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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. 20410-10276

Re: Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment – 60-Day Notice Under Paperwork Reduction Act of 1995; Docket No. FR-5173-N-02

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 proposed affirmatively furthering fair housing (AFFH) rule in July 2013, and for taking another step towards AFFH implementation with the release of the Assessment of Fair Housing Assessment Tool (“Assessment Tool” or “Tool”). We also commend HUD for making the Assessment Tool available for public comment. From reading the Preamble and the Tool itself, it is clear that HUD has given this process a great deal of consideration.

We support the use of the Tool as a way to ensure that HUD funding recipients are meeting their AFFH obligations, and offer the following comments to improve and strengthen the Tool. That said, we join other organizations in calling upon HUD to provide the public with a web-based simulated version of this Tool, as well as the accompanying written instructions to the Tool as soon as possible. Only then will members of the public, as well as HUD program participants, be fully able to assess the Tool’s functionality in practice.

We join many colleagues from the civil rights, fair housing, and housing and community development community in our strong support for the Proposed Rule and the draft Tool, and have reviewed several of their thoughtful comments on how the Tool and the implementation process could be improved. By way of example, both the National Low Income Housing Coalition and the Poverty and Race Research Action Council (PRRAC) have emphasized the importance of a robust community participation process and we have drawn from their suggestions in our comments. The PRRAC letter has offered numerous suggestions related to the mobility goal incorporated in AFFH, a goal that NHLP likewise supports. The ACLU has emphasized the need for more focus on the fair housing needs of women and survivors of domestic and sexual violence, and NHLP joins them in that request. We write separately, however, to emphasize two important areas.

First, the Assessment Tool's community participation section requires additional questions to ensure that community input is meaningfully solicited and considered. Second, we discuss how the Assessment Tool should elicit information relevant to goals related to *both* community reinvestment in R/ECAPs *and* mobility to higher-income, less segregated areas (the "both/and" approach). The Assessment Tool must provide a framework for developing informed policies on these important twin aims, while acknowledging that these goals are not necessarily in conflict. While the draft Tool provides essential structure that will assist participants in identifying and discussing fair housing barriers, certain parts of the questions should be framed in a way that would better highlight this "both/and" approach.

NHLP provides general comments in this letter, with selected proposed changes in Assessment Tool language accompanying this letter as Attachment A. This language has been developed by the National Low Income Housing Coalition, and is representative of the kinds of changes we would like to see throughout the Tool.

#### **A. Community Participation Provisions Must be Strengthened to Ensure that the AFH Process Reflects Community Needs**

As NHLP and other commenters stressed in their comments on the Proposed Rule, community participation is vital to the meaningful implementation of the AFFH mandate. Community participation lies at the heart of the Assessment of Fair Housing (AFH) process, and the Assessment Tool itself must reflect this. We offer the following suggestions and observations to improve the community participation segments of the Tool, which, in turn, will help ensure that any goal setting and action steps resulting from the AFH process will adequately reflect input from resident members of protected classes.

#### ***Community Participation Process Section***

The "Community Participation Process" section of the Assessment Tool (Section III) must require participants to describe in much greater detail the efforts undertaken to encourage broad community engagement in the AFH process. As a starting point, the Tool should distinguish between outreach activities conducted by program participants and any outreach undertaken by other community

organizations/advocates to increase community participation in the AFH process.<sup>1</sup> Participants should denote both types of outreach efforts, while also clearly enumerating the program participant’s specific actions taken to adequately publicize the AFH process and to encourage public participation.

***Suggested outreach targets.*** Additionally, as other commenters have noted, this portion of the Tool would benefit from a listing of suggested outreach targets. Section III should ask the participants to list which community representatives and other stakeholders it conferred with during the community participation process. In doing so, the Tool could provide examples of organizations that the participant should consult, such as:

- tenant advocates;
- community and social service organizations (particularly those serving members of protected classes and low- and very-low-income populations);
- nonprofit housing developers
- fair housing organizations;
- legal services advocates; and
- community grassroots organizations.

Providing examples of where outreach activities should be directed would help focus these important outreach efforts, making the AFH process as inclusive as possible. While such guidance should be included in any accompanying instructions for the Tool, it is equally important to incorporate such examples in the text of the Tool to encourage thorough responses.

