

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

November 17, 2014

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

To Whom It May Concern:

The Lawyers' Committee for Civil Rights Under Law writes to submit our comments regarding the notice published by the U.S. Department of Housing and Urban Development (HUD) on September 26, 2014 (79 Fed. Reg. 57949), which unveiled the Affirmatively Furthering Fair Housing (AFFH) Assessment Tool. The Lawyers' Committee was formed over 50 years ago at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and has been heavily involved in the struggle for fair housing and equal access to community assets. In addition there are eight affiliates of the Lawyers' Committee around the country, and three affiliates which operate fair housing programs join these comments.

Initially, the Lawyers' Committee has joined in the in-depth comments submitted on behalf of a coalition of civil rights and fair housing groups by the Poverty & Race Research Action Council on November 4th. We write separately to highlight several issues that are high priorities for the Lawyers' Committee.

We commend HUD on the release of the Assessment Tool, which municipalities and public housing authorities (PHAs) that are collaborating with municipalities will use to complete their Assessments of Fair Housings (AFHs), and strongly support its use as a replacement for the Analysis of Impediments to Fair Housing Choice (AI). Additionally, we urge HUD to act quickly to finalize its Proposed Rule on Affirmatively Furthering Fair Housing, which the department published on July 19, 2013 (78 Fed. Reg. 43710). The Assessment Tool will dramatically enhance the quality and the consistency of municipal fair housing planning across the country. In particular, the Assessment Tool provides a strong foundation for analyzing residential segregation and implementing strategies to promote integration. The following features are especially laudable and should be retained in the final version of the tool:

- The Assessment Tool requires jurisdictions to analyze the effect of federal housing expenditures on residential segregation on a program-by-program basis. This level of granularity is necessary to provide a basis for truly effective corrective actions.
- The sample maps and data tables that HUD released with the Assessment Tool capture much, though not all, of the most important demographic information that is needed to engage in thoughtful, comprehensive fair housing planning.

- The Assessment Tool includes questions (and corresponding data) relating to several of the issues that frequently intersect with housing choice to limit or expand opportunity for members of protected classes. These factors include access to quality schools, job opportunities, public transportation, and environmental quality.
- In the Disability and Access section, the Assessment Tool rightly prioritizes discussion of community integration for persons with disabilities. This emphasis reinforces HUD's efforts to align its activities and policies in this area with those of the Department of Justice and the Department of Health & Human Services.

HUD has the opportunity to build on these strengths as it works to finalize the Assessment Tool. While we believe the proposed Assessment Tool provides an excellent vehicle for preparing an Assessment of Fair Housing, there are several points on which we believe it could be clearer and more robust. In addition to the recommendations in the November 4th coalition letter, we recommend that HUD adopt the following recommendations as it moves to finalize the Proposed Rule and the Assessment Tool.

I. Require Strong Action Steps:

The Assessment Tool must require jurisdictions to propose concrete action steps to address the identified barriers to equal opportunity housing and set forth specific examples. If specific action steps are not designated until preparation of the Consolidated Plan, critical stakeholders will face a more substantial burden when they attempt to influence the content of AFHs and ensure accountability and transparency. Many groups do not have the capacity to provide input during both processes.

II. Strengthen the Community Participation Process Section:

In its Proposed Rule, HUD sent a strong signal that the department expects robust community engagement to inform the fair housing planning process. However, that welcome focus is not evident in the Assessment Tool. Initially, we fully agree with the in depth recommendations in the November 4th coalition letter designed to strengthen the Community Participation Process section of the Tool. We add our own comments about this section to reflect the crucial importance of community participation to the AFH process and the need for the Tool to reflect this importance.

Particularly important in our judgment is (1) a requirement in the Tool that jurisdictions attach evidence of community input – including but not limited to comment letters and transcripts of comments at public hearings – to their AFHs in an appendix; (2) to the extent that responses to Question B reveal that public participation efforts were not successful, HUD should require jurisdictions to take supplemental actions to increase community engagement; and (3) the description of outreach activities should specifically require documentation of attempts to solicit the input of fair housing organizations and organizations that represent people with disabilities, and racial and ethnic groups in the community .

III. Provide More Detailed Examples to Guide Analysis:

The November 4th coalition letter includes an extensive list of common additional determinants that the Assessment Tool should include. We would add to this recommendation that HUD should provide more detailed examples of the types of issues jurisdictions must address in their analysis of determinants. One example of this need may be found in Part 3 of the Disability and Access section, where the Assessment Tool does not state which types of “state or local programs, laws, policies, or practices” affect community integration for persons with disabilities. Since local housing and community development officials are particularly unlikely to have experience implementing *Olmstead* plans, the need for HUD to list types of relevant policies is clear. For that question, examples of policies that promote community integration could include the administration of state or locally-funded tenant-based rental assistance programs, applying for Section 811 Project Rental Assistance, special population preferences for the Housing Choice Voucher program, ordinances banning discrimination on the basis of source of income, and coordination with relevant state and local agencies. Examples of policies that discourage community integration could include inadequate Medicaid services, policies that restrict the supply of affordable housing generally (particularly housing with rents that are under Fair Market Rents for the HCV program), policies that condition eligibility for housing on the receipt of supportive services, and policies that incentivize the development or rehabilitation of segregated settings.

IV. Explicitly Require Discussion of Gentrification and Displacement:

As noted in the November 4th coalition letter, the Assessment Tool does not explicitly address the fair housing implications of gentrification that result in the displacement of low-income residents. Particularly in strong real estate markets, the influx of relatively affluent households into formerly distressed inner-city neighborhoods presents an opportunity to promote residential integration. Unfortunately, all too often that opportunity is being squandered as affordable housing stock is lost and resegregation, rather than integration, results.

Accordingly, we emphasize the importance of addressing this issue in the Tool. Municipalities can most effectively address this difficult phenomenon if they explicitly acknowledge its existence, rather than only discussing it in the oblique terms of question 2.g. of the Segregation/Integration and R/ECAPs section of the Assessment Tool.

V. Provide Additional Segregation Data and Allow for Easier Analysis of Maps:

The HUD-provided tables that accompany the Assessment Tool include one segregation index but do not include other helpful measures that are commonly used by social scientists. The Dissimilarity Index is a valuable tool, but it has real limitations, particularly in small or rural communities. At a minimum, HUD should also provide jurisdictions with Exposure Index data, which shows the percentage of the population of the typical Census Tract inhabited by members of one group (such as African Americans) that is comprised of members of another group (such as non-Latino whites). The Exposure Index is a critical tool for putting demographic changes into proper context. The methodology behind the Exposure Index is closely related to that of the Isolation Index, which HUD included in its Data Documentation for the Proposed Rule.

Additionally, it is critical that the data underlying HUD’s dot maps be made available in other forms. Although dot maps can be effective tools for telling a vivid story about segregated

conditions or disparities in access to community assets, they are more difficult to interpret objectively than data tables or shaded maps. HUD's attempts to overlay dots on top of shaded maps are particularly problematic in urban areas where dots may make it difficult to see the underlying shading.

The Lawyers' Committee and its affiliates thank HUD for the opportunity to submit these comments. By addressing the areas of concern identified in this letter and the November 4th coalition letter and moving expeditiously to finalize the Proposed Rule, HUD can make great strides toward fulfilling the Fair Housing Act's goals of open, inclusive communities and equal opportunity for all.

Respectfully submitted,

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