

Preliminary Summary of Proposed AFFH Assessment Tool

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On September 26, HUD's Office of Fair Housing and Equal Opportunity (FHEO) published the proposed Affirmatively Furthering Fair Housing Assessment Tool. Comments are due by November 24. After receiving comments, HUD will consider them and solicit a second round of comments for an additional 30 days. On July 19, 2013, HUD published the long-awaited proposed rule intended to improve jurisdictions' and public housing agencies' obligation to affirmatively further fair housing (AFFH). The proposed rule indicated that HUD would issue an Assessment Tool to be used by program participants to evaluate fair housing choice, identify barriers to fair housing choice, and set and prioritize fair housing goals to overcome those barriers. Issuing the Assessment Tool one more necessary step before a final AFFH rule can be published.

The proposed Assessment Tool is intended for entitlement jurisdictions (but not for states) and for joint submissions by entitlement jurisdictions and public housing agencies (PHA). A similar Assessment Tool is being tailored for states, Insular Areas, regionally collaborating entitlement jurisdictions, and PHAs that will not be making a joint submission with an entitlement jurisdiction.

Eventually, program participants will complete the assessment using a web-based system that will automatically guide completion of the assessment. HUD intends to also provide additional guidance on specific AFFH issues.

Possible Hints at Improvements in Final AFFH Regulations

The preamble appears to address three of the concerns expressed by NLIHC and other advocates in comments to the proposed AFFH rule. One concern was that the proposed rule did not seem to sufficiently present a balanced approach to AFFH. A balanced approach would be one that promotes greater mobility and that also recognizes that AFFH may entail devoting resources to improve areas of concentrated racial and ethnic poverty by preserving and improving affordable housing and by implementing investment policies that increase access to essential community assets for protected class residents who wish to remain in their communities. Two places in the preamble appear to address the balance concern, but not in a sufficiently clear and explicit manner:

“Addressing segregation and R/ECAPs requires a balanced approach that not only increases housing opportunities in integrated areas but also promotes integration by broadening housing opportunities in segregated areas and encouraging resident mobility.”

“Addressing disparity in access and exposure to adverse conditions requires a balanced approach that not only provides for strategic investment in areas that lack key assets or are exposed to adverse community factors, but also opens up housing opportunities in asset rich areas and provides for resident mobility.”

A second concern pertained to the need for benchmarks for each fair housing goal in an Assessment of Fair Housing (AFH). Benchmarks should specify actions that a program participant plans to take with a timetable for each action. The preamble and proposed Assessment Tool call for metrics, milestones, and timelines. Finally, NLIHC and others were concerned that the proposed AFFH rule seemed to allow program participants to merely have one goal for addressing fair housing. The preamble and proposed Assessment Tool seem to require at least one goal for each of a number of fair housing issues.

Use of Data

The preamble begins by discussing the sources of data that will be required to inform the AFH. HUD will provide nationally uniform data. Sample sets of HUD-provided data tables and maps are included on the Affirmatively Furthering Fair Housing Proposed Rule webpage, which is a site maintained by HUD's Office of Policy Development and Research. Currently, the proposed Assessment Tool is not on the FHEO website. Information will be provided for both the entitlement jurisdiction as well as its entire region (the Census Bureau's Core Based Statistical Area).

It appears that data will be provided about race and ethnicity, national origin, limited English proficiency (LEP), disability type, gender, age categories (under 18, between 18 and 64, and over 65), and families with children. HUD will also provide data about areas of racial or ethnic concentrations of poverty (R/ECAP). HUD will also provide the number of public housing units, Housing Choice Vouchers, Project-Based Section 8 units, and other units assisted by HUD's Office of Multifamily Housing (Section 202 Housing for Elderly People and Section 811 Housing for People with Disabilities). Apparently HOME-assisted units will not be provided, and HUD admits that there is no uniform information about units assisted by the Low Income Housing Tax Credit (LIHTC) program. Finally, HUD will provide data about households experiencing any of four types of housing problems: cost burden (paying more than 30% of income for housing) and severe cost burden (paying more than 50% of income for housing), overcrowding (more than one person per room), incomplete kitchen facilities, and incomplete plumbing facilities.

HUD stresses that in addition to using HUD-provided data, program participants will be required to use existing and reasonably available local data and local knowledge to inform their assessments. Program participants will not be required to create or compile new data. Local knowledge is to be gained by the required community participation and consultation process.

Possible HUD Action Regarding Data and Goals

If HUD finds that an AFH analysis is materially inconsistent with data readily available and relevant to the questions in the Assessment Tool, or if the priorities or goals are materially inconsistent with available local data or knowledge, HUD may find the AFH to be substantially incomplete and unacceptable. According to the proposed regulations, without an accepted AFH, a Consolidated Plan cannot be approved and a program participant could not receive Community Development Block Grant or HOME Investment Partnerships program, or some other HUD funds.

Three Key Sections of the Assessment Tool

The preamble next describes the three substantive sections of the Assessment Tool: a description of the community participation process, a comprehensive analysis, and a presentation of fair housing goals and priorities.

Community Participation

For the community participation process section, program participants will be asked to describe outreach activities they undertook to encourage community participation in the development and review of the AFH. A summary of all comments received must be provided, along with a summary of comments not accepted and an explanation of why they were not accepted. The draft Assessment Tool specifically directs program participants to describe efforts made to reach people who have limited English proficiency and people who have disabilities. The preamble stresses that the public participation process is a means for obtaining local information, including available local data and knowledge.

