

July 23, 2018

**Submitted via Regulations.gov**

Office of the General Counsel, Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street, SW  
Room 10276  
Washington, D.C. 20410-0001

RE: Comments Regarding Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments, Docket No. FR-5173-N-17

Dear Office of General Counsel:

This letter is written on behalf of the National Housing Law Project (NHLP) and the undersigned organizations in response to HUD’s Federal Register Notice (Notice), “Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments,” dated May 23, 2018.<sup>1</sup> NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP supports the full implementation of HUD’s 2015 AFFH regulation.<sup>2</sup>

Withdrawal of the Assessment Tool for Local Governments (Local Government Tool) is improper and will undermine local jurisdictions’ efforts to affirmatively further fair housing; therefore, HUD should reinstate the Local Government Tool, so that implementation of the AFFH Rule for local government program participants can continue. The AFFH regulation itself does not countenance the withdrawal of an already-published Assessment Tool; as HUD understands, withdrawal of the Local Government Tool stalls the implementation of the AFFH Rule for local governments. HUD instead should prevent additional loss of momentum to implement the AFFH Rule, and rescind its Notice withdrawing the Tool and continue working to fully implement the AFFH Rule.

**Return to the Analysis of Impediments Fails to Provide for the Robust Fair Housing Analysis the AFFH Rule Envisions**

HUD states that upon the withdrawal of the Local Government Tool, local governments without

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<sup>1</sup>83 Fed. Reg. 23,922 (May 23, 2018) [hereinafter “Withdrawal Notice”].

<sup>2</sup> NHLP also submitted an amicus brief in support of plaintiffs in the ongoing litigation, *National Fair Housing Alliance, et al. v. Carson*.

an accepted AFH are subject to the pre-AFFH rule requirements, which include conducting an Analysis of Impediments.<sup>3</sup> The AI process has considerable shortcomings, as noted in both the HUD AFFH Rule preamble,<sup>4</sup> and the 2010 review of the AI process by the Government Accountability Office (GAO).<sup>5</sup> HUD local government program participants are left to ensure they are meeting their ongoing obligation to affirmatively further fair housing without the necessary structure and consistent, systematic HUD oversight that the AFFH Rule and the Assessment of Fair Housing process provide.

HUD should not have grantees return to a process that has been shown to be ineffective. Both program participant and HUD resources are better spent continuing the transition to the planning process that is supposed to be replacing the AI. Reliance on the Analysis of Impediments process reinforces the use of an analysis framework that generally failed to serve grantees, HUD, or stakeholders effectively.

### HUD Does Not Need to Withdraw the Assessment Tool to Evaluate the Tool

Withdrawal of the Local Government Assessment Tool not only is inconsistent with the text of the AFFH Rule, it breaks with prior practice when it comes to evaluating and renewing the Assessment Tool. HUD previously solicited comments from the public regarding renewal for the Assessment Tool for Local Governments while grantees were still using the then-approved version. HUD first finalized the Assessment Tool for Local Governments in December 2015 (LG-2015)<sup>6</sup>; however, HUD solicited two rounds<sup>7</sup> of public comments for what would eventually become the Assessment Tool for Local Governments that was finalized in January 2017 (LG-2017).

Importantly, HUD *did not* halt the use of LG-2015 pending the comment period for the draft version of LG-2017. HUD's prior actions show that it need not halt the use of the Tool in order to evaluate and update the Tool.

### HUD Should Not Scale Back the Assessment Tool for Local Governments

HUD also should refrain from significantly scaling back the Local Government Tool. Doing so would deny program participants the questions and instructions they need to conduct a meaningful analysis of fair housing issues and their contributing factors, and to set goals to

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<sup>3</sup>Withdrawal Notice at 23,926; *see generally* Affirmatively Furthering Fair Housing (AFFH): Responsibility To Conduct Analysis of Impediments, 83 Fed. Reg. 23,927 (May 23, 2018).

<sup>4</sup>*See e.g.*, Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272, 47,272 (July 16, 2015) (noting that the “AI approach was not as effective as originally envisioned”).

<sup>5</sup>Government Accountability Office, GAO-10-905, “HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans” (Sept. 2010), available at: <https://www.gao.gov/assets/320/311065.pdf>.

<sup>6</sup>Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document, 80 Fed. Reg. 81,840 (Dec. 31, 2015).

<sup>7</sup>*See generally* Affirmatively Furthering Fair Housing Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment—30-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 57,601 (Aug. 23, 2016); Affirmatively Furthering Fair Housing Local Government Assessment Tool—Information Collection Renewal: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 15,546 (Mar. 23, 2016).

overcome those contributing factors and fair housing issues.<sup>8</sup>

The Local Government Assessment Tool has important features that speak to its continuing usefulness in assisting HUD program participants conduct their Assessments of Fair Housing. The non-exhaustive lists of contributing factors, for example, encompass many potential contributing factors for program participants to consider. The range of topics covered by the contributing factors demonstrate the breadth of the types of policies, practices, and circumstances that could create, contribute to, perpetuate, or increase the severity of the fair housing issue being analyzed.

The inclusion of source of income discrimination as a possible contributing factor, for example, also demonstrates how a policy or practice (whether permissible under local law or not) can give rise to fair housing issues such as racially and ethnically concentrated areas of poverty. The local government (or other program participant, as applicable), using the Assessment Tool, can explore in the goals section locally devised ways to address and eventually overcome the effects of the fair housing problem and the contributing factors. How the various contributing factors are addressed will vary across communities. The number of contributing factors included in the Tool further speaks to the locally oriented nature of the AFH analysis, acknowledging that communities have varying issues, strengths, and needs.

HUD should refrain from scaling back the Local Government Assessment Tool, and, instead, reinstate the existing Tool while also improving support to program participants and informing them of resources already available to them, including the *AFFH Rule Guidebook* and resources on the HUD Exchange website.

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HUD should reinstate the Assessment Tool for Local Governments, and refrain from scaling back the Local Government Tool in any way that diminishes its effectiveness as a fair housing planning document.

Sincerely,

National Housing Law Project

National Low Income Housing Coalition

Housing Assistance Council

Sargent Shriver National Center on Poverty Law

The Public Interest Law Project

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<sup>8</sup> See e.g., 24 C.F.R. § 5.154 (assessment of fair housing requirements).

Public Justice Center

Boston Tenant Coalition

California Rural Legal Assistance, Inc.

Public Law Center

Fair Housing Advocates of Northern California