

Regulations Division
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United States Department of Housing
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Washington, DC 20410-0500

Via regulations.gov (<http://www.regulations.gov/#!submitComment;D=HUD-2014-0080-0001>)

November 25, 2014

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

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Texas Appleseed promotes social and economic justice for all Texans by identifying practical solutions that create systemic change on broad-based issues of social equity, from juvenile justice reform to fair housing.

The Texas Low income Housing Information Service (TxLIHIS), a non-profit corporation, has worked in Texas for over twenty-five years with community leaders in neighborhoods of people of color living with low-incomes to achieve affordable, fair housing and open communities. We conduct research assist communities to develop, organize and advocate for solutions to improve housing and community development. Citizen engagement, civil rights enforcement and fair housing are at the center of our work.

TxLIHIS and Texas Appleseed write to offer our comments on the proposed Affirmatively Furthering Fair Housing (AFFH) Assessment Tool, published for comment at 79 Fed. Reg. 57949 (Friday, September 26, 2014). The Assessment Tool is an important step forward in the implementation of the final AFFH rule, and will provide the clear guidance that jurisdictions need to conduct meaningful assessments of their barriers to fair housing and equal opportunity, in a way that reduces their administrative and regulatory burden and establishes baseline metrics.

Our organizations have worked closely with state, regional, and local jurisdictions on AFFH, and we believe Texas can be a source of information relevant to the implementation of the proposed rule and Assessment Tool because the fair housing requirements specified by our Conciliation Agreement with the State related to the administration of \$3 billion in Community Development Block Grant funds for disaster recovery has required jurisdictions to grapple with the concepts and data include in the proposed rule and Assessment Tool. Our comments include a number of examples drawn from Texas. We want to emphasize that these examples are not included because we believe Texas has a uniquely egregious set of fair housing issues,

everything being bigger here notwithstanding, but because the issues we see in Texas are widely applicable examples of issues common to jurisdictions across the United States.

Texas Appleseed and TxLIHIS support many features of the proposed Assessment Tool, but we take this opportunity to provide comments on ways to clarify and strengthen it as well.

Responses to Specific Questions Raised in the Notice

Local data and local knowledge (57951)

We strongly support the required inclusion of existing local data and local knowledge, including data and knowledge gained through the community participation process, in the Assessment. In addition to the fact that highly relevant data, such as local crime statistics, school quality data, and information on environmental hazards, is not available in a nationally uniform way, the inclusion of local knowledge ensures that conditions, policies, and data that might otherwise be overlooked can be incorporated into the analysis.

We do have some concerns about what HUD considers “readily” or “reasonably available.” (The inclusion of a list of this type of data would be helpful, and studies conducted by academic institutions should be included on this list.) At 79 Fed. Reg. 57955, HUD states that available local data “refers to data already publicly available and reasonably easy to access.” This implied definition is overly vague and may exclude highly relevant data with a severe disproportionate impact on members of protected classes. We urge HUD to be mindful that the jurisdictions using this tool will not be small rural communities, they will be larger cities and counties with professional staff who can be expected to have a certain level of competence with data and information relevant to planning. If the data is available to the jurisdiction, and reasonably easy to access for a planning professional, it should be considered the kind of local data that the jurisdiction is expected to access and include in its analysis.

We also note that the lack of data collection, or of easy access to certain data can be in itself a barrier to fair housing and compliant planning.

The preamble to the Assessment Tool states that, “if HUD finds that an AFH analysis is materially inconsistent with data readily available and relevant to one or more questions in the Assessment Tool, or if priorities or goals are found to be materially inconsistent with available local data or local knowledge, HUD may find the AFH to be substantially incomplete and therefore unacceptable.” This is necessary and appropriate. Jurisdictions cannot simply ignore relevant local data or knowledge; their long history of doing so to the detriment of members of protected classes and the creation of diverse and inclusive communities is the reason this proposed Assessment Tool is so needed.

Assessment Tool

Community Participation Process (57951-57192)

The importance of a robust and inclusive community participation process to the AFH cannot be overstated. In addition to the siloing of fair housing from other funding and planning decisions, too often these decisions are also removed from the communities they affect and from the historical context in which they are being made. The public participation process can provide jurisdictions with deep local knowledge of neighborhood inequities and the impact of policies and practices that maybe otherwise difficult to access, and point them towards relevant data. However, conducting a process that obtains these results will require more of jurisdictions than the standard public notice and comment process.

