



Eric Garcetti, Mayor
Rushmore D. Cervantes, General Manager

November 25, 2014

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

Attn: Ms. Camille E. Acevedo

Comments on the Proposed Rule on Affirmatively Furthering Fair Housing (AFFH) Assessment Tool Published on September 26, 2014 (Docket No. FR-5173-N-02)

Dear Ms. Acevedo:

The City of Los Angeles continues to fully support HUD's intent to create a new rule that affirmatively furthers fair housing and hereby provides comments regarding the U.S. Department of Housing and Urban Development (HUD), Affirmatively Furthering Fair Housing (AFFH) Assessment Tool (FR-5173-N-02).

Los Angeles is the second largest City in the nation with a majority-minority population of nearly 72%. The City has begun to recover from a deep economic crisis and is experiencing a decline in unemployment rates as renewed economic revitalization takes center stage. However, the downside of this new economic renaissance is that Los Angeles ranks near the top of the list of cities that are least affordable for housing. This juxtaposition has created the need for the City to seek and implement solutions to the affordable housing crisis, including developing anti-displacement strategies for neighborhoods experiencing rapid economic investment and rising rental rates. It is from this vantage point that both the Los Angeles Housing + Community Investment Department (HCIDLA) and the Housing Authority of the City of Los Angeles (HACLA) provide the comments below.

HUD released its proposed AFFH rule in July 2013, with the intent of refining existing requirements for a fair housing assessment and planning process that better aids HUD program participants in fulfilling their statutory obligation to certify that localities are affirmatively furthering fair housing. While we appreciate HUD's desire to enhance the effectiveness of existing fair housing activities, we believe the draft AFFH tool could potentially hinder the City's ability to meet locally defined objectives, such as preserving affordable and workforce housing, and reducing/ending chronic and veteran homelessness. Mayor Eric Garcetti and City Council are very concerned about these issues. Our mandate is to ensure that housing is highly accessible and meets the diverse housing needs of residents, while fostering a high quality of life for all Angelenos. Given the City's efforts to ensure equitable access to housing, transit, and jobs as well as other community assets, the City is very concerned that the proposed AFFH tool does not provide the needed flexibility to address the needs of a majority-minority city engaged in an attempt to preserve housing affordability in its neighborhoods.

The City of Los Angeles reiterates its concerns in the proposed AFFH Rule comment letter dated September 17, 2013 (*attached*), where we raised several issues regarding apparent changes in HUD's policies. Since HUD has not addressed the public comments on the proposed AFFH rule from last year, moving forward with the draft AFFH tool before a final

AFFH rule has been issued, seems premature. This also signals that HUD does not intend to make any substantial changes to the proposed AFFH rule. Therefore, we submit these comments with the goal of assisting HUD in the development of an AFFH tool that is balanced, clear, objective, practical, and implementable.

