



November 25, 2014

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

Re: Affirmatively Furthering Fair Housing Assessment Tool- Solicitation of Comment—60-Day Notice under Paperwork Reduction Act of 1995, Docket number: FR-5173-N-0

PolicyLink, the Kirwan Institute for the Study of Race & Ethnicity and the undersigned applauds the U.S. Department of Housing and Urban Development for taking this necessary step towards clarifying and strengthening the federal government’s obligation to further fair housing and providing a tool to guide participants in achieving this obligation. Housing choice for low-income communities, communities of color, families, and people with disabilities is a critical component of equitable and economically prosperous regions.

As the nation becomes a majority people-of-color country, the face of many neighborhoods is changing in the process, but the persistence of deep and entrenched patterns of segregation continues. Where integrated neighborhoods exist, it is because of gentrification, the suburbanization of poverty, or because of intentional efforts to promote and maintain diversity. Some of these neighborhoods are stable, but many of them are not. We commend HUD’s advancement of fair housing as supporting the priorities of mobility for people of color, families, and people with disabilities; the investment in neighborhoods that have been left behind; and the retention of current residents in improving neighborhoods. The complicated and changing nature of the geography of opportunity is an indication that we need a 21st-Century imperative to fulfill the Fair Housing Act of 1968.

PolicyLink and the Kirwan Institute for the Study of Race and Ethnicity are the lead authors of these comments, but they are also informed by program participants of the Sustainable Communities initiative that recently conducted Fair Housing and Equity Assessments. Our organizations have four years of experience providing technical assistance on behalf of the Department of Housing and Urban Development’s Sustainable Communities Initiative. As part

of our assistance and capacity building with grantees across the nation, we were the primary Capacity Building providers for the Fair Housing Equity Assessment (FHEA). The FHEA was a pilot initiative modeled to test many of the components of the proposed new AFFH rule processes. The FHEA included analysis of the same core metrics required for the AFFH, and introduced new concepts to the field such as identifying Racially or Ethnically Concentrated Areas of Poverty (RCAPs/ECAPs). It also encouraged the integration of measures that impact opportunity outcomes—workforce engagement strategies, transportation access, and quality schools.

Our organizations, in partnership with HUD, developed guidance for the FHEA leaders, and reviewed dozens of FHEA's—providing coaching and feedback to obligated participants. Our comments below, reflect our experience with grantees across the nation who have attempted to meet obligations which parallel the new rule and reflect the challenges and opportunities presented by the new assessment components when implemented.

In November, 2014, PolicyLink and Kirwan convened several of the practitioners that conducted the FHEA assessment (named at the end of the comments) and together reviewed the draft AFFH tool. Our collective assessment of this tool is included in the following comments.

Key points:

The proposed tool helps prioritize goals and align resources and policy across federal, state and local programs. Dynamic trends bear evaluation, and the proposed tool's use of maps and data that chart demographic change, access to opportunity, and the use and impact of federal resources are an important contribution to planning for future policy and investment resources. Those that piloted the Fair Housing Equity Assessments found that similar process was extremely helpful to shaping their regional plans to address equity and inclusion. The comments that follow are based on the experience of effective practices and challenges faced in conducting the Fair Housing and Equity Assessment or the Regional Analysis of Impediments.

- ***Section III on community engagement can be built upon successful pilot FHEA experience. Guidance for meaningful community engagement (including leadership and stakeholders representing disadvantaged groups, RCAPs, and protected classes)—needs to be added to the proposed tool. We are appending our Community Engagement Guide for the Fair Housing and Equity Assessment to these comments as recommended guidance for the AFFH tool. From our experience, communities who performed robust community engagement also delivered the best analytical and policy outcomes identified in their FHEA's. We would expect similar outcomes in meeting the AFFH requirement. HUD should specifically name the types of stakeholders expected to***

participate—namely fair housing, civil rights, disability, faith, tenants, community development, environmental justice, immigrant, and transportation equity organizations.

