NFHA has similar concerns about the data and geospatial tool. The data and geospatial tool that HUD will provide participants are important components of the proposed AFH process, and while they are not a formal part of the rule itself they will have significant impact on the way the rule is implemented at the local level. The version of the data/geospatial tool that has been made available for public review is preliminary only, and it is important for the public to have the

opportunity to see and comment on a more complete version of the tool that will be made available to participants before it is finalized. More detailed comments about the data and geospatial tool are contained in the addendum to these comments.

The definitions of RCAPs and ECAPs, which are central to the proposed AFFH regulation, are set out in the data methodology document that accompanies the proposed rule, but are not incorporated into the rule itself. Because the data methodology document does not have the force of regulation, we recommend that these terms be defined in the actual regulation. In addition, there may be circumstances in which the definitions put forward by HUD are not effective in capturing important racially or ethnically concentrated areas of poverty in a particular community. The rule should allow participants to propose an alternative definition, which should be subject to public comment as part of the AFH process and approval by HUD before they can be adopted.

As mentioned above, NFHA has provided an appendix to this comment letter with additional feedback on the beta version of the geospatial tool.

RECOMMENDATIONS

1. Incorporate into the geospatial tool functionality that will allow the public to upload data that it believes relevant to the Assessment of Fair Housing, regardless of whether the program participant wishes to incorporate such data in its analysis.
2. Make the assessment tool available for public review and comment before finalizing it and allowing participants to begin using it to conduct their AFHs.
3. Make the geospatial tool and a more complete version of the data HUD intends to incorporate into it available for public review and comment before they are finalized.
4. Include the definitions of RCAPs and ECAPs into the rule itself, and provide a process by which participants can propose, get public feedback about, and get approval for alternative definitions where local conditions require them in order to identify areas of racial and/or ethnic concentration and high levels of poverty.

VIII. Strengthen/Clarify AFH Obligations of Public Housing Authorities

NFHA supports HUD's efforts to clarify the AFFH obligations of PHAs, and to provide incentives for PHAs to collaborate with local governments to identify and overcome fair housing barriers. The PHA program, many of whose participants are female-headed households, people with disabilities, people of color, and other protected classes, should be a critical partner in achieving HUD's fair housing goals. This is especially important because some landlords and others hide behind participation in this program (i.e., refusal to accept housing choice vouchers

or resistance to siting public housing or other assisted housing) as a proxy for discrimination based on race, national origin, familial status, disability or other protected characteristics. With declining revenues, many PHAs will lack the capacity to doing meaningful AFHs, and the proposed rule leaves in place the lowered expectation that PHAs will address fair housing barriers “in a reasonable fashion in view of the resources available.” Proposed Rule, §903.7(o)(3)(iii). While many participants, and indeed HUD itself, face resource limitations, HUD should not use that as a basis for signaling to PHAs that they will be held to a lower standard than other program participants.

The rule ties the requirement for PHAs to submit AFHs to the existing PHA annual planning requirement. This is problematic and potentially confusing, because many PHAs are exempt from this requirement. Further, in the President’s FY 2014 budget proposal, HUD proposes to do away with the requirement altogether:

Replace PHA Annual Plans. For fiscal year 2014, the Department proposes to eliminate the requirement that PHAs complete and submit annual PHA Plans. This would reduce the burden on PHAs, while replacing it with meaningful planning processes for resident feedback, including the requirement that PHAs hold meetings with residents and the public related to significant changes to PHA policies and proposals of major activities, such as the demolition or disposition of public housing. This would be consistent with the enactment of the Housing and Economic Recovery Act of 2007 (HERA), where the majority of PHAs are exempted from the annual plan requirement and in its place, required an annual hearing.¹⁰

NFHA recommends that the rule clarify that any PHA not required to complete and submit an annual PHA plan must collaborate with the state or relevant participating jurisdiction to develop its AFH. Further, HUD should make it clear that the AFH produced by this collaboration must set forth goals, strategies, benchmarks and timetables for actions to be taken by the PHA to affirmatively further fair housing.