***Detailed descriptions of efforts to increase participation.*** Furthermore, the final Tool needs more detailed questions so that HUD can determine whether the participant meaningfully engaged community members and other stakeholders—such that this process does not become a mere formality. For example, the Tool should require a description of:

- the number, date/time, and location of public hearings, or other outreach activities;
- the extent to which members of protected classes attend or otherwise engage in any meetings, hearings, or other activities associated with the AFH process;
- whether corrective steps were taken in response to low levels of community interest and engagement;
- whether communications were made in a manner effective and accessible to persons with disabilities;
- whether public hearing facilities and services were made physically accessible to persons with disabilities;
- whether resources were provided for persons with limited English proficiency (and to which language groups), including oral interpretation and the translation of vital documents in accordance with HUD’s *Final Guidance to Federal Financial Assistance Recipients*

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<sup>1</sup> The Preamble language appears to be somewhat clearer on this point, noting that the Tool directs the participant “to describe how successful *its* outreach efforts were in obtaining community participation related to the AFH.” Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment – 60-Day Notice Under Paperwork Reduction Act of 1995, Notice, 79 Fed. Reg. 57,949, 57,951 (Sept. 26, 2014) (emphasis added) [hereinafter “Assessment Tool Preamble”]. However, the text of the Tool does not clearly assign the responsibility to the program participant.

*Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons;*

- additional efforts to maximize public participation, such as offering child care services, holding public meetings at assisted housing developments, or holding public meetings on different days and times to facilitate work schedules.

***Self-evaluation inadequate.*** Additionally, simply asking the participant to self-evaluate the success of public participation efforts is inadequate, as the veracity of the self-assessment cannot be determined without numbers or other indicia of community involvement. At minimum, these narrative questions should ask the participant to demonstrate (through metrics such as meeting attendance or comments received) that a representative cross-section of the community participated in the AFH process. If the participant cannot make such a showing because public participation is low, HUD should require that the program participant discuss what factors may have led to low levels of community engagement. HUD should also ask the participant to explain how the future outreach efforts could be improved to increase participation during the next AFH, particularly by protected classes.

***Indexing comments received.*** As other commenters have noted, it is also important for the participant to not only summarize the comments received, but also to provide some sort of index of each comment received in the AFH, as well as a publicly accessible copy of input received during this process. Since the Proposed Rule does not provide for a formalized complaint process for deficient AFHs, a full account of what occurred during the community participation process is crucial for HUD reviewers to (1) identify whether goal or priority setting appears inconsistent with the desires of the community, particularly protected classes, and (2) find out about sources of local data or knowledge.

Ideally, there would be at a minimum, two sets of public meetings: one to gather input before drafting the AFH and another after the draft AFH is completed, but before it is submitted to HUD. In order to incorporate the AFH into the Consolidated Plan (ConPlan) and Action Plan process, the public should have time to review the AFH's recommendations and advocate for action steps to be included in the ConPlan.

### ***Local Knowledge***

NHLP applauds the requirement that participants must include reasonably accessible local data and local knowledge in their assessments to supplement HUD-provided data. However, the Preamble notes that a "lack of data or knowledge may be noted as an acceptable and complete response to that particular question."<sup>2</sup> While the inability of certain program participants to reasonably locate reliable local data is in some cases understandable, the same cannot be said for local knowledge. The Preamble defines "local knowledge" as "information relating to a respective jurisdiction or region that is relevant to the AFH and is known or becomes known to the program participant."<sup>3</sup> This broad definition ensures that as much relevant information is considered in the AFH as possible. Practically speaking, it seems highly unlikely that a program participant would not have *any* local knowledge (as defined here) to assist in answering a particular question. Since a considerable amount of the Assessment Tool relies on responses based upon local knowledge, being able to cite a lack of local knowledge as an acceptable answer risks omitting local nuances that may not be reflected in HUD-provided data. The Preamble

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<sup>2</sup> Assessment Tool Preamble, 79 Fed. Reg. at 57,951.

<sup>3</sup> *Id.*

notes that, if HUD discovers local data or local knowledge that contradicts a participant's AFH, HUD can refuse to accept the submission.<sup>4</sup> This provision should not be relied upon as the only failsafe that would prevent incomplete AFHs from being accepted. Due to the agency's limited capacity, HUD reviewers may remain unaware of important sources of local knowledge and/or data omitted by program participants, even though such information is easily accessible locally. Thus, HUD should take considerable care to strengthen the structure of the Tool, thereby increasing the likelihood that important local knowledge is not left out of the process.

The Preamble and Assessment Tool questions should state that, even where local knowledge is limited, participants should make their best attempts to answer the questions while also outlining any efforts made to obtain local knowledge. This description should include a list of stakeholder groups consulted, such as tenant organizations, civil rights groups, legal services organizations, local officials, etc. Furthermore, both the Preamble and the Tool should make clear that the onus is on the *participant* to actively search for local knowledge, not just passively receive it.

***Time-lag of HUD data.*** We are also concerned that HUD-provided data will suffer a time-lag, a fact that underscores the importance of local knowledge in the AFH—as local knowledge can provide information in real-time. For example, HUD-provided data will probably fail to capture the early stages of gentrification in a R/ECAP. While questions in Section IV.B.2 try to elicit discussion about demographic trends in particular areas, those questions (a) fail to capture early indicators of gentrification in R/ECAPs because the current questions largely focus on areas that have already “emerged or moved out of the R/ECAP definition” or that have segregation/integration patterns that have changed over time<sup>5</sup>; and (b) solicit responses only using HUD data and maps, with limited focus on responses using local knowledge. Therefore, Section IV.B.2 should include additional questions that would capture ongoing gentrification and involuntary displacement in R/ECAPs; furthermore, this section should include more questions that require participants to utilize local knowledge in their responses, or at the very least, change the wording of Question 4 to inquire about emerging trends such as early gentrification. Local knowledge that may be useful for participants to assess early signs of gentrification include websites that provide real-time real estate values (Trulia, Zillow, etc.) and local news reports about new amenities targeted at a higher income clientele in historic R/ECAPs (*e.g.*, higher-end grocery stores, transit-oriented development, etc.). Such questions are crucial to ensuring participants can set goals aimed at staving off future involuntary displacement caused by gentrification.

## **B. The Assessment Tool Must Reflect the “Both/And” Approach Referenced in the Preamble**

In our AFFH Proposed Rule comments, NHLP emphasized the importance of a “both/and” approach such that both mobility and reinvestment strategies are utilized to promote fair housing choice. In the Assessment Tool Preamble, HUD notes, “Addressing disparity in access and exposure to adverse conditions requires a balanced approach that not only provides for strategic investment in areas that lack key community assets or are exposed to adverse community factors, but also opens up housing opportunities in asset rich areas and provides for resident mobility.”<sup>6</sup> We firmly believe that a failure to

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<sup>4</sup> *Id.*

<sup>5</sup> Fair Housing Assessment Tool, 2.

<sup>6</sup> Assessment Tool Preamble, 79 Fed. Reg. at 57,953.

preserve affordable housing is itself a failure to affirmatively further fair housing if it leads to the forced displacement of members of protected classes whom the FHA is designed to protect.

The following subsections provide suggestions where the Assessment Tool can be improved to better encapsulate HUD's expressed commitment to balancing these twin aims of preventing involuntary resident displacement while ensuring mobility opportunities for families who seek them. What we advocate for here is a goal of true balance in HUD's approach. While our comments focus on including more language regarding affordable housing preservation and preventing involuntary displacement, HUD should also not interpret these comments as advocating for inaction on promoting mobility opportunities for families who seek them. We stress the importance of retaining and strengthening those portions of the Assessment Tool that address barriers to fair housing choice in low-poverty, less segregated areas and that enable greater resident mobility. Many of our suggestions simply call for additional specificity, clarification, and/or relevant context to be added to the existing Assessment Tool questions.