HUD should clarify what it means by “outreach activities.” The traditional public hearing process is not sufficient for this AFFH assessment, and any description of outreach that includes only publishing notice and holding meetings should be regarded by HUD as insufficient to support a certification that the assessment fulfills the requirements at 24 CFR §§ 5.150-5.164. This is particularly critical because the Assessment Tool relies on local data and knowledge. Jurisdictions must make specific contact with, and solicit participation from “members of the public, non-profit and other private organizations, and other governmental agencies”¹ with relevant knowledge and information, including community organizations, groups that are made up of or represent members of protected classes, civil rights and fair housing organizations, advocates, social services and governmental agencies that address the needs of members of protected classes, and organizations and agencies that deal with the community assets (education, transportation, employment, health care, infrastructure, etc.) and adverse community factors (public safety, code compliance, environmental, etc.) that are critical determinants of fair housing and equal opportunity. We also encourage HUD to include private sector stakeholders like developers and mortgage lenders in the public participation process.

HUD should encourage jurisdictions to have multiple departments (housing, public works, code compliance, etc.) involved in the outreach process in order to reduce siloing and ensure that the relevant departments can hear directly from communities and members of the public about conditions and needs.

Obtaining the kind of public input and participation envisioned by the proposed AFFH rule will also require more deliberate and thoughtful approach to sharing information. Jurisdictions must ensure that the public has meaningful access to relevant information, including HUD-provided data and local data. Some of the most relevant stakeholders in this process, for example, will not necessarily have access to the internet in a manner that makes geospatial data presentation easy to view or long and detailed documents easy to read.

HUD should also clarify its metrics for success in eliciting public participation. Volume and

¹ 79 Fed. Reg. 57949, 57952.

quality of participation are only baseline metrics, success in this context must mean that participation was obtained from all affected groups and on as many as possible of the relevant topics. While it should go without saying that the public engagement process must be accessible for persons with limited English proficiency (LEP) and persons with disabilities, the steps a jurisdiction has taken in order to conduct an accessible process should be included in this section.

In order to promote citizen participation, input should be sought through a variety of formats such as work groups, semi formal meetings, and public hearings before a governing body with one hearing covering local data, knowledge, and issues and after preparing the plan a second hearing on the draft AFH document with a thirty-day written comment period. Opportunities for participation should be offered at a variety of times, including in the evening, and places, including in locations within the community. The schedule of opportunities for citizen participation, including the schedule of the thirty-day period for written comments, should be made available to the public and included in the AFH document.

We agree that all comments received must be summarized, that the reasons why a particular comment was not accepted must be included, and that comments should be included and available to the public.

A. Local data. We agree with encouraging local jurisdictions to incorporate local data in their AFH. We support further requirements to assure that local data is fully utilized such as listing possible sources of local data in the Tool and requiring local governments to explain why they did not include particular local sources.

Analysis (57954-57954)

We agree that this section needs the additional instructions and guidance HUD indicates it will be providing in the proposed Assessment Tool. HUD asks if it should provide guidelines for identifying local determinants. Since local governments will have a tendency to not see the determinants at work behind the data that they analyze, we support HUD's suggestion to overcome this tendency, by including a list of fair housing issues and determinants, and questions to help local governments identify determinants within the Assessment Tool. as well as questions to help local governments identify determinants

We support the use of commonly used neighborhood or area names in addition to census tract numbers, and believe this will substantially increase the level of public participation by making the data and information more accessible to the public – particularly to residents of specific neighborhoods.

The Assessment Tool's requirement that the geographical assessment be "broader than the jurisdictional level because fair housing issues are often not constrained by political-geographic boundaries" is critical to producing a meaningful analysis of fair housing issues and determinants. In Southeast Texas, segregated housing patterns exist both within major cities and

between virtually all white smaller cities adjacent to or near the larger cities of Beaumont, Port Arthur and Orange. For example, the City of Port Arthur is a majority minority city (40% African-American, 30% Hispanic, 6% Asian) surrounded by white bedroom communities like the City of Groves (2% African-American), Bridge City (0% African-American), and Nederland (0% African-American.) And AFH that looked solely at demographics within one of these jurisdictions would not provide an accurate picture of fair housing issues and determinants, or allow for the selection of meaningful action steps to increase fair housing and equal opportunity.

A. Demographic Summary

The R/E-CAP lens defines concentration at half or more of a census tract or 20% more than the jurisdiction-wide percentage. We believe, that while definitely useful, local communities would also benefit from data and maps of extremely low income MFI as well as mapping of affluent census tracts or areas. We note that some analysts of poverty concentration find that poverty in excess of 40% constitutes a concentration while a poverty level below 20% does not have not have an adverse effect on a census tract.² Thus we recommend adding 20%, 40%, and 200% of poverty concentrations.