The Analysis Section

The analysis section has seven required elements, requiring local and regional descriptions and analyses of demographics and various “fair housing issues” including: segregation/ integration and R/ECAPs; disproportionate housing needs; disparities in access to community assets, and exposure to adverse community factors; disability access; and, fair housing compliance and infrastructure. For each of the fair housing issue elements, the Assessment Tool asks for an analysis of the “determinants,” HUD’s new term for the factors that create, contribute to, or perpetuate a fair housing issue. For each of the fair housing issues the Assessment Tool lists a variety of possible determinants which program participants are asked to rank as highly significant, moderately significant, or not significant, and then explain the basis for the significance level.

Demographics

For the demographic summary element, the Assessment Tool asks the program participant to identify current demographic patterns as well as trends over the past ten years for a number of categories, including: total population, number and percentage of people by race and ethnicity, the top ten national origin populations, the top ten LEP categories, disability by type, sex, age range, and households with children.

Segregation, Integration, R/ECAPs

The segregation, integration, and R/ECAP element asks program participants to identify neighborhoods that have high levels of segregation, including racially or ethnically concentrated areas of poverty. Unique issues faced by immigrant populations must be assessed by analyzing needs according to national origin and limited English proficiency. In addition to describing the current situation, the Tool asks for trends to be described.

As more clearly stated in the preamble, program participants are asked to assess their policies, procedures, and practices that might affect segregation, integration, and R/ECAPs. An assessment must also be made of others' policies, or of other factors such as private investments, market forces, or negative community attitudes such as NIMBYism.

The segregation, integration, and R/ECAP element also asks for an examination of issues related to the location and demographic makeup of residents of publicly supported housing on a project-by-project basis. Program participants must also describe Housing Choice Voucher portability policies and any mobility counseling provided.

Publicly Supported Housing and Segregation, Integration, R/ECAPs

Publicly supported housing includes: public housing, Housing Choice Vouchers (HCV), Project-Based Section 8, other HUD Multifamily Housing (such as Section 202 Elderly Housing, Section 811 Housing for People with Disabilities), and LIHTC units. In addition, the analysis should include housing assisted by Rural Development of the U.S. Department of Agriculture, or assisted by the Veterans Administration, as well as other HUD programs that HUD is not providing data for (such as the HOME program). There must also be a discussion of how admission preferences might affect residency patterns. Features of state or local plans or funding programs (such as LIHTC Qualified Allocation Plans) and their effect on the populations served and the location of developments must be discussed.

Disproportionate Housing Needs

The disproportionate housing needs element of the proposed Assessment Tool asks a series of questions about households experiencing one or more housing burdens by race/ethnicity and family size. The housing burdens include: paying more than 30% of income for housing ("cost burden") and paying more than 50% of income for housing ("severe cost burden"), living in overcrowded conditions (more than one person per room), and substandard housing conditions (incomplete plumbing or kitchen facilities).

Access to Community Assets, Exposure to Adverse Community Factors

The next element of the Assessment Tool concerns disparities in access to community assets, and exposure to adverse community factors. For different races, ethnicities, national origins, or family status, it asks for analyses of access to public transportation, quality schools and jobs, as well as an analysis of exposure to poverty and environmental hazards.

The disability access element of the Assessment Tool acknowledges that nationally consistent data is limited for different types of disabilities. Program participants should solicit input from people with disabilities and advocates. The Assessment Tool asks for a description of the geographic distribution or concentration of people with disabilities, especially by age range. Program participants are asked if there is a sufficient number of affordable and accessible units in a range of sizes for various types of disabilities. For publicly assisted housing, there must be a discussion of admissions preferences and waitlist procedures, as well as a description of the extent to which people with different types of disabilities are able to access housing. Three

questions probe issues relating to *Olmstead* compliance, the obligation to ensure that people with disabilities live in apartments, family homes, or other non-institutional settings. Finally, this element asks about the extent that people with disabilities are able to access public buildings, transportation, and other facilities and services.

Fair Housing Compliance, Fair Housing Infrastructure

The fair housing compliance and infrastructure element of the Assessment Tool calls for a listing and summary of any of a number of unresolved administrative or judicial proceedings related to fair housing or other civil rights issues. Program participants are also asked to identify fair housing or civil rights agencies or organizations, describe their capacity, and discuss any steps taken to provide resources to them.

Fair Housing Goals and Priorities

The final section of the Assessment Tool, the fair housing goals and priorities section, has a summary table listing each of the fair housing issues. For each fair housing issue, program participants must identify any fair housing determinants it considers to be significant and the level of significance (e.g., highly, moderately, or not significant). One or more goals must be described for each significant determinant, along with a discussion of how the goal relates to overcoming the determinant and related fair housing issue. A level of priority for each goal must be indicated (i.e. highest, moderate, lowest). The program participant must identify metrics and milestones, including timeframe, for evaluating the fair housing results to be achieved. Finally, a reason must be provided for any highly or moderately significant determinant not being addressed by a goal.

The AFFH Assessment Tool *Federal Register* notice is at <http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/pdf/2014-22956.pdf>

An easier to read version of the announcement and preamble is at http://www.ofr.gov/OFRUpload/OFRData/2014-22956_PI.pdf

Toward the end of the preamble there is a link to HUD's Office of Policy Development and Research site which has the proposed AFFH rule, as well as:

- the actual proposed assessment tool, <http://www.huduser.org/portal/publications/pdf/AFFH-Assessment-Tool-2014.pdf>
- sample HUD-provided data tables, <http://www.huduser.org/portal/publications/pdf/AFFH-Assessment-Tool-2014.pdf>
- sample HUD-provided maps, <http://www.huduser.org/portal/publications/pdf/AFFH-Template-Maps-2014.pdf>

NLIHC's Summary of the Proposed AFFH regulations and NLIHC's formal comments regarding them are at <http://nlihc.org/issues/affh>

More information about AFFH is on page 204 of NLIHC's *2014 Advocates' Guide* at <http://nlihc.org/sites/default/files/2014AG-204.pdf>