



May 9, 2016

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

Re: Docket No. FR-5173-N-08, Affirmatively Furthering Fair Housing Assessment Tool for State and Insular Areas: Solicitation of Comment – 60-Day Notice under Paperwork Reduction Act of 1995

To Whom It May Concern:

We appreciate the opportunity to comment on the Assessment of Fair Housing Tool (Tool) for states and insular areas. We commend HUD for its work in shaping the Tool to address States' distinct needs and challenges in identifying barriers to fair housing choice and for its recognition of additional elements of access to opportunity.

The undersigned organizations and their members and partners finance, develop or otherwise support affordable housing in urban and rural communities throughout the country. We strongly support HUD's goal of addressing disparities in housing needs and access to opportunity by ensuring access to decent, affordable housing in truly inclusive communities. We were pleased with the publication of the new Affirmatively Furthering Fair Housing rule last year. As we have shared with HUD in earlier comments, we are collectively committed to the creation of quality affordable housing in a choice of neighborhoods through the removal of barriers to development in high opportunity areas, investment in areas of neighborhood revitalization, and preservation of affordable housing. We are pleased that the state tool provides an opportunity for an analysis of Low Income Housing Tax Credit (LIHTC) policies and their role in creating housing opportunities using all of the above strategies.

In general we urge HUD to match its efforts to promote fair housing outcomes with a process that does not unduly impede the flow of federal housing resources to the low-income residents who need them most. A process for allocating housing resources that becomes unduly burdensome or complex for state and local governments could be costly and could result in fewer overall resources available to support low-income families—especially in jurisdictions with

limited resources. Ambiguity or subjectivity could also lead to reasonable fear of legal action, which might further delay allocations of housing resources or discourage some jurisdictions from using them at all. We strongly urge that HUD remain mindful of these issues as it moves forward with this effort.

Overall, we recognize and appreciate the significant effort that HUD has expended in developing a tool that will identify impediments to fair housing and develop goals and strategies to address these issues at the state level. As a general comment, we believe that it's important that the tool remain flexible enough to accommodate the variation between rural and urban states. For example, rural states with a more heterogeneous population may exhibit poverty in certain rural regions while more urban states may have more concentrated poverty in urban areas. The tool should also provide guidance for states that differ in their form of state government affecting their ability to change policy. For example, Dillon Rule states where local governments have limited authority without express legislation from the state legislature or Home Rule states where the state legislature provide more broad authority to local governments. Below, we offer more specific comments on how the Tool may be improved to enhance the quality, utility, and clarity of the information to be collected while remaining mindful of the administrative burden of the process on state agencies.

1. Request for Comment: Questions on Disparities in Access to Opportunity should be general with more detailed guidance in the instructions

We applaud HUD for its thoughtful inclusion of additional considerations into the analysis of disparities in access to opportunity. In our work, we see and work to address the disparities in access to health and safety resources, the impact of emergency preparedness and the challenges to re-entry populations. While we acknowledge that the detailed questions in the Notice target some of the many factors in disparity in access to opportunity, without further guidance on standard data sources and more detailed information on analysis, detailed questions may pose a significant burden on states and may not yield accurate or complete analyses. For these reasons, in this early version of the Tool, we encourage HUD to use the general question approach and to include in the instructions a list of these other factors that states may consider using local data and information. We would further encourage HUD to explore the availability of standardized data sources for the five areas listed in the notice and to consider including this data and more detailed questions and guidance in future versions of the tool.

2. Section III: Summary of the Community Participation Process Should Include Detailed Information about Participants and Geography

We appreciate the language in the tool that clarifies that outreach activities should reach populations typically underrepresented in the planning process. To further encourage a robust and continuously improving participation process, we encourage HUD to include guidance that states publish their outreach plan for public comment ahead of time along with the anticipated locations for the public meetings to ensure participation by typically underrepresented populations. This is particularly important in a statewide assessment that may cover broad geographies.

Further in questions two and three, we recommend that HUD require a best efforts summary

for each participation group of its members' race, ethnicity, disability status and an indication of whether participant groups represent residents of R/ECAPS. This information will serve the dual purpose of documenting the inclusive nature of the process for the community and assisting the participating jurisdiction and HUD in identifying any population(s) that should be further engaged to ensure an inclusive and accurate assessment. We further recommend that in order to facilitate and encourage cross sector collaborations HUD should provide in the instructions a sample list of organizations that communities may wish to consult during the AFH process, such as transportation advocacy groups, transportation planners, public health advocates, and community based organizations.

