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**Submitted via Regulations.gov**

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: Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies  
Solicitation of Comment – 60-Day Notice Under Paperwork Reduction Act of 1995—Docket  
No. FR-5173-N-09

Dear Office of General Counsel:

This letter is written on behalf of the National Housing Law Project (NHLP), [as well as the undersigned organizations]. 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 issuing the draft Public Housing Agency (PHA) Assessment Tool (Draft PHA Tool). We also appreciate recent steps HUD has taken to implement the AFFH rule. We offer the following comments and recommendations to further improve the efficacy of the Draft PHA Tool.

**A. General Comments and Recommendations**

## Data, Maps, and Tables for PHAs

HUD deserves credit for announcing its intent to provide tables and maps specifically tailored for PHAs, such that PHAs will be able to obtain information that is specific to their individual service areas, as well as information about the regions in which PHAs operate. Unfortunately, without the full functionality of the tables and maps, it becomes difficult to fully evaluate how the Draft PHA Assessment Tool would work in conjunction with the HUD-provided tables and maps. As noted in more detail below, many of the sample maps provided are very difficult to read – due in large part to their static nature (i.e., being unable to zoom in and out, or otherwise adjust map settings). The result is that the sample maps provided do not allow commenters to fully interact with map features while evaluating the questions and instructions provided with the Tool.

HUD should therefore strive to finalize the maps and tables for the PHA Tool as expeditiously as possible, *ideally before the initiation of the subsequent 30-day comment period*. However, as HUD still needs to collect information from PHAs about their service areas, if finalizing the maps and tables for PHAs would cause undue delay in HUD finalizing the PHA Assessment Tool, we ask, alternatively, *at a minimum*, that HUD reference the titles of the relevant maps and tables within the instructions for individual Tool questions. Currently, the specific maps and tables are only represented in the instructions by a placeholder such as “[HUD-provided Tables]” or “[HUD-provided Maps].” Doing so will at least allow interested stakeholders to review the question alongside the intended map(s) or table(s) that HUD is asking PHAs to use to respond to a particular question.

## PHA Service Areas

The March 23, 2016, Federal Register Notice accompanying the Draft PHA Tool notes that “PHAs’ service areas are determined by State legislation and their scope may vary,” and that “HUD does not currently have data for all PHAs’ service areas.”<sup>1</sup> Since there is no uniform means by which PHA service areas are determined, stakeholders who are assessing the adequacy of a PHA’s AFH would benefit from an understanding of how a specific PHA’s service area is defined. Accordingly, the Tool should include a separate section named “Service Area” that asks the PHA to briefly describe its service area using easily identifiable indicators such as geographic boundaries and a description of what, if any, functions the PHA operates on a regional level. This section should also ask the PHA to briefly explain how State law determines the size and scope of PHA service areas, with a citation to the relevant legal authority under State law.

Furthermore, as HUD continues to develop its maps for PHAs to use when engaging in the analysis required to complete the PHA Tool, the “regional” maps should consistently also denote the PHA service area as a frame of reference. The current sample maps provided for PHA regions do not

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<sup>1</sup>Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 15,549, 15,553 (Mar. 23, 2016) [hereinafter “PHA Draft Tool Notice”].

do this consistently. For example, while PHA Regional Map 1 displays both the boundaries for the region and for the PHA service area, PHA Regional Map 2 does not. Including the PHA's service area boundary in the PHA regional maps helps provide appropriate context for both the PHA and interested stakeholders reviewing the regional maps.

HUD should also consider an option that allows PHAs to overlay neighboring PHA service areas on both the PHA service area and regional maps. This change would also allow stakeholders to easily identify where PHAs' service areas overlap.

### Contributing Factors

The contributing factors in several parts of the Draft PHA Tool should be modified such that they are more closely tied to an analysis that is relevant for PHAs. For example, the description for the "Community Opposition" contributing factor that is listed in the Segregation, Racially/Ethnicity Concentrated Areas of Poverty (R/ECAPs), and Publicly Supported Housing analysis sections should be amended. While the "Community Opposition" description rightly references community opposition to proposed or existing publicly supported housing, and specifically includes opposition to the use of Housing Choice Vouchers, the reference regarding Vouchers should be expanded upon. Opposition to the use of Housing Choice Vouchers should include public opposition to proposed measures that would prohibit source of income discrimination (including discrimination against Voucher holders). Additional examples of how the contributing factor descriptions can be amended will be included within this letter.

### **B. The Community Participation Section Should be More Specifically Tailored to PHAs**

The questions and instructions within the Draft PHA Tool's Section III ("Community Participation Process") should be amended to better reflect community participation by the populations that PHAs serve or that are eligible to be served by the PHA. In Question 1, the question should be updated to include the following: "Identify media outlets used and include a description of efforts made to reach the public, including those representing populations that are typically underrepresented in the planning process such as persons who reside in areas identified as R/ECAPs, persons who are limited English proficient (LEP), and persons with disabilities. *Describe efforts to conduct outreach to residents of public housing (including members of resident councils), Section 8 Housing Choice Voucher holders, and persons eligible to be served by the PHA (including those currently on PHA-administered waitlists). Also, briefly describe how the documents associated with the AFH, including the draft AFH itself, were provided to public housing tenants, Voucher holders, and other interested parties*" (proposed language in italics). The accompanying instructions should specifically reference 24 C.F.R. § 903.17, which states, in part, that 45 days before the public hearing on the AFH, the PHA is required to make the draft AFH, as well as "the required attachments and documents related to the [AFH], and all information relevant to the public hearing to be conducted, available for inspection by

the public at the principal office of the PHA during normal business hours.”<sup>2</sup> Additionally, there appears to be a typo in Question 1, in the last sentence, which should read, “Briefly explain how these communications were designed to reach the broadest audience possible. *Please include a description of any meetings with the Resident Advisory Board, resident council(s), or other interested parties*” (proposed language in italics; deleted language omitted). Furthermore, the accompanying instructions and/or subsequent HUD guidance to PHAs about the AFH process should provide PHA-specific suggestions regarding advertising public meetings and hearings about the AFH process, such as mailing materials to current tenants, applicants, and persons on PHA waitlists; postings in common areas of all PHA properties; or providing easily accessible information about the AFH process on the PHA’s website (including dates, times, and locations of public hearings). The instructions and/or guidance should also recommend making the draft AFH and related documents easily accessible at each PHA development, as well as on the PHA’s website as a means of ensuring “meaningful community participation” and employing “communications means designed to reach the broadest audience.”<sup>3</sup>

The instructions accompanying Question 2 should provide examples of the types of organizations with which PHA may consult during the AFH process. The AFFH Final Rule Preamble notes that “[c]onsultation requirements for PHAs are fundamentally different [from the Consolidated Plan consultation requirements] as direct consultation is focused upon the residents served. This takes place through specific consultation of the Resident Advisory Board (see § 903.13) as well as residents in the HCV program.”<sup>4</sup> The preamble also notes that PHAs are required to “conduct reasonable outreach activities to encourage broad public participation,” refers to interaction “with difficult to reach groups such as those with LEP.”<sup>5</sup> While this discussion provides a good starting point, PHAs would benefit from more concrete examples of groups that the PHA should consult in the development of the AFH such as local legal aid organizations, fair housing groups, and social service agencies. PHAs would also benefit from more concrete examples of the method of outreach, such as starting a listserv or email group of interested stakeholders.

As noted above, PHAs must consider recommendations provided by the Resident Advisory Board or Boards. Accordingly, Question 4 should be amended to read as follows: “Summarize all comments obtained in the community participation process, *including any recommendations provided by the Resident Advisory Board(s)*. Include a summary of any comments or views not accepted and the reasons why” (proposed language in italics).

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<sup>2</sup> 24 C.F.R. § 903.17(b). Note that PHA participation requirements are incorporated by reference into the AFFH rule in 24 C.F.R. § 5.158.

<sup>3</sup> 24 C.F.R. § 5.158(a). The regulation states, “To ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other required planning documents. To ensure that the AFH, the consolidated plan, and the PHA Plan and any plan incorporated therein are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. Such communications may be met, as appropriate, by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the program participant’s official government Web site, and as well at libraries, government offices, and public places.”

<sup>4</sup> AFFH Final Rule Preamble at 42,297.

<sup>5</sup> *Id.* (citing 24 C.F.R. § 903.13 and HUD PIH Notice 2011-31).

## C. Specific Comments Concerning the Fair Housing Analysis Section

### Contributing Factors, Generally

As noted above, the descriptions for contributing factors featured within the Fair Housing Analysis Section should be amended such that these descriptions are more relevant for PHAs conducting the analysis. These are outlined below:

- “Displacement of residents due to economic pressures.” This description should also include a specific reference to landlords who exit the Housing Choice Voucher program so that the landlord can obtain higher rents than permitted under a PHA’s payment standard, which results in involuntary displacement of Voucher households from their desired communities.
- “Lack of regional cooperation.” This description should not only focus on planning for regional development, but should also reference any existing failure among PHAs within a region to cooperate in facilitating the portability of Housing Choice Voucher holders who seek to relocate from the jurisdiction of one PHA to another. Alternatively, the “Impediments to mobility” and “Impediments to portability” contributing factors should be included in the sections focusing on R/ECAPs, Segregation, and Disproportionate Housing Needs.
- “Location and type of affordable housing.” This contributing factor description should be updated to also include a specific reference to the location of Housing Choice Voucher households, which may be a result of inadequate Fair Market Rents, payment standards that are too low, the failure of PHAs to provide sufficient landlord outreach, or other reasons.
- “Impediments to portability.” An additional impediment to portability is the fact that family members can be re-screened for criminal history by the receiving PHA. Families can therefore be terminated from the voucher program upon moving to a new jurisdiction based on a member’s criminal history record. This greatly reduces housing choice and is a barrier to portability.

Additionally, the PHA Tool should list “Policies related to payment standards, FMR, and rent subsidies” as a possible contributing factor for both Segregation and R/ECAPs. Doing so acknowledges that inadequate payment standards and FMRs can, in certain circumstances, exacerbate existing patterns of segregation by denying housing choice in non-segregated areas for those families who seek such housing opportunities. Furthermore, the description of this contributing factor should include a reference to the PHA’s policies and practices regarding rent reasonableness determinations in the context of the Voucher program. PHAs may not approve a Voucher tenancy or execute a HAP contract

until the housing authority has determined that several factors have been met—including a determination that the rent is reasonable.<sup>6</sup> This requirement is intended to ensure that Voucher holders are paying rents that are in line with what an unassisted household would pay for a similar unit on the private market.<sup>7</sup> However, despite the fact that all PHAs administering the Housing Choice Voucher program make rent reasonableness determinations on every unit, PHAs’ considerable discretion in making this determination results in wide variation and a lack of uniformity in how PHAs approach the question of “reasonableness.” Many PHAs rely upon databases with rental listings that paint an incomplete picture of what actually constitutes a reasonable rent for a specific unit in a particular area. Thus, in some instances, rents for units in certain neighborhoods (such as concentrated areas of poverty) are more likely to be deemed “reasonable,” whereas rents for units in lower-poverty areas are more likely to be deemed “unreasonable” because they are not really comparable in terms of location. In some areas, PHAs compare the rent of the unit in question to rent paid by other Voucher holders, rather than to comparable private units, resulting in a distorted “market value,” especially in higher opportunity areas that have historically lacked a large number of Voucher holders.

Finally, we feel that the “Restrictions on landlords accepting vouchers” contributing factor should be re-named “Barriers imposed upon Landlords who wish to rent to Voucher holders.” If the description is not consulted, the name of the current contributing factor could be read to imply that any sort of source of income protection (a “requirement” to rent Voucher holders) could contribute to fair housing issues.