The rule already provides for this approach (see proposed rule at §903.15), which may help ensure that PHAs’ activities are coordinated with those of the jurisdictions in which they operate and facilitate the deployment of PHA resources more effectively to decrease racially/ethnically concentrated areas of poverty and foster diverse, inclusive communities.

RECOMMENDATIONS

1. Remove the phrase “in a reasonable fashion in view of the resources available from §903.7(o)(3)(iii) of the rule.

¹⁰ FY2014 Congressional Justifications, Public Housing Operating Fund, p. J-16
http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/2014/main_toc

2. Specify that any PHA not required to complete and submit an annual PHA plan must collaborate with its state or other relevant jurisdiction to complete an AFH, and that such AFH must contain goals, strategies, benchmarks and timetables for actions the PHA will take to affirmatively further fair housing.

IX. Provide Incentives for and Clarity about Regional Assessments of Fair Housing

NFHA applauds HUD's attempt to encourage regional AFHs, but is concerned that such efforts over the past 15 to 20 years have more often resulted in overly-generalized analyses which fail to provide accountability for individual jurisdictions, and recommend few, if any, meaningful actions to overcome fair housing barriers. HUD must take care to avoid this result in the proposed rule. §5.156 (d) of the proposed rule states only that "A Regional AFH does not relieve each regionally collaborating program from its obligation to analyze and address local fair housing issues and determinants that affect housing choice within its respective jurisdiction." This should be amended to require that regionally collaborating programs, especially those exercising land use and zoning powers, are required not just to analyze barriers within their own boundaries and but also to adopt jurisdiction-specific actions to overcome those barriers. HUD might also provide more detail about how such regional planning would work in non-contiguous jurisdictions.

Finally, HUD should clarify in the final rule that every jurisdiction that submits its own non-regional AFH must still consider regional fair housing issues, and HUD should ensure jurisdictions appropriately evaluate regional issues in all AFH reviews and audits.

RECOMMENDATIONS

1. Amend §5.156(d) of the proposed rule to clarify that regionally collaborating program participants are required not just to analyze barriers to fair housing choice within their own boundaries, but also to adopt jurisdiction-specific actions to overcome them.
2. Provide more detail about how regional AFHs should work in non-contiguous jurisdictions.
3. Provide incentives for regional collaboration on AFHs to help overcome the disincentives for such collaboration
4. Clarify that participants that choose not to collaborate on a regional AFH and complete an AFH limited to their specific geographic area must nonetheless incorporate into their own AFH an analysis of relevant regional patterns and determinants of segregation and regional barriers preventing access to community assets by members of protected classes.

X. Scope of Regulation Is Limited to HUD but Scope of AFFH Obligation is Broader

While providing important clarification and amplification of the AFFH mandate, NFHA notes that the proposed rule governs only the AFFH obligations of “participants,” defined by the rule to mean state and local governments receiving funding under the Community Development Block Grant (“CDBG”), HOME Investment Partnership (“HOME”), Emergency Solutions Grant (“ESG”) or Housing Opportunities for Persons with AIDS (“HOPWA”) programs and public housing authorities. This represents an extremely important step toward effective implementation of the requirement in the Fair Housing Act that HUD administer its programs and activities affirmatively to further the purposes of the Act, but because it does not cover all of HUD’s programs and activities, it does not represent a truly comprehensive approach. NFHA encourages HUD to continue to consider and seek public input on ways that it can ensure that all of its programs and activities affirmatively further fair housing.

Because the AFFH obligation attaches to “[a]ll executive departments and agencies ... administer[ing] ... programs and activities relating to housing and urban development,” 42 U.S.C. §3608(d), and not just to the “participants” identified in the proposed rule, NFHA strongly encourages HUD to reactivate the President’s Fair Housing Advisory Council (created pursuant to Executive Order 12892) for purposes of instructing other federal agencies and departments to adopt AFFH regulations and guidance, and to consider additional regulations and guidance for HUD programs not covered by the proposed rule.

