

Secretary Julian Castro
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

November 25, 2014

Re: Comments on Affirmatively Furthering Fair Housing Assessment Tool,
Docket No. FR-5173-N-02

Dear Secretary Castro,

We write to comment on the proposed Fair Housing Assessment Tool pursuant to the HUD Notice of September 26, 2014, published in the Federal Register at 79 FR 57949 – 55.

The signatories hereto provided comments to the July 19, 2013 publication of the AFFH proposed rule supporting the replacement of the Analysis of Impediments with the Assessment of Fair Housing and the clarity it can bring to the process as well as the extension of community participation into the development of the AFH. As leading fair housing and community development organizations in New Jersey, we support the implementation of the AFFH rule and a “both and” approach to providing fair housing choice in areas that historically have not had opportunities for many low-income people, people of color, people with disabilities, and other protected classes, and to addressing issues of gentrification and revitalization in neighborhoods that have racially concentrated areas of poverty.

We comment here, specifically, on two areas: the Community Participation Process portion of the Tool and the lack of a requirement that participants address concrete actions in response to the Assessment.

Section III: Community Participation Process, of the Assessment Tool, presents an important opportunity for participant jurisdictions to understand and describe how well they engaged their constituent communities and whether they were open to and successful in integrating community input into the AFH and ultimately into consolidated plan implementation. The September 26, 2014 Notice recognizes the importance this component in the development of the AFH. See: Section III (79 FR 57952-3,) and Specific solicitation of public comment (79 FR 57953).

While Section III of the Tool requests general information about engagement and integration, it does not require sufficient participant disclosure or self-evaluation. This is particularly important in light of the enhanced emphasis on fair housing contained in the July 19, 2013 Proposed Rule. (78 FR 43710).

Specifically, the July 19, 2013 Proposed Rule, would modify existing rules by requiring community participation not only in the preparation of the consolidated plan, but also in the preparation of the AFH. The Proposed Rule would require program participants to “consult with the agencies and organizations identified in consultation requirements at 24 CFR part 91 (specifically, 24 CFR 91.100, 91.110, 91.235, 91.401).” Section 91.100, which applies to local government participants, at (a) (1) General and (c) Public Housing, newly applies such consultation to the preparation of the AFH. The section also contains an entirely new paragraph (e) Affirmatively furthering fair housing, that contains a long, descriptive and non-exclusive list of fair housing organizations that must be consulted and concludes that “the jurisdiction will consult with the organizations described in this paragraph (e) in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.” (78 FR 43735) Similarly, Section 91.110, which applies to State participants, contains the same new inclusion of community consultation for the AFH generally and with respect to Public Housing Authorities ((a) and (a)(1)) and contains a new (a)(2) that specifically addresses consultation with fair housing organizations; concluding, verbatim, with the requirement that the AFH “inform” the consolidated plan. (78 FR 43736-7)

To effectuate this community engagement in the AFH the Proposed Rule also requires that participant jurisdictions amend their Citizens Participation Plans to make such plans applicable in the development of their AFH, just as they have been in the development of the consolidated plan itself. (See: 24 CFR 91.105 for local governments and 91.115 for State governments.) (78 FR 43735 and 43737 respectively).

This enhanced emphasis on fair housing and its integration into the AFH development will ensure that the public has a full opportunity to participate in the AFH process, which too often has not fully included the voices of community groups, community development corporations, fair housing organizations, civil rights leaders, and other key stakeholders.

To provide the community with the tools to effectively engage in AFH development, it is critical that the public has access to the data, maps and other foundation materials used by the participant jurisdiction to prepare its draft Assessment. The Tool should require in Section III, that participants include, as an appendix, a list of all such materials and confirm that they were made available not only on-line, but, for communities without adequate electronic access, or persons with special needs or disabilities, in forms accessible and usable by all interested parties.

We suggest that the Assessment Tool require participants to specify how they have complied with the specific demands of these regulations. The tool should:

- provide participants with lists of entity types with which they are required to consult under each regulatory paragraph;
- require that they specify what outreach was conducted for each, whether the invitation was accepted and the outcome of any resulting consultation/participation;
- state what activities they engaged in pursuant to their amended Citizen Participation Plan;
- require that they make publicly available unedited copies of all comments or views received in response to the community participation process, as well as minutes of all public meetings.

A requirement that participants describe in detail the implementation of these new responsibilities will go a long way to building new awareness and supporting compliance. Not only will such a specific set of inquiries inform HUD of the level of compliance, but it will help community members, advocates and other local actors better understand and address the level and depth of the jurisdiction's incorporation of non-governmental contributions.

Section V. Fair Housing Goals and Priorities properly invites participants to evaluate the influence of determinants on housing discrimination and to envision, under the concept of 'goals', what the reality of Affirmatively Furthering Fair Housing would mean for the jurisdiction.

The Section starkly omits, however, a road map between the two. And, indeed, the September 26, 2014 Solicitation of Comment states specifically, that: "actions and funding decisions are not a requirement of this section" (79 FR 57954). For too long, fair housing advocates and those living under the heavy hand of discrimination have been offered the showcase of public participation as a palliative alternative to real change. If the Department is serious in its efforts to inject constructive, thoughtful and engaged community participation into the AFH process, it is imperative that the Tool contain a Section VI, that draws the lines that makes a set of dots into that map.

There must be a place in the Tool that requires applicants state the concrete steps that are needed and that they intend to take, the responsible entity or agency and timelines and milestones for such steps, to move from the recognition of the impact of a determinant, to the removal of barriers and the affirmative creation of fair housing and community integration.

Without the possibility that the process will lead to actual, defined and appropriate behavior by participant jurisdictions, the invitation to the community to engage will likely draw little, if any, participation. Community leaders face many issues and many forums to participate and it will be hard to motivate such participation in this process if not linked to a clear path to change. The potential for concrete action and results will draw the community into the process and is critical for its success.

While one could argue that the creation of actions, timelines and milestones are elements of the consolidated plan, these components will be much more easily and effectively incorporated into such plan if the Tool requires that they be developed as part of the AFH and then incorporated into the consolidated plan. The consolidated plan process involves, rightly, a wide range of concerns and so often fair housing issues get short shrift; a process more tailored to addressing those issues is a stronger forum for action steps.

Each of the signatories to these comments have participating in submitting other broader comments in collaboration with other organizations, and join these comments to specifically address the two issues raised herein.

Thank you for your consideration of our comments. We would welcome the opportunity to discuss these suggestions with you.

Very truly yours,

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