



October 27, 2016

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 for States and Insular Areas—
Information Collection: Solicitation of Comment First 30-Day Notice Under Paperwork
Reduction Act of 1995, Docket No. FR-5173-N-08-B

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates this opportunity to provide comments on the most recent iteration of the Affirmatively Furthering Fair Housing (AFFH) Assessment Tool for States and Insular Areas, which HUD released on September 28, 2016. NCSHA and our member Housing Finance Agencies (HFA) welcome the chance to continue working with HUD to craft a final state assessment tool that will help states meaningfully plan to affirmatively further fair housing, while being mindful of their capacity, available resources, and jurisdictional authority.

Overall, NCSHA commends HUD for making significant improvements to the state assessment tool. We are very pleased that HUD has modified the tool in ways that take into account many of the recommendations NCSHA made in our May 10 comment letter on the initial version of the tool. In particular, we applaud HUD for committing to work with NCSHA and HFAs as it develops the state AFFH data and mapping tool (AFFH-T), which states will need to use in conjunction with the assessment tool to develop their Assessments of Fair Housing (AFH), and for providing a separate comment period on the AFFH-T. We also appreciate changes HUD has made to the assessment tool that make it more responsive to state-level implementation needs, help to clarify what is expected of states, and reduce some of the burden on state agencies.

However, even with the changes HUD has made to the assessment tool, the AFH process will remain unreasonably burdensome unless HUD takes further steps to adapt the state assessment tool. Based on the feedback we have received from HFAs on this most recent iteration of the state assessment tool, HUD still vastly underestimates the average time requirement

associated with the AFH process for state agencies, especially for larger states. State agencies are also concerned that the cost of undertaking the AFH will be excessive, likely far more so than the cost associated with the Analysis of Impediments process. Therefore, we urge HUD to consider ways that it may reduce the overall scope of the assessment tool, including by incorporating our recommendations as provided below.

NCSHA and Its HFA Members

NCSHA is a nonprofit, nonpartisan organization created by the nation's state HFAs more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing. HFAs are governmental and quasi-governmental, nonprofit agencies created by their jurisdictions to address the full spectrum of housing need, from homelessness to homeownership. HFAs are dedicated to their common affordable housing mission, reinvest their earnings in the furtherance of that mission, and are publicly accountable.

Most HFAs act as the state Participating Jurisdiction administering the HOME Investment Partnerships (HOME) program. Many HFAs also run other HUD programs, such as Section 8 Project-Based Rental Assistance, Housing Choice Vouchers, the Community Development Block Grant program, the Emergency Solutions Grant program, Housing Opportunities for Persons With AIDS, and the Housing Trust Fund. In addition, HFAs administer federal housing programs outside of HUD's authority, including the Low Income Housing Tax Credit (Housing Credit) and tax-exempt private activity Housing Bonds.

Recommendations for Improving the State Assessment Tool

NCSHA and our HFA members strongly support the Fair Housing Act, including the obligation it creates to affirmatively further fair housing. It is critical that HUD work with state agencies to design a state assessment tool that provides states a mechanism for meaningful and productive fair housing planning, while also minimizing to the greatest extent feasible the burden associated with implementing the AFFH regulations. As such, HUD should make the following additional adjustments to the state tool.

Modify the contributing factors discussion requirement to clarify that states do not need to conduct analyses showing a causal connection between contributing factors and fair housing issues. NCSHA continues to be concerned with the various sections of the state assessment tool that require states to consider a list of contributing factors and identify the factors that significantly create, contribute to, perpetuate, or increase the severity of fair housing issues, including segregation, Racial/Ethnic Concentrated Areas of Poverty (R/ECAP), disparities in access to opportunity, disproportionate housing need, publicly supported housing location and occupancy, and access to opportunities for people with disabilities.

The language HUD uses in the assessment tool suggests that states would have to determine whether each of those contributing factors has a statistically significant causal impact on the fair housing issue in question. For example, states would have to determine whether community opposition significantly creates, contributes to, perpetuates, or increases the severity of segregation. To this end, states would need to conduct rigorous empirical research to measure community opposition, control for all other factors, and determine whether community opposition not only is correlated with segregation, but actually causes segregation.

NCSHA recommends that HUD modify the language in the tool in all sections referring to contributing factors in the same way it modified the language related to analyses of state laws, policies, and practices related to the various fair housing issues to specify that the contributing factors analyses need only be informed by community participation, consultation with other relevant government agencies, and local data and local knowledge. We also recommend that HUD remove the word “significantly,” as it connotes the need for a statistically significant analysis. For example, we recommend that the section on contributing factors to segregation read as:

“Informed by community participation, consultation with other relevant government agencies, and the program participant’s own local data and local knowledge, discuss whether the listed factors may create, contribute to, perpetuate, or increase the severity of segregation.”

Changing the state assessment tool in this way would clarify that HUD is not requiring states to undertake empirical research showing a causal effect of the contributing factor on the fair housing issue, and instead may rely on information garnered through the community participation process, consultation with other government agencies, and local data/knowledge to respond to the contributing factor questions in the tool.

Similarly, HUD also should modify section VI Fair Housing Goals and Priorities to note that the prioritization of contributing factors and resulting fair housing goals should be based on information gleaned through the community participation process, discussion with other governmental agencies, and local data and knowledge, as it is impossible for agencies to objectively rank contributing factors without conducting new empirical research on each.