RECOMMENDATIONS

1. HUD should continue to consider and seek public input on additional steps it can take to ensure that all of its programs and activities, not just those covered by the proposed rule, operate in a manner affirmatively to further fair housing.
2. Reactivate the President’s Fair Housing Advisory Council to instruct other federal agencies and departments on the ways that they can and should administer their programs and activities related to housing and urban development in a manner that affirmatively furthers fair housing.

Thank you for the opportunity to comment on this important regulation. We urge HUD to move quickly to make these changes and promulgate the final AFFH regulation. NFHA looks forward

to partnering with HUD in implementing regulatory requirements to effectuate the AFFH obligations of municipalities and PHAs receiving HUD funding.

Sincerely,

A handwritten signature in black ink, appearing to read "Shanna L. Smith". The signature is fluid and cursive, with the first name being the most prominent.

Shanna L. Smith
President and CEO

Enclosure: NFHA Comments on Data, Metrics and the Geo-spatial Tool

**Addendum to Comments by the National Fair Housing Alliance
on Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing**

**Comments on Data, Metric and the Geo-Spatial Tool
Associated with the Proposed AFFH Rule**

Note: these comments are based on a review of the preliminary geo-spatial tool and associated data and metrics by a group of NFHA members as well as NFHA staff. All of the reviewers are experienced in conducting data analysis for fair housing purposes and using mapping to display the results of their analyses. They reviewed the functionality of the geo-spatial tool, including the data provided and the embedded metrics. NFHA and its members request the opportunity to review and provide feedback on a more complete version of the tool before it is finalized and placed in service.

Recommendations for Increasing the Utility and User-Friendliness of the Mapping Function of the Geo-Spatial Tool

- Allow users to change the values of the dots for the dot density maps. In relatively low density areas, certain population groups may be present at density levels too low to show up with the current values. For example, in one location reviewed, at the current density value (75 people/dot), Hispanic children do not show up at all.
- Provide graduated dot sizes. This would enhance the visual display of some data.
- Allow users to choose to shade census tracts as an alternative to using dots. This would make it easier to display multiple layers on a single map.
- Provide clearer labeling for the different levels of community assets and stressors. These are scored from 1-100 and divided into 10 sub-categories, but the sub-categories are not labeled to allow users to understand what the different numbers mean. For example, it is not clear what the categories for labor market engagement (1-10, 11-20, 21-30, etc.) mean. The same is true for the other stressors.
- Allow users to display stressors (or other characteristics) using hash marks or similar graphics in addition to the fill colors. The current system makes it difficult to display more than one stressor on a single map.
- Ten shades (associated with 10 categories for various data points) is too many. It is difficult to distinguish among categories and to match the category on the map with that on the legend.
- Labels should be a separate layer on the maps.
- Users should be able to change the order of the layers.
- The maps need better printing capacity. As it stands now, the tool does not produce a quality map that can be printed.
- The lack of borders on the polygons makes it hard to see the edges of the areas shown.

- The color of the voucher holders does not work well with some of the colors of the stressors and should be changed (or be able to be changed by the user).
- Users should be able to click on a geographic area (e.g., census tract) on the map and get the detailed information associated with that area, including both the specific data values and the sources of the data.
- Users should be able to change the colors used to display the different data points. For example, public housing units and white non-Hispanic children are both shown as blue circles, which makes it hard to display them on the same map.
- Properties (public housing, tax credit housing) for which HUD has street addresses should be shown at their actual locations on the map, rather than a random location within the census tract. Alternatively, HUD could supply the actual address and allow users to map the locations themselves.
- There should be a better way to navigate to the geographic location users are interested in. Ideal would be the system used in ArcMap Online, which includes a search bar labeled, “Find address or place” that allows the user to type in the desired city. See <http://www.arcgis.com/home/webmap/viewer.html?useExisting=1>. Another alternative would be to provide drop down menu with a list of jurisdictions (or even states) from which the user could select the desired location. This would be easier than always starting with Chicago and then zooming out and moving over to the relevant location on the map. In the absence of either of these options, the map should be displayed at a scale that allows the user to see the entire country on the initial screen.
- It would be helpful if HUD's tool could be linked to the ArcMap Online database, which contains a searchable list of through thousands of hosted maps. For example, if HUD didn't have median age as a layer in its map, the user could search and find the desired layer and add it that way.

