May 23, 2016

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


To Whom It May Concern:

On behalf of our agency members--who manage over 970,000 units of Public Housing and 1.7 million Housing Choice Vouchers--and the more than 20,000 individual members that make up that National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice of proposed information collection (FR-5173-N-09) titled “Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies Solicitation of Comment-60-Day Notice Under Paperwork Reduction Act of 1995” and published in the Federal Register on March 23, 2016. NAHRO would like to thank the United States Department of Housing and Urban Development (HUD or the Department) for the opportunity to comment on this proposed tool.

While NAHRO remains committed to the goals of the Fair Housing Act (FHA) to both fight discrimination and to affirmatively further fair housing, NAHRO has serious concerns about this Assessment Tool for Public Housing Agencies (PHAs), should PHAs choose to complete their Affirmatively Furthering Fair Housing (AFFH) Assessment of Fair Housing (AFH) using this tool. The FHA’s mandate to affirmatively further fair housing can be conducted in a way that both makes a substantial on-the-ground impact, while still balancing the concerns of interested stakeholders. NAHRO hopes that the Department will consider the feedback provided in this comment letter.

This comment letter is divided into three major sections. The first section details some of NAHRO’s larger concerns with the implementation of this tool. The second section delves into specific issues with the PHA tool and addresses several HUD requested questions. The third
section is a short, non-exhaustive, list of recommendations that NAHRO proposes to improve the tool.

1. NAHRO’s Broad Concerns

NAHRO’s broad concerns reflect general points about the PHA tool that should be rethought. Many of these overarching comments will apply to the other tools too and would require a substantial rethinking of the tool to be implemented properly.

A. Inappropriately Prioritizing Planning Priorities

Since the tool does not take into account resource availability, it forces PHAs to prioritize fair housing activities. For all other affordable housing activities, PHAs must consider available resources (e.g., when deciding to make an investment in capital). The tool forces PHAs to set goals and take “meaningful actions” towards those goals irrespective of the other needs or priorities that the PHA may have.¹ This centralized directive does not take into account a community’s local needs or priorities in how the PHA or community wants to allocate its scarce resources. The tool also ignores the real-world constraints under which entities operate. The question of how does a PHA balance its mandate to continue meeting local needs, while being forced into an isolated goal-setting process that ignores these priorities is one that every PHA will have to face.

B. Administrative Burden

As it has in the past, NAHRO would like to stress that the administrative burden imposed by this tool is excessive. Resources that could be put into housing related tasks are being funneled into completing the tool and its associated administrative tasks. The notice asks “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.”² NAHRO does not believe that the information asked by the PHA tool and required by the AFFH rule is necessary to further the FHA’s mandate to affirmatively further fair housing.

Additionally, although HUD claims that this tool can be completed without the use of a consultant, in our discussions with our membership, we have found that most PHAs will be using a consultant. For many PHAs, the rule imposes a jurisdictional analysis that is too complex to be effectively completed by staff without specific statistical and mapping knowledge. As housing providers, most staff at PHAs have comparative advantages that lie in providing affordable housing services, but not providing complex statistical data analysis. Forcing PHA staff to do this analysis is an inefficient use of their scarce time.

¹ Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. ii.
C. Issues Outside the Scope of Authority and Expertise of PHAs

NAHRO objects to those portions of the rule that require analysis outside the scope of authority for the entity that is filling out a section of the AFH. While the rationale provided by HUD in this analysis is that there are other entities that can help achieve the goals, it does not make sense to have the entity that does not have authority to achieve these goals conduct the analysis, both because that entity would not have specialized knowledge of the field and because equitable considerations would stress that the entity responsible for achieving the goals should be the one conducting the analysis.

Setting fair housing goals is another area where this concern occurs. Public Housing Agencies must set fair housing goals for activities that are outside of their scope of control. Since goals may be in topic areas that are outside their day-to-day experience, a PHA may misjudge the extent to which achieving those goals is feasible (e.g., a public housing agency may not know how difficult or easy it is to change local transportation policy because it lacks expertise in policy matters and transportation matters).

D. Lack of Additional Resources

The AFH does not recognize the extreme constraints many participating entities face. By allocating resources to complete this process, participating entities are not allocating resources somewhere else. Those resources could be used to provide additional housing assistance. While NAHRO is aware that the Department does not control the federal budget, which is within the purvey of Congress, NAHRO notes that the FY 2017 President’s budget proposal did not request additional money for PHAs and other participating entities to complete their AFH tools. NAHRO believes that HUD should request additional money for PHAs to complete this tool in its next budget proposal. Requesting additional money is completely within the scope of HUD’s control and would be a strong indicator to all interested stakeholders and Congress that HUD is serious about affirmatively furthering fair housing and is willing to commit resources to the mandate.

E. Inaccessibility of HUD Data

While HUD is providing some data 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 and the general public. The level of statistical sophistication required to understand this information is at odds with the emphasis on public participation.

NAHRO believes that the Department should remember that for most employees that work at PHAs, the work that an AFH requires them to do will lie outside the scope of their normal

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3 While NAHRO commends HUD on the clear table on the dissimilarity index on page 61 of its AFFH Guidebook, this table does not sufficiently reduce the complexity of understanding what the index means for a given area. As HUD states “context is important in interpreting the dissimilarity index.”
activities in providing affordable housing services. It will require them to stretch their work related skillset in a new way. NAHRO encourages the Department to remember this as they continue designing the tool and they think about the most user friendly way to present complex demographic patterns.

2. Specific Concerns About the PHA Assessment of Fair Housing Tool

NAHRO has specific concerns about how this tool is structured and implemented.

A. HUD Instructions Can Be Improved by Providing a Streamlined Guidance Document and Sample Completed AFHs

A streamlined set of instructions that includes a broad overview of the AFH process as it applies to PHAs would go far in eliminating lingering confusion about the process. This streamlined guidance document can provide a broad overview of the AFH process to PHAs, illustrate their various options among the other tools, clarify that the AFFH duty applies to Moving To Work agencies (and clarify any particularities about the process that may apply to MTW agencies and their submittal schedule), and do a quick walkthrough of the process of completing the PHA tool. While NAHRO understands that there are instructions included in the PHA AFH tool and there is an AFFH guidance book—which is over a hundred pages long--NAHRO feels that a shorter pamphlet that explains the difference between the tools, provides an overview of filling out the PHA AFH, and then provides links to all the other sources of information (guidance, regulations, etc.) would be a less intimidating document that busy officials would have time to read.

Another approach to clarifying what is required in particular AFHs is to create sample completed AFHs utilizing each of the tools. These AFHs should be completed for areas that are representative of the diversity of our nation (e.g., a large city, a medium-sized city, a small rural area, a large rural area where very little HUD provided data is available, etc.). These sample documents which should be made available on HUD’s website. They would show the level of analysis required by various entities as they attempt to complete their AFHs. The sample documents must address scenarios in rural areas where there are no racial and ethnic concentrated areas of poverty (R/ECAPS) and scenarios where there is no meaningful HUD-provided data and the local community participation process has not yielded usable local data or local knowledge.

B. PHAs and Qualified PHAs Are Most Likely to Collaborate With Local Governments and Somewhat Likely to Collaborate With Each Other or Not Collaborate at all

After discussing this with our membership, it is NAHRO’s belief that most PHAs will collaborate with local governments. Our discussions have revealed that this is because these are the entities that are most likely to have had pre-existing relationships with PHAs. These prior relationships will make it much easier for PHAs to collaborate once more. Some of our members will not be collaborating with other entities at all. Some have stated that their local governments are not entitlement communities and they have no desire to collaborate with states. Others cite
that they lack the staff capacity and time to build relationships with other entities. Some PHAs have stated that they do not want the potential additional complications that come with collaborations.

There are several problems that our members have identified with collaborating with other entities. First, our members are worried about problems with free-riders. They worry that there will be some entities that do not do as much work or do not do as high quality work as other members of the collaboration. There is a concern that collaborating will be beneficial for some entities, while it may occur at the expense of other entities.

A second concern revolves around the prospect of one entity slowing down the entire collaborative process. Our membership worries that there may be instances where a collaborator who is having trouble coordinating with others or who is constantly late meeting internal deadlines may jeopardize the entire AFH process. Our membership is also concerned about certain local entities that may not yet have a handle on the AFH process and will not be ready to collaborate meaningfully. These entities worry that they will have to rush to complete their AFH with the local entity or that they will have to complete the AFH by themselves.

A third concern that our members have identified is the difficulty of collaborating in some rural areas where the entities may not be geographically proximate. In some cases, collaborating entities may be hundreds of miles away, which will make preparing joint work difficult. This is especially true in rural jurisdictions where smaller PHAs may have jurisdictions that encompass thousands of square miles. It is unreasonable to expect that these entities will be able to easily collaborate with other entities.