### ***Inclusion of Broader Context Surrounding Fair Housing Issues***

As a starting point, HUD must ensure that the Assessment Tool elicits responses from participants that include relevant context in order to appropriately frame existing barriers to fair housing choice. Of particular concern to us is ensuring that reinvestment and rehabilitation of affordable housing stock in R/ECAPs—when consistent with the needs and wants of the community, particularly members of protected classes—are viewed as being consistent with the AFFH mandate. This perspective is largely lacking in the existing draft of the Assessment Tool. To foster a truly balanced approach, the Tool's questions must create opportunities for program participants to meaningfully reflect on forces such as historic lack of investment, failure to rehabilitate aging housing stock and foreclosed properties, and ineffective use of HUD and other sources of funding for community development activities. Gaining a fuller understanding of relevant local historical factors facilitates the creation of responsive fair housing goals and priorities that reflect ongoing needs and challenges faced by protected classes. The examples below demonstrate places where the current Tool lacks the necessary context for a holistic evaluation of fair housing issues.

***“Siting.”*** One example of the current lack of appropriate context can be seen in the draft Tool's treatment of what it terms the “siting” or “siting decisions” of public housing and other subsidized housing units (e.g., Sections IV.B6, B9). The Assessment Tool fails to clarify whether it is referring to existing housing stock or stock that is planned for future placement. This “existing” versus “new” housing dichotomy is important to understanding the forces causing racial/ethnic concentrations of poverty in a given area. Housing stock that has been previously built implicates a host of additional considerations, such as the degree to which there are strong community ties among residents who may wish to remain in this housing, or whether services to assist low-income and protected class residents (job training, social services, programs serving individuals experiencing disabilities, etc.) have been built in response to community needs. This context is crucial to understanding the extent to which the housing's placement (or efforts to rehabilitate that housing) is consistent with the AFFH mandate of promoting fair housing choice. Housing that has not yet been constructed raises distinct concerns, as such housing may serve local need for affordable housing stock, may be part of ongoing community revitalization efforts by residents, or may in fact be part of an overall pattern to limit affordable housing placement to R/ECAPs in spite of resident wishes. Given these important distinctions, the final Assessment Tool should distinguish between existing and new “siting” of subsidized housing, or, preferably, use a term other than “siting” to describe investment in existing housing.

Additionally, HUD should update Tables 7 and 9 to include regional data, which would then provide a figure by which participants can draw conclusions on the need for publicly supported housing region-wide. While the maps provided allow for a visual sense of how a particular jurisdiction measures up in terms of the distribution of affordable housing units, having both figures in the same table would allow for a more precise comparison.

***Publicly Supported Housing Patterns.*** The Tool’s questions in Section IV.B6 regarding publicly supported housing patterns require additional questions, or prompts in the existing questions, that consider the extent to which concentrations of particular ethnicities, national origins, or other protected groups exist because of community resources and cultural ties. Questions that simply ask the participant to identify the demographic patterns of this housing only tell part of the story. Again, this is where context and the use of local knowledge are crucial. The questions in this section should explore forces such as involuntary displacement of protected class members, gentrification, the failure of housing providers to engage in affirmative marketing, and tenant selection policies/practices that also impact the demographic composition of publicly supported housing. A more robust discussion of these issues in these preliminary questions will help better inform subsequent consideration of the determinants of segregation in publicly supported housing.

***Segregation and R/ECAP Determinants.*** HUD should include language in the Tool instructions and questions clarifying that community-based reinvestment or preservation efforts in R/ECAPs *should not automatically* be considered significant determinants of segregation. For example, the Tool features questions in which participants are asked to rate determinants of segregation (Section IV.B5). Included on this list is an item called “major private investments.” Without appropriate context in the question, program participants may incorrectly infer that private investment<sup>7</sup> in the R/ECAP is automatically a significant impetus of segregation, and thus inconsistent with the AFFH mandate, or on the other hand, that public investment cannot be used to alleviate the harms of segregation. When listing potential determinants, the questions should be sure to differentiate among the types of private investment that could be impacting a particular community. This question should list private investment *inside* of a R/ECAP that results in gentrification (causing involuntary displacement of low-income members of protected classes), patterns of private investment *outside* of a R/ECAP that results in mobility opportunities being denied to protected groups (i.e., investment in only luxury apartments or high-priced condominiums/ single-family homes), as well as such investments adjacent to R/ECAPs that spur gentrification of the area. Without location-specific nuanced responses, program participants will experience considerable difficulties in determining what steps they should take to enhance fair housing choice.

Furthermore, some determinants in Section IV.B5 are too vague for a participant to meaningfully evaluate. For example, “land use and zoning laws” can capture a wide range of activities that may hinder, or may in fact help, reinvestment efforts in R/ECAPs or for the provision of affordable housing options in low-poverty, non-segregated areas. For example, a jurisdiction may have inclusionary zoning laws, but may also have restrictive land use laws. It would be difficult for a participant to capture that in a system where it must rank determinants as “not significant,” “moderately significant,” and “highly significant.” Without more specific determinants, the explanations may only

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<sup>7</sup> Note that the Assessment Tool lists LIHTC among the various forms of publicly supported housing, but LIHTC investments are really examples of both public and *private* investment.

focus on one aspect of the determinant (such as, in the example above, only focusing on the fact that there are inclusionary zoning policies, but leaving out the restrictive land use laws). Additionally, areas— both within a jurisdiction and within the greater region— that have substantial concentrations of wealth and resources but which offer few, if any, affordable housing options should also be represented on this list of determinants, as certain areas of extreme privilege can also be a driving force for reinforcing existing segregation patterns in R/ECAPs.

***Determinants of Disproportionate Housing Needs.*** Section IV.C4 of the Assessment Tool should list additional determinants of disproportionate housing needs to better reflect a fuller range of factors contributing to the lack of fair housing choice in a given jurisdiction, resulting in disproportionate housing needs<sup>8</sup> for protected groups. Such additional determinants include:

- landlords who opt out of affordable housing programs, such as the project-based Section 8 program;
- federally insured mortgages reaching maturity, which make unassisted units in those developments unaffordable;
- involuntary displacement;
- source of income discrimination inside and outside of R/ECAPs; and
- Fair Market Rents and payment standards that do not reflect the real-world struggle by low-income and very-low-income families to obtain affordable housing.

Additionally, Tables 11 and 12 should be revised to include proper comparisons regarding housing burdens. Currently, the charts count households as a percentage of population, which appears to be based on the number of individuals in the jurisdiction and region. Therefore, if someone is trying to determine how many households are cost-burdened, they would be comparing the number of *households* as a percentage of the total number of *individuals* residing in the jurisdiction or region. Instead, the chart should present numbers that display X percent of households as compared to the number of *households* (not individuals) in the jurisdiction or region. Furthermore, the number of total household numbers regionally, subdivided by race/ethnicity, should be included alongside the figures of households that are experiencing housing burdens. This will provide participants with clear comparisons for the jurisdiction/region.

***Determinants of Disparities in Access to Community Assets.*** The Tool should facilitate a more complete cataloging of community assets. Such an examination is crucial to analyze fair housing choice in a jurisdiction. The following determinants should be added to Section IV.D5:

- involuntary displacement;
- lack of private investment;
- lack of job training programs;
- lack of schools that serve students with special needs (gifted students, LEP students, students with learning barriers);
- lack of affordable child care;
- lack of social and health services in the area that meet the needs of protected classes;

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<sup>8</sup> AFFH Proposed Rule states that “categories of housing need are cost burden and severe cost burden, overcrowding (especially for large families) and substandard housing conditions.” Affirmatively Furthering Fair Housing, Proposed Rule, 78 Fed. Reg. 43,710, 43,730 (July 19, 2013).



- public safety concerns;
- lack of adequate legal services for low-income and very-low-income families; and
- failure by local officials to conduct outreach to various national origin groups (particularly LEP residents) to inform them of community services and amenities.

***Fair Housing Compliance and Infrastructure.*** While the Tool focuses on identifying determinants that impact fair housing choice, Section IV.F of the Tool should provide a separate question that asks participants to describe existing policies or actions that ameliorate or otherwise address fair housing issues. Participants should list anti-discrimination laws, local funding sources, and policies that support the construction and/or maintenance of affordable housing stock. Not only would such a question assist in providing a true snapshot of the state of fair housing in a given jurisdiction, but it would also help assess the effectiveness of these policies and fair housing enforcement efforts. For example, if a jurisdiction has a source of income discrimination law protecting HCV participants, but local knowledge reveals that HCV applicants are still being impermissibly denied housing, this finding may result in goal setting to address gaps in existing fair housing enforcement efforts.