B. Segregation/Integration and R/ECAPs

1. Dissimilarity Index

We were disappointed to see that the additional indices, especially the race and income index, presented in HUD's "Data Documentation" are not included in the Assessment Tool. Use of the dissimilarity index alone is not enough to provide a full understanding of residential segregation patterns in a community and region.. Returning to the example of Southeast Texas in the previous section of our comments, the dissimilarity index for individual jurisdictions would be low, but because these jurisdictions are largely monoracial, not because they are integrated. Given the residential patterns that segregation and housing discrimination have produced – majority minority urban areas surrounded by predominantly white suburbs, or all white cities bordered by African-American enclaves (common in North Texas, for example) – using the dissimilarity index alone will severely distort the picture of segregation and integration the AFH should produce. The Assessment Tool must include indices, for example the exposure index, in addition to the dissimilarity index that will produce an accurate analysis of residential segregation and a full picture of fair housing issues.

We support inclusion of the race and income index for its ability to highlight where actual levels of diversity out-perform or under-perform predicted levels and thus where particular actions might be directed

2. Geographic Analysis

² The Costs of Concentrated Poverty: Neighborhood Property Markets and the Dynamics of Decline." In Nicolas P. Retsinas and Eric S. Belsky, eds., *Revisiting Rental Housing: Policies, Programs, and Priorities*. Washington, DC: Brookings Institution, 116-9.

. HUD-provided data could include a summary of federal actions that have perpetuated segregated housing patterns for persons in protected classes under the Fair Housing Act which would also present a model for local analysis.

5. Determinants of Segregation/R/ECAPs

Past practices in the form of restrictive covenants, redlining, segregated zoning, segregated public housing designations, segregated schools, and other public policies remain determinants of where persons who are members of protected classes live. It is critical that these discriminatory practices be identified so that people can readily see the ongoing effect of these practices. HUD could possibly provide records of relevant federal practices such as acceptance of redlined under-writing criteria.

There are several additional determinants to list for local jurisdictions:

- School catchment zones and school proficiency
- Crime rates
- Unequal maintenance of housing, unequal enforcement of code compliance
- Unequal maintenance of public assets (schools, flood control, parks and recreational facilities, other public infrastructure)
- Environmentally hazardous operations near residential areas
- Discriminatory real estate practices (redlining, steering, refusal to rent or sell, handling foreclosed property in manner so as set off more foreclosures in the area)
- Lack of affordable housing stock
- Concentration of publicly supported housing in limited areas of jurisdiction (see below)
- Denial of zoning or other local approvals for multi-family development
- Private sector disinvestment
- Factors associated with gentrification such as displacement
- Other (local governments may find other determinants to include)

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It would also be helpful to include a general statement in this section of the Assessment Tool that determinants of segregation may differ depending on local context and provide further examples in program guidance.

Project level data (57953)

We strongly agree with HUD that “the assessment of the impact of project siting and project occupancy of publically supported housing is critical to an assessment of segregations, racially and ethnically concentrated areas of poverty and their determinants.” (57952) It is crucial for each jurisdiction completing an AFH to assess the cumulative impacts of multiple assisted housing programs, including LIHTC developments and any PHA-administered programs in the region, as well as any state or locally supported housing programs, in both the jurisdiction itself and the larger region. Whether or not an entitlement jurisdiction is submitting an AFH with its local PHA, the jurisdiction must be required to report on PHA-run programs as well as on the housing assistance programs it administers directly and the broader distribution of federally

assisted housing programs in the region. Particularly given the multiple sources of financing that go into the development of most affordable housing, there are rarely hard lines between PHA programs and other assisted housing programs. This data is readily available and does not create an administrative burden for jurisdictions.

Jurisdictions should also be required to include analysis of state and local publicly supported housing programs, for example, density bonuses and fair-share requirements.

We support HUD's having separated the discussion of publicly supported housing from the discussion of other determinants. The government role in funding, siting, and maintaining this portion of the housing stock, is a unique role with a high level of control over policy and funding decisions.

The language in the Notice which reads “[a]ddressing segregation and R/E-CAPs requires a balanced approach that not only increases housing opportunities in integrated areas but also promotes integration by broadening housing opportunities in segregated areas and encourages resident mobility” is important language that should be emphasized. The term “segregated areas” does not apply only to areas where the population is predominantly minority, but to areas where the population is largely or exclusively white, which are often extremely high opportunity areas. The goal of the Fair Housing Act is to promote integration, not merely to increase it in already integrated areas.

