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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-08]

Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas
Solicitation of Comment – 60-Day Notice under Paperwork Reduction Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: On July 16, 2015, HUD published the Affirmatively Furthering Fair Housing (AFFH) final rule that provides HUD program participants with a new process for planning for fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing. This process includes an assessment tool that must be used by program participants to evaluate fair housing choice and access to opportunity in their jurisdictions, to identify barriers to fair housing choice and opportunity at the local and regional levels, and to set fair housing goals to overcome such barriers and advance fair housing choice.

HUD committed to issue three assessment tools for its program participants covered by the AFFH final rule. One assessment tool is for use by local governments (Local Government Assessment Tool) that receive assistance under certain grant programs administered by HUD's Office of Community Planning and Development (CPD), as well as by joint and regional collaborations between: (i) local governments; (ii) one or more local governments and one or more public housing agency (PHA) partners; and (iii) other collaborations in which such a local government is designated as the lead for the collaboration. The second tool (the subject of this Notice) is to be used by States and Insular Areas (State and Insular Area Assessment Tool), including joint or regional collaborations (with local governments and/or PHAs) where the State is designated as the lead entity. The third assessment tool is for PHAs (including for joint

collaborations among multiple PHAs) (PHA Assessment Tool). On December 31, 2015, HUD issued the Local Government Assessment.

This notice solicits public comment for a period of 60 days on the proposed State and Insular Area Assessment Tool. In seeking comment for a period of 60 days, this notice commences the process for compliance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires two public comment periods – a public comment period of 60 days and a second comment period of 30 days. After consideration of the public comments submitted in response to this notice, HUD will solicit a second round of public comments for a period of 30 days.

To further facilitate public input on the State and Insular Areas Assessment Tool, HUD will post sample maps and tables that are intended to provide options for presenting relevant data. Sample data will be posted on <https://www.hudexchange.info/programs/affh/> and https://www.huduser.gov/portal/affht_pt.html no later than March 18, 2016.

DATES: Comment Due Date: **[Insert Date 60 days after date of publication in the FEDERAL REGISTER.]**

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments

electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make public comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dustin Parks, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5249, Washington, DC 20410-0500; telephone number 202-708-1112 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may

access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, at 80 FR 42272, HUD issued its final AFFH rule. The AFFH rule provides a new approach to enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in their efforts to comply with their duty to affirmatively further fair housing as required by the Fair Housing Act, which is Title VIII of the Civil Rights Act, and other authorities. The Fair Housing Act not only prohibits discrimination, but, in conjunction with other statutes, directs HUD's program participants to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.

The new approach established by HUD replaces the existing analysis of impediments (AI) process. The approach is designed to assist program participants in analyzing their fair housing environment, identifying fair housing issues and the related contributing factors, and setting fair housing goals, and, ultimately, taking meaningful actions to affirmatively further fair housing. This approach builds upon and refines the fair housing elements of the existing fair housing planning processes that are in the process of being replaced as the AFH process is being phased in pursuant to the AFFH rule.

To assist program participants in improving planning to achieve meaningful fair housing outcomes, the new approach involves an "assessment tool" for use in completing the regulatory requirement to conduct an assessment of fair housing (AFH) as set out in the AFFH rule. To aid in the completion of an AFH, HUD committed to provide program participants and the public with certain nationally available data, and State, local, and regional data relevant to the AFH,

including data on certain demographics; patterns of integration and segregation; racially or ethnically concentrated areas of poverty (R/ECAPs); disparities in access to education, employment, low-poverty neighborhoods, transportation, and environmental health, among other critical opportunity indicators; disproportionate housing needs; data on publicly supported housing, including location and occupancy patterns; and data on individuals with disabilities and families with children. Using these data, together with other available local data and local knowledge, program participants will evaluate their present fair housing environment to assess fair housing issues, identify significant contributing factors that create, contribute to, perpetuate, or increase the severity of those issues, and set forth fair housing priorities and goals to address fair housing issues and significant contributing factors. The expected benefit of this approach is that by engaging in the analysis of this information, program participants, with the input of the community, can set better priorities and goals that will better inform their AFFH strategies and actions by enabling program participants to improve the integration of fair housing planning with other planning processes.

As noted in the Summary of this document, HUD has committed to issue three assessment tools: the Local Government Assessment Tool, the State and Insular Area Assessment Tool, and the PHA Assessment Tool. The final Local Government Assessment Tool issued by HUD on December 31, 2015, and announced by HUD on that same date in the Federal Register, at 80 FR 81840, provides the basic structure and primary areas to be covered by all three assessment tools. The final Local Government Assessment Tool, the instructions for this tool, an AFFH Rule Guidebook, and the AFFH Data and Mapping Tool can all be found at <https://www.hudexchange.info/programs/affh/>.

It is the proposed State and Insular Area Assessment Tool that HUD is submitting for

public comment through this Notice. References to “States” in the assessment tool are inclusive of “Insular Areas.”

As with the Local Government Assessment Tool issued on December 31, 2015, the State and Insular Area Assessment Tool allows for collaboration with other program participants that may include either local government or PHAs. HUD is particularly interested in soliciting public comment on joint collaborations between States and Qualified PHAs,¹ as these entities may especially benefit from such collaborations, and HUD encourages such collaboration.