### ***Existing Community Assets***

HUD should improve the Assessment Tool by including language that broadens the scope of what participants should consider to be “community assets.” The Tool focuses on “high-performing” schools, job access, and transportation options as the three primary types of community assets evaluated. Providing such a narrow view of community assets will likely lead to, in many instances, R/ECAPs measuring most unfavorably when compared with non-segregated, low poverty areas in nearly every proposed metric. Take, for example, questions in Section IV.D that inquire about the prevalence of high-performing schools in R/ECAPs and outside of R/ECAPs. While measuring a “high-performing” school is a complex question that should not only rely on quantitative benchmarks, the unfortunate reality is that low-poverty, non-segregated communities will have schools that measure considerably better on traditional indicators like standardized test scores.<sup>9</sup> Additionally, while R/ECAP schools might not be high performing, the local school district may have open enrollment or other means to give families access to schools jurisdiction-wide, or the school might offer special services (on-site child care, health and social services, bilingual education) desired by residents. Standardized scores should not be the primary metric to evaluate a school. By concentrating the focus upon on assets whereby R/ECAPs have traditionally lagged (schools, job access, and transportation quality), the resulting assessment lends short shrift to communities with other important assets. R/ECAPs may also have, for example:

- existing cultural, social, and language networks;
- medical and other social services for low-income individuals and families;
- low-income tenant and community organizations;
- neighborhood-serving and culturally-sensitive food and retail;
- small business networks that offer employment opportunities;
- kinship networks;
- community gathering spaces; and

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<sup>9</sup> The AFFH Data Documentation document that accompanied the release of the AFFH Proposed Rule confirmed that the use of state test scores for elementary school students in the areas of reading and math would formulate the basis for the “Neighborhood School Proficiency Index” within the HUD-provided data. Draft AFFH Data Documentation, at 5.

- faith-based communities.

Such resources—particularly those that serve low and very-low-income families, immigrant and LEP populations, and homeless individuals and families, to name a few—may not exist in non-R/ECAPs because there is actually little demand for them there. The proximity of these additional assets may motivate protected classes in R/ECAPs to seek reinvestment in infrastructure and rehabilitation of existing affordable housing stock so they can continue residing in their neighborhoods. Of course, the absence of public safety, jobs, transportation, and quality schools may result in some community members seeking mobility options. However, communities and individual families should make these determinations of what best serves their needs. A truly balanced approach elicits the essential information needed for informed choices at the local and regional levels. Limiting the focus to metrics such as jobs, transportation, and schools does not provide sufficient information about local or regional assets to encourage informed fair housing conclusions and goal-setting.

Accordingly, Section IV.D1(d) should include reference to this expanded list of community assets; HUD may even consider breaking out several of these assets into separate questions for responses based on any existing local data or knowledge. Other questions throughout the Tool should not only attempt to gather information about community characteristics that have historically been lacking or inadequate in R/ECAPs, but also existing strengths in the community that may impact priority-setting by program participants. By facilitating a truly balanced, nuanced discussion of community assets in the Tool, fair housing goal setting will better reflect what community members of protected classes want to see in their neighborhoods.

Finally, in order to better inform program participants and community members in their evaluation of community assets in a given jurisdiction or region, HUD should make the data forming the basis for Table 14 easily available to the public by posting that data online. The underlying data from Table 14 would allow for a more complete evaluation of how particular jurisdictions factor into larger regional fair housing trends.

### **C. Additional Considerations**

We also wanted to highlight additional considerations concerning further improvements that can be made to the Assessment Tool. Many of these observations are discussed in greater detail within comments submitted by other organizations.

