



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, Docket No: FR-5173-N-02

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates this opportunity to comment on the Affirmatively Furthering Fair Housing (AFFH) Assessment Tool. NCSHA and its member state Housing Finance Agencies (HFAs) are committed to providing quality affordable housing opportunities for low- and moderate-income households free from discrimination. Central to our vision of an affordably housed nation is the goal of removing obstacles that impede anyone from accessing the affordable housing of their choice. NCSHA welcomes the opportunity to work with HUD to further fair housing across the nation.

We understand that the Assessment Tool, as currently available, pertains to local jurisdictions, and that HUD intends to promulgate a separate Assessment Tool designed to assist state-level entities, such as state HFAs, in completing the Assessment of Fair Housing (AFH) as required by the AFFH regulations. We applaud HUD for recognizing the differences between states and local jurisdictions, and that some of the local Assessment Tool's requirements simply are not relevant to states. NCSHA seeks to ensure that the state Assessment Tool takes into consideration the differences between states and local jurisdictions in their capacity to assess fair housing at a granular level, recognizes the limits to state authority to impact local zoning decisions, and minimizes the burden of implementation statewide.

In addition, we offer comments on the Assessment Tool that are applicable to both states and local jurisdictions.

State-Specific Issues

NCSHA urges HUD to make the following modifications to the Assessment Tool when it publishes the state version:

- Ensure accuracy of data. NCSHA supports using a data-driven process to assess fair housing, and appreciates HUD's efforts to provide jurisdictions with maps and tabular data from federal and nationally uniform data sources. However, we are concerned that data for rural areas may not be as complete or statistically accurate as data for more urban areas. Data quality issues in these areas could impact states' ability to analyze characteristics such as poverty, racial and ethnic concentrations, and concentrations of people with disabilities. In addition, we caution that data may be easily misconstrued to suggest causation and statistical significance where none may in fact exist.
- Provide flexibility to states on the Community Participation Process. The tool requires jurisdictions to gauge the success of their efforts to elicit public participation in the development of their AFH. HUD should provide greater guidance as to what constitutes "success," and provide states with flexibility in this regard so long as states make a good faith effort to obtain input, even if the input received is minimal. Unfortunately, community members and community organizations may be more likely to engage at the local level than they are in state-level community engagement processes, and states should not be penalized if their efforts elicit less community involvement than similar efforts at the local level.
- States should be able to use local data when they believe it necessary to do so, but HUD should not mandate its use. Compiling all of the data required in the Assessment Tool on a statewide basis would be exceedingly cumbersome, costly, and time-consuming. States do not have the capacity to assess the credibility and reliability of local data across many localities, or to detect statistical significance from such a large number of datasets. Additionally, there are significant inconsistencies between the types of local data available for different census tracts across states. In some areas, there will be substantial amounts of local data, while in other places—especially in rural areas—local data may be insufficient or unavailable. Where states are able to access quality local data to inform their AFH, they should be allowed to do so, but HUD should not require it.
- Do not require states to analyze demographic data at the neighborhood, area, or project level. While it may be appropriate for local jurisdictions to evaluate the racial and ethnic makeup of distinctive neighborhoods and areas within their boundaries, or to make a similar analysis of demographics for individual projects, doing so across an entire state would be overly burdensome or even impossible. States do not have the information to accurately reflect on all the neighborhoods and areas within all the cities and towns, both urban and rural, within their boundaries. An analysis of such detail when conducted across a geography as large as a state would be extremely time-intensive, and

states could be forced to hire outside consultants, which would likely come at a considerable cost.

- Do not require states to compare their demographic makeup to the demographic makeup of other states. The proposed Assessment Tool requires local jurisdictions to compare the demographic makeup of neighborhoods and areas within their boundaries to those in neighboring jurisdictions so as to understand segregation from a regional perspective. While this type of comparison is entirely appropriate at the local level, it does not make sense at the state level.
- Provide guidance on how overlapping jurisdictions should comply with the rule. States may or may not operate HUD programs within the boundaries of local entitlement jurisdictions. Neither the proposed AFFH rule nor the Assessment Tool discuss issues pertaining to overlapping jurisdictions, such as which entity is responsible for assessment activities and how to avoid duplication of efforts or contradictory outcomes. States need guidance from HUD on how they should handle the AFH in these areas, which will already be assessed at the local level. NCSHA would recommend that HUD allow states to rely on localities' or public housing agencies' (PHA) assessments of fair housing in those districts, should they wish to do so. However, HUD should not mandate that they do so. Furthermore, HUD should not require states to coordinate the fair housing assessments of local jurisdictions. States do not have the authority to do so, and may not have the capacity.
- Do not require states to report on the activities of PHAs within their boundaries. Throughout the Assessment Tool there are requests for information about how PHAs administer Housing Choice Vouchers (HCV) so that tenants have access to high opportunity areas. For example, Section IV B(7) requires jurisdictions to describe how HCV policies or practices, including mobility counseling and portability, impact the ability of persons using HCVs to live in neighborhoods of their choice. With the exception of the limited number of vouchers administered by some states that act as statewide or balance of state PHAs, states do not have access to this sort of information, nor do they have the authority to require it from the PHAs located within the state. Given the large number of PHAs in some states, such a requirement would be extensively burdensome even if states had that authority.
- States must be able to set achievable goals. Section V requires jurisdictions to set one or more goals addressing identified determinants to fair housing and metrics for measuring success in meeting those goals. We are concerned that achieving measurable change in certain fair housing outcomes could require more resources than are available to either states or local jurisdictions, and in some instances is simply beyond a state's legal authority. For example, state HFAs do not have land use decision-making authority or local taxing authority, which significantly limits their options for achieving measurable change.