II. The Proposed State and Insular Area Assessment Tool

A. Sources of Data and Information to Complete the Assessment of Fair Housing

HUD-Provided Data: One of HUD’s major considerations in formulating the new AFFH planning process is to provide certain nationally uniform data to program participants that would be useful in completing an AFH. All program participants must use the HUD-provided data, which includes data for the program participant’s jurisdiction and region, to complete the AFH. A collaborative AFH must reference the HUD-provided data for each program participant’s jurisdiction and region. The HUD-provided data will be used by various types of program participants (e.g. those in urban areas, rural areas, suburban areas, majority-minority communities), which may have unique characteristics, issues, and challenges. The HUD-provided data will help program participants assess local and regional fair housing issues and contributing factors and set priorities and goals to overcome them. However, certain HUD-provided data may have limitations, including limitations in how they apply to geographic areas

¹ A Qualified PHA, defined at 24 C.F.R. § 5.142, includes a PHA that: (1) has a combined unit total of 550 or less public housing units and section 8 vouchers; and (2) is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months; and (3) does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.

with different characteristics (e.g., rural versus urban, majority minority areas). While HUD is providing nationally uniform data, as with the Local Government Assessment Tool, HUD recognizes in this proposed State and Insular Area Assessment Tool that there are other important data sources that may be available and relevant locally, including data that are unavailable from a nationally uniform source.

HUD is only able to provide data for those protected class groups for which nationally uniform data are available. For this reason, some questions in the proposed State and Insular Area Assessment Tool focus on specific protected classes based on the availability of such data. For these questions, local data and local knowledge may provide information to supplement the analysis for protected classes not covered by the HUD-provided data. Local data and local knowledge can be particularly helpful when program participants have local data that are more up-to-date or more accurate than the HUD-provided data or when the HUD-provided data do not cover all of the protected classes that would be relevant to program participants' analyses. Consequently, although HUD will provide nationally available data that are expected to be of significant assistance to program participants, the AFFH rule recognizes the value of local data and knowledge.

Local Data and Local Knowledge: In addition to the nationally uniform data provided by HUD, program participants are required to use local data and local knowledge to inform their assessments. However, the AFH process does not require program participants to create or compile new data. Rather program participants must consider existing local data and local knowledge that is relevant in order to answer questions in the assessment tool. Local data and local knowledge include data and information gained through the community participation, consultation, and coordination processes set out in the AFFH rule at § 5.158.

Local data are existing data pertaining to the State or Insular Area or its region that are relevant to the AFH, that are either known or become known to the program participant or that can be found through a *reasonable* amount of searching, and that are readily available at little or no cost.

Local knowledge, on the other hand, is information relating to the State's or Insular Area's jurisdiction or its region that is relevant to the AFH and is known or becomes known to the program participant.

A program participant must complete its AFH using the assessment tool designated for its use and HUD-provided data, as well as any local data, and local knowledge that are relevant. To the extent that HUD does not provide data for a program participant to respond to a question in the assessment tool, and there is no local data and no local knowledge that would be responsive to the question, stating that data and knowledge are unavailable to the program participant is an acceptable and complete response to that particular question. However, if HUD finds that an AFH is materially inconsistent with HUD-provided data or finds that local data or local knowledge relevant to a question were available to the program participant, HUD will determine, as applicable, that the AFH is substantially incomplete and/or inconsistent with fair housing and other civil rights requirements, and not accept the AFH.

B. Structure of the Proposed State and Insular Area Assessment Tool

This proposed State and Insular Area Assessment Tool is designed with the same three key objectives that HUD had in mind in its design of the first assessment tool, the Local Government Assessment Tool. First, the assessment tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors and set meaningful fair housing goals and priorities. Second, the

assessment tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by HUD. Third, the assessment tool must be designed so program participants would be able to use it to prepare an AFH that HUD would accept without unnecessary burden.

The following presents the structure for the proposed State and Insular Area Assessment Tool, which closely tracks the structure of the Local Government Assessment Tool, with some key changes. For example, States and Insular Areas have different responsibilities compared to local governments. One of the key considerations in the proposed State and Insular Area Assessment Tool pertains to how to include questions designed to elicit a fair housing analysis for Qualified PHAs that will sufficiently address fair housing issues, contributing factors, goals and priorities relating to the PHA's service area (jurisdiction) and region. The AFFH rule strongly encourages program participants to collaborate on an AFH. While the AFFH rule encourages collaboration among all types of program participants, this Notice specifically solicits public input on how best to facilitate collaborative participation between States and Qualified PHAs.

Qualified PHAs vary in their size of operations and scope. HUD believes that Qualified PHAs collaborating with a State may be beneficial to both parties. There are resources available to States that may not be available to all Qualified PHAs, so this collaboration can help reduce burden for Qualified PHAs while also informing the State's analysis with supplemental information available to the Qualified PHA. Section F of this document presents issues for which HUD is specifically seeking comment, with respect to how HUD may design the assessment tool to facilitate collaborations between States and Qualified PHAs. In addition to including specific questions focused on collaboration with Qualified PHAs, HUD is interested in all public comments

on the types of collaborations that are likely to occur and how to facilitate collaboration with other program participants of any size that may wish to collaborate with a State.

Section I. As is the case with the Local Government Assessment Tool, Section I of the proposed State and Insular Area Assessment Tool contains the Cover Sheet and Certification and addresses basic information applicable to the program participant or program participants (where there are joint submissions), such as the name of the entity making the submission, the type of submission (e.g., whether it is a submission by a State or Insular Area, individually, or a State or Insular Area in collaboration with another program participant), the time period covered by the assessment, and the required certifications.

