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Regulations Division

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Department of Housing and Urban Development

451 7th Street SW

Room 10276

Washington, DC 20410-0500

Via regulations.gov

Re Docket No. FR-5173-N-09

Affirmatively Furthering Fair Housing Assessment Tool for Public Housing
Agencies Solicitation of Comment – 60-Day Notice Under Paperwork
Reduction Act of 1995

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people and people who are homeless.

NLIHC enthusiastically endorsed the final affirmatively furthering fair housing (AFFH) rule, and pledges to help realize successful implementation in the coming years.

The Assessment Tool should have as much detail as possible because it will be the working template and ultimate document that public housing agencies (PHAs), residents, and advocates will be working with on a frequent, operational basis. The final rule, along with any additional guidance HUD provides, is important to realize the goal of affirmatively furthering fair housing choice, but on a day-to-day working basis, these documents will eventually be less prominent than the Assessment Tool itself. An Assessment Tool with detailed guidance providing direction echoing the final rule will minimize the need for stakeholders to toggle between the final rule, guidance, and the Assessment Tool. In short, the Assessment Tool is as important as the final rule. Therefore, NLIHC offers the following suggestions.

The Community Participation Process

The Community Participation Process section needs to be augmented in a manner that provides more guidance to PHAs and that affords resident and community stakeholders a means to assess the thoroughness of a PHA's efforts to provide for and encourage public participation.

Because the regulations seek to have PHA Plans informed by meaningful community participation and urge PHAs to reach the broadest audience, the Assessment Tool should require PHAs to consult with and reach out to a wide variety of organizations, including those that represent people who are members of the Fair Housing Act's protected classes.

Comments: Consultation

The Assessment Tool should require a PHA to list all entities consulted and the date of consultation so that residents and advocates are able to assess whether the most appropriate entities were consulted. The PHA should also provide a summary of the input offered through the consultation (attach as an appendix any detailed written input provided).

Because the Assessment Tool is intended to be a guide for PHAs, and should also be viewed as a guide for residents and community participants, the Assessment Tool should include examples of the types of groups a PHA could consider reaching out to. NLIHC suggests the public housing Resident Advisory Board, any resident councils (duly recognized and unofficial), groups representing Housing Choice Voucher households, people on waiting lists for public housing and vouchers, and groups in the community in which PHA properties are located such as neighborhood-based organizations, community-based development organizations, tenant organizations, affordable housing advocacy organizations, and legal services offices.

Comments: Encouraging Community Participation

PHAs should describe how community participation was both provided for and encouraged. They should be required to present a detailed list (by date and time of day) of specific participation activities for various components of the stakeholder community.

The Assessment Tool should require PHAs to list organizations that submitted written comments and/or delivered remarks at public hearings so that residents and advocates will be able to assess whether the groups that participated represent a balance of opinions.

PHAs should describe how meetings and events were held at times and places conducive to optimal participation. Were meetings held in the evenings and/or on weekends (not just during the business day)?

Comment: Participation by Non-English Speaking Persons

PHAs should describe how they assessed language needs and provided for translation of notices and vital documents, as well as provided interpreters for meetings and public hearings.

Comments: Notice

PHAs should describe how far in advance notice of meetings and events was provided.

PHAs should describe the method(s) of notification, for example:

- Mailings to residents and those on waiting lists.
- Postings in common areas of all PHA properties and at AMP offices.
- Easily identified notices on the PHA's homepage.
- Listserv of people who have requested to be informed of PHA activities.
- Notices in newspapers oriented to neighborhoods where PHA properties are located and in languages spoken by significant numbers of PHA residents.
- Notices in newsletters of organizations serving various populations.
- Public service announcements on radio and television stations oriented to particular populations.
- Provisions for people with limited English proficiency.
- Provisions for people with visual, hearing, or other communications disabilities.
- Social media

Comments: Local Knowledge

The Assessment Tool should require PHAs to report discussions with residents of public housing to determine whether residents want to remain in their homes and communities or to relocate to areas that may offer other opportunities.

The instructions should offer examples of likely sources of local knowledge important to residents, such as university studies and the experiences of advocacy organizations, service providers, school districts, and health departments.

The instructions should provide examples of local knowledge such as:

- Efforts to preserve publicly-supported housing
- Community-based revitalization efforts
- Public housing Section 18 demolition or disposition application proposals
- Rental Assistance Demonstration (RAD) conversion applications
- Transit-Oriented Development plans
- Major redevelopment plans
- Comprehensive planning or zoning updates
- Source of income ordinance campaigns
- Inclusive housing provision campaigns

PHAs should summarize all local knowledge and comments obtained in the community participation process, and include a summary of any local knowledge or comments not accepted and the reasons why. These should be attached as an appendix to the AFH.

The Assessment Tool Must Provide for a More Balanced Analysis and Assessment

In Part V.B., “Fair Housing Analysis of Segregation,” “R/ECAPs,” and “Disparities in Access to Opportunity,” the instructions for the “Additional Information” questions and the questions themselves could be misconstrued to suggest, contrary to the final AFFH rule, a prohibition on the use of resources for preservation of public housing and revitalization in neighborhoods where public housing is located, even though those neighborhoods have assets not mentioned in the Assessment Tool. Although preservation is mentioned in the instructions, the manner in which it is articulated could be misconstrued to limit preservation to situations narrowly designed to increase integration.

Comments

HUD should include clearer directions in each of the “Additional Information” subsections to foster a more balanced assessment pertinent to the fair housing issue under consideration.