- **Valuable elements of the FHEA process are contained in the proposed AFFH Assessment Tool—including access to quality transportation, schools, jobs, and healthy environments. These measures should remain core required elements in the final tool.** Like this draft tool, the FHEA focused on trend analysis of demographic change and of opportunity outcomes for low income people and specific protected classes. The job, school and transit access analyses proved transformational elements in the FHEA. These measures, together with diverse stakeholders engaged in the analysis, allowed for broader engagement in addressing fair housing and structural challenges than many grantees had previously been able to achieve under the traditional AI process. Stakeholders became much more aware of the connections between fair housing, land use, transit, and school quality—a key goal of the SCI process that should translate to the AFFH and Consolidated Plans.
- **The draft template underemphasizes a needed focus on communities of opportunity and the role of market forces.** While the tool’s emphasis on the role of publicly assisted housing is important for informing programmatic direction and use of resources, it must be placed in the broader context of other forces driving segregation and disinvestment. The tool should be strengthened by requiring regional data overlays of these other forces. (see ‘Analysis’ section below)
- **The proposed tool does not adequately address gentrification and displacement.** Additional questions should be added to help jurisdictions identify areas where lower income residents and cultural communities face displacement.
- **Guidance should require entitlement jurisdictions and their key partners to substantially conduct the assessment—not a short-term consultant.** The act of working with data and convening a deliberation process builds the capacity for addressing the goals and the impediments identified during the assessment in the Consolidated Plan and its implementation.
- **Continued capacity-building and technical assistance, similar to what was provided to SCI grantees, will be needed** to help the field make meaning of the data, remain accountable to engaged communities, and deliver on appropriate solutions. Capacity-

building for the engaged communities on the AFH process, the use and analysis of data, and the translation of data to policy solutions is needed to ensure effective community participation and agency. Support and coaching for these capacities were a high demand by agencies conducting the Fair Housing and Equity Assessment.

- ***Provide guidance to measure community-wide and regional patterns of segregation.*** We strongly recommend the inclusion of multiple measures of segregation in the Assessment Tool. In addition to the “index of dissimilarity,” HUD should provide jurisdictions with the “exposure index” for their communities and regions. There are several other valuable indices that have been created, and HUD should make these available to jurisdictions for analysis in the AFH.
- ***The tool should include a section focused on recommended actions to inform the Consolidated Plan.*** Although the Notice and Preamble published in the Federal Register refer to “Action Steps” to be identified by jurisdictions, the Assessment Tool itself is missing this key section. Identifying fair housing “challenges” without beginning to identify policies and actions to address these challenges would severely undermine and marginalize the community engagement process and will not further the goals set out in the AFFH proposed rule.

Section by Section Comments

Data

- Q: Whether the description of available local data and local knowledge helps program participants understand how these terms are being used in the Assessment Tool and the extent of their obligations to obtain and use data and other information.
 - ***Local data and knowledge is a must.*** The data HUD provides is a good starting point, but it should be made clearer in the guidance that this data must be supplemented with more localized data sets. [The best FHEAs were those that went above and beyond what HUD provided. Make clear in additional guidance that this is a preferred practice (not just allowable). For example, several SCI grantees didn’t have RCAPs as defined by HUD—they came up with their own classifications to allow addressing fair housing challenges at smaller or larger levels of geography.] HUD should communicate that this is an acceptable approach. In places where national data or Census or ACS data is not meaningful, HUD should provide proxy data or guidance for meaningful alternative data that is accessible.

- Program participants need HUD or Treasury to standardize reporting on Low Income Housing Tax Credits and HOME investments—they want to include this data, but it is a lift without a standardized reporting system.

Governance and Accountability

- *Q: Section III addresses the community participation in the development and review of the AFH. HUD highlights this as an area for public comment in general and specifically asks about the best way to clarify how program participants should include relevant information gathered in the public participation process.*
 - *Community participation of disadvantaged groups must be requisite.* The Tool is currently undeveloped on community engagement, which is a foundational component of an effective assessment. Section III as outlined in the Assessment Tool merely asks for a description of activities. The tool should provide jurisdictions guidance to undertake *required* meaningful engagement of protected classes and other disadvantaged groups in their assessments, and *required* demonstration of how these engagements informed, influenced, or changed the draft and final AFH. HUD should clarify that the purpose of community participation is to document an accurate official record (historical, political, and fiscal) of the structural fair housing challenges that confront them. This requires engagement of affected groups, early and often. The AFH guidance should designate as insufficient if government agencies alone review and interpret the data. HUD AFFH Tool guidance must require community participants and consortium members that are representative of the communities facing segregation, poverty, blight, and lack of services, particularly those from RCAPs and ECAPs. HUD should specifically name the types of stakeholders expected to participate—namely fair housing, civil rights, faith, tenants, community development, environmental justice, immigrant, and transportation equity organizations.
 - *An inclusive governance structure and inclusive decision making processes are essential* to ensuring the needs of underrepresented and underinvested communities are properly identified in the planning process, and that implementation strategies result in the intended outcomes. These necessary components are not defined or addressed in the tool and should be included. HUD guidance should establish an AFFH consortium structure similar to that required of the SCI/FHEA, establishing equity advocates and disadvantaged

communities' leaders decision making roles. A consortium structure can also emphasize regional assessments, meaningful to understanding and addressing regional housing markets and patterns of segregation and isolation from opportunity.

