

July 23, 2018

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

Re: Docket No. FR-5173-N-17, “Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments,” 83 Fed. Reg. 23922.

The undersigned organizations submit these comments in response to HUD’s notice of withdrawal of the Local Government Assessment Tool (Assessment Tool). Several of our organizations are plaintiffs, serving as co-counsel for the plaintiffs, or are amici in the pending lawsuit *National Fair Housing Alliance, et al. v. Carson*, which challenges this withdrawal and the effective suspension of the rule. We submit these comments to provide additional information for the agency and the public, without waiving any legal claims.

Withdrawal of the Local Government Assessment Tool and Effective Rule Suspension

As an initial matter, HUD’s withdrawal of the Assessment Tool is in violation of law. Such withdrawal is unauthorized by the AFFH regulation and effectively suspends the regulation, which is already in effect, without due procedures; was not based in sound reasoning or supported by the record; and is contrary to HUD’s duty to affirmatively further fair housing. This regulatory suspension is already causing ongoing damage to the ability of local fair housing groups, community advocates, and state and local policymakers to address fair housing issues within their communities. Continuing suspension of the rule in any form will compound this damage, as would changes to the Assessment Tool that undercut its ability to perform as intended.

Localities that have already completed the Assessment of Fair Housing process, using the Local Government Tool, have benefited greatly. They have gained clear, meaningful fair housing goals that expand housing choice, address discrimination, and promote fair community investments, as identified and prioritized by the communities themselves. See *Justin Steil and Nicholas Kelly, The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance*.¹ Grantees have also benefited from broader community participation and input, including from a range of groups that the Fair Housing Act is designed to protect. See *Comment Letter of the Furman Center at NYU*.² Until its suspension, the AFH process also was yielding significant opportunities for public housing authorities to collaborate with local governments, and for local governments to collaborate together in examining their fair housing issues and solutions at both the local and regional levels.

The Assessment Tool, along with HUD reviews and past technical assistance efforts, has ensured that communities take this fair housing obligation seriously and that the goals they commit to are specific and meaningful, advance fair housing principles, and reflect the actual needs of the locality and region. For example, the “pass-back” process and other individualized feedback has been an important means of HUD oversight of participants that had failed to follow the Tool’s prompts to generate meaningful goals with metrics, requiring those participants to do better. In other instances, the HUD review process, aided by the consistent Assessment Tool format and its

level of detail, has enabled program participants to avoid employing policies that are inconsistent with their own fair housing obligations.

These benefits are now lost to the majority of communities. The longer the AFH process is suspended, the longer many of these places go without addressing severe fair housing issues. Extensive documentation has shown that the Analysis of Impediments process is deeply inadequate as an alternative. See, e.g., *Reforming HUD's Regulations, The Opportunity Agenda*; *Hannah-Jones, Nikole, Living Apart: How the Government Betrayed a Landmark Civil Rights Law*; *GAO-10-905, Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans* (2010).³ Further, those communities that have already undergone the process risk losing the benefits of the cycle of accountability that it is intended to create, because progress on their goal commitments and fair housing issues now will not be evaluated within future Assessments in a timely manner as long as the suspension continues.

The results of continuing housing discrimination and segregation have a deep cost both to society, as well as to individual dignity, security, and opportunity. For instance, over the past several decades, increasingly compelling social science research has documented the harms faced by low income families, particularly children, who grow up in high poverty, segregated neighborhoods.⁴ These include health impacts such as heightened risk of severe asthma, increased exposure to lead and airborne toxic chemicals, increased exposure to neighborhood violence, fears for personal safety, and other triggers of toxic stress.⁵ Children in high poverty neighborhoods are more likely to attend an under-resourced and under-performing school that also has a disproportionate concentration of low income children, which further hampers learning.⁶ Economic segregation is also related to income and wealth inequality, and constraints on upward social mobility.⁷ The cumulative effects of exposure to high poverty environments are intergenerational, passing on inherited disadvantage from parent to child.⁸ The AFFH rule helps local jurisdictions address these ongoing harms through a step by step analysis that leads to meaningful goals for both community reinvestment and housing integration.

Despite this evident toll and its legislative mandate, HUD is currently failing to affirmatively further fair housing through its funding administration. Although this has been the case for decades, HUD has more recently and fully documented its own failures, in a manner that makes clear the systemic nature and consequences of those failures has been made abundantly clear. Yet HUD is now actively turning away from a system that has been working to further fair housing, and reinstating a system it well knows fails to do so. This means that HUD funding is continuing to support housing policies that fail to break from segregative patterns, and in many cases reinforce them. See *Jones, Living Apart*, supra.

AFFH Guidance and Technical Assistance

The AFH process and Assessment Tool have worked effectively for the communities that have used them. We encourage HUD to build on the early successes and learning opportunities of the initial AFHs, as well as to better deploy the technical assistance resources it has available or has already developed.

For example, HUD should undertake the following steps:

- Publicly post completed Assessments of Fair Housing online for review and reference by participants embarking on the process, as well as by community groups;
- Complete and release guidance documents that it has already substantially generated, such as the “Contributing Factors” overviews;
- Reinstate and adequately staff the Ask-A-Question Portal;
- Reinstate its regional trainings;
- Make publicly available non-acceptance letters, and notify participants of common reasons for non-acceptance, including the failure to include specific goals with metrics that are supported by the AFH analysis;
- Make publicly available the “Technical Guidance” documents developed to accompany non-acceptance letters;
- Issue user-friendly guides to best practices in the use of local data and knowledge, or aid in publicizing the guide already developed by the Urban Institute [cite];
- Issue a single user-friendly guide regarding the AFFH Data and Mapping Tool that both explains functionality and features of the Mapping Tool while also incorporating concepts currently outlined in the AFFH Data Documentation.
- Ensure that the Data Tool is regularly updated and technical issues are regularly addressed.

All of these measures are appropriately undertaken with the Assessment Tool and AFH process intact, and moving forward on schedule. Furthermore, they would enable HUD and its participants to build upon the learning experiences and examples of prior submitters and community members, and HUD’s own initial investments in guidance, in keeping with the regulation.

For all the reasons above, we urge HUD to immediately restore operation of the AFFH rule and use of the Local Government Assessment Tool, and to provide necessary aid and oversight to its participants through adequate technical assistance and AFH reviews.

Sincerely,

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¹ Available at http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/research/Steil_Kelly_Fairest_of_them_All.pdf

² Available at <https://www.regulations.gov/document?D=HUD-2018-0001-0036> (last visited Apr. 26, 2018).

³ The Opportunity Agenda, Reforming HUD's Regulations to Affirmatively Further Fair Housing, available at <https://opportunityagenda.org/explore/resources-publications/reforming-huds-regulations-affirmatively-further-fair-housing>; Hannah-Jones, Nikole, Living Apart (Pro Publica), available at <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law>.

⁴ For reviews of these studies, see Duncan, Greg J. and Stephen W. Raudenbush. 1999. "Assessing the Effects of Context in Studies of Child and Youth Development." *Educational Psychologist* 34(1):29–41; Durlauf, Steven N. 2004. "Neighborhood Effects." *Handbook of Regional and Urban Economics* 4:2173–2242; Ellen, Ingrid Gould and Margery Austin Turner. 1997. "Does Neighborhood Matter? Assessing Recent Evidence." *Housing Policy Debate* 8(4):833–66; Jencks, Christopher and Susan E. Mayer. 1990. "The Social Consequences of Growing Up in a Poor Neighborhood." Pp. 111–86 in *Inner-City Poverty in the United States*, edited by L. E. Lynne and M. G. H. McCreary. Washington, DC: National Academy Press; Leventhal, Tama and Jeanne Brooks-Gunn. 2000. "The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes." *Psychological Bulletin* 126:309–37; Mayer, Susan E. and Christopher Jencks. 1989. "Growing up in Poor Neighborhoods: How Much Does It Matter?" *Science* 143:1441–45; Pebley, Anne R. and Narayan Sastry. 2004. "Neighborhoods, Poverty, and Children's Well-Being." Pp. 119–45 in *Social Inequality*, edited by K. M. Neckerman. New York: Russell Sage Foundation; Sampson, Robert J., Jeffrey D. Morenoff, and Thomas GannonRowley. 2002. "Assessing 'Neighborhood Effects': Social Processes and New Directions in Research." *Annual Review of Sociology* 28:443–78; Sharkey, Patrick and Jacob W. Faber. 2014. "Where, When, Why, and for Whom Do Residential Contexts Matter? Moving Away from the Dichotomous Understanding of Neighborhood Effects." *Annual Review of Sociology* 40:559–79; Hahn, Robert A., "Racial and Ethnic Residential Segregation as a Root Social Determinant of Public Health and Health Inequity: A Persistent Public Health Challenge in the United States," *Poverty & Race* (April-June 2017), available at <http://www.prrac.org/newsletters/aprmayjun2017.pdf>.

⁵ Sampson, Robert J. and Alix S. Winter. 2016. "The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995-2013." *Du Bois Review* 13(2):261-283; Winter, Alix S. and Robert J. Sampson. 2017. "From Lead Exposure in Early Childhood to Adolescent Health: A Chicago Birth Cohort." *American Journal of Public Health* 107(9):1496-1501; Sharkey, Patrick. 2010. "The Acute Effect of Local Homicides on Children's Cognitive Performance." *Proceedings of the National Academy of Sciences of the United States of America* 107(26):11733–38; See generally David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 *Pub. Health Reps.* 404, 409 (2001), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf; see also Hahn, Robert A., *Ibid.*

⁶ Mickelson, R. A. (2008). Twenty-first century social science research on school diversity and educational outcomes. *Ohio State Law Journal*, 69, 1173–1228; Schwartz, Heather (2010), "Housing Policy is School Policy," The Century Foundation, www.tcf.org/assets/downloads/tcf-Schwartz_Deng_Lan_2007.pdf; Deng, Lan. 2007. "Comparing the Effects of Housing Vouchers and Low-Income Housing Tax Credits on Neighborhood Integration and School Quality." *Journal of Planning Education and Research* 27:20–35; Horn, Keren Mertens, Ingrid Gould Ellen, and Amy Ellen Schwartz. 2014. "Do Housing Choice Voucher Holders Live Near Good Schools?" *Journal of Housing Economics* 23:28–40; DeLuca, Stefanie and Peter Rosenblatt. 2011. "Increasing Access to High Performing Schools in an Assisted Housing Voucher Program." Pp. 35–43 in *Finding Common Ground: Coordinating Housing and Education Policy to Promote Integration*, edited by P. Tegeler. Washington, DC: Poverty & Race Research Action Council (2011).

⁷ Reardon, Sean F. and Kendra Bischoff. 2011. "Income Inequality and Income Segregation." *American Journal of Sociology* 116(4):1092-1153; Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. 2014. "Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States." *The Quarterly Journal of Economics* 129(4):1553-1623; Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," *The Equality of Opportunity Project* (2014), www.equality-of-opportunity.org/images/mto_paper.pdf.

⁸ Sharkey, Patrick and Felix Elwert. 2011. "The Legacy of Disadvantage: Multigenerational Neighborhood Effects on Cognitive Ability" *American Journal of Sociology* 116(6):1934-1981; Sharkey, Patrick, *Stuck in Place* (2013).