Section II. This section of the proposed State and Insular Area Assessment Tool is an Executive Summary to provide the State or Insular Area, and any other program participant that joins in collaboration with the State or Insular Area, the opportunity to present a general overview of the AFH's findings and the fair housing priorities and goals established.

Section III. This section of the proposed State and Insular Area Assessment Tool addresses the community participation process and directs the State or Insular Area to describe outreach activities to encourage community participation in the development and review of the AFH, to describe how successful its outreach efforts were in obtaining community participation related to the AFH, and to summarize all comments obtained in the community participation process, including a summary of any comments or views not accepted and the reasons why.

Section IV. This section of the proposed State and Insular Area Assessment Tool, entitled "Assessment of Past Goals and Actions," asks States and Insular Areas to explain the fair housing goals they selected in their recent AIs, AFHs, or other relevant planning documents, and the progress that was made in achieving these goals. In essence, this section requires program

participants to reflect upon the progress of past goals and actions and the efforts undertaken to achieve fair housing goals. This section also solicits information on how such experience influenced the selection of fair housing goals that the State or Insular Area sets in the current AFH.

Section V. This section of the proposed State and Insular Area Assessment Tool, entitled “Fair Housing Analysis,” presents the core analysis to be undertaken by States, Insular Areas, and program participants that may be participating with the State or Insular Area in a collaborative AFH. This section of the proposed State and Insular Area Assessment Tool is structured to help program participants identify the fair housing issues and contributing factors in their jurisdiction and region. The proposed State and Insular Area Assessment Tool, as is the case with the Local Government Assessment Tool, requires the State or Insular Area to examine fair housing issues that exist within the State or Insular Area and those that may go beyond the boundaries of the State or Insular Area. As stated in the Local Government Assessment Tool, fair housing issues are often not constrained by political-geographic boundaries, and the State or Insular Area must determine if such is the case for any fair housing issues identified in their AFH.

Section V includes an assessment of certain key fair housing issues – segregation and integration, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, disproportionate housing needs, publicly supported housing, and disability and access. Each subsection of Section V also includes targeted questions in order to help ensure that the AFH includes appropriate analysis from a fair housing perspective.

An area of analysis included in the proposed State and Insular Area Assessment Tool that has been expanded upon from the Local Government Assessment Tool pertains to low-income

housing tax credits (LIHTCs). The LIHTC questions presented in the proposed State and Insular Area Assessment Tool include questions pertaining to a State's Qualified Allocation Plan (QAP).² This section of the proposed State and Insular Area Assessment Tool, which differs from the Local Government Assessment Tool, also includes questions pertaining to other State-administered programs relating to housing and urban development. These questions differ from those in the Local Government Assessment Tool because of the unique role played by States in connection with the LIHTC program and other programs such as State Housing Trust Funds. HUD recognizes that at least some Insular Areas may not have all of the same programs as States.

Section VI. Section VI, Fair Housing Goals and Priorities, contains a summary table of the fair housing issues that the State or Insular Area and any program participant collaborating with them on an AFH have identified. The table includes a framework for the State or Insular Area to establish fair housing goals to overcome contributing factors and related fair housing issues by setting specific goals that include metrics and milestones, and a timeframe for achievement. The table also includes a space to identify the responsible party in the event the State or Insular Area conducts a joint AFH with other program participants.

The preceding presented a brief overview of the structure and content of the State and Insular Area Assessment Tool. For States, Insular Areas, other HUD program participants and the public generally, HUD provides at <https://www.hudexchange.info/programs/affh/> a comparison of the proposed State and Insular Area Assessment Tool to the final Local

² Low-income housing tax credits are managed by the Department of Treasury. The Qualified Allocation Plan is a federally mandated planning requirement that States annually use to explain the basis upon which they distribute their LIHTC allocations. Based on their QAP, states establish preferences and set-asides within their tax credit competitions so as to target the credits towards specific places (such as rural areas) or types of people (such as elderly households). See https://www.huduser.gov/portal/publications/hsgfin/analysis_of_sqa_plans.html.

Government Assessment Tool so that covered program participants and interested parties can see in detail the differences between this proposed State and Insular Area Assessment Tool and the Local Government Assessment Tool issued on December 31, 2015.

C. Instructions to Accompany the Proposed State and Insular Area Assessment Tool

The instructions, which will be part of the proposed State and Insular Area Assessment Tool, are also provided for public comment at the website listed above. The comparison of this proposed State and Insular Area Assessment Tool to the Local Government Assessment Tool issued on December 31, 2015, also highlights the differences in instructions provided in the Local Government Assessment Tool and the proposed State and Insular Area Assessment Tool. Please note that the instructions provided in the proposed State and Insular Area Assessment Tool include placeholders where HUD intends to provide data pertaining to specific questions. HUD intends to generally provide States with thematic maps at the county or statistically equivalent level in the AFFH Data and Mapping Tool. HUD intends to provide additional functionality to allow States to zoom in to the dot density maps that are currently provided for local governments and PHAs submitting an AFH using the Local Government Assessment Tool issued on December 31, 2015. HUD is currently in the process of compiling such data, which will be incorporated into the AFFH Data and Mapping Tool prior to the final issuance of the State and Insular Area Assessment Tool.