We support the majority of this section of the Assessment Tool as drafted, but recommend the following additions:

6. Publicly Supported Housing Patterns: Both the demographics and location of publicly supported housing are important to this analysis and to determining whether future siting decisions AFFH.

In Houston, for example:

- Fifteen out of 20 public housing developments have populations that are over 70% African-American: 8 have populations that are 90% or more African-American.
- Three out of 6 LIHTC developments are more than 70% Black: the only development in a higher income majority white non-Hispanic census tract is 83% White, 16% Hispanic, and 1% African-American.
- 48% of public housing units (2632) are located in census tracts that have concentrations of Hispanic residents greater than the City as a whole.
- 70% of public housing units (3827) are located in census tracts that have concentrations of African-American residents greater than the City as a whole.
- 57% of all public housing units (3123) are located in census tracts where the MFI is less than 50% of the AMFI for the Houston MSA.
- Only 9% of public housing units (496) are located in a census tract where the MFI is more than 80% of the AMFI for the Houston MSA.

The Houston Housing Authority must make future siting decisions, and even preservation

decisions, in a way that decreases these concentrations and provides housing options outside these census tracts. Additional investment in the census tracts in which its current portfolio is concentrated would perpetuate and reinforce segregation.

HUD should clarify that this analysis must include the region as well as the individual jurisdiction. As previously discussed, regional mobility may be one of the only ways to reduce segregation in areas with mono-racial communities.

The questions related to Map 6 should include questions about the breakdown of tenant-based versus project-based vouchers in patterns of HCV uses.

In addition to the proportion of HCVs used in and outside of R/ECAPs, jurisdictions should be required to evaluate the extent to which tenant-based HCV holders are successful in using their vouchers in neighborhoods zoned to attend schools performing in the top half and top decile in the most recently available school performance rankings, and to what extent project-based vouchers are located in high-performing school districts.

HUD should add “located outside of R/E-CAPS” to the end of question viii. HCV rents may be higher than market rents in LIHTC developments in R/ECAPS and other distressed neighborhoods.

7. Publicly Supported Housing and Mobility Policies

a. Publicly Supported Housing Policies

Add “affirmative marketing, tenant selection, and application and waitlist procedures, including the use of site-based waiting lists” to question i.

Jurisdictions should include the impact of requirements imposed on different types of publicly supported housing (e.g. additional notice requirements) in their answers to question ii.

b. Mobility Policies

The title of the section suggests that Housing Choice Vouchers and Housing Mobility programs are the same. We suggest renaming this section: “Housing Choice Voucher Administration and Housing Mobility Programs,” and rephrasing to separate marketing and admissions issues from issues that affect where voucher holders live.

The questions in this section should address the following by race/ethnicity, national origin, age, familial status, disability status, and household size:

- Payment standards, for both high rent and low rent areas
- Landlord and apartment listings, including the PHAs central registry and others
- Landlord recruitment
- Local preferences
- Portability between PHAs
- Presence or absence of mobility counseling and incentives; the PHAs and or external mobility programs

- The information on different neighborhoods and communities and their amenities presented to HCV holders and how that information is conveyed
- Type of assistance available to help HCV holders to move to higher opportunity neighborhoods (e.g. security deposit assistance or car access programs)
- Availability of post-move counseling and assistance
- Barriers to mobility and portability when HCV holders attempt to move to low poverty neighborhoods throughout the region
- HCV waiting list policies and preferences

9. Determinants of Segregation/R/E-CAPs related to Publicly Supported Housing Location and Occupancy

We recommend adding “including project-based vouchers” to the bullet on “Siting decisions for other publicly supported housing.”

We recommend adding “state and local laws, policies, procedures, and practices” (other than zoning and land use laws) to the list of factors. For example, notice and posting requirements related to possible sites, and policies that give NIMBY input disproportionate weight have a significant impact on where publicly supported housing is located.

HUD may wish to clarify that the factors “Siting decisions for Public Housing”, “Siting decisions for LIHTC housing”, and “Siting decisions for other publicly supported housing” include both historical and current siting decisions are determinants of segregation.