C. HUD Should Create a Standalone Streamlined Tool for Qualified PHAs

As mentioned above, there are many reasons that collaboration may not be an appropriate choice for all PHAs, especially some Qualified PHAs. In these instances, Qualified PHAs should have the option to complete a streamlined assessment tool without being forced to collaborate with States. Qualified PHAs should be able to complete a streamlined process, while collaborating with other non-State entities or without collaborating at all.

While NAHRO understands that HUD would like to incentivize Qualified PHAs to collaborate with States so that they are able to rely on the State analysis as the Qualified PHA’s regional analysis, the best way to ensure that Qualified PHAs do the best job that they are capable of doing is to give them the option to use a streamlined set of requirements that work best in their particular circumstances. While collaborating with States may make sense for many Qualified PHAs, having a “Standalone Streamlined Tool for Qualified PHAs” may make sense for other Qualified PHAs for whom collaboration with their State is not feasible. If the Department is serious about making the process as manageable as possible, while still affirmatively furthering fair housing goals, the Department should give PHAs all the options they can to further the mandate.
D. PHAs That Only Administer Public Housing Should not be Required to Complete the “Fair Housing Analysis of Rental Housing” Section

Public Housing Agencies that only administer public housing should not be required to complete the “Fair Housing Analysis of Rental Housing” section of the PHA AFH tool. Since PHAs that only administer public housing have only fixed units, the utility of doing an analysis of the surrounding rental market is negligible. On the other hand, the amount of time and staff capacity it would take to complete this section is significant. While this time would be significant for those programs that do have Housing Choice Voucher programs, it would be more significant for PHAs that only administer public housing because they will not have the day-to-day on-the-ground knowledge of people who are frequently engaged in the rental market.

Additionally, the request to “[d]escribe how rental housing, including affordable rental housing, in the service area and region, has changed over time” in the “Fair Housing Analysis of Rental Housing” section should be removed. The utility gained from this question is marginal. The change in the affordable rental housing over time is not nearly as important as the current status of the market and location of rental housing. For the utility, the time spent answering this question will be excessive. Formulating an answer to this question will require looking at past data, when past data is not necessarily relevant to the current analysis.

E. The PHA AFH Tool Should Only Incorporate Contributing Factors That Are Related to Housing

The Department’s AFH tool for PHAs should only suggest using contributing factors that are housing-related. Housing-related contributing factors would be contributing factors of which PHAs would have the most knowledge, since those contributing factors are within the scope of their expertise. In doing this analysis--throughout the PHA AFH tool--PHAs are required to infer a causal connection between the contributing factor and the undesirable outcome (e.g., segregation, the creation of a R/ECAP, a disparity in opportunity, etc.). Public Housing Agencies are best suited to infer a causal connection between a contributing factor and an undesirable outcome when they are knowledgeable about the contributing factor. Asking PHAs to infer causal connections between non-housing-related contributing factors and undesirable outcomes will not lead to appropriate fair-housing goal setting.

For example, PHAs are not the entities best situated to know whether “the availability, type, frequency, and reliability of public transportation” are important factors in creating a disparity in access to opportunity in any particular area. Most PHAs will not have staff that are well versed in the intricacies of transportation planning, thus they are not well positioned to know whether

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4 Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. 9.
5 Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. 9.
6 Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. 5.
there’s a causal connection between the type of public transportation and a disparity in opportunity.

While NAHRO acknowledges that some PHAs are large, sophisticated entities with departments that may have staff that can make these sorts of causal inferences, most PHAs will not have this ability. As the list of contributing factors is non-exhaustive, the very few PHAs that may be able to judge whether transportation or education are appropriate contributing factors can add them to their specific AFH independently.

NAHRO believes that the new contributing factors (e.g., “restriction on landlords accepting vouchers,” “impediments to portability,” “policies related to payment standards, FMR, and rent subsidies,” etc.) in the “Contributing Factors of Publicly Supported Housing” are appropriate. They are housing related and will fall within the scope of knowledge that a PHA would know. NAHRO suggests including a “complexity of federal regulations” contributing factor, since the current structure of regulations is one of the primary reasons that many landlords do not participate in the Housing Choice Voucher program and this is increasing the severity of fair housing issues in many jurisdictions.

F. Data in Rural Areas

NAHRO has serious concerns about data availability or meaningfulness in rural areas. In HUD’s AFFH guidebook, it stresses reliance on local knowledge and local data in these situations, but NAHRO believes that this imposes an unrealistic burden on PHAs that will be unable to realistically rely on local data and may not receive any meaningful local knowledge for these regions.