D. PHA Assessment Tool

As noted earlier in this document, HUD has not only committed to issuance of a State and Insular Area Assessment Tool, but to issuance of a PHA Assessment Tool for PHAs' use in conducting the AFH individually or in collaboration with other PHAs. HUD will soon issue the 60-day public comment notice for the proposed PHA Assessment Tool. It should be noted that

the questions contained in the proposed PHA Assessment Tool will differ from the questions addressed to Qualified PHAs that collaborate with States using the proposed State and Insular Area Assessment Tool. HUD expects that collaborations between States and Qualified PHAs may reduce burden for Qualified PHAs. Although program participants will decide among themselves how to divide the work on a collaborative AFH, a State's analysis of the entire State and region is expected to fulfill the regional analysis that Qualified PHAs would otherwise be required to perform if submitting an individual AFH using the PHA Assessment Tool. As discussed more fully below, the proposed State and Insular Area Assessment Tool contains specific questions relating to collaborating with Qualified PHAs. HUD would like feedback on the circumstances in which these collaborations are likely to occur and the structure of the State and Insular Area Assessment Tool that would be most effective in facilitating those collaborations while still ensuring that the required fair housing analysis and priority and goal setting for each collaborating program participant is conducted.

E. Small Entities

Whether the proposed State and Insular Area Assessment Tool, which is the subject of this Notice, the proposed PHA Assessment Tool, which remains to be issued, or the Local Government Assessment Tool that HUD has already issued, HUD is cognizant that completion of the AFH will place some burden on small entities, and HUD welcomes comments on how burden may be reduced for all program participants, but especially for small entities, while still achieving the necessary fair housing analysis.

F. Solicitation of Specific Comment on the Proposed State and Insular Area Assessment Tool

While the primary purpose of comment under the Paperwork Reduction Act is to

determine the burden of any information collection requirement, HUD, as was the case for the Local Government Assessment Tool, also solicits comment on the content of the proposed State and Insular Area Assessment Tool, the clarity of the questions presented and whether there are areas of information sought that program participants believe are not necessary to a meaningful AFH, or whether there are important areas of information for conducting a meaningful fair housing analysis that HUD may have overlooked. HUD also solicits comments for the following questions:

Content of the Proposed State and Insular Assessment Tool

In developing the proposed State and Insular Area Assessment Tool, HUD has made changes to the Local Government Assessment Tool in order to capture the appropriate level of information for States and Insular Areas conducting a fair housing analysis and goal setting. Some questions have been removed, new questions have been added, and some questions remain but with revisions. As noted earlier in this notice, HUD's AFFH web page at <https://www.hudexchange.info/programs/affh/> provides a comparison of the Local Government Assessment Tool and this proposed State and Insular Area Assessment Tool, which includes a section of questions to facilitate collaborations between States and Qualified PHAs.

One of the differences between the Local Government Assessment Tool and the proposed State and Insular Area Assessment Tool pertains to the analysis of disparities in access to opportunity. HUD is considering different ways of structuring this section to obtain an appropriate fair housing analysis of disparities in access to opportunity. The proposed State and Insular Area Assessment Tool seeks analysis relating to States' programs and policies and how they affect protected class groups in new areas including emergency preparedness, prisoner re-entry, public health, public safety, and housing and financial opportunities (access to rental

housing, home ownership, and mortgage loans). The proposed State and Insular Assessment Tool, through a general question, solicits information from States and Insular Areas on these five areas. In this Notice, HUD provides specific questions on certain areas that HUD is also considering for inclusion with the tool.

Specific solicitation of comment: HUD is considering two approaches to the section of the proposed State and Insular Area Assessment Tool in which program participants will analyze disparities in access to opportunity. One approach asks more general questions and relies on States and Insular Areas to be diligent in identifying specific subjects involving disparities in access to opportunity for protected class groups. The other approach asks more targeted questions that would guide program participants through the required analysis and reduce the risk of an inadvertent omission of a key point of analysis. HUD specifically solicits comment from States and Insular Areas and other interested parties on which of these approaches would be more beneficial in eliciting an appropriate fair housing analysis from States and Insular Areas. The following presents proposed targeted questions on these areas for which HUD solicits comment not only on whether such targeted questions should be included in the proposed State and Insular Area Assessment Tool, but also on whether these questions appropriately target information on these five areas for purposes of conducting a meaningful fair housing analysis, and if there are better ways to pose the questions or additional questions that should be included:

Disparities Related to Emergency Management and Preparedness

- Identify and describe any disparities in access to emergency management and preparedness programs, policies, practices, and resources, including prevention, protection, mitigation, response, and recovery within the State by protected class.

What role does a person's place of residence have on access to emergency

preparedness opportunities?

- Describe any effects on emergency management and preparedness for protected class groups in your State of the emergency preparedness programs, policies, practices, and resources in neighboring states or a broader geographic area.

Re-Entry Opportunities (re-entry relates to offenders transitioning back into the community)

- Describe the demographics of the State's population involved in reentry in terms of race, ethnicity, national origin (including LEP persons), sex, and disability. Which protected class groups are least successful in accessing housing, employment, counseling, education, or other opportunities in the State?

Disparities Related to Public Health Services

- What role does a person's place of residence have on access to public health programs and resources (chronic disease prevention, environmental health, family health, healthcare quality, and exposure to communicable diseases) in the State? Which protected class groups have the least access to public health programs and resources and the greatest exposure to public health hazards?

Disparities Related to Public Safety

- Describe disparities related to public safety, including law enforcement, fire and rescue, and emergency medical services, in the State by protected class. What role does a person's place of residence have on disparities related to public safety in the State? Which protected class groups experience the most disparities related to public safety in the State?

Housing and Financial Opportunities

- Describe any laws, policies, and practices affecting affordable rental housing, homeownership and mortgage access in the State, including occupancy codes and homeownership programs. Describe disparities in access to rental housing, homeownership, and mortgage access, including State lending programs, tax incentives, homeownership programs, and State housing assistance or subsidies, in the State by protected class.
- What role does a person's place of residence have on access to affordable rental housing, homeownership and mortgage access in the State? Which protected class groups have the least access to affordable rental housing, homeownership, and financial opportunities in the State?

Specific solicitation of comment: Through the questions presented in the proposed State and Insular Area Assessment Tool (and the alternate questions included immediately above in this Notice), has HUD captured the appropriate level of information from States and Insular Areas in conducting their AFH? Are there additional areas of analysis that should be included in the State and Insular Area Assessment Tool given their areas of responsibility, programs, policymaking, and jurisdictions? HUD solicits comment on any additional areas of analysis or specific questions that should be included in the State and Insular Area Assessment Tool and HUD asks commenters responding to this question to indicate the section of the assessment tool where these additional subject areas or questions should be included. HUD also solicits comment on any questions included in the State and Insular Area Assessment Tool that should be excluded and the reasons why.

States with Rural Areas and Other Key Differences among States and Insular Areas

HUD recognizes that many States include rural areas and is particularly interested in

obtaining comment on how the State and Insular Area Assessment Tool can ensure an appropriate fair housing analysis for rural areas. HUD is also interested in other differences that may cause States and Insular Areas to have to have different fair housing issues that need to be assessed. HUD seeks solicits comment on how to best accommodate these differences between States and Insular Areas while still providing an appropriate vehicle for fair housing analysis.

Specific Solicitation of Comment: States and Insular Areas must assess their entire jurisdiction; however, HUD recognizes that rural areas may present certain challenges in conducting such an assessment. Are there particular questions that HUD should include in the State and Insular Area Assessment Tool to ensure the appropriate focus on rural areas? What sources of information do States have access to when considering fair housing issues in rural areas? HUD seeks comment on any additional questions or additional data that should be included and the applicable section of the State and Insular Area Assessment Tool to address how States and Insular Areas can assess rural areas.

Specific Solicitation of Comments: States and Insular Areas can have different populations, can have many different characteristics, and, as a result, can have different types of program and policies that affect fair housing. HUD seeks comment on any key areas beyond those HUD has already presented in the proposed State and Insular Area Assessment Tool and this notice? If a commenter suggests other key areas to be added, HUD asks the commenter to indicate why the area is important to include when conducting a fair housing analysis, what questions to ask about it, and any relevant data a State or Insular Area may use.

Specific Solicitation of Comment: Native American considerations. Indian tribes receiving HUD assistance are not required to comply with AFFH requirements. However, under certain HUD programs, grantees that are subject to AFFH requirements also provide assistance

to tribal communities on reservations. For example, under the HOME program, a State may fund projects on Indian reservations if the State includes Indian reservations in its Consolidated Plan. Does the Assessment Tool adequately take into account, including in the terminology used, the issues and needs of Indian families and tribal communities while also factoring in the unique circumstances of tribal communities?

Disability and Access

Section V.D of the proposed State and Insular Area Assessment Tool requires an analysis of disability and access in the State or Insular Area. This section of the proposed State and Insular Assessment Tool is intended to solicit specific information about disability and access issues, while incorporating the rest of the analysis completed in prior sections of the assessment tool.

Specific Solicitation of Comment: Is the Disability and Access section of the proposed State and Insular Area Assessment Tool adequately clear such that it includes the analysis of prior sections as it relates to disability and access issues.

Contributing Factors

A key part of the AFH analysis is the identification of contributing factors. HUD seeks comment on the contributing factor analysis in the proposed State and Insular Area Assessment Tool.

Specific Solicitation of Comment: Many of the contributing factors contained in the Local Government Assessment Tool remain in the proposed State and Insular Area Assessment Tool. HUD specifically seeks comment on whether there are additional contributing factors that should be included in the State and Insular Area Assessment Tool that are of particular importance for States and Insular Areas to consider while conducting their fair housing analysis. If a commenter

suggests additional contributing factors to be included in the State and Insular Area Assessment Tool, HUD asks the commenter to identify to which fair housing issues or sections of the assessment tool these additional factors should be added. HUD also asks commenters to provide a description of the additional factor and why the commenter(s) believe it is of particular relevance for States and Insular Areas. HUD also solicits comment on any contributing factors included in the State and Insular Area Assessment Tool that should be excluded and the reasons why.

Regional Analysis

As provided in the AFFH rule, all program participants must conduct an analysis not only for their jurisdiction but also for the larger area that is their region. The proposed State and Insular Assessment Tool generally keeps analysis for the jurisdiction and analysis for the region together in the same question, except in circumstances where a specific question does not provide for a regional analysis. The instructions provide guidance on the appropriate region to be considered. HUD generally combined the questions relating to jurisdiction and region so that the proposed State and Insular Area Assessment Tool was shorter and considered both jurisdictional and regional fair housing issues concurrently but recognizes that it could take a different approach to the structure and organization of questions that call for a regional analysis.