I. **Issues/Challenges with HUD's Approach to Ensure Fair Housing**

A. Data and Mapping Usability

1. **Need for Cross-Tabulated Data.** In several sections of HUD's tabular data, it states: "These data are not currently available, but are expected to be available before the AFFH rule goes into effect." It is problematic for reviewers to provide a comprehensive assessment of HUD's data when it has not yet been finalized. Given the incomplete nature of the data released for public review, jurisdictions are at a disadvantage to provide comprehensive comments on data and use of the mapping tool. We strongly believe the tool is incomplete and warrants substantial revisions. In addition, HUD's AFFH tool data in its current format is not cross-tabulated. Without cross-tabulated data regarding race/ethnicity, sex, family size, income, etc., the use of HUD provided data for the Assessment of Fair Housing (AFH) report's required data analysis may generate unclear or inaccurate results.
2. **Need to Unlock the "Cloud."** HUD's eCon Planning Suite renders all data *unusable* for jurisdictions who have invested fully in Geographic Information System (GIS) capacity by keeping its data locked in a viewable cloud. Additionally, based on our experience in producing maps and analysis for the 5-Year Consolidated Plan, local jurisdictions were unable to upload local data into the cloud, thus forcing localities to recreate HUD layers to the best of their ability in GIS in order to perform a cross comparative analysis of rich local data with HUD data. The handful of "downloadable" datasets for GIS were also only available for viewing only, reducing the ability to do cross comparative analysis with local data to a tedious and subjective "eyeball" analysis. Given the high number of indices in the AFFH tool, HUD should provide mapping data in a fully downloadable GIS format in order for jurisdictions to use the data in creating comprehensive data driven analyses that can inform an AFH properly and objectively.
3. **Need Clear Set of Metadata For Each Layer.** In addition to making the data fully accessible in GIS format, we anticipate difficulty in the use of HUD's sample data since it lacks a clear set of guidelines to assist jurisdictions in evaluating the data provided. Moreover, the correlation between data sets does not imply causation; without the proper guidance from HUD, a locality may arrive at subjective conclusions. HUD should provide a clear set of metadata for each of its layers, that detail the methodology, source, and a description of how to use each layer in creating an AFH, and be fully downloadable in a single table. (*Please see attachment for additional data concerns*).

B. AFFH Assessment Tool Concerns

1. The tool lacks clarity and could be enhanced by providing definitions for various terms and concepts. It also lacks guidance for evaluating data and integrating it with local knowledge. The following reflects a few examples:
 - a. "Disproportionate Housing Needs" section; the tool (p. 7) states: "*Given the supply of units with two, three, four or more bedrooms for each category of publicly-supported housing, discuss whether this supply achieves an appropriate balance from a fair housing perspective in serving the needs of families with children, including large families. Please explain.*" HUD should define what "appropriate balance"

specifically means. We strongly urge HUD to provide clear examples. Otherwise, this is an ambiguous phrase that makes it difficult for jurisdictions to exercise their own discretion performing analyses, to properly set goals and/or make proper fair housing determinations.

- b. In many instances within the tool, HUD asks AFH preparers to determine if items are "highly significant, moderately significant or not significant." In order to ensure an effective response, HUD should provide guidance on how preparers are to distinguish between these different impact levels, otherwise, if left to the discretion to individual jurisdictions, this flexibility can result in extremely subjective and potentially erroneous conclusions.
2. HUD's AFFH tool substantially relies on local knowledge as the basis for the majority of the sections and questions in the AFFH tool. Local knowledge should be used to reflect a locality's efforts to address a myriad of initiatives and efforts that further fair housing issues from various perspectives. Participants in the public process should be given the opportunity to voice their interest in staying in their neighborhoods; community residents are highly capable of providing feedback as why/how they could benefit from the positive social and economic enhancements that are taking place within their communities instead of spending scarce funds to provide them with the "opportunity" to move somewhere else. HUD needs to promote a locality's flexibility to decide on its best choices and strategies.
 3. Should local knowledge be unavailable or so costly to collect as to be unobtainable, we urge HUD not to penalize localities for not providing unobtainable data. Given the potential difficulty of addressing local knowledge based questions, we urge HUD to address the potential implications of incomplete responses to ensure this does not result in non-compliance.
 4. The tool also conflicts with the goal of ending veteran and chronic homelessness and the efforts the Housing Authority of the City of Los Angeles (HACLA) has taken to utilize its project-based Housing Choice Vouchers (HCVs). In the effort to meet HUD's goals in addressing homelessness, HACLA often commits HCVs to units in racially and ethnically concentrated areas of poverty (R/ECAPs). In addition, the Section 8 Program includes funding principles for Project-Based Vouchers (PBVs) that conflict with the draft AFFH tool. For example, one of the objectives of Los Angeles County's Coordinated Entry System (CES) is to prioritize the most vulnerable people experiencing chronic homelessness for permanent supportive housing. HACLA has required that Shelter Plus Care (SPC) sponsors participate in the CES Program. This requirement has been implemented through close consultation with HUD's Community Planning and Development (CPD) Office staff, the U.S. Interagency Council on Homelessness (USICH), both locally and at the senior level in Washington D.C., the Los Angeles Homeless Services Authority (LAHSA), the Los Angeles Continuum of Care, and L.A.'s United Way Home For Good Funders Collaborative. As of November 1, 2013, all SPC applicant referrals for turnover vacancies that are received must be chronically homeless to be admitted into the program. Chronically homeless individuals who receive housing are often placed in R/ECAPs, because these areas typically include properties with subsidized units. The other parts of Los Angeles that are not considered R/ECAPs, contain very few units to assist those with special needs who require permanent housing and supportive services.