General Comments

In addition to our comments on modifications HUD should make to the local Assessment Tool when it develops the state Assessment Tool, NCSHA has a number of comments on the Tool that apply to both states and local jurisdictions.

- Allow for sufficient testing of the system. NCSHA strongly encourages HUD to provide ample opportunity for both local jurisdictions and states to pilot test the Assessment Tool using the web-based interactive data and mapping program HUD has not yet made available. This pilot testing should occur prior to finalizing either the Assessment Tool or the Final Rule for AFFH. It behooves HUD to ensure that the Assessment Tool is user-friendly and provides the quality data necessary for jurisdictions to assess segregation and poverty concentration in a meaningful way without causing unnecessary and onerous burdens on jurisdictions. As of this writing, HUD has provided data tables and maps in a stagnant format that does not allow users to determine how the interactive tool will work in practice. Until HUD makes the web-based interactive data and mapping program available to jurisdictions, states and local jurisdictions will be unable to provide feedback on the program's functionality or assess the data to determine if any errors or outliers exist for their specific geographies.

- Do not require jurisdictions to determine the extent to which various identified factors control access to fair housing. In numerous places throughout the Assessment Tool, HUD requires jurisdictions to determine the significance of various identified factors on fair housing concerns, including segregation, disproportionate housing needs, and access to community assets. The Assessment Tool requires jurisdictions to consider an extremely diverse variety of factors, including land use regulations, siting decisions, community resistance, private investments, location of employers, school assignment policies, public transportation, taxi services, public buildings and facilities, and more. Requiring jurisdictions to make these determinations implies that there is a causal relationship between these factors and fair housing outcomes. While this may be true in some instances, it is not always the case. This requirement assumes that jurisdictions could objectively determine whether these factors have a significant impact, a moderate impact, or an insignificant impact on fair housing concerns. Jurisdictions would need to undertake extensive empirical sociological research, possibly including multivariate regression analysis, to adequately make such a determination.

NCSHA is particularly concerned with Section IV B(9), which asks jurisdictions to determine the extent to which a list of factors related to publicly supported housing location and occupancy contribute to segregation. One of the factors noted is "Siting decisions for LIHTC housing, including discretionary incentives in the relevant Qualified Allocation Plan (QAP) governing LIHTC distribution." Local jurisdictions should not attempt to evaluate state QAP policies through the AFFH Assessment Tool. In many cases, such a review would be impossibly complex. Federal law requires state

Low Income Housing Tax Credit (Housing Credit) allocating agencies to undertake a public participation and hearing process when they update their QAPs on an annual or every other year basis. This community participation process is the appropriate vehicle for local governments and others to provide input on QAP policies, including decisions about where properties are located.

- Do not penalize jurisdictions because of racial or ethnic concentration in publicly supported housing. Section IV B(6) requires jurisdictions to assess the demographic makeup of publicly supported housing within their boundaries. However, given that low-income populations are disproportionately comprised of minorities, it is inevitable that income-restricted programs, including publicly supported housing, would serve a disproportionate number of minorities. We are concerned HUD or other outside parties could use this information to penalize jurisdictions unfairly.

Throughout this section, HUD references “siting patterns” for publicly supported housing. We would recommend HUD refer instead to properties’ locations, as these are existing properties and not new properties that are yet to be sited. As a general matter, the Assessment Tool should reflect the distinction between new construction, in which there is opportunity to direct resources to high opportunity areas, and the preservation or rehabilitation of existing housing, which may or may not be located in high opportunity areas.

Section IV B(6)(a)(iii), which requires jurisdictions to describe patterns of occupancy based on color, national origin, family status, and religion, should recognize that this information may not be gathered uniformly or defined consistently at the property level.

- Do not hold jurisdictions accountable for the demographic makeup or admission practices of publicly assisted housing. Sections IV B(6)(b)(iv) and IV B(6)(b)(v) require jurisdictions to discuss the extent to which the racial or ethnic makeup of residents of project-based Section 8, other HUD multifamily developments, and Housing Credit developments is proportional to the racial or ethnic makeup of the neighborhood or area in which the development is located. Because these properties are privately owned and managed, there is little a jurisdiction can do to impact the tenant profile of any particular building or project. In addition, Section IV B(7)(a) requires jurisdictions to report on the admissions preferences or designations of each type of publicly supported housing. Again, as this housing is privately owned, jurisdictions do not have control over or data on individual properties’ admission practices.
- Do not require jurisdictions to report on the extent to which HCV holders are successful in using their vouchers in Housing Credit properties. Section IV B(6)(b)(viii) requires jurisdictions to describe the extent to which tenant-based HCV holders are successful in using their vouchers in Housing Credit developments. This implies that project owners may be discriminating against HCV holders. Jurisdictions have no ability to know how

many voucher holders applied for housing in a particular Housing Credit property, and therefore cannot assess success rates.

Thank you for your consideration of our comments. We look forward to working with HUD to ensure that the state Assessment Tool reflects the needs of state-level jurisdictions, and that it is a useful and meaningful means for states to assess fair housing. Please contact me if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives