November 24, 2014

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


To Whom It May Concern:

On behalf of the more than 3,100 agencies and over 20,000 individual members that make up the National Association of Housing and Redevelopment Officials, I would like to offer the following comments in response to the notice of proposed information collection (FR-5173-N-02) entitled “Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995” published in the Federal Register on September 26, 2014. While NAHRO remains firmly committed to the goals of the Fair Housing Act and our mandate to affirmatively further fair housing, we are deeply troubled by the proposed information collection containing the Assessment of Fair Housing (AFH) tool. The timing of the tool is premature for several reasons: 1) it implements a deeply-flawed Affirmatively Furthering Fair Housing (AFFH) proposed rule that has not yet been finalized; 2) development of the tool itself is not yet complete, with the public only being provided one version of the tool despite the understanding that different types of grantees will be provided with different versions of the tool, and 3) outstanding legal challenges that will be heard by the Supreme Court in early 2015 may dramatically change the policy landscape surrounding the tool. For these reasons, as well as the ones listed below, we strongly urge HUD to retract this proposed information collection until such time that these other issues have been resolved.

We are concerned about the wide-ranging consequences that the AFH tool, and the proposed rule which it implements, would have.

The tool does not take into account critical factors like resource availability and other program priorities. Instead, the AFH tool requires program participants to set fair housing goals based on a limited, and sometimes irrelevant, set of pre-determined factors, many of which are outside of the control of the program participants. For example, HUD grantees are unlikely to have control over
the taxi services available to community residents (see page 12 of the proposed tool). PHAs are unlikely to have influence over zoning or source of income legislation. Cities and counties are unlikely to have control over PHA waiting list preferences. To require each grantee to expend significant resources to analyze and describe issues over which they do not exercise influence is unnecessarily burdensome and wasteful. It sets unrealistic expectations for members of the public, creating conflict rather than partnership between the community and the respondent. HUD should eliminate sections requiring grantees to report on housing they do not control. So doing would eliminate the duplication in responses created by respondents with overlapping jurisdictions, and would appropriately recognize the limitations of each grantee’s authority. For the same reasons, HUD should also eliminate the requirement to analyze both the jurisdiction and the region. While fair housing issues may be regional, a grantee’s authority to act is not.

The tool further contorts the public’s view of the respondent’s work by focusing only on a subset of community needs. Program participants are being pressured to set goals that do not fully reflect the needs and priorities of their communities and ignore the real-world constraints under which they operate. Capital needs unrelated to fair housing issues are nowhere represented, but certainly they continue to exist. Simply aligning the timing of the AFH submission with the PHA or ConPlan does not integration make—instead, they may be directly in competition for scarce resources. How does a program participant balance its mandate to continue meeting these needs while being forced into an isolated goal-setting process that ignores these priorities? We are deeply concerned that completion of this tool will interfere with communities’ abilities to make locally-based decisions about their most pressing needs.

We are concerned that the AFH tool is not well designed to achieve its goals.

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. Furthermore, the tool requires respondents to identify “determinants” of fair housing issues. While data and local knowledge may be sufficient to draw a correlation, PHAs and others would be hard-pressed to prove a causal relationship as the tool so blithely does. The tool promotes the creation of policy on the basis of incomplete information and personal perceptions, casting doubt over its ability to truly increase fair housing choice.

Completion of the tool requires substantial investment of resources, but HUD is not proposing providing incremental resources. As a result, respondents will have no choice but to divert already scarce resources away from program efforts to pay for the added administrative work. The irony of this situation should be clear to all. What’s more, the tool does not align the required analysis with the tools available to each grantee. PHAs do not have the authority to influence most of the location of high quality schools, jobs, government services, public transportation, etc. As a result, the only possible means of intervention would be to ensure that their housing is within close proximity to these amenities. However, in any given year, the vast majority of PHAs make no decisions about siting because they are not doing new development. The tool’s essential failure to recognize the fixed nature of real estate is among its greatest shortcomings. The tool also fails to recognize the zero-sum nature of grantees’ resource allocation choices. Increasing HCV payment standards to allow individual households access to higher-cost areas would necessitate a reduction in the number
of families served. While this may further the fair housing opportunities afforded to the families who are able to access the program, it comes at the direct expense of the choices available to the families who remain on the waiting list.

Finally, the tool does not create the structure for the balance between investments in high opportunity areas and reinvestment in disinvested neighborhoods that the AFFH proposed rule describes. The structure of the tool implies that investments in disadvantaged neighborhoods does not further fair housing choice.

**We are concerned about the level of uncertainty and risk that program participants would take on as a result of completing the proposed AFH tool.**

The proposed tool would shift a tremendous amount of uncertainty to HUD program participants. The AFH tool and the proposed AFFH rule do not provide grantees’ with even a modicum of certainty as to when they have met their AFFH obligations. In commenting on the proposed AFFH rule, NAHRO and others noted their concern over the lack of concrete guidance and the absence of safe harbors, but the tool does nothing to remedy the uncertainty. For example, if a PHA were to set goals that involve revitalizing properties in minority neighborhoods, would they be contributing to segregation? Conversely, if the PHA were to concentrate its investments in neighborhoods with relatively small minority populations would it be contributing to segregation? If a PHA sets its payment standard below 110 percent of FMR in order to stretch its available funds to serve additional families, would it be guilty of concentrating poverty? By failing to provide clear guidance as to what kinds of activities are expected, the tool may set up unrealistic expectations on the part of residents, advocates, and the general public. Contrary to the Department’s stated intention to reduce litigation, uncertainties such as these are pervasive throughout the rule, thereby increasing the likelihood of expensive, protracted litigation on the basis of grantees’ AFH submissions.

**We are concerned that the proposed AFH tool would require HUD grantees to fundamentally violate the Fair Housing Act.**

At its core, the Fair Housing Act prohibits discrimination on the basis of certain protected characteristics including race, color, familial status, national origin, or handicap. The Fair Housing Act, however, does not give additional protections to individuals within these categories; immigrants are not to be treated differently than native-born residents, women are not to be treated differently than men, families are not to be treated differently than individuals. The purpose of the Fair Housing Act is to ensure that these characteristics are not the basis for discrimination. However, the proposed tool asks HUD program participants to do just that by requiring them to set policies on the basis of data related to various sub-groups of these protected classes. How can grantees make policy decisions on the basis of these characteristics without violating these protections?

**We are concerned about the administrative burden that the AFH tool presents.**

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. In addition, it is worth noting that not only are no additional resources being made available to support this increased administrative requirement, but that resources to meaningfully enhance fair housing choice are already insufficient. In recent years,
PHAs have experienced devastating cuts in funding for both Public Housing and the Housing Choice Voucher program. Additionally, appropriations for the Community Development Block Grant and the HOME Investment Partnerships have also continued to decline. Ironically, these scarce resources will be diverted to complete the administrative burdens of the AFH tool, reducing the funds available for carrying out the programs themselves.

According to the preamble published in the Federal Register, “the primary purpose of comment under the Paperwork Reduction Act is to determine the burden of any information collection.” Put simply, the proposed AFH represents an enormous burden. The notice further goes on to ask “[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.” We believe that this information collection is exponentially more burdensome than its associated utility. The AFH tool is so unreasonably detailed as to be a technocratic study of the conditions at play in the respondent’s jurisdiction and region. Many of these conditions are entirely outside of the control of the respondent, rendering the analysis nothing more than an academic exercise with little ability to affect the goals of the Fair Housing Act.

As always, NAHRO is appreciative of the opportunity to comment on this important notice. We look forward to continuing our work together to find a reasonable, appropriate mechanism for furthering the goals of the Fair Housing Act. Please do not hesitate to contact us if we can provide additional information or clarification.

Sincerely,

Tamar Greenspan
Director of Policy and Program Development