- *Participation of advisory/decision making groups should be defined* a) in the development of the AFH approach that the community/region would take, b) in selecting the contractors/staffing to be employed in carrying out the work, 3) in reviewing and drawing conclusions regarding the data (identification of opportunities and challenges), and 4) in establishing objectives and action steps. Something to be avoided is believing that the views of disadvantaged groups can be gained solely by ensuring that they are notified and invited to large public meetings.
- *Encouraging participation of local fair housing, civil rights, etc. organizations or representatives of these organizations (as opposed to individuals) in planning and decision making groups enriches resulting strategies.* Often, these groups and their representatives need financial support to enable their full participation.
- *Establish that compliance requires bringing these communities into the process.* The SCI grantees that had the most inclusive and robust consortia, resulted in the richest Regional Sustainable Development Plans and best addressed FHEA findings in their implementation strategies. FHEA processes that included diverse and robust engagement and governance structures reported increased understanding among community members from different socio-economic backgrounds and ensured that policy decisions stemming from the assessment had more support across the community.
- *Engagement should be given as much, if not more, weight as the data analysis.* During the FHEA, some grantees spent so much time on data analysis that there was too little time to actually “vet” the FHEA findings with the communities most impacted, and thus, little time for improving the draft. This vetting process is imperative for developing a meaningful AFH that defines appropriate strategies for change.

Analysis

- Q: Does the Assessment Tool ask the right questions and provide the right list of determinants to provoke a meaningful assessment
 - *A broader focus on marginalized groups was found to be beneficial in the FHEA process.* The tool needs to better clarify who will be covered under the

assessment, particularly populations that do not fall under current protected class status. Many groups that are not listed as a protected class, such as low income residents, may nonetheless be subject to discrimination in a way that may eventually affect those in protected classes. The tool could benefit by clearly delineating which groups are required to be focused on, which are suggested, as well as providing guidance on how to engage with each.

- *Missing data elements limit the potential of the AFH.* The tool should provide a broader range of metrics in order to make both the analysis and engagement portions of the assessment more enriching. *The tool should be strengthened by providing or requiring regional data overlays of these other forces:* Lending and mortgage rates by area; government backed home loans by race (to demonstrate how banks are serving communities); zoning overlays (to demonstrate whether inclusionary housing and multifamily zoning exists in higher opportunity communities); a regional ‘fair share’ overlay (to demonstrate what proportion of the region’s lower cost housing need each jurisdiction provides); and use of mortgage interest subsidy (to demonstrate where the largest housing subsidy invested in American communities is going). It should require program participants to characterize major public and private investments and disinvestments. More detailed demographic data on children and dependents would be helpful.
- *Guidance should provide best practices for getting local transportation data for analysis.* Program participants affirmed that nuanced information on transit access beyond proximity to public transit resources was necessary and valuable to getting a true picture of transportation mobility (i.e. transit schedules, service levels, or access to active transportation amenities). Providing data or guidance on finding local data that can help paint a picture of the public transit connection to opportunity would be extremely helpful
- *Broaden the segregation analysis.* Grantees also highlighted that a broadening of the segregation analysis to include private housing market forces such as mortgagees, foreclosures, and private rentals is needed in the field at large and greatly benefits the attainment of a meaningful assessment and bolsters solutions created.
- *Rural participants have unique data challenges that must be addressed.* A number of grantees in smaller, more rural regions where traditional census-based data and measurements of segregation were not as applicable. The assessment tool could be strengthened by a broader based set of data metrics that can help illustrate the housing landscape of rural and non-traditional entitlement communities. For instance, HUD could provide alternatives to traditionally defined R/ECAPs to help jurisdictions with insignificant populations of protected classes identify how housing discrimination operates in their communities. Also, HUD could provide guidance in the utilization of “key observers” to supplement scarce quantifiable data, including the use of

techniques such as survey monkey. Additionally, in rural communities, data derived from landlords, utility providers, and service organizations can often be used to better illustrate housing choice than traditional census-derived information. HUD should guide how the planning entity documents their approach to obtaining all of these observations, how to compile the observations, and record (anonymous or not) the identity of those providing observations.