### Disparities in Access to Opportunity

We begin by including comments with overall applicability to this section:

- Indices by national origin and familial status are not available. The first two subparts of each template question iii(1)(a) – (1)(e) require that the PHA use HUD-provided maps and tables to describe disparities in a particular opportunity area (e.g. education, employment) based on race/ethnicity, national origin, and familial status in the service area and region; identify the protected class groups that have the least access to these opportunity areas (e.g. proficient schools, employment); and compare/describe the residency patterns of racial/ethnic, national origin, and familial status groups in the service area and region relating to access to the opportunity areas. The analyses of the indices by national origin and familial status cannot be done since the index scores are not currently organized by protected group categories other than race/ethnicity. We strongly urge HUD to make these data be available for public review before the start of the next comment period, to the extent that doing so would not cause an undue delay in the issuance of the final PHA Tool. To the extent that HUD expects PHAs to do their own overlay comparisons with HUD-provided maps (by, for example, looking side-by-side at the national origin demographics map, Sample Map 1, and the school proficiency index map,

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<sup>6</sup> See 24 C.F.R. § 982.305; 24 C.F.R. § 982.507.

<sup>7</sup> See 24 C.F.R. § 982.507(b) (noting that the “PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units”).

Sample Map 9), these comparisons are almost impossible to do because the maps are incredibly difficult to read.

- Strategies to complete third subparts of Questions iii(1)(a) – (1)(e). In the third subparts of Questions iii(1)(a) – (1)(e), PHAs must describe policies or programs that limit or enhance the ability of public housing tenants, HCV participants, and program waitlisted individuals to obtain high access to specific opportunity areas. The instructions that accompany these questions provide some basic guidance regarding how to respond to these queries by generally asking PHAs to refer to local data and local knowledge and pointing to a few HUD-provided maps. To the extent these questions address issues that are beyond the scope of PHAs’ normal line of work (e.g. transportation, access to environmentally healthy neighborhoods), we strongly encourage HUD to provide examples of real strategies that PHAs could employ to obtain the information necessary to answer the questions. For example, for the employment policies and programs question, HUD could recommend that PHAs outreach to local worker centers and direct service organizations that help low-income individuals find and apply for jobs, to see why people in protected groups may or may not be accessing employment opportunities. Furthermore, where possible, HUD should draw connections between a specific opportunity indicator and the PHA where a particular indicator intersects with existing PHA operations. For example, in the subsection on access to employment, HUD should ask PHAs to describe efforts to promote employment opportunities for public housing residents pursuant to Section 3 (in addition to the reference to “job training programs” in Question (b)(iii)).
- Interpreting indices in tables by protected group. The template instructions should provide clear guidance on how PHAs should read the tables with indices that are organized by protected groups. For example, in Sample Table 12, what do the transit index scores indicate when they are organized by race/ethnicity? Does a higher transit index score mean that a certain racial/ethnic group takes more frequent public transit trips? Does it mean that the group has better access to transit generally or in their neighborhoods? Similarly, what does it mean when a certain racial/ethnic group has a higher school proficiency index score? Does a higher score mean that the group is more likely to live in a neighborhood close to a proficient school? Does a higher score mean that the group is more likely to have access to a proficient school?
- Defining “region.” – When HUD finalizes the regional data, it would be very helpful if HUD clearly defines the boundaries of the regions so that PHAs know exactly the regional area that must be covered in their analyses and, therefore, the extent of the data necessary to answer the template questions.

We also offer comments for specific subsections within the Disparities in Access to Opportunity section. Many of these observations and comments can also apply to the HUD-provided data and maps more generally, to the extent that these opportunity indices are being used as the basis for analysis for the State and Local Government assessment tools.

### *Education.*

We encourage HUD to provide a clearer explanation of what the School Proficiency Index shows. HUD states that the “School Proficiency Index measures the proficiency of elementary schools in the attendance area (where this information is available) of individuals sharing 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.” 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. HUD should define “attendance areas” and briefly explain how attendance areas are determined (which is explained in HUD’s *Data Documentation*<sup>8</sup>) in the instructions. Additionally, any explanation concerning the School Proficiency Index (including the accompanying 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.

