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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, S.W., Room 10276
Washington, D.C. 20410-0500

Re: Docket No. FR-5173-N-10; Affirmatively Furthering Fair Housing Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995

Dear Office of General Counsel:

This letter is written on behalf of the National Housing Law Project (NHLP). NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for racial and ethnic minorities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. Since 1968, NHLP has been dedicated to advancing housing justice for low-income individuals and families.

NHLP applauds HUD for issuing its final affirmatively furthering fair housing (AFFH) regulation in July 2015, and for taking a series of steps to implement this important rule. As HUD considers the renewal of the Assessment Tool for Local Governments (Local Government Assessment Tool), we offer the following comments and suggestions that we feel would increase the overall efficacy of the Tool, as well as the accompanying HUD AFFH Data and Mapping Tool. These components are crucial to the successful implementation of the Rule.

A. Comments on the Local Government Assessment Tool

The Need for More Questions about Sex Discrimination

The questions in the Assessment Tool currently focus on issues regarding race/ethnicity, national origin, and familial status. There is also a Disability and Access Analysis section within the Tool. However, there are no questions within the Tool that directly ask the jurisdiction to analyze issues related to sex discrimination.

Discrimination on the basis of sex or gender can take various forms, including discrimination against survivors of domestic violence (who are overwhelmingly women); discrimination against members of the LGBT community, often on the basis of sex stereotyping; and sexual harassment. Despite HUD's work in these areas of sex discrimination, questions regarding these forms of discrimination are absent from the Tool. Unfortunately, the Assessment Tool only asks about groups with "other protected characteristics" within the "Additional Information" segments of each subsection (e.g., Disparities in Access to Opportunity, Disproportionate Housing Needs) of the Fair Housing Analysis section (Part V) of the Tool. The lack of prompting about the fair housing issues that are faced by domestic violence survivors, members of the LGBT community, and victims of sexual harassment misses an important opportunity to more fully assess how one's sex, gender/gender identity, and/or sexual orientation can impact fair housing choice and opportunity for many individuals and families in our nation's communities. For example, jurisdictions may have so-called "nuisance ordinances" in place; such ordinances have been used against survivors of domestic violence who have sought police assistance,¹ placing their housing security in jeopardy. Despite this obvious barrier to fair housing choice and opportunity for individuals and families, the Local Government Assessment Tool does not mention nuisance ordinances, and does not have any questions that are specifically geared toward the fair housing issues faced by survivors and their families. Likewise, despite HUD's own research demonstrating housing discrimination against LGBT individuals and families,² there are no questions in the Tool that directly prompt the jurisdiction to consider barriers to fair housing choice and opportunity for these populations. Similarly, no questions in the Tool focus on how sexual harassment creates barriers to fair housing choice.

Amendment of the "Land Use and Zoning Laws" Contributing Factor Description

Currently, the description for the possible contributing factor "Land Use and Zoning Laws" lists "[i]nclusionary zoning practices that mandate or incentivize the creation of affordable units." Inclusionary zoning is included alongside policies, such as occupancy restrictions and minimum lot sizes, which can be used to limit housing choice; this could be read to imply that inclusionary zoning works to limit housing choice. This is an issue found within several of the Assessment Tools issued for public comment, including the State and PHA Assessment Tools. However, inclusionary zoning is a tool with the potential to expand access for low-income families who seek to move to lower-poverty

¹ For more information on how nuisance ordinances impact survivors, including references to several cases, please refer to the AIGU Website titled *Discrimination Against Same-Sex Couples (June 2013)*, available at https://www.huduser.gov/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf.

areas.³ To address this concern, we recommend that the words “lack of” should be added, such that the description says “Lack of inclusionary zoning practices that mandate or incentivize the creation of affordable units.”

B. Comments on HUD’s AFFH Data and Mapping Tool

General Comments

We greatly appreciate HUD’s commitment to providing HUD grantees and the public with access to the HUD AFFH Data and Mapping Tool (Data/Mapping Tool). This Tool provides an important starting point for examining fair housing issues in communities and regions. We believe that the following comments and suggestions will make the Data/Mapping Tool more user-friendly.