Specific Solicitation of Comment: HUD is seeking comment on the best approach for States to conduct an effective fair housing regional analysis addressing the fair housing issues and contributing factors affecting their State. HUD is considering different approaches to accomplish this. One approach, as presented in the proposed State and Insular Area Assessment Tool, would include “region” throughout the tool in specific questions. An alternative approach would be to include the regional analysis questions required for an appropriate fair housing analysis in a separate section of the proposed State and Insular Area Assessment Tool. These regional questions could

be placed in either a separate section, or within appropriate sub-sections (e.g. Segregation, R/ECAPs, etc.).

Specific Solicitation of Comment: Insular Areas – like other program participants – are impacted by circumstances happening outside their borders. HUD wants to make sure that the proposed State and Insular Areas Assessment Tool appropriately captures fair housing regional impacts without imposing undue burden on Insular Areas. HUD seeks specific comment on whether the proposed format appropriately provides for Insular Areas to describe regional fair housing impacts without imposing undue burdens. HUD welcomes recommendations for specific questions tailored to capture regional fair housing analysis for Insular Areas while not imposing unnecessary burdens in view of the unique characteristics of Insular Areas.

Data

As with the Local Government Assessment Tool, HUD intends to provide data that States and Insular Areas will use to conduct their AFH. HUD contemplates that the geographic scale of the new data HUD intends to provide will generally be at a higher geographic level, i.e., county or statistically equivalent level, than the data provided for local governments. States will be able to access the lower level data through the AFFH data and mapping tool by zooming in to smaller levels of geography, such as Census tracts.

Specific Solicitation of Comment: Acknowledging the geographic limitation of the Jobs Proximity Opportunity Index at the State level, HUD is seeking comment on providing alternative types of data (e.g., by education level, sector of the economy, race/ethnicity, numbers of jobs by location) that might be most useful for States in conducting an appropriate fair housing analysis in connection with disparities in access to employment opportunities.

The extent of nationally uniform data available for Insular Areas is limited. HUD notes some data limitations for some sources of information used in the overall AFFH Data and

Mapping Tool in relation to Insular Areas. The American Community Survey, used for some maps and data elements, is not available for Insular Areas. However, the 2010 Decennial Census along with HUD administrative data on program activities and assisted housing residents are available. HUD intends to improve the provision of data it will be providing for Insular Areas to assist them in conducting an AFH.

Given these data limitations, HUD expects that the questions in the proposed State and Insular Area Assessment Tool that direct program participants to data tables or maps to inform their answers may be more challenging for an Insular Area to answer. However, Insular Areas, like States, are required to use available local data and local knowledge to answer questions in the proposed State and Insular Area Assessment Tool. To the extent that HUD does not provide data for a program participant to use in responding to a question in the assessment tool, and local data and local knowledge relevant to the question are not available to the program participant, the program participant may answer the question by stating that the program participant lacks available data and knowledge to answer the question. Under those circumstances, if HUD determined that the program participant did not have available data and knowledge relevant to the question, HUD would consider that an acceptable and complete response to that particular question.

Specific Solicitation of Comment: HUD specifically seeks comment on what data are available to States and Insular Areas, including data at the local level, that would be relevant and most helpful to States or Insular Areas in conducting their respective analyses of fair housing issues and contributing factors in their jurisdiction and region? HUD asks commenters responding to this question to identify data sources for States or Insular Areas that would be helpful to States and Insular areas and are already available and to what extent the State or

Insular Area intends to rely on certain data sources to answer the questions included in the proposed State and Insular Area Assessment Tool.

State or Insular Area Collaboration with Qualified PHAs

As stated in the AFFH rule and earlier in this document, HUD encourages Qualified PHAs to conduct and submit a joint AFH with their State or Insular Area. Under the AFFH rule, States and Insular Areas must consult with PHAs that administer public housing or Section 8 programs on a statewide basis or that certify consistency with the State's or Insular Area's consolidated plan.³ PHAs are encouraged to work in collaboration with a State or Insular Area pursuant to HUD's AFFH regulations in 24 CFR 5.156 and HUD's Public Housing regulations in 24 CFR 903.15(a)(1). In addition, as provided in HUD's AFFH regulations at 24 CFR 5.156(a)(3), all collaborating program participants are accountable for the joint analysis and any joint goals and priorities to be included in the collaborative AFH, and collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH. HUD strongly encourages collaboration by program participants because HUD expects that program participants working together will be better positioned to affirmatively further fair housing, and may be able to reduce burdens and costs by sharing resources.

HUD believes that collaboration, specifically, between States or Insular Areas and Qualified PHAs, can benefit both program participants. The State or Insular Area benefits by being able to align its goals established to address fair housing issues it has identified with other program participants, such as a Qualified PHA that has resources to assist the State at the local level, which would aid the State in accomplishing its goals and ultimately taking meaningful

³ See HUD's AFFH final rule published on July 16, 2015, at 80 FR 42293.

actions to affirmatively further fair housing. All collaborating program participants will have both a jurisdictional (in the case of a PHA, its jurisdiction is its service area) and regional analysis. A Qualified PHA collaborating with a State is aided because the regional portion of the analysis of the Qualified PHA is expected to be fulfilled by the State's analysis of the entire State.

All program participants, regardless of size, have the legal duty to affirmatively further fair housing and to conduct an AFH. Each program participant may choose to submit an individual AFH or a collaborative AFH as set out in the AFFH rule. A Qualified PHA collaborating with a State or Insular Area is aided to the extent that it may rely on the State for completing its background regional analysis and otherwise be generally informed by the State's analysis.