10. Determinants of Segregation/R/E-CAPs related to Mobility

The following should be added to the list of determinants in this section:

- Discrimination against families with vouchers
- Fair market rents (FMRs) and payment standards
- Difficulty in exercising voucher portability rights between PHAs
- Restrictions on voucher portability rights adopted by PHA
- Screening or rescreening of tenants
- Landlord and apartment listings provided by the PHA
- Racial/ethnic discrimination (which may be masked by source of income discrimination)
- Disability discrimination (which may be masked by source of income discrimination)
- Limited availability of rental units outside of RECAPs

Disproportionate Housing Needs (57953)

We are concerned that the language of subsection 2. Geographic Patterns, creates the impression that small geographic areas with the greatest housing needs should be the primary recipients of additional low income housing assistance at the expense of housing mobility and integrative housing opportunities in other areas. This is inconsistent with the requirements of 42 USC §3608, and would undermine the purposes of the AFFH Rule. This subsection should be moved to Section D, Subsection 2, Adverse Community Factors, or replaced with a more meaningful regional fair share analysis. Just because persons with greatest housing needs are concentrated

(often based on determinants of segregation) in specific areas does not mean that the need is for housing in those areas.

We believe that the Fair Housing Act and the AFFH obligation require HUD fund recipients to overcome historical underfunding and the failure to provide equal public services and facilities in low-income majority-minority neighborhoods by investing in the improvement of these neighborhoods through improved infrastructure, economic development, and connection to municipal services. However, HUD funds should only rarely and with careful, considered, and deliberate purpose be used to expand subsidized and/or assisted housing in existing high-poverty segregated neighborhoods. First, research shows that people of color typically prefer integration over segregation, especially under low-opportunity conditions. Second, the Fair Housing Act and AFFH obligations do not exist to facilitate any group's particular preference but, rather, to ensure non-discrimination, integration, and access to opportunity – conditions that do not exist in high poverty, racially segregated neighborhoods. HUD should require jurisdictions and PHAs to fully consider and demonstrate why integrative alternatives available to the jurisdictions, such as siting affordable housing at the juncture of existing majority and minority neighborhoods, and in high opportunity locations is not adopted instead. Housing preservation efforts should focus on sites with increasing access to opportunity. Many housing authorities, including those in Galveston, Texas and Beaumont, Texas, have historically sold off higher opportunity sites in less segregated areas and instead further concentrated assisted housing in high-poverty segregated neighborhoods which already had a disproportionate share of subsidized housing. We note, again, that the assumption that current residents, particularly renters, want to stay in a specific community is often unwarranted and frequently based on racial stereotypes like “African-Americans don't like to move away from their churches.”

Disparities in Access to Community Assets and Exposure to Adverse Community Factors (57953)

This section of the AFH is perhaps the most critical to a meaningful evaluation of fair housing issues and determinants. As the Notice states:

An assessment of asset-rich areas compared to those areas that lack access to key community assets is critical to informing a program participant's policy decisions. Addressing disparity in access and exposure to adverse conditions requires a balanced approach that not only provides for strategic investment in areas that lack key community assets or are exposed to adverse community factors, but also opens up housing opportunities in asset rich areas and provides for resident mobility.

Research on the impact of place continues to confirm that “where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.” 114 Cong. Rec. 2276–2707 (1968). Affirmatively furthering fair housing requires 1) promoting residential integration; 2) ensuring non-discrimination in housing choices; and 3) providing equal access to opportunity connected to

housing, including services and conditions.³ Determining whether a particular program activity or use of funds complies with the obligation to affirmatively further may require applying different criteria to different funding streams or program activities depending, for example, on whether housing or infrastructure investments are being considered.

As we note above, the circumstances under which the investment of additional housing funds in areas that lack access to key community assets does not perpetuate or increase segregation are rare. Conversely, the investment of infrastructure and other community development and non-housing dollars should be targeted to these same minority segregated - and often low-income - communities in order to redress inadequate and unequal access to opportunity and a history of discriminatory investment in community assets and services. Racially segregated communities were not only created and reinforced by de jure segregation and other discriminatory policies, they remain targets for discrimination and struggle with the legacy of past disinvestment and exclusion.⁴

This section represents a major and important clarification of HUD's approach to AFFH; to encourage residential integration and access to opportunity while at the same time seeking to equalize community resources and investment in communities that have been subject to segregation. In our experience, this is also an area in which jurisdictions are severely in need of clarity and guidance. First, we have dealt in our work with strong resistance from state and local jurisdictions to the ideas that federal housing and community development fund that are not spent specifically on housing programs are subject to the Fair Housing Act and the AFFH mandate, and that a jurisdiction's obligation to AFFH extends beyond how it spends HUD housing funds. Second, there is also strong resistance, from both public and private sector entities - including non-profits - to recognizing that investing affordable housing dollars in distressed neighborhoods does not constitute revitalization and often a violation of fair housing requirements.

There is also a lack of general public understanding that the Fair Housing Act applies to non-housing programs. Clarifying the scope of AFFH will help communities fit the neighborhood disparities that they are intimately aware of into a civil rights framework and elicit valuable local knowledge and increased public engagement.