Furthermore, this index has serious limitations as the index is determined by the performance of 4<sup>th</sup> grade students on state exams and, in some cases, in schools that are only within 1.5 miles of where individuals in protected groups are located. The index does not include data on other grade levels, private schools, or consider racial segregation in the schools. The instructions for subpart two of the question state that “to the extent the questions require consideration of middle and high schools, local knowledge (as defined at 24 C.F.R. § 5.152) will be relevant.” This statement seems to acknowledge the limitations of the school proficiency index and the possible need to explore performance of students in other grade levels. HUD should provide examples of strategies PHAs can employ to obtain this local information.

Question iii(1)(a)(iii) should not be limited to prompting discussion about access to proficient schools by protected class members who are public housing residents, Voucher tenants, and families waitlisted for these programs. Instead, the Tool should also ask the PHA to discuss the experience of public housing residents, Voucher tenants, and waitlisted families who are able to attend proficient schools, but who still experience disparities in educational outcomes, such as graduation rates, test scores, and other performance metrics. The accompanying instructions, which ask the PHA to provide additional information about “education-related policies, and practices, and the effects on protected class groups residing in public housing and HCV-assisted housing, and for applicants waitlisted for these programs,” should be amended to specifically ask about disparities in educational outcomes for students who attend proficient schools.

### *Employment.*

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<sup>8</sup> 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.



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 poignant example of this is in Sample Table 12 where it looks like, in the sample PHA service area and region, many individuals who live below the federal poverty line have higher job proximity index scores than those in the general population (see scores for White, Black, and Asian categories). 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.

#### *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 several factors, including the absence of key maps (such as a map of residency patterns of protected groups overlaid by shading showing transportation access at the neighborhood level, which is mentioned in the instructions) and a lack of clarity regarding what the low transportation cost index measures. The template instructions indicate that the low transportation cost index measures the “cost of transport and proximity to public transportation by neighborhood.” 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.

#### *Access to Low Poverty Neighborhoods.*

There are limitations to the 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. In addition, please note that the instructions refer to a Question (1)(d)(iv) that does not exist.

#### *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.<sup>9</sup>

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<sup>9</sup> See U.S. Environmental Protection Agency, FAQ on NATA, available at <https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions#background4>

### *Contributing Factors: Disparities in Access to Opportunity.*

We applaud HUD for adding three new contributing factors of disparities in access to opportunity – impediments to portability, lack of access to opportunity due to high housing costs, and policies related to payment standards, FMR, and rent subsidies. In our experience, these are three major contributing factors that can create, perpetuate, contribute to, or increase the severity of disparities in housing access. An important note is that low FMRs and payment standards in costly rental markets can prohibit mobility *and* portability. Therefore, we recommend that this fact be reflected in the definitions of “impediments to portability” and “policies related to payment standards, FMR, and rent subsidies.” In addition, we encourage HUD to include the following contributing factors that can impede access to opportunity – source of income discrimination, lack of job training programs, and lack of affordable childcare.

### Disproportionate Housing Needs

In Sample Tables 9 and 10, it is unclear whether the “% with problems” reflects the percentage of individuals in a specific protected group or the percentage of overall households with housing/severe housing problems. In addition, family households with more than five people are not an appropriate proxy for families with children. There are many families with children that have five or fewer members in the households. Therefore, the data for the household type and size need to be broken down further to reflect families with children with three, four, and five household members.

It is very difficult to use Sample Maps 7 and 8 to answer Subpart Question 2. Sample Map 7 for the PHA service area, which presents the percentages of households experiencing problems by race/ethnicity, is extremely hard to examine because the dots are very clustered and cover most of the PHA service area such that the various gray degradations are impossible to decipher. Although there is less dot clustering in Sample Map 7 for the region and the Sample Maps 8 generally, the problem of dot clustering still exists in the middle parts of these maps and the gray degradations of the tracts in many cases are too subtle to distinguish them from each other.