- ***Housing Mobility Programs.*** The title of Section IV.B(7) should be renamed in recognition of the important distinction between “mobility policies” and the Housing Choice Voucher Program. Not all participants who administer a Section 8 Housing Choice Voucher Program have mobility programs (such as mobility counseling programs) in place. Similarly, Question 7b(ii) appears to confuse mobility counseling (which provides Voucher families with guidance and information about housing opportunities in other areas) with administration of the Section 8 program (i.e., having a listing of available Section 8 rental units).
- ***Special Concerns of Female-Headed Households and Survivors of Domestic and Sexual Violence.*** The Assessment Tool should include questions (or additions to existing questions) in which the participant must discuss barriers to fair housing choice for women. While sex is protected category under the FHA, discussion surrounding sex discrimination is not featured prominently in the Assessment Tool. The Tool should address the intersection that exists

between one's status as a survivor of domestic or sexual violence and barriers to locating and maintaining safe, affordable housing. For example, local policies such as nuisance ordinances that do not include an exception for survivors can serve as an impediment for survivors seeking to remain in their housing. Furthermore, discrimination in admissions for both private and federally subsidized housing impacts survivors and their families across the country. Finally, survivor resources such as domestic violence shelters and counselors should be included in a discussion of existing community assets. The ACLU Women's Rights Project is submitting a comment letter that describes these important issues in greater detail.

- ***Special Concerns of LGBT Community Members.*** While not an explicitly protected class, the link between housing rights for the Lesbian, Gay, Bisexual, and Transgender community and fair housing rights should not be ignored. The Tool should evaluate fair housing concerns of LGBT residents as they intersect with the concerns of protected classes more generally. For example, questions that discuss fair housing choice for families with children could include additional prompts about discrimination against LGBT families with children. Furthermore, HUD should incorporate questions into the Tool that focus on the extent to which HUD-funded programs in a given jurisdiction are complying with HUD's Equal Access Rule.
- ***Action Steps as a Connection to the Consolidated Plan.*** As other commenters have pointed out, Section V must include tangible action steps at the conclusion of the Assessment Tool. Not only will requiring action steps require participants to think about real-world solutions to identified fair housing barriers, but it will also encourage community input by showing community members that actual outcomes do arise out of the AFH process. Therefore, the Tool should conclude with a series of action steps to address the identified fair housing goals and priorities. These action steps should then be included in the Consolidated Plan. This will make the AFH process a natural bridge to the ConPlan process, consistent with the idea of integrating fair housing considerations into broader planning processes.
- ***Integration of Instructions into the Online Interface.*** We also urge HUD to consider finding a way to integrate any future accompanying guidance for the Assessment Tool into the online Assessment Tool form itself. For example, Tool questions could feature embedded links to pertinent instructions or passages from future guidance that is too lengthy to be included in the Tool itself. Integrating the guidance in this manner will increase the likelihood that such guidance is meaningfully utilized, and may actually decrease the need for participants to consult outside assistance regarding the Tool.

NHLP and the undersigned organizations are grateful for the opportunity to comment on this important document. We close by noting the importance of a timely issuance of a final AFFH regulation and the Assessment Tool, and urge that HUD finalize any planning guides that will accompany the Tool as soon as possible.

Should you have any questions regarding this letter, please contact me or Renee Williams (rwilliams@nhlp.org). We look forward to the release of the Assessment Tool and the Final AFFH Rule.

*AFFH Assessment Tool Comments*

Sincerely,

A handwritten signature in black ink that reads "Marcia Rosen". The signature is written in a cursive, flowing style.

Marcia Rosen  
Executive Director  
National Housing Law Project

National Low Income Housing Coalition

Bay Area Legal Aid

Texas RioGrande Legal Aid, Inc.

The Public Interest Law Project

Housing Preservation Project

Fair Housing Law Project, of the Law Foundation of Silicon Valley

Michigan Poverty Law Program

Western Center on Law & Poverty

Greater Boston Legal Services, on behalf of our client group, the Boston Tenant Coalition

The Daytona Beach Housing Development Corporation

Florida S.P.E.C.S. Inc.

Housing Rights Center

Community Legal Services of Mid-Florida, Inc.  
Affordable Housing Preservation Project

Community Legal Services of Mid-Florida  
Fair Housing Project

## ATTACHMENT A

Below please find suggested language for some of the Assessment Tool questions. These edits were developed by the National Low Income Housing Coalition, and are underlined below. These edits are a representative sample of the changes we would like to see in the final Assessment Tool – namely, questions that provide important context and that represent the “both/and” approach. Our comment letter also suggests additional edits. The Coalition’s individually submitted comment letter features proposed language for questions throughout the Tool.