Positive assets that should be listed include affordable housing preservation organizations and community-based development organizations that have long worked with residents to improve publicly supported housing and/or community living conditions.

Fair housing choice must include residents’ ability to choose to remain in their homes and communities where they have long lived and where they have deep social, community, cultural, and language ties, even if those communities are R/ECAPs. The Assessment Tool should provide guidance that takes these assets into consideration.

In Part V. D., “Publicly Supported Housing Analysis,” “Location and Occupancy” questions for both the “Public Housing Agency Program Analysis” (at 1.b.iv) and the “Other Publicly Supported Housing Programs” (at 2.b.v) ask PHAs to compare the demographics of developments to the demographics of the service area and region.

Comments

NLIHC is concerned about how these will be interpreted because most publicly supported housing projects have existed at their sites for a long time. While these projects might be in segregated or R/ECAP areas, sensitivity to the wishes of existing residents must be paramount – if people prefer that their developments be improved and preserved, then devoting federal funds should not be deemed contrary to affirmatively furthering fair housing choice.

PHAs should describe actions taken to determine residents’ desire to remain in their publicly supported housing and their neighborhood, or their desire to move to a different publicly supported housing development, receive a voucher, or move to a different neighborhood. PHAs should describe the resources (and in what amounts) that have been used to improve the neighborhood in which the publicly supported housing development is located.

Also, the “Additional Information” questions should require PHAs to describe efforts that have been made, are underway, or are planned to preserve 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. PHAs should also describe efforts that have been made, are underway, or are planned to preserve LIHTC developments, including at Year 15 and beyond Year 30.

Suggestions Related to Contributing Factors

For each set of “Contributing Factors” add, “Local governments or the state unwilling to promote source of income legislation, or poor enforcement where source of income ordinances exist.”

For the “Segregation” and “R/ECAP” Contributing Factors add:

- Impediments to mobility
- Impediments to portability
- Policies related to payment standards, FMR, and rent subsidies

For “Publicly Supported Housing:”

- Add “past and present” to the site selection factor, so that it reads, “Site selection policies, practices, and decisions (past and present) for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs.”
- Add “Displacement of residents due to economic pressures, causing landlords to exit the Housing Choice Voucher program or Section 8 program.”

Disparities in Access to Opportunity

Employment

The Assessment Tool should add a question directing the PHA to describe its actions in complying with Section 3 obligations, and a description, if appropriate, of planned efforts to overcome underperformance.

Include a Section Pertaining to Mobility

The initial Assessment Tool for local governments had an entire section regarding mobility policies, especially related to Housing Choice Vouchers. The final local government Assessment Tool eliminated such a section.

Comment

The PHA Assessment Tool should include a Mobility section as drafted for the initial local government Assessment Tool, with the changes NLIHC recommended in its November 2014 comment letter regarding the initial local government Assessment Tool. Major barriers to housing choice revolve around voucher issues, including landlord discrimination, public housing agency portability practices, payment standard policies, and admissions policies. NLIHC’s November 2014 comments regarding Mobility were (HUD original in italics; NLIHC comments in red):

a. Publicly Supported Housing Policies

i. Discuss how admission preferences or designations in each type of publicly supported housing (such as residency preferences or elderly or disability designations), tenant selection policies, application and waitlist procedures, and affirmative marketing, affect residency patterns of publicly supported housing residents (by race/ethnicity, national origin, families with children, and disability).?

b. Mobility Policies

i. Describe how HCV policies or practices, including **payment standards (i.e. allowable rents), landlord and apartment listings, and portability issues between PHAs, and presence or absence of** mobility counseling, impact the ability of persons using HCVs (**discuss these issues by race/ethnicity, national origin, age, families with children, household size**) to live in neighborhoods of their choice.

ii. Is there a **housing** mobility counseling program (~~other than the PHA's~~), ~~central registry, listing of rental housing available to HCV holders, or other program~~ to ensure that residents, particularly those living in low-asset/high poverty neighborhoods, become aware of public or private housing opportunities ~~outside their neighborhood~~ **in significantly lower poverty communities, and receive assistance in making moves to such areas**? Explain.

iii. What barriers do persons using HCV's encounter when attempting to ~~utilize mobility and portability features~~ **move to low poverty neighborhoods and communities**?

8. Provide additional relevant information, if any, about publicly supported housing and mobility programs in the Jurisdiction and Region (e.g., information regarding LEP persons, religion, color and families with children, as well as information about other federally supported housing or state or locally supported housing). **Does the program participant have a local or state "source of income" ordinance or law that prohibits discrimination of voucher holders? If not, what has the program participant done to directly (or by supporting others) to attempt to secure source of income protection?**

PHA Service Area

HUD states in the preamble to the Assessment Tool that it does not know PHA service areas and therefore cannot provide data to PHAs based on their service areas. HUD specifically asks how it could obtain information about each PHA's service area.

NLIHC recommends the PHA Assessment Tool include a section titled "Service Area" asking the PHA to describe its service area using readily identifiable indicators such as geographic boundaries and the census tracts that roughly approximate the geographic boundaries.

NLIHC strongly supports the new AFFH rule and pledges to help contribute toward its successful implementation. A key component to the future success of the AFFH rule are Assessment Tools that provide clear, complete, and balanced guidance for the development of an Assessment of Fair Housing.

NLIHC thanks HUD for issuing the draft PHA Assessment Tool as one more step in the process of implementing the AFFH regulations. If there are any questions about the comments offered in this letter, please contact Ed Gramlich at ed@nlihc.org or 202.662.1530 x 314.

Sincerely,



Diane Yentel
President and CEO