In those instances where there is no high quality data available for PHAs, NAHRO is concerned about the ability to gather local knowledge and data. NAHRO suggests instructions here are very explicit about what to do when the following scenario with the following conditions occur:

1. There is no HUD-provided data or no meaningful HUD-provided data; and
2. Local data and local knowledge, including the information gathered from the community participation process (also including information from the Resident Advisory Board), is not particularly useful in addressing the questions posed by the AFH tool.

G. R/ECAPs in Rural Areas

While the concept of R/ECAPs makes sense in dense, urban cores, NAHRO is concerned about how to appropriately define R/ECAPs in rural areas. The Department’s guidance states that “[g]enerally, in rural areas, poverty is more dispersed and segregation patterns often include fewer people of color. Due to these demographic differences, some rural areas may want to

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7 Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. 11.
explore how to define R/ECAPs in their areas.” NAHRO believes that HUD should provide suggestions for what PHAs, and other program participants, should do in these scenarios. These suggestions can be articulated in the instructions for the tool or in additional guidance that HUD may promulgate.

H. Use of Consultants

While many in our membership have stated that they will use consultants to complete the AFH process, many have also said that they are still looking into the cost of a consultant. Some PHAs have told NAHRO that they are not yet in a position to decide whether they will hire a consultant or not because they cannot accurately gauge the cost to complete an AFH because the AFH tools are themselves not complete, so it is difficult to decide which AFH the PHA will use and how much it will cost to complete it in-house. These PHAs have also stated that it is hard to know what the price of a consultant will be at this time. The AFH consultant market is still in its infancy, but all agree that given the complexity, the massive amount of time necessary to complete the various AFH tools, and the sophisticated levels of required analysis, there will be a large market of consultants. It is unclear whether the price of consultants will come down as the market for helping participating entities complete their AFHs develops. One member noted that current price quotes may understate the true cost of completing an AFH because many consultants do not understand the full complexity of completing an AFH. A final concern expressed by all PHAs is a worry that they will have a hard time choosing between consultants and figuring out which consultants are able to provide high-quality services.

I. HUD Should Make Sure That Field Offices Are Knowledgeable About the AFH Process and Tools

Our membership has expressed concern that the HUD’s field offices are not sufficiently knowledgeable about the AFFH rule and the tools that HUD is providing to complete the AFH. NAHRO encourages HUD to make every effort to make sure that field offices are prepared to assist PHAs and other entities as they are preparing their AFHs.

J. Good Faith Safe Harbor

HUD should include a good faith safe harbor clause specifying that if a PHA makes a good faith effort to comply with this regulation and submits an AFH, then HUD will not only accept the AFH, but also approve it.

3. NAHRO’s Recommendations

This section lists general recommendations that NAHRO believes will improve the PHA tool. This list is not inclusive of all possible improvements to the tool. NAHRO hopes that HUD will seriously consider these recommendations when formulating its next iteration of the PHA tool for public comment.

8 Affirmatively Furthering Fair Housing Guidebook, the U.S. Department of Housing and Urban Development, Version 1, December 31, 2015, p. 42.
NAHRO recommends the following:

1. Create a shorter guidance document (15 pages or less) that explains the AFFH process from a PHA’s perspective (a short less-detailed document that is read will be more informative than long guidance documents or instructions that are not read);
2. Create sample completed AFHs for a variety of types of PHAs in a variety of jurisdictions;
3. Create a streamlined Qualified PHA set of questions that can be completed by Qualified PHAs that choose not to collaborate with other entities;
4. Only suggest in the PHA tool contributing factors that are housing-related;
5. Give suggestions for defining R/ECAPs in rural areas;
6. Make the “Fair Housing Analysis of Rental Housing” section not applicable to PHAs that administer public housing;\(^9\)
7. Request additional funding from Congress for PHAs and other entities to complete their AFHs in HUD’s next budget proposal (this step is completely within HUD’s scope of control and would show HUD’s seriousness about affirmatively furthering fair housing); and
8. Simplify to the greatest extent possible, so that PHAs will not have to rely on consultants.

NAHRO thanks the Department for taking the time to read NAHRO’s comments and hopes that HUD gives them serious consideration as it moves forward in this rulemaking process.

Sincerely,

\[\text{Signature}\]

Tushar Gurjal
Policy Analyst, Section 8 Programs

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\(^9\) Assessment of Fair Housing Tool for Public Housing Agencies, the U.S. Department of Housing and Urban Development, p. 9.