### Section IV

#### A: Demographic Summary

1. Describe demographic patterns in the Jurisdiction and Region, and describe trends over the past ten years, including factors influencing those trends, such as investments leading to gentrification/displacement, immigration by different income groups, national origin groups, LEP persons, etc.

#### B. Segregation/Integration and R/ECAPs

##### 2. Geographic Analysis

- c. For each identified R/ECAP neighborhood or area, describe the relevant characteristics that set it apart from non-R/ECAPs, including:
  - patterns of financial investment, including:
    - disproportionately less per capita use of CDBG and local general revenues in R/ECAPs
    - existence or lack of policies and practices intended to prevent gentrification/displacement of long-term, low income residents due to financial investments
    - existence or lack of policies and programs to preserve publicly supported affordable housing
    - existence or lack of policies and programs to support community-based revitalization
  - transportation and other basic services
  - infrastructure, including disproportionately less per capita use of CDBG and local general revenues in R/ECAPs
  - health and safety conditions
  - geographic isolation, as a result of barriers such as highways, waterways, hills, etc.
  - tenant and neighborhood organizations
  - community-based organizations devoted to neighborhood or area revitalization
  - nonprofit or government efforts to preserve publicly supported affordable housing
  - social and economic services provided by nonprofits and local government
  - other important social network and cultural support infrastructure, especially networks or cultural supports for people of various racial, ethnic, language, or national origin groups.

Suggested subsection i:

i): Which, if any, neighborhoods or areas are vulnerable to becoming gentrified, causing significant displacement of long-term, low income people? Describe any factors contributing to such vulnerability.

### Section VI.B.6b – Publicly supported housing location and occupancy

iv. Discuss the extent to which Project-Based Section 8 and other HUD multifamily assisted developments are located in segregated neighborhoods or areas. Discuss the extent to which the residents of those units are of the same race or ethnicity as the residents of the neighborhood or area in which the development is located. Describe any patterns or outliers with respect to occupancy (for example, a housing development disproportionately occupied by residents of one race/ethnicity or national origin). What does this information suggest about the fair housing implications of project siting or occupancy generally or at any specific project?

- Program participants should describe actions taken to determine Project-Based Section 8 and other HUD Multifamily-assisted development residents' desire to remain in their assisted development and their neighborhood, or their desire to move to a different assisted development, receive a voucher, or move to a different neighborhood.
- Program participants should describe the resources (and in what amounts) that have been used to improve the neighborhood in which the Project-Based Section 8 or other HUD Multifamily-assisted development is located.
- Program participants should describe efforts that have been made, are underway, or are planned to identify Project-Based Section 8 developments at risk of opting out of the program or prepaying their mortgage and thereby exiting the program, or of other HUD Multifamily-assisted developments from leaving the affordable housing stock due to FHA mortgage maturity.
- Program participants should describe the efforts that have been made, are underway, or are planned to preserve Project-Based Section 8 or other HUD Multifamily-assisted developments.

### 10. Determinants of Segregation/R/ECAPs related to Mobility

*To what extent do each of the following or other identified factors act as determinants to segregation in the Jurisdiction or Region by contributing to segregation of neighborhoods or R/ECAPs? For each factor, select whether the impact on segregation is highly significant, moderately significant or not significant from the drop down menu and explain the level of significance selected in the space provided.*

- Lack of Housing Choice Voucher program
- Admission or residency preferences for Housing Choice Vouchers
- The quality of mobility counseling programs
- Lack of support for voucher mobility
- Lack of landlord participation in the voucher program
- Landlord refusal to accept other sources of income, such as Social Security, disability retirement, or other tenant-based rental assistance
- Program participant unwilling to promote source of income legislation, or willing to accept weak source of income provisions, or poorly enforces source of income provision
- Inadequate voucher payment standards (allowable rents)
- PHAs' portability policies

*AFFH Assessment Tool Comments*

- Regional Fair Market Rent (FMR) hinders use of voucher in low poverty areas where market rents are much higher
- Screening or rescreening of tenants
- Landlord and apartment listings provided only by PHA
- Racial/ethnic discrimination
- Disability discrimination
- Other