The instructions for subpart Question 3 seem to indicate that PHAs should read the data in Sample Tables 9-11 together to compare the needs of families with children for housing units with two, three or more bedrooms with the available existing housing stock in each category of publicly supported housing. However, it is unclear from the data in the tables how a PHA would be able to make these logical deductions. Table 11 shows the number of households in the PHA service area in 0-3 bedroom units and that about half of tenants in publicly supported housing, except for other multifamily housing, are comprised of households with children. But Table 11 does not address the needs of these families. Tables 9 and 10 indicate the number of households with housing/severe housing cost burdens by household type and size, but these households are not categorized by type of publicly supported housing. HUD must provide guidance on how a PHA is to interpret the data given in these tables to provide the requested analyses.

*Contributing Factors: Disproportionate Housing Needs.*

We recommend that HUD add to the contributing factors list for this section— involuntary displacement of survivors of domestic violence; source of income discrimination; high housing costs on the private market; and policies related to payment standards, FMR, and rent subsidies.

*Additional Information: Disproportionate Housing Needs.*

As HUD has identified, the HUD-provided maps and tables do not provide data for several protected groups, including data based on gender and one’s status as a survivor of domestic violence. HUD has acknowledged that the Fair Housing Act protects domestic violence survivors,<sup>10</sup> and, therefore, should be considered as part of a PHA’s AFH. PHAs can use information regarding survivors that they are already required to report under federal and local laws. The Violence Against Women Act mandates that PHAs address the housing needs of survivors in their planning documents. In the 5-Year Plan, PHAs are required to include a statement of the goals, objectives, policies, or programs that will enable the PHA to serve the needs of survivors.<sup>11</sup> In the Annual Plan, PHAs are required to include a description of activities, services, or programs that are provided by a victim service agency to survivors, that help survivors to obtain or maintain housing, and that prevent violence or enhance survivor safety in assisted families.<sup>12</sup> If PHAs are meeting these reporting requirements, then they should have readily available information that will help them assess the challenges that survivors face in maintaining and accessing affordable housing, which may include housing cost burden, substandard housing conditions, and/or overcrowding.

Disability and Access Analysis

We offer the following suggestions and comments regarding the Disability and Access Analysis section.

- Disability Data. In the instructions for the Tool, HUD acknowledges that there “are limited sources of nationally uniform data on the extent to which individuals with disabilities are able to access housing and other community assets.”<sup>13</sup> Currently, the instructions accompanying this section mention that “[l]ocal data and local knowledge may be particularly useful in completing this section, including, but not limited to, information provided by the public, outside organizations and other government agencies in the community participation process.” Given

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<sup>10</sup> See Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD Office of Fair Housing and Equal Opportunity (FHEO), to FHEO Office Directors and Regional Directors, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA) (Feb. 9, 2011), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>

<sup>11</sup> 42 U.S.C. § 1437c-1 (West 2016).

<sup>12</sup> *Id.*

<sup>13</sup> PHA Draft Tool Instructions at 26.

the lack of nationally uniform data, the instructions accompanying this section should not only mention, but should strongly encourage PHAs to solicit input from community stakeholders about sources of local data and local knowledge—to the extent available—that would provide valuable insights for the disability and access analysis. In subsequent guidance geared at PHAs, HUD should make suggestions about places (universities, other public agencies, etc.) that may have sources of local data regarding fair housing choice for persons who experience disabilities.

- Effective Communication. Question C(2) should include an additional question about PHA compliance with the requirement to provide effective communication<sup>14</sup> to persons who experience disabilities. The question should read, “How do PHA personnel and building staff engage in effective communication with applicants and residents who experience disabilities?” The accompanying instructions should ask the PHA to answer this question using any available local data or local knowledge.
- Wait Times. Question C(2) should include a question about wait list times for accessible units that are administered by the PHA. The question should read, “Is there a wait list for units accessible to people with different types of disabilities? If so, describe the average wait times for each type of accessible unit.” The accompanying instructions should ask the PHA to answer this question using any available local data or local knowledge.
- Failure to Provide Reasonable Accommodations. We recommend that the Draft PHA Tool be updated to include “Failure to Provide Reasonable Accommodations” as a possible contributing factor for this section. Currently, failure to provide reasonable accommodations is referenced in the “Private Discrimination” contributing factor, and references to reasonable accommodation policies are made in other contributing factor descriptions. However, we recommend creating a new contributing factor with its own full description. A description could read as follows:

