August 17, 2015

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

Re: Docket No. FR-5173-N-05 - Affirmatively Furthering Fair Housing Assessment Tool:
Solicitation of Comment—30-Day Notice under Paperwork Reduction Act of 1995

On behalf of the below national organizations representing local elected officials, state
governments, community development professionals, economic development organizations, and
non-profits, collectively known as the Community Development Block Grant (CDBG) Coalition,
we would like to offer the following comments in response to the notice of proposed information
collection (FR-5173-N-05) entitled “Affirmatively Furthering Fair Housing Assessment Tool:
Solicitation of Comment—30-Day Notice Under Paperwork Reduction Act of 1995” published in
the Federal Register on July 16, 2015. While the CDBG Coalition remains firmly committed to the
goals of the Fair Housing Act and our mandate to affirmatively further fair housing, we are
concerned by the proposed information collection containing the Assessment of Fair Housing
(AFH) tool. While we are encouraged by the Department’s recognition of the shortcomings of the
revised tool, we are disappointed by the Department’s willingness to pursue its implementation.

Administrative Burden: During a time of historically low funding, it simply is not appropriate or
feasible to add additional administrative burdens. While the tool is well intentioned, it requires a
tremendous expenditure of time and resources on the part of grantees. Not only are no additional
resources being made available, but resources to meaningfully enhance fair housing choice are
already insufficient. In recent years, CDBG and HOME program appropriations continue to decline.
Ironically, these scarce resources will be diverted to complete AFH requirements, reducing the funds
available for the programs themselves. HUD has recognized the need for burden reduction, noting
that “for program participants that will submit an AFH in later years, HUD anticipates taking
additional steps to reduce regulatory burden.” The AFH Tool and overall AFFH process outlined in
this and previous notices is much too burdensome for small entitlements and PHAs and must be
eliminated in lieu of a streamlined tool that seeks a basic outline of fair housing issues and needs
that is coordinated through the Consolidated Plan process, not separately. We urge the Department
to delay AFH implementation until such time as an appropriately streamlined version is available.
However, we do not believe delaying is a solution to the overly burdensome AFH.

Inaccessibility of HUD Data: While some data has been provided to assist with the completion of
the tool, this data is unwieldy and hard to understand. In some cases, it relies on complex social
science indices (e.g., dissimilarity index) whose meaning is largely unintelligible to most users.

Correlation Is Not Causation: While data and local knowledge may be sufficient to draw a
correlation, program participants would be hard-pressed to prove a causal relationship as the tool so
blithely does. The change from the use of the term “determinants” to “contributing factors” is an
improvement, but it continues to suffer from the same lack of underlying validity.
**Mapping Tool:** While we appreciate the Department’s efforts to provide communities with the data they will need, we do not believe the current tool is sufficient. The current tool available for review is incomplete and was not immediately available at the beginning of the 30-day comment period.

**Inappropriate Level of Analysis:** We are concerned about HUD’s insistence on requiring respondents to conduct analyses beyond their own jurisdictions, as well as factors outside of a program participant’s ability to impact. To require each grantee to expend resources to analyze and describe issues over which they do not exercise influence is unnecessarily burdensome.

**Continued Lack of Coordination between FHEO and Program Offices:** We are concerned that the revised tool does not address many of the comments received noting the incompatibilities between the goals each program participant must set and the realities of the program implementation landscape. This suggests that the input of program offices was not sought or largely ignored.

**Lack of Clarity Surrounding Review Process:** The final rule declines to specify which portion of HUD will be responsible for AFH review. Given the complex nature of HUD programs, it is essential that the staff charged with reviewing the AFH understand the myriad requirements each program participants face, not just fair housing. Additionally, HUD has stated it will not accept an AFH that is “inconsistent with fair housing or civil rights requirements.” The range of possible interpretations that could be ascribed to this standard is troubling.

**Tool Continues to Focus on Protections beyond the Fair Housing Act:** There is concerned that the analysis required by the tool continues to treat income as a protected class. In many questions, the Department asks whether persons have differences in access to opportunity based on familial status, this indicator could be a proxy for income, as unmarried households tend to have lower incomes.

**Lack of Clarity Regarding Local Knowledge:** We appreciate the added specificity limiting local data to that which “can be found through a reasonable amount of searching, are readily available at little or no cost.” However, the validity of these data, which are generally combined with local knowledge, is not always “statistical.” It is not clear how HUD can consider the public participation “as a tool to acquire additional information to reduce burden” while also requiring that local data meet an undefined standard of “statistical validity.”

**Exposure to Legal Liability:** The AFH tool would shift a tremendous amount of uncertainty to HUD program participants since it does not provide grantees’ with any certainty as to when they have met their AFFH obligations. With the lack of concrete guidance and the absence of safe harbors, the AFH tool does not remedy the uncertainty.

The CDBG Coalition is appreciative of the opportunity to comment on this important notice. Please do not hesitate to contact us for additional information or clarification.

Sincerely,

National Association of Housing & Redevelopment Officials (NAHRO)
National Community Development Association (NCDA)
National Association for County Community and Economic Development (NACCED)
National Association of Local Housing Finance Agencies (NALHFA)