- Q: By addressing Disability and Access Issues separately, has the tool inadvertently failed to consider any key fair housing issues that relate to individuals with disabilities?
 - *Disabled Population Resources:* Data for the disabled population is particularly challenging and its validity has often been questioned. HUD should provide additional guidance on more localized strategies to identify challenges for the disabled population, including suggestions on how to utilize administrative data sets from state or local agencies, how to get qualitative information from disability programmatic staff and advocates, and how to assess universal design features in available housing.
- Q: *Can program participants complete the Assessment Tool independently (i.e., without assistance from consulting firms or outside contractors)? And what costs may be associated with collecting and analyzing the available local data and local knowledge necessary to complete the Assessment Tool? Do program participants expect to use Federal funds to complete the Assessment Tool? What strategies can program participants use to reduce any burden associated with completing the AFH, including low-cost or no-cost strategies for obtaining available local data and local knowledge?*
 - *The capacity gap must be acknowledged and addressed.* What we found through our TA over the past four years is that even though HUD provided data, there was a capacity gap in the field on how to make sense of the data (for example, dissimilarity indexes) and then what to do with the data (i.e. policy implications). Uptake of capacity-building resources helped mitigate this challenge, but many grantees still consulted out the work. HUD has asked specifically whether participants could complete the AFH without consulting out; we think that they could if there is continued real time technical assistance, as the SCI initiative provided through national capacity builders, to provide guidance often needed to help translate data into assessments which can guide policy interventions and action.
 - *Participatory processes require resources.* The FHEA framework required orientation and capacity building for meaningful community engagement, data

analysis, deliberation, and decision making (plans, policies, budgets). This adaptation to a new, data-driven approach, proved to be a worthy and significant effort. It challenged status quo processes, disinvestments, exclusions, and priorities. It resulted in policy changes and resource allocation to address better fair housing outcomes. And the priority changes went beyond housing to transportation, and other community opportunity amenities.

- *The tool should offer guidance for how jurisdictions can partner with local organizations to do engagement in their RCAP/ECAP communities.* Jurisdictions can utilize competitive bids or contracting practices for funding culturally competent lead organizations to do outreach and facilitate engagement of disadvantaged communities. *The final tool should identify resources to help jurisdictions get this work done.* For example, while some jurisdictions were able to pool their resources or link their data-gathering efforts with ongoing and existing plans (eg, CEDs, Title VI, human services plans, Comprehensive Plans, etc), these options need to be articulated in the tool. The final tool should identify resources jurisdictions can avail to support more in-depth data gathering and analysis and community engagement (including federal resources, philanthropic resources, state and local resources, universities, the Federal Reserve, others); and provide guidance on how smaller communities could partner with larger jurisdictions and regions to gain economy of scale to bolster their efforts. These provisions would enable resource-poor communities to engage in effective planning to forward fair housing goals.
 - *Capacity-building around strategy is a must.* Getting relevant stakeholders knowledgeable with the policy actions that address the fair housing challenges revealed by the assessment is another significant need. Support, guidance, and resources from HUD in this regard are needed (for example, guidance on successful mixed income approaches to housing, effective strategies for inclusionary zoning, and how to structure mobility programs).
- Q: How do program participants envision joint participation in completing this template?
- *The collaboration of public housing agencies and entitlement jurisdiction at the regional level should be encouraged as it allows for an enhanced assessment by having more stakeholders present.* Collaborative assessments also reduce the staffing and resource costs for smaller jurisdictions and this has proven to be viewed positively by communities who chose to transition their Fair Housing Equity Assessment into a RAI. The tool should direct jurisdictions to include the

participation of public housing agencies and provide guidelines in facilitating this participation at the regional level. ***The tool must include a section focused on recommended actions to inform the Consolidated Plan.*** Although the Notice and Preamble published in the Federal Register refer to “Action Steps” to be identified by jurisdictions, the Assessment Tool itself is missing this key section. Identifying fair housing “challenges” without beginning to identify policies and actions to address these challenges would severely undermine and marginalize the community engagement process and will not further the goals set out in the AFFH proposed rule.

We would again like to reiterate our strong support of HUD in undertaking the development of the Affirmatively Furthering Fair Housing assessment tool. Please contact Judith Bell at jbelle@policylink.org or Kalima Rose at krese@policylink.org if you would like to speak with us in more detail about our comments.



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