In order to assist Qualified PHAs and States or Insular Areas in collaborating to conduct and submit joint AFHs, HUD is seeking additional information from States and Insular Areas, Qualified PHAs, and other interested parties about how to best facilitate these collaborations while ensuring the fair housing analysis required of Qualified PHAs is complete. HUD is seeking input on how this proposed State and Insular Area Assessment Tool can facilitate collaboration with Qualified PHAs by ensuring that the State's or Insular Area's analysis of the entire State or Insular Area provides a sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting. The regional portion of the Qualified PHA analysis is expected to be fulfilled by the State's or Insular Area's analysis of the entire state. For purposes of this proposed State and Insular Area Assessment Tool, the region of a Qualified PHA is defined as the State or Insular Area that is smaller than the State or Insular Area. For Qualified PHAs whose service area is an entire State, and for purposes of this proposed State and

Insular Area Assessment Tool, the region of a Qualified PHA is the same as the State's region.

The questions to be included in this State and Insular Area Assessment Tool strive to facilitate collaboration while ensuring individual analysis and accountability for each collaborating program participant. With this objective in mind, HUD has placed questions designed to address the fair housing analysis relating to the Qualified PHA's service area in a separate section of the proposed State and Insular Area Assessment Tool. In addition to soliciting comment on these specific questions, HUD also seeks input about how to best facilitate collaboration between States or Insular Areas and Qualified PHAs.

Specific Solicitation of Comment: As provided in this Notice, HUD believes that collaboration between a State or Insular Area and a Qualified PHA can be a beneficial collaboration. While HUD sees such collaboration as having the potential to be beneficial, HUD seeks comment on whether other program participants contemplate collaborating with a State or Insular Area on an AFH. With respect to possible collaboration by States or Insular Areas and Qualified PHAs, HUD seeks comment on whether these two categories of program participants anticipate collaborating on a joint AFH. If not, why is such collaboration not contemplated at this time and are there ways HUD could better facilitate this collaboration? HUD specifically solicits comments on actions that HUD could take to facilitate collaborations between States or Insular Areas and Qualified PHAs. For commenters responding to this question, HUD asks the commenter(s) to provide specific questions or structure for the proposed State and Insular Area Assessment Tool, and the sections of this assessment tool to which those questions are recommended to be included.

Specific Solicitation of Comment: Related to the above question, HUD specifically seeks feedback on how the State and Insular Assessment Tool can facilitate collaboration with

Qualified PHAs and strive to ensure that the State's or Insular Area's analysis of the entire State or Insular Area provides sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting.

Specific Solicitation of Comment: HUD generally intends to provide States with thematic maps at the county or statistically equivalent level. HUD intends to provide additional functionality to the AFFH Data and Mapping Tool, including the ability to access the dot density maps currently available for local governments submitting alone or in collaboration with other local governments and PHAs. HUD notes that the service areas for Qualified PHAs vary greatly. Some Qualified PHAs have statewide service areas. Others are the size of multiple counties. And yet other Qualified PHAs have service areas smaller than a county or statistically equivalent level. Given that HUD currently intends to focus States on thematic maps at the county or statistically equivalent level, how can this proposed State and Insular Area Assessment Tool facilitate collaboration with Qualified PHAs by ensuring that the State's analysis of the entire State provides sufficiently detailed analysis to inform the Qualified PHA's fair housing analysis and goal setting?

Specific Solicitation of Comment: In this proposed State and Insular Area Assessment Tool, the questions designed to address the fair housing analysis relating to the Qualified PHA's service area are included in a separate section. HUD is seeking comment on whether this organizational structure is the most efficient and useful means of conducting the analysis or whether these questions should be inserted into the respective sections of the proposed State and Insular Area Assessment Tool to which they apply.

Insular Areas

There is limited nationally uniform data available for Insular Areas. HUD notes some

data limitations for some sources of information used in the overall AFFH Data and Mapping Tool in relation to Insular Areas. The American Community Survey, used for some maps and data elements, is not available for Insular Areas. However, the 2010 Decennial Census along with HUD administrative data on program activities and assisted housing residents are available. HUD intends to improve the data it will be providing for Insular Areas to assist them in assessing demographic information to better inform local planning and decisionmaking and to better inform the analysis of fair housing issues and contributing factors in the AFH.

Given these data limitations, HUD expects that questions in the proposed State and Insular Area Assessment Tool that tend to rely largely on data tables or maps to answer may be more challenging for an Insular Area to answer. In general, the Insular Area will need to rely on local data and local knowledge to answer these questions. As the instructions to the proposed State and Insular Area Assessment Tool explain, to the extent an Insular Area does not have any relevant HUD-provided data, local data, or local knowledge to answer a question in this assessment tool, the Insular Area may answer the question by stating that it does not have HUD-provided data, local data, or local knowledge to respond to the question. For an Insular Area, local data are existing data pertaining to the Insular Area or its region that are relevant to the AFH, that are either known or become known to the program participant or that can be found through a *reasonable* amount of searching, and that are readily available at little or no cost. Local knowledge is information relating to the Insular Area's geographic area of the State or Insular Area itself or its region that is relevant to the AFH and is known or becomes known to the Insular Area. Local data and local knowledge may both be obtained through the community participation process.