3. Section V.C. Publicly Supported Housing Analysis – Additional Guidance Needed on RAD

The instructions for the publically supported housing analyses include reference to the Rental Assistance Demonstration (RAD) Program and guidance that RAD projects may be analyzed as part of Housing Choice Vouchers. Additional clarification is needed in this section. Many RAD projects are being converted to project based Section 8 rental assistance, not Housing Choice Voucher assistance, and are most appropriately considered in the project-based Section 8 category. Even those projects that are converted under RAD to a voucher contract receive a project-based voucher contract. To the extent that project-based voucher contracts resulting from RAD transactions are included in an analysis of housing choice vouchers, HUD should provide additional related guidance. The location and occupancy of these units is primarily an artifact of the public housing system that originally created them and not necessarily indicative of current policies and practices around the use of housing choice vouchers. HUD should encourage local jurisdictions to consider this in determining how to analyze and act upon this data.

4. Section V.C.1. Low Income Housing Tax Credits

We support the inclusion of an analysis of the state's administration of the LIHTC program, including the current Qualified Allocation Plan (QAP) criteria, as part of the analysis of publically supported housing. HUD's guidance to the states should clarify that while a critical analysis of QAP criteria is essential, each state has the responsibility to evaluate the unique housing needs and challenges of its residents, and allocate its Housing Credits in a balanced way to promote a range of quality housing options in a choice of neighborhoods for all people. QAPs should incentivize affordable housing construction in high opportunity areas as well investments in affordable housing preservation and neighborhood revitalization.

a. Section V. C.1.c.i. 1. Analysis of Low Income Housing Tax Credits Should Include Review of Completed Project Data as well as Qualified Allocation Plan Criteria

QAPs are amended annually or semi-annually, so criteria may evolve quickly. For this reason, it is critical that the analysis include a review not only of current QAP criteria, but also a review of where existing LIHTC projects are located. This local data should be easily accessed by state agencies and is equally important in identifying fair housing impediments and developing goals and strategies to address them.

Additionally, in reviewing QAP criteria and in analyzing the location of existing LIHTC projects, states should be instructed to differentiate between preservation projects and new construction projects, as the decision to preserve and revitalize existing affordable housing, which often includes the preservation of irreplaceable deep rental subsidies for extremely low-income households, is different than an allocation to support new construction. Allocation decisions related to preservation projects will be driven by the location of existing affordable housing, while new construction can be pursued in a wider range of areas.

b. Section V. C.1.c.i. 2 Additional detail is needed

The prompt for this question is very general and it would be helpful to provide further guidance in the instructions explaining that this may include incentives, such as bonus points or basis boosts, for projects such as supportive housing, those serving the lowest income tenants or those located in high opportunity neighborhoods.

c. Section V. C.1.c.iii Additional guidance on use agreements

This question requires the state to describe its enforcement of use agreements prohibiting discrimination against voucher holders. It may be helpful to include in the instructions examples of the types of use agreements that include these restrictions. Information on the types of use agreements that are enforced by the state may be more readily identifiable for the state than looking at enforcement of an isolated provision that may appear in many types of use agreements, including LIHTC restrictions, Section 236 use restrictions and other HUD-related restrictions.

d. Section V. C.1.d Other State Administered Programs Related To Housing and Urban Development

This section should also provide an opportunity for states to describe regional policies and initiatives for housing and community development. Several states also have regional economic development strategies that focus on economically distressed areas such as the Mississippi Delta, Appalachia, and the Colonias of Texas.

5. Appendix C Contributing Factors: Threats to Preservation of Existing Affordable Housing

Lack of quality affordable housing is an impediment to fair housing for many families. [According to the Joint Center for Housing Studies at Harvard University, the supply of affordable housing has failed to keep pace with the demand. As of 2013, 18.5 million renter households had very low incomes (up to 50 percent of area median). According to HUD's most recent Worst Case Housing Needs report, excluding inadequate and unavailable units, there were only 34 affordable rentals for every 100 of these renters.¹

One of the contributing factors to this impediment is the threat to the preservation of the limited affordable housing stock that does exist. While HUD acknowledges in its comments that accompany the final Rule that preservation of affordable housing is a strategy for affirmatively

¹ "America's Rental Housing" Joint Center for Housing Studies of Harvard University, 2015.

furthering fair housing, the threat of loss of affordable housing is not acknowledged as a contributing factor. References to preservation are limited to the discussion of lack of community revitalization strategies, which are useful for promoting preservation but are not the only appropriate tool for preserving and improving existing affordable housing that is at risk of loss or deterioration.

To more readily identify preservation issues, we recommend the addition of the following to the list of contributing factors in Appendix C.

Threats to Affordable Housing Preservation

The loss of existing affordable housing can limit the housing choices for low-income individuals and families. Affordable housing units may be lost from the housing stock due to deterioration, abandonment, or conversion to more expensive housing, especially in gentrifying areas. Elimination of this housing can lead to displacement of residents, a decrease in the availability of units in a range of sizes, and a loss of federal resources within a community. Threats to the existing affordable housing inventory may include economic or personal pressures on landlords to abandon or convert their properties. These threats should be recognized as a contributing factor in the AFH.

Many neighborhoods that have a mix of racial and economic composition include important amenities and opportunities for residents. Rehabilitation of existing affordable rental housing to preserve its affordability can be critical in lower-income neighborhoods where the loss of rental housing subsidies can mean the difference between stabilization and further deterioration of housing and neighborhood quality and diminished housing options for residents. Further, without housing preservation as a strategy, gentrifying neighborhoods that are becoming neighborhoods of opportunity with improving schools, good transit connections to jobs, and better amenities such as libraries and community centers may be out of reach to many residents who might otherwise be priced out of that neighborhood

6. Rural Areas

a. *Dissimilarity Index*

The segregation and integration analysis in Part VB.B.I. requires states to use a dissimilarity index. The guidance provides that generally when a group's population is less than 1,000, program participants should exercise caution in interpreting the indices. This size limitation seems particularly relevant in rural communities. We suggest that HUD provide guidance instructing states to consider additional local data for rural areas when evaluating the dissimilarity index for rural communities and providing examples of potential data sources.

b. *Preservation of Rural Rental Housing*

Properties financed under the United States Department of Agriculture Rural Housing Service Section 514 and 515 programs comprise a significant portion of the affordable rental housing stock in rural communities. In the next eight years, the Section 515 mortgages on approximately 11,500 projects comprised of approximately 330,000 units will mature, leaving the units

unsubsidized and unrestricted. This significant impending loss of affordable rental units will impact low-income families in rural communities, many of whom belong to protected classes. Data on maturing mortgages is available from USDA and improved data is expected to be released very soon. We encourage HUD to require states to consider the number and location of maturing Section 514 and 515 mortgages when assessing publically supported housing and to coordinate with USDA on a consistent publically available source of information regarding maturing mortgages for this purposes.

7. About Us

The Local Initiatives Support Corporation (LISC) is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity — good places to work, do business and raise children. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations with financial, technical and policy resources. We are a national organization with a community focus, with local LISC offices in 32 different cities and partnerships with a network of 72 rural organizations. Our program staff in the cities and the rural areas where we work collaborate actively with local community development groups, to help identify priorities and challenges, and to deliver the most appropriate support to meet local needs whether it's in the area of housing, economic development, education, healthcare, community safety, or building family income and wealth. Since 1980, we have invested \$16.2 billion in communities across the country, which leveraged \$48.5 billion in total development, including 348,000 affordable homes and apartments.

For over 25 years, the National Housing Trust (NHT) has been dedicated to preserving and improving affordable rental housing. Using the tools of real estate development, rehabilitation, finance, and policy engagement the Trust has helped save and improve more than 25,000 apartments in 41 states, leveraging more than \$1.5 billion in investment for affordable housing. The majority of properties that NHT has preserved have HUD subsidized mortgages or project-based rental assistance. The majority of the residents we assist are persons of color and quite often our work involves working areas of concentrated poverty. In all cases, we are working with residents and tenant leaders to help them stay in their homes if that is their choice.

Stewards of Affordable Housing for the Future (SAHF) is a collaborative of eleven multistate nonprofit affordable housing providers who are committed to long-term sustainable ownership and continued affordability of multifamily rental properties. Together, SAHF members own and operate housing in 49 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands—providing rental homes to more than 118,000 low-income families, seniors and disabled households across the country.

Enterprise Community Partners (Enterprise) is a national nonprofit organization whose mission is to create opportunity for low-and-moderate income people through affordable housing in diverse, thriving communities. We work to achieve this by introducing solutions through cross-sector public-private partnerships with financial institutions, governments, community organizations and other partners that share our vision. Since 1982, Enterprise has raised and invested \$16 billion to help finance nearly 320,000 affordable homes across the United States.

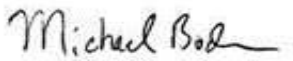
We support HUD's efforts to develop a streamlined Tool that will provide a meaningful and

practical framework for municipalities to evaluate fair housing issues and develop goals to improve fair housing choice and access to opportunity. We hope that our comments will help HUD strengthen the Tool and facilitate its most effective use. Please contact Andrea Ponsor, LISC Housing Policy Director, at (202) 739-9279 or aponсор@lisc.org or Ellen Lurie Hoffman, NHT Federal Policy Director, at (202) 333-8931 x 130 or eluriehoffman@nhtinc.org with any questions.

Sincerely,

A handwritten signature in black ink that reads "Matt Josephs". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matt Josephs
Senior Vice President for Policy
Local Initiatives Support Corporation

A handwritten signature in black ink that reads "Michael Bodaken". The signature is cursive and somewhat compact.

Michael Bodaken
President
National Housing Trust

A handwritten signature in blue ink that reads "Toby Halliday". The signature is cursive and has a distinctive loop at the end.

Toby Halliday
Executive Vice President
Stewards of Affordable Housing for the Future

A handwritten signature in black ink that reads "Andrew Jakabovics". The signature is cursive and has a long, sweeping tail.

Andrew Jakabovics
Acting Head, Public Policy and Government Affairs
Enterprise Community Partners