II. Segregation/Integration and Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs) is Not Fully Vetted/Processed

The AFFH tool (and the proposed Rule) concentrates on integration through mobility, without encouraging preservation or the impact of revitalization on communities of color. HUD's goal to deconcentrate heavily racial and ethnic populations

reflects a paternalistic approach to displace people from their communities and social networks, and potentially rob them of economic investments occurring within their neighborhoods. Los Angeles, like many other large metropolitan regions throughout the country, has seen racial and ethnic segregation within various neighborhoods for a myriad of reasons. Many residents desire to maintain the social, cultural, and language networks within their communities, and want to remain there. They want improvements within their neighborhoods, not to move somewhere else. The choice ought to be theirs, not the government's.

As previously stated in the City of Los Angeles' partner letter (dated September 17, 2013):

The emphasis on desegregation is of particular concern since Los Angeles is a majority-minority city (71.3% of which belong to a minority group). The large percentage of minorities in Los Angeles is attributable, in part, to a significant foreign-born population that presents unique challenges. According to the National Poverty Center, foreign-born residents have almost twice the incidence of poverty as native-born residents. These households usually live in concentrated areas where neighbors speak the same language and there are relatives and friends from "back home." Many foreign-born households do not want to live in integrated areas with their language and economic challenges. We believe that HUD should value the housing choices of these households in addition to the housing choices of others who may want to move to more integrated settings.

The tool seems to employ outdated methods of a mostly bygone era. For example, the tool does not provide guidance to evaluate how planned investments such as new transit stations that will affect current R/ECAPs, nor does it encourage local jurisdictions to take into account recent patterns of neighborhood change to reflect ensuing gentrification.

The City of Los Angeles' population consists of a 28.3% white non-Hispanic demographic. With this low white population statistic, it is difficult to compare segregation levels as HUD requires without further guidance. Moreover, the AFFH tool does not allow or require an analysis of areas that are exclusively wealthy or white.

The current R/ECAP does not take into account multifamily residential density in local jurisdictions. The residential areas in non-R/ECAPs will be largely comprised of single family homes, expecting a jurisdiction to simply move low-income tenants into non-R/ECAPs without evaluating the multifamily capacity of these areas places an undue burden on local jurisdictions to meet AFFH goals. The City of Los Angeles is currently one of the most unaffordable cities in the country primarily due to its low wages and an undersupply of housing. Additionally, there is less multifamily residential density in non-R/ECAPs.

Furthermore, building in non-R/ECAPs comes at a cost; there will be an increase in construction costs due to higher land costs, transportation, goods and services in non-R/ECAP areas causing fewer affordable housing units to be built.

Without a balanced tool, there is also a danger that federal funds could not be used in so-called R/ECAPs to preserve homes and to revitalize neighborhoods in which members of protected classes wish to remain. The City of Los Angeles is currently seeking to implement anti-displacement measures and encourage equitable development to ensure existing low-income residents are provided with fair housing choices in low-income and/or racially concentrated neighborhoods. We believe the AFFH tool should embrace the premise that anyone who wants to should be able to choose to remain in one's community and benefit from its economic renaissance; HUD's AFFH tool as drafted does not offer the balanced approach.