This section of the AFH must include infrastructure metrics. The presence and condition of infrastructure (from adequate drainage to sidewalks) is a strong indicator of historical investment or disinvestment, and a precondition to meaningful revitalization and equalizing access to opportunity. Infrastructure also makes up, in many jurisdictions, the bulk of non-housing

³ See Public Policy Brief: Reforming HUD's Regulations to Affirmatively Further Fair Housing, The Opportunity Agenda, available at: http://opportunityagenda.org/reforming_huds_regulations_affirmatively_further_fair_housing

⁴ The Fair Housing Act is not the only federal law that mandates non-discrimination and equity in the expenditure of federal funds. Title VI of the Civil Rights Act of 1964, for example, prohibits discrimination on the basis of race, ethnicity, or national origin in programs or activities receiving federal financial assistance. (42 U.S.C. §2000(d) *et seq.*) The regulations of other federal agencies also prohibit discrimination; the Department of Transportation has been particularly active recently in enforcing civil rights requirements attached to its funding.

expenditures of federal community development funds. This is an areas in which jurisdictions have a significant measure of control over determinants. We strongly recommend the inclusion of I.e. Infrastructure, in this section.

1. Disparities in Access to Community Assets

- a. Schools: This section should include data on access to *low poverty* schools – a primary determinant of success for low income students. School quality should be a primary factor in the location of housing, particularly housing for families.
- c. Public transportation:
 - i. This assessment should include demographic and neighborhood comparisons along multiple indices including (but not limited to) service quality and frequency, average commute length, transit type, accessibility to persons with disabilities, pedestrian and cycling support, financial investment, and sources of air and noise pollution. Using data on ridership demographics that transit systems are required to compile by FTA’s Title VI Circular, these comparisons should be disaggregated by route and/or by mode (e.g., local bus, light rail, commuter rail, etc.), where those lines or modes serve substantially different demographic groups. Analysis of transportation benefits and burdens should examine cumulative benefits and burdens incurred by various populations. This requirement should be emphasized and made explicit. The transportation analysis should require cross-reference to Title VI, Environmental Justice, and other civil rights obligations under federal transportation guidance, including (but not limited to) relevant Federal Transit Administration circulars.
 - ii. We strongly support the inclusion of an analysis of whether asset-rich/low-poverty areas are accessible by public transportation. Excluding public transportation from low-poverty/asset-rich areas is a way of deliberately excluding certain groups, including members of protected classes, from an area. The City of League City, for example, has repeatedly sought to defund public transit that enables lower-income persons and persons with disabilities to access health care and economic opportunity. This analysis is particularly important given trends favoring transit-oriented development. In addition to evaluating whether TOD includes affordable housing, evaluating the location of existing transit access (and when necessary, action to extend transit access into asset-rich areas in the jurisdiction or region) policies that favor transit-oriented development will replicate patterns of segregation and exclusion, and reduce housing mobility.

2. Exposure to Adverse Community Factors

This section should include a 2.d. Public Health, and require a description of public health issues and health disparities among neighborhoods within the jurisdiction and between the jurisdiction and the region, including disparities in low birth weight, infant mortality, sentinel health conditions, deaths due to fire, homicide, pedestrian auto fatalities, rates of premature death and life expectancy.

This section should also include a 2.e. focused on exposure to crime, particularly violent crime.

b. Environmental Health Hazards: The Environmental Health Hazards Index does not include a number of sources beyond air pollution necessary to evaluate exposure to environmental health hazards. The presence of explosive materials in close proximity to a residential areas, for example, is a significant health hazard, as seen in West, Texas. This section should direct jurisdictions to consider state and local data on exposure to other adverse environmental factors including but not limited to water pollution, presence of legacy environmental hazards such as Superfund site and closed landfills, the type of cargo carried by any active rail lines through the neighborhood, heavy industrial uses, fuel and chemical storage facilities, refinery blast zones, nuclear plants, large refineries, solid waste or landfill facilities, airport or military installation accident or clear zones, underground or aboveground pipelines carrying volatile liquids, flooding and other disaster vulnerability factors, and mobile sources of air pollution (such as diesel trucks).

c. Other adverse community factors: Assessing local data on foreclosed or otherwise vacant properties under this section is important because blight can contribute to a host of health problems including increases in asthma and stress. Where cumulative impact data is available (e.g., environmental justice screening tools developed by EPA and others), disparities in those cumulative impacts should also be analyzed, particularly in light of current research on the impact of toxic stress on children's life outcomes.