The FHA states that a refusal to provide reasonable accommodations “in rules, policies, practices, or services, when such accommodations may be necessary” to allow a person who experiences a disability “to use and enjoy a dwelling.”<sup>15</sup> In addition to the FHA, Section 504 also requires PHAs and certain other publicly supported housing providers to provide reasonable accommodations to disabled persons when the tenant establishes a nexus between a person’s disability and the requested accommodation. Housing providers may fail to offer reasonable accommodations in the application process, during occupancy, and prior to eviction. The failure to provide a reasonable accommodation could result in displacement, subsidy termination, or eviction of a disabled tenant. The failure to provide a reasonable accommodation includes a housing provider’s failure to

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<sup>14</sup> See 24 C.F.R. § 8.6 (requiring that HUD recipients “take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public,” including providing auxiliary aids and the use of telecommunication devices for persons who are deaf).

<sup>15</sup> 42 U.S.C. § 3604(f)(3)(B).

engage in the interactive process with the requester, and requiring information from the requester that is unnecessarily intrusive in order to evaluate the reasonable accommodation request.

### Publicly Supported Housing Analysis

The Publicly Supported Housing Analysis section emphasizes questions concerning the location and occupancy of publicly supported housing, with limited questions about access to opportunity by residents and no questions about disproportionate housing needs specific to the context of publicly supported housing. This section would benefit from questions that ask about access to community assets (including proficient schools, transportation, employment, social services, green space, job training, and community centers) by residents of public housing, such as amenities within and in close proximity to publicly supported housing developments. This section also does not touch on issues such as access to supportive or other services by residents of publicly supported housing. Currently, such information would likely go in the “Additional Information” section; however, featuring such questions more prominently is likely to get the PHA thinking about the ways in which the PHA and other publicly supported housing in the PHA’s service area and region are themselves providing access to opportunity via promoting access to community assets and other necessary services.

HUD is soliciting comment on whether the Fair Housing Analysis of Rental Housing subsection should be only completed by PHAs that administer the Housing Choice Voucher program. We support also requiring PHAs that do not administer a Voucher program to engage in this analysis. First, doing so is consistent with other sections of the AFH that may not directly relate to public housing specifically (e.g., the sections on Segregation and R/ECAPs, which are both of more general applicability). Second, doing so is informative to the rest of the analysis, and may further inform the identification of contributing factors. Third, asking PHAs without Voucher programs to complete an additional five questions would not create an undue burden.

Question (c)(v) of the Fair Housing Analysis of Rental Housing subsection should also acknowledge the risk of losing access to opportunity for not only Housing Choice Voucher households, but also other publicly supported housing residents. This question should also include a prompt that acknowledges the risk of losing access to opportunity through unwanted displacement. Accordingly, a third prompt should read, “Are at risk of losing affordable rental housing units, including a landlord’s choice to end participation in the Housing Choice Voucher program, or loss of affordability restrictions in other publicly supported housing programs (e.g., opting-out from a project-based Section 8 contract).”

The Publicly Supported Housing Analysis section also requires questions that inquire into a PHA’s compliance with specific legal mandates intended to combat discrimination against persons with limited English proficiency, survivors of domestic violence, and members of the LGBT community. Limited English proficient (LEP) individuals are entitled to meaningful language access pursuant to the prohibition on national origin discrimination found within Title VI of the Civil Rights Act of 1964 (and

Title VI implementation regulations) and pursuant to HUD's own LEP guidance. Therefore, HUD should require the PHA to briefly explain its efforts to comply with HUD's LEP guidance and to otherwise provide meaningful access to LEP populations, including the development and updating of a language access plan (LAP), the provision of oral interpretation when requested, and the translation of vital documents for particular language populations.