Providing Explanations for the Data/Mapping Tool. The Data/Mapping Tool itself should include more detailed descriptions to better assist users in understanding what the map is displaying, or what table the user is looking at. For example, on Map 9, “Demographics and School Proficiency,” intervals for the School Proficiency Index are displayed, but without providing a statement of the range of the index (0-100), or what the index numbers mean. Just from looking at the map, it is difficult to tell whether a higher or lower number on the index indicates high or low school proficiency within the context of the School Proficiency Index. Currently, this information is available in the Assessment Tool’s accompanying instructions, and in the *AFFH Data Documentation*; however, such information would not be available to someone (such as a member of the public) who is only accessing the Data/Mapping Tool, without these accompanying materials. Additionally, each map and or table generated by the Data/Mapping Tool should provide a brief description of what a particular index is actually measuring (in the example of the School Proficiency Index, the performance of 4th-grade students attending up to 3 schools within 1.5 miles on state math and reading exams),⁴ such that members of the public, advocates, and other stakeholders can understand what types of local data and/or local knowledge would be most useful for jurisdictions to consider. Given the importance of community participation in the AFH process, it is imperative that members of the general public who access the Data/Mapping Tool can easily understand and navigate the maps and data provided. Additionally, providing this information will also benefit jurisdictions by providing maps and tables with the appropriate accompanying context.

Increasing the Readability of the Maps. Maps within the AFFH Data/Mapping Tool that utilize shading to indicate differences between areas (e.g., differences in Map 6 regarding percentage of Vouchers; differences in the ranges of the various opportunity indices) can be difficult to read; specifically, the differences in the gray gradations. HUD should ensure that maps can be easily read and gradations are more easily distinguishable. One recommendation is to use distinguishable patterns instead of color gradations.

³ See e.g., Heather L. Schwartz, et al., *Is Inclusionary Zoning Inclusionary? A Guide for Practitioners?* (2012), available at: http://www.rand.org/pubs/technical_reports/TR1231.html; HUD, *Inclusionary Zoning and Mixed-Income Communities* (Spring 2013), available at: <https://www.huduser.gov/portal/periodicals/em/spring13/highlight3.html>.

⁴ HUD, *AFFH Data Documentation*, 14 (Apr. 2016).

C Solicitation for Specific Comments

We offer the following responses and recommendations regarding two questions for which HUD specifically solicits comments in its March 2016 Federal Register Notice.⁵

Question #2 (Additional Data on Homeownership and Rental Housing). Yes, HUD should provide additional data on homeownership and rental housing. This would allow the jurisdiction to examine the question of whether certain protected class members face barriers in purchasing homes and accumulating wealth over time, versus those who are able to do so. Such information may be relevant for identifying contributing factors such as Lending Discrimination and Access to Financial Services.

Question #3 (Opportunity Indices). The Notice asks whether changes or improvements could be made regarding the Opportunity Index measures. Here, we include a series of observations and questions that are raised by the various Opportunity Index measures that we hope can be addressed as HUD further refines the data it is providing through the Data/Mapping Tool. We made many of these observations in our comments for the Draft PHA Assessment Tool.

School Proficiency Index. We encourage HUD to provide a clearer explanation of what the School Proficiency Index shows. The Local Assessment Tool instructions state that the School Proficiency Index “measures the proficiency of elementary schools in the attendance area” of persons who share a protected characteristic, or “the proficiency of elementary schools within 1.5 miles of individuals with a protected characteristic where attendance boundary data are not available.”⁶ The instructions add, “The values for the School Proficiency Index are determined by the performance of 4th grade students on state exams.”⁷ The *AFFH Data Documentation* fails to mention protected characteristics with respect to the School Proficiency Index; instead, it states, “Values are percentile ranked and range from 0 to 100. The higher the score, the higher the school system quality is in a neighborhood.” Thus, the relationship between the index and protected class status is left unclear by the instructions.⁸ HUD should define “attendance areas” and briefly explain how attendance areas are determined (which is explained in HUD’s *Data Documentation*⁹) in the instructions. Additionally, any explanation concerning the School Proficiency Index (including the Local Government Tool instructions) should differentiate between *proximity* to proficient schools and actual *access* to proficient schools. The index’s focus on location of proficient schools versus actual ability to access these schools only presents part of the picture necessary for a meaningful analysis.