Specific Solicitation of Comment: How can HUD assist Insular Areas to complete an

AFH in terms of providing data, or, where data is lacking, are there areas where HUD can provide further assistance or guidance for Insular Areas? To what extent will Insular Areas be able to use the State and Insular Area Assessment Tool to analyze fair housing issues and contributing factors and set goals and priorities without HUD-provided data? Are there ways in which HUD could adapt this assessment tool for Insular Areas? To what extent do Insular Areas have access to local data and/or local knowledge, including information that can be obtained through community participation, that could help identify areas of segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs where the HUD-provided data may be unavailable? HUD asks that comments in response to these questions provide specifics as to sources of data relating to Insular Areas that are available beyond the HUD-provided data, including data from national sources.

Small Entities that Collaborate with States

HUD is seeking public comment on how use of the proposed State and Insular Assessment Tool may reduce burdens for small entities that collaborate with States in conducting an AFH.

Specific Solicitation of Comment: Will collaboration with a State in conducting an AFH using the proposed State and Insular Area Assessment Tool reduce the burden that a small entity such as a Qualified PHA would otherwise have in conducting an individual AFH? To what extent do small entities, such as Qualified PHAs, expect to rely on outside resources such as a consultant in conducting a collaborative AFH with a State?

Burden of Compiling Information Required by the Proposed State and Insular Area Assessment Tool

In addition to comment on the preceding questions, HUD specifically seeks comment

from the States or Insular Areas on the degree of difficulty or cooperation that may be involved in gathering information from the specific State or Insular Area agencies that possess the information solicited by the proposed State and Insular Area Assessment Tool.

III. Compliance with the Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number issued by the Office of Management and Budget (OMB). Through this notice, HUD commences the process for obtaining the requisite approval by OMB under the PRA process.

The public reporting burden for the proposed State and Insular Area Assessment Tool is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This State and Insular Area Assessment Tool is primarily designed for use by State and Insular Area program participants. These include the 50 States, the Commonwealth of Puerto Rico, and 4 Insular Areas (American Samoa, the Territory of Guam, the Commonwealth of the Northern Marianas Islands and the U.S. Virgin Islands).

The estimate of burden hours is an average within a range, with some AFHs requiring either more or less time and effort based on the size and complexity of the relevant program participant's assessment. Smaller program participants will have less total burden both in terms of staff hours and costs. A separate estimate for Insular Areas is included, at 240 hours per Insular Area program participant, which is the same level of burden that HUD estimated for the Local Government Assessment Tool.

This estimate assumes that approximately one-third of the 3,942 PHAs may seek to enter into joint AFHs with their relevant State program participant. This is consistent with the burden estimate included in the 30-Day PRA Notice for the Local Government Assessment Tool. The 120 hours per PHA is also consistent with the previous estimate, however, this may be an over-estimate given that numerous smaller sized PHAs may be more likely to enter into joint assessments with State program participants.

This burden estimate assumes there would be cost savings for PHAs that opt to partner with a State agency. For instance, the proposed State and Insular Area Tool includes a distinct set of questions that would be required for Qualified PHAs (i.e. those with 550 or fewer public housing units and/or Housing Choice Vouchers). Qualified PHAs would also benefit from having the State agency's analysis fulfill the regional portion of the PHA's assessments. While there may be some cost savings for Qualified PHAs opting to participate in joint submissions using the proposed State and Insular Assessment Tool, they are still assumed to have some fixed costs, including those relating to staff training and conducting community participation, but reduced costs for conducting the analysis in the assessment tool itself.

While local government program participants may also choose to partner with State agencies, the burden estimate for the Assessment Tool designed for their use included a total estimate for all of the 1,192 local government agencies.

All HUD program participants are greatly encouraged to conduct joint AFHs and to consider regional cooperation. More coordination in the initial years between State and local government program participants on the one hand and PHAs on the other will reduce total costs for both types of program participants in later years. In addition, combining and coordinating some elements of the Consolidated Plan and the PHA Plan will reduce total costs for both types

of program participants. Completing an AFH in earlier years will also help reduce costs later, for instance by incorporating the completed analysis into later planning documents, such as the PHA plan, will help to better inform planning and goal setting decisions ahead of time.

Information on the estimated public reporting burden is provided in the following table:

	Number of Respondents	Number of Responses Per Respondent	Frequency of Response	Estimated Average Time for Requirement (in hours)	Estimated Total Burden (in hours)
States*	51	1	Once every five years	1,500	76,500
Insular Areas**	4	1	Once every five years	240	960
Public Housing Agencies	1,314	1	Once every five years	120	157,680
	Total Burden				235,140

The estimates represent the average level of burden for these grantee types. It should be noted that this staff cost is not an annual cost, but is incurred every five years.

*The term 'State' includes the 50 States as well as Puerto Rico. See 42 USC 5302(2) & 42 USC 12704(2);

** The term "Insular Area" includes Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa." See 42 USC 5302(24) & 42 USC 12704(24).

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment on the proposed State and Insular Area Assessment Tool from members of the public and affected program participants on the following:

- (1) Whether 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;
 - (3) Ways to enhance the quality, utility, and clarity of the information to be collected;
- and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to www.regulations.gov as provided under the “Addresses” section of this notice. Comments must refer to the proposal by name and docket number (FR-5173-N-02).

Following consideration of public comments submitted in response to this notice, HUD will submit for further public comment, for a period of 30 days, a version of the Assessment Tool that reflects consideration of the public comments received in response to this notice.

Dated: March 7, 2016

George D. Williams, Deputy Assistant Secretary for
Policy, Legislative Initiatives and Outreach

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