Clarify the course of action when a local program participant’s findings in its analysis differ from the findings of the state agency in its analysis. NCSHA agrees with HUD that a full-state fair housing analysis is necessary, and we appreciate the clarification HUD makes in the *Federal Register* notice accompanying the state assessment tool that states may use information contained in the AFH of a local government in order to minimize duplication of efforts to assess the fair housing needs in entitlement areas. In such situations, we recommend that states be able to rely on the analyses conducted by the local program participant, including the results of its community participation process, but set their own fair housing goals that are consistent with state jurisdictional and resource considerations.

However, we remain concerned that there may be instances in which the state and a local program participant conduct separate analyses of an entitlement jurisdiction, and those analyses come to different conclusions with contradictory findings. This could create a situation in which the goals set by the local program participant and the goals set by the state are incongruous, potentially undermining fair housing planning in that area of the state. HUD should consider how it can work with states and localities to resolve these sorts of conflicts.

Do not require states to undertake analyses beyond their borders. In response to NCSHA's and other stakeholders' comments that HUD should not require states to assess fair housing issues in their neighboring states, HUD took some positive steps to limit the scope of certain questions to intrastate concerns only. However in other areas of the tool, HUD is still requiring states to analyze fair housing concerns in neighboring states. Indeed, the *Federal Register* notice explicitly states that HUD will continue to require regional, interstate fair housing analyses. NCSHA understands that fair housing issues extend beyond political boundaries, however, we still contend that it is unreasonable to require states to conduct an assessment of fair housing in neighboring states, where the state conducting the assessment has no ability to affect change. Such analyses should be optional. This would make the overall scope of the AFH more manageable for state agencies.

Make optional any analysis requiring longitudinal study of demographic trends. This iteration of the state assessment tool continues to require analyses of how demographic patterns and fair housing issues have changed over time since 1990. NCSHA stands by the recommendation we made in our initial set of comments that historical longitudinal analyses are not necessary to effectively plan to further fair housing with the resources available today and should be optional.

Such longitudinal analyses will necessitate a significant amount of data to show true trending information. It is our understanding that the historical demographic data HUD has provided in the local data and mapping tool is only available at the time of each decennial Census—in this case at 1990, 2000, and 2010. We continue to contend that states will not be able to draw meaningful conclusions about trends with so few data points spread across so many years. Therefore, this analysis will have limited use. We recommend that HUD remove or make optional questions that require a longitudinal analysis in order to allow states to focus their efforts on areas of the assessment tool that are more central to successful fair housing planning.

Clarify what is expected of state agencies under the Disparities in Access to Opportunity section of the tool. We continue to be concerned that the Disparities in Access to Opportunities section of the state assessment tool includes questions that require expertise in policy areas far beyond that housed in HFA policy and planning departments. HUD should clarify whether it intends to provide data to states with which they may respond to questions such as, "For the protected class group(s) for which HUD has provided data, describe any disparities in access to proficient schools in the State." In this case, will HUD provide state

agencies data to help them measure school proficiency or will it simply provide demographic data about the protected class group(s)?

We appreciate, however, HUD's decision to include disparities in access to issues such as public safety, public health, prisoner re-entry resources, housing finance and financial services, and emergency management and preparedness in the Additional Information section, which requires response only if the state's community participation process uncovered relevant information relating to those issues.

Make optional questions in the Disability and Access Analysis section of the assessment tool that require states to conduct analyses based on type of disability. In the *Federal Register* notice, HUD recognizes that there is a lack of nationally uniform data related to disability. Moreover, protections associated with disability data make the disaggregation of that data by type of disability particularly difficult. Therefore, NCSHA recommends that HUD make optional questions that require analyses according to type of disability, such as, "Describe whether geographic patterns vary for persons with each type of disability or for persons with disabilities in different age ranges."

Clarify that states and local program participants can coordinate their community participation processes, even if they are not undertaking a joint AFH. The success of the AFFH regulation to a large part is dependent on a robust community participation process. We are concerned however, that with so many program participants on differing AFH schedules with overlapping geographies, that the public may become fatigued and disinterested in participating. We encourage HUD to allow states and local program participants to coordinate their community participation efforts, even if they do not plan to collaborate on a joint AFH and their AFHs are due in different years.

HUD should ensure language uniformity throughout the state assessment tool, consistent with the changes HUD has made to make the tool more applicable to state-level jurisdictions. NCSHA commends HUD for modifying the state tool so that it better reflects larger geographies such as states. For example, as NCSHA recommended, HUD has changed many of the references to "neighborhoods" to "areas" to show that the state does not need to conduct neighborhood-by-neighborhood analyses. However, it appears that HUD may have overlooked some references to neighborhoods that should be changed to areas.

Moreover, we recommend that HUD clarify the meaning of the term "regional." In some instances throughout the assessment tool, it appears to refer to an interstate analysis and in others it seems to refer to a sub-state analysis conducted by the state or a collaborative analysis conducted by more than one local program participant.

NCSHA appreciates HUD's willingness to work in partnership with us and our members on this very important tool. It is clear that HUD took seriously the comments we provided on the first iteration of the tool, adopting many of our recommendations. We hope HUD will

continue to adjust the tool based on the recommendations we have made in this second comment letter. We look forward to working with HUD as it finalizes the state assessment tool and begins work on the AFFH-T.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Thompson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara Thompson
Executive Director