Additionally, as noted above, HUD has acknowledged that the FHA does extend protections to survivors of domestic violence, based on the intersection between sex discrimination against women and domestic violence. Furthermore, under VAWA, PHAs cannot deny housing opportunities based on an individual's status as a survivor. Accordingly, it is appropriate to include one or more questions that ask the PHA to briefly explain its efforts to serve survivors, including steps it has taken to comply with VAWA. As referenced earlier, PHAs already have existing reporting requirements regarding survivors. In addition, states and localities may have additional data reporting requirements. For example, in California, PHAs must submit an annual report to the California Department of Housing and Community Development regarding data on evictions and terminations of domestic violence survivors and specify the steps taken by these PHAs to address the situations or assist the survivors before terminations.<sup>16</sup> If PHAs in California are reporting this information, then PHAs should include the data as part of the AFH to assess the housing obstacles survivors face in the public housing and voucher programs.

Finally, even though LGBT individuals are not protected by the FHA explicitly, the FHA may apply in certain contexts to the extent that discrimination against LGBT persons is motivated on the basis of sex stereotyping or other bases that are already protected by the FHA. HUD's Equal Access Rule ensures that eligibility for HUD-assisted and -insured housing will be made "without regard to actual or perceived sexual orientation, gender identity, or marital status."<sup>17</sup> This mandate applies to PHAs; in fact, in 2014, HUD directed PHAs to update their Administrative Plans and ACOPs to ensure consistency with the Equal Access Rule.<sup>18</sup> Given these existing HUD requirements, the PHA Tool should include one or more questions asking the PHA to briefly explain steps it has taken to comply with the Equal Access Rule.

#### *Contributing Factors: Publicly Supported Housing Analysis*

HUD should consider adding the following possible contributing factors to the Publicly Supported Housing Analysis section: (1) Lack of meaningful language access; (2) Discrimination against LGBT individuals and families; (3) Lack of safe, affordable housing options for survivors of domestic violence; and (4) Displacement of residents due to economic pressures (existing contributing factor appearing in other analysis sections of the Draft PHA Tool).

#### **D. Additional Comments**

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<sup>16</sup> Cal. Health & Safety Code § 34328.1 (West 2016).

<sup>17</sup> 24 C.F.R. § 5.105(a)(2).

<sup>18</sup> Notice HUD PIH 2014-20.

- Applicability of the Equal Access Rule to HUD Programs. Despite the Equal Access Rule’s applicability to PHAs (as well as to other forms of HUD-assisted and -insured housing), the Draft PHA Tool completely fails to acknowledge the Equal Access Rule. The Tool should include questions that both explore the extent to which housing choice is denied due to one’s sexual orientation, gender identity, or marital status, and steps that PHAs and other HUD-assisted and -insured housing providers have taken to implement the Equal Access Rule.
- References to the Rental Assistance Demonstration. Under the RAD program, public housing units convert to project-based Section 8 subsidies, which include both project-based rental assistance and project-based Vouchers. In several places, however, the instructions note that “[r]elevant information may also include housing converted through RAD, which may be analyzed as part of Housing Choice Vouchers.”<sup>19</sup> In another instance, the instructions state, “Relevant information may also include housing converted through the Rental Assistance Demonstration (RAD), which will be analyzed as part of Housing Choice Vouchers or project-based Section 8 (as applicable).”<sup>20</sup> We ask that the final PHA Tool replace the former statement with the latter instruction, as the second statement correctly references both Housing Choice Vouchers and project-based Section 8 subsidies.
- Use of the word “siting.” The word “siting” should only be used in reference to new developments, and not used to refer to existing developments. Thus, the description of the contributing factor “Siting selection policies, practices, and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs” should not use “siting” to reference “acquisition with rehabilitation of previously unsubsidized housing.”
- Inclusionary zoning. 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. The words “lack of” should be added, such that the listing says “Lack of inclusionary zoning practices that mandate or incentivize the creation of affordable units.”

In closing, we sincerely appreciate HUD’s recent steps to implement the AFFH regulation, including the issuance of the Draft PHA Tool. Thank you for your consideration of these comments. If you have any questions, please contact Staff Attorney Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org).

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<sup>19</sup> PHA Draft Tool Instructions at 28, 31.

<sup>20</sup> PHA Draft Tool Instructions at 27.

Sincerely,

/s/

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The National Housing Law Project

The Public Interest Law Project

Texas RioGrande Legal Aid, Inc.

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