5. Determinants of Disparities in Access to Community Assets and Adverse Community Factors

The following well known determinants should be added to the list of determinants in this section:

- Industrial siting policies and incentives
- Zoning provisions that co-locate industrial uses and multi-family housing
- Highway construction and related transportation policies
- Transit fares and service levels

Disability data (57953)

We agree that there is value in highlighting fair housing challenges for persons with disabilities in a separate section of the Assessment Tool, but it is also important to ask jurisdictions to report (and for HUD to provide) cross-tabulated data on disability, race and poverty. This type of intersectional analysis can help to highlight particular types of discrimination and segregation that often remain hidden. The Assessment Tool should require jurisdictions to discuss and analyze fair housing issues affecting persons with disabilities throughout the AFH but also maintain a separate, disability-specific section for Housing Accessibility and Integration and *Olmstead*. Jurisdictions also have access to local data that provides more detail about the population of persons with disabilities than Census data.

E. Disability and Access

1. Population profile

This section should direct jurisdictions to identify and consider local data that paints a more robust picture of the population of persons with disabilities than is possible with Census data. In particular, jurisdictions should identify local data concerning the population of persons with psychiatric disabilities.

4. Disparities in access to community assets and exposure to adverse community factors

- a. This question should include a discussion of exposure to adverse environmental conditions, which may have exacerbate or complicate an individual's existing disabilities

Fair Housing Compliance and Infrastructure (57953)

This section of the Assessment Tool should require jurisdictions to conduct a more thorough assessment of the capacity and performance of the local fair housing enforcement infrastructure, including both public and private organizations. It should also require jurisdictions to examine a variety of types of complaints and other evidence that point to any trends or emerging issues in fair housing compliance. Further, it should capture information about any protected classes under state or local law in addition to those protected under federal law.

We recommend specific questions about the use of testing in the jurisdiction and region and about other methods used to identify systemic discrimination. While certain types of direct discrimination may be identified by complaints, relying solely on this data to identify fair housing issues ignores the fact vast amounts of both individual and structural discrimination are essentially invisible to complainants. For example, HUD-funded matched pair testing has shown the existence of discriminatory practices such as steering in Texas housing markets.⁵ Steering involves not making residents aware of certain housing options. By definition, residents subject to racial steering would not be aware of the options they were not made aware of and would not be able to report such discrimination. The same is true for systemic discrimination in areas like home mortgage lending. While HUD has indicated it will not require jurisdictions to collect data that requires an "independent data or information collection effort" for the AFH, HUD should make clear to jurisdictions that conclusions about the prevalence of discrimination that rely solely on complaint filings other forms of self-reporting (e.g. surveys) will not be considered reliable, and that jurisdictions should consider improving their data as an action step.

Additional fair housing issues (57954)

The Assessment Tool should require jurisdictions to assess the patterns and trends in homeownership, including the level of homeownership for each protected class and how that has changed over the past five years. This should include an analysis of the Home Mortgage Disclosure Act data for the jurisdiction (including the number, type and cost of loans made as well as the denial rates and reasons for denial for members of protected classes), the levels of

⁵ See for example, the studies referenced in the draft AI at 6-11, as well as Housing Discrimination against Racial and Ethnic Minorities The Urban Institute, Turner et al. 2012.

segregation among homeowners, access to homeowners insurance, foreclosure patterns, and the comparative maintenance and management of foreclosed properties in communities of color and other communities. In addition, because access to banking services is an important preliminary to homeownership, jurisdictions should examine the distribution of bank branches and prevalence of predatory lenders (including payday and auto title lenders) by neighborhood.

The Assessment Tool is clear that a jurisdiction may indicate when a particular fair housing inquiry cannot be answered due to lack of data, however, we note that lack of a robust public engagement process that would have produced such information, lack of reasonable efforts to find such data, and deliberate failures to collect certain data make any assertions that data is not available unresponsive and materially inconsistent.

The Assessment Tool is not sufficiently clear that program participants may address additional fair housing issues that are relevant. Clarification should include guidance to jurisdictions that addressing relevant fair housing issues is not optional, whether or not the particular issue is included in the Assessment Tool. Mandatory inclusion of additional fair housing issues is important not only to the jurisdiction's compliance with its AFFH obligation, but as an indicator to HUD that new forms of discrimination or other new fair housing issues are emerging.

Because of Texas' experience with Disaster Recovery, our organizations are particularly interested in seeing guidance for program participants on how to revise their AFH in a timely manner in order to ensure that the aftermath of a disaster does not result in permanent displacement, increased segregation, reduced fair housing choice, and disproportionate impact on low-income and historically minority communities. We urge HUD to include these requirements and guidance in the final version of the Assessment Tool.