Recommendations for Improving the Data Provided in Conjunction with the Geo-spatial Tool

- It would be helpful to include race and other demographic data (single parent head of household, disability, age, etc.) for voucher holders. These are data that HUD has and should be relatively easy to incorporate into the geo-spatial tool.
- The map uses 1 dot= 20 voucher holders, but HUD makes data available for tracts with as few as 10 voucher holders. It should use this value for the voucher holder dots.
- Subsidized housing should be broken out by type: family, elderly, supportive, etc. It is important to understand the location of these different types of housing as part of the AFH; if the data are not provided the result may be that AFHs fail to include such analysis.

- There are many other types of data that should be analyzed as part of the AFH, including Home Mortgage Disclosure Act data and complete Census data, among others.
- It will be important to link the geo-spatial tool to the existing or forthcoming databases mandated under the Dodd-Frank Act. These include the national default and foreclosure database, the CFPB database, the Financial Stability Oversight Council (FSOC) database on financial instruments, and the FSOC financial company reference database.
- To the extent possible, it is preferable to have data by year, rather than by ranges of years because users cannot compare overlapping ranges.
- HUD should identify which PHAs provide the vouchers shown on the map. In places where more than one PHA may provide a voucher that can be used in a particular area, users currently cannot tell which voucher came from which PHA.
- Users should be able to upload data that they believe is useful for the AFH analysis. It is not clear whether the system will be set up to allow this, or whether only HUD and grantees/PHAs will have that capability.
- Similarly, users should be able to export data, tables, maps, charts and the like from the geo-spatial tool.
- It would be helpful to have data on rental housing (location, bedroom size, rents – such as median rent, rent ranges, etc.) and other housing data (age of housing stock, etc.).
- Users should be able to use data broken out by census block groups or other smaller geographic units to identify RCAPs and ECAPs or to conduct other analyses. In some places, RCAPs and ECAPs may not align with census tract boundaries, and therefore may not be captured effectively in an analysis that’s done at the census tract level.

Recommendations for Improving the Metrics Provided in the Geo-spatial Tool

- Poverty index – it would be helpful to be able to analyze the factors incorporated into this index (family poverty rate, % of households receiving public assistance) individually, and not just in combination as a single index.
- Transit access – this measure relies on self-reporting by transit agencies. In jurisdictions where agencies do not report the data are not available. The lack of comprehensive data makes it difficult to identify or display problems that may exist with the lack of transit access across jurisdictions. In some places, for example, buses from one jurisdiction do not cross into neighboring jurisdictions, making travel difficult for people dependent on public transportation. The existing, incomplete transit data will not show this problem.

- Jobs data – It would be good to have data on job growth, not just job location. That would help identify places where transit linkages are needed. In addition, it would be useful to distinguish between high- and low-skilled jobs.
- Dissimilarity Index and Isolation Index – these are standard metrics and can be useful, but both have their limitations. These limitations should be made clear to data users, and HUD should consider whether there are thresholds at which these indices should kick in (i.e., population levels below which they don't work very well, and above which they can be useful). One alternative is to use the statewide minority population as a benchmark and flag any place with a minority population above that level as disproportionately minority. Another concern is that because the dissimilarity index is calculated at the census tract level, it may not give a clear picture of the actual geographic distribution of members of a protected class. Therefore it may be useful to pair it with maps that plot where members of protected classes live.