HUD's Integration Requirements Directly Impact the Public Housing Authority

The Housing Authority of the City of Los Angeles finds difficulty in explaining the siting patterns of public housing/project-based/multifamily properties located in high R/ECAPs and possibly developing goals to correct or improve said concentration given the historic reality of how and why the public housing authority (PHA) sites were built in their current locations. How specifically are PHAs supposed to revise previously created practices to adhere to HUD's newly designed requirements?

The intent to mitigate racial/ethnic concentration faces other challenges. HACLA anticipates major problems if required to describe the fair housing implications of projects that may have a disproportionate concentration of one group over others, especially in light of the reality that current HUD Fair Housing regulations require the PHA to have a community-wide wait list for public housing that allows the applicant to select from the sites offered. For the Project-Based/Multifamily Program, those properties are required to have site-based waiting lists; applicants self-select where they want to live. An owner/operator cannot deny an otherwise eligible applicant housing because of their racial/ethnic makeup.

Moreover, the assessment tool poses problems for HACLA's planning based on the private market rental rates. The tool demonstrates limitations for the HCV Program to expand mobility options to low poverty areas due to the limited funding available for Housing Assistance Payments (HAP), the limitation on how high the Voucher Payment Standard (VPS) can be set (between 90% - 110% FMR), and the lack of affordable units in the private market in low poverty areas. In other words, the challenge threatens the mobility intent. ***How does HACLA get voucher holders to rent in low impacted areas if HACLA cannot approve rents for those areas if the VPS cannot be exceeded?*** VPS limits the ability to pay the market rents landlords ask in low impact areas, the program rules themselves create the pernicious concentration of poverty.

The statutes and regulations that housing authorities operate under also impact the concentration of poverty. Current program statutes and regulations require 40% of all new public housing admissions to be families at or below 30% area median income (AMI) and none can exceed 80% AMI at initial occupancy, this is similar for the Section 8 Program in that 75% of all new admissions cannot exceed the higher of the federal poverty level or 30% AMI and none over 80% AMI. HACLA houses the poorest of the poor to ensure program compliance.

III. HUD's Proposed AFFH Assessment Tool Poses a Burden on Jurisdictions

The completion of the AFH report and utilizing HUD's tabular data, maps, and assessment tool pose an undue burden upon jurisdictions. Given the cutbacks in federal funding and lack of local general fund revenues, jurisdictions have few options to finance the development of their AFH reports. Yet, jurisdictions have been given this unfunded mandate to carry out the new AFH process. HUD asks the question: "Do participants expect to use federal funds to complete the tool?" It is unclear as to what other financing mechanisms jurisdictions can rely on to complete the tool. HUD also poses the questions: 1) "What cost reduction strategies might exist for completing the tool?" 2) "How do participants envision joint participation in completing the template?" HUD seems to imply that if the AFH report is completed in partnership (e.g., local housing department and PHA), then it would be less costly and time consuming to complete, when in fact, the cost factor remains a major impediment to carrying out the new requirements with or without a partner agency.

Furthermore, as stated in the City of L.A.'s September 2013 letter, the proposed AFFH Rule indicates that the community engagement process for the AFH cannot be combined with the Consolidated Plan's (ConPlan) community engagement process since the AFH report is due prior to the ConPlan. If the processes for both plans cannot be consolidated, this poses another burden on grantees who must do more with fewer funds. An appropriate community engagement approach requires time and generates staff costs that will need to be taken from carrying out other HUD mandates. It also risks community members meeting fatigue with seemingly duplicative events. If these processes are consolidated a year before the next 5-year ConPlan is due, the ConPlan will be less current, and perhaps, less relevant.

CONCLUSION

The City of Los Angeles remains fully committed to furthering fair housing and supports HUD's efforts to create a new rule that moves towards that goal. Unfortunately, the draft Affirmatively Furthering Fair Housing