⁵ Affirmatively Furthering Fair Housing Local Government Assessment Tool – Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 15,546, 15,548 (Mar. 23, 2016) [hereinafter “Local Government Assessment Tool”]

⁶ Local Government Assessment Tool Instructions at 8.

⁷ *Id.*

⁸ *AFFH Data Documentation* at 14.

⁹ The *AFFH Data Documentation* notes that mapping area of attendance area zones is based upon the School Attendance Boundary Information System (SABINS), where available. *AFFH Data Documentation* at 14. If these zones are what are used to determine the attendance areas, then HUD should note that in any accompanying descriptions concerning the School Proficiency Index. Also, it would be helpful to know what goes into determining an “attendance area” for the purposes of SABINS and the index, as local knowledge or local data may offer alternative “attendance areas” that make more sense for the purposes of conducting a fair housing analysis.

Furthermore, the index does not include data on other grade levels, private schools, high school graduation rates by protected class status, or consider racial composition/segregation in the schools. HUD should consider ways to incorporate these considerations into the School Proficiency Index, as well as school resources (i.e., percentage of students receiving free/reduced meals, amount of funding per student), and how the racial/ethnic makeup of the schools compares with the composition of students district-wide. If incorporating all of these considerations into the School Proficiency Index is not practicable, then HUD should prompt jurisdictions to consider these school characteristics as part of an overall evaluation of access to educational opportunity.

Employment. There are limitations to the jobs proximity and labor market indices. The Job Proximity Index does not take into account the skill level needed for jobs or the jobs that are actually available. Therefore, just because individuals in a protected group may live in an area that is close to jobs, that does not necessarily mean they have better access to job opportunities. A limitation of the Labor Market Index is that it only measures the number of jobholders and education level of residents. We recommend finding a means by which to measure other forms of human capital, such as prior job experience, skills, or training. Additionally, weighting the different kinds of educational attainment (e.g., high school diploma, some college, college degree, etc.) would provide additional context for analysis.

Transportation. It is unclear how the Low Transportation Cost and Transit Trips indices provide information on access to transportation by protected groups. This confusion may be due to a lack of clarity regarding what the Low Transportation Cost Index measures. The Tool's instructions indicate that the low transportation cost index measures the "cost of transport and proximity to public transportation by neighborhood."¹⁰ These two variables seem quite different from each other since you can have situations where individuals have relatively low transportation costs (which would lead to a higher score) and no proximity to public transit (which would lead to a lower score) because, for example, there is no public transit available in the area and people drive short distances to work. In these situations, how can one index score measure two variables that can be very different from each other? Furthermore, since the transit index scores only measures the frequency of transit use, these scores do not measure transportation access. For example, a tract may have poor access to public transit, but receive a high score because residents use the public transit often.

Low Poverty Index. The calculation method compares national and tract-level data, making it unsuitable for judging the relative position of a tract in a city or region.

Access to Environmentally Healthy Neighborhoods. There are limitations to the Environmental Health Index. The data only covers air toxins, is outdated, and, according to the EPA, is only valid for large geographic areas, like regions and states.¹¹ HUD should consider utilizing the 12 environmental justice indicators such as exposure to lead paint, traffic proximity, etc., found in the EPA's EJSCREEN

¹⁰ Local Government Assessment Tool Instructions at 9.

¹¹ See U.S. Environmental Protection Agency, FAQ on NATA, available at <https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions#background4>

Tool referenced in a recent *Cityscape* article.¹² Another tool referenced in that article, an EPA tool called C-FERST¹³, also has potential, though that tool remains in beta testing.

Thank you for your consideration of these comments. If you have any questions, please contact Staff Attorney Renee Williams, rwilliams@nhlp.org.

Sincerely,

/s/
Stephen Knight
Interim Co-Director

¹² Brent D. Mast, “Measuring Neighborhood Opportunity with AFFH Data.” (Nov. 23, 2015), available at: <https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/ch12.pdf>. The EJSCREEN tool can be accessed at: <https://www.epa.gov/ejscreen>.

¹³ <https://www.epa.gov/healthresearch/community-focused-exposure-and-risk-screening-tool-c-ferst>.