Solicitation of Comment on the Assessment Tool Only (57954)

- (1) We believe program participants should be able to complete the Assessment Tool independently. Entitlement jurisdictions are larger cities and counties with some level of planning and data analysis capacity. Further, HUD's provision of data and a guided Assessment Tool significantly reduces the administrative burden of completing a fair housing analysis on program participants as compared to the previous Analysis of Impediments to Fair Housing Choice process. We encourage HUD to provide extensive technical assistance to grantees the first time they go through the AFH process, because both the process and perhaps some of the concepts, will be new. The administrative burden of completing the AFH should be even lighter in subsequent years as jurisdictions will have collected historical and baseline data, be familiar with appropriate data sets and tools, and hopefully, will build increasingly collaborative relationships with local communities and groups that will make public engagement more robust and relevant over time.
- (2) We have identified some areas where additional instructions would be helpful for program participants in our comments above, and we reiterate our support for a heightened level of technical assistance for the first rounds of the AFH process, both in order to assist jurisdictions and to refine instructions for future participants.

- (3) While there may be costs in terms of staff time to collect and analyze available local data and knowledge, we do not consider these costs any kind of new or additional burden on jurisdictions. First, regardless of whether it has been enforced, the AFFH obligation and AI requirement have been in place for a long time. This is not a new burden imposed on local jurisdictions. Second, collection and analysis of this kind of data is a core government function and should already be a part of local planning and decision-making. And third, the AFH process significantly reduces the administrative burden and data costs for jurisdictions.

Fair Housing Goals and Priorities (57954)

We strongly support the inclusion of “metrics for measuring success” in reaching the identified goals in the AFH. The goal of the AFH process is not the production of an AFH, it is progress in reducing segregation and inequity, and in expanding fair housing choice and access to opportunity.

We urge HUD to require greater specificity in the goals and metrics identified – with an emphasis on measurable goals for increasing levels of integration, reducing levels of segregation, increasing the number of affordable housing units outside areas of minority and poverty concentration (and increasing access to these units by protected groups, voucher holders and extremely low income households), and increasing equal access to community assets and resources for families residing in racially concentrated areas. There should be some requirement that goals selected by a jurisdiction are significant; “increasing awareness of fair housing rights” with a poster contest or a local resolution, for example, is in no way a meaningful or sufficient goal and should not be accepted as such by HUD. It is also important to link indicators of integration/desegregation to indicators of displacement and gentrification in order to evaluate whether data changes truly indicate forward progress.

We are deeply troubled by the language stating that “[t]he goals and priorities section within the assessment enables the program participants to begin to think about the fair housing actions they will incorporate into subsequent HUD required planning processes” and that “actions . . . are not a requirement of this section.” Given that the Executive Summary must include “a general overview of the AFH’s findings and recommended actions,” we hope that the inconsistency of the language in this section is inadvertent and will be corrected in the final version of the AFH and Assessment Tool. It seems somewhat odd to require the inclusion of recommended actions in the Executive Summary but not in the Goals and Priorities section.

It is in fact difficult to see how jurisdictions can identify and prioritize goals without considering and recommending concrete actions they can take to reach those goals. While final program and funding decisions are made at the Consolidated Plan/PHA Plan stage, the purpose of the AFH is to provide priorities that must be incorporated into those planning processes. Jurisdictions should be required to identify action steps to address all significant determinants of segregation and disparities in access to opportunity in both the Executive Summary and the Goals and Priorities sections of the AFH.

Compliance with the Paperwork Reduction Act

- (1) The proposed collection of information is necessary for the proper performance of the functions of the agency and will have practical utility. The Fair Housing Act mandates that HUD programs are implemented and administered in a manner that affirmatively furthers fair housing. The collection of information in the AFH is necessary for the Agency to comply with the Fair Housing Act and its other civil rights obligations. The proposed Assessment Tool will have additional practical utility, increasing the ability to compare metrics across jurisdictions and ensuing equivalent treatment of grantees based on a common process. Further, the collection of this information is necessary to the ability of program participants to conduct comprehensive and inclusive planning that complies with their own civil rights obligations, and the data and analysis will have practical utility for jurisdictions beyond the AFH and Consolidated Plan/PHA Plan process.

Thank you for the opportunity to comment on the Assessment Tool. We look forward to seeing the final regulation and Assessment Tool published, and to working with HUD and our local grantees and PHAs to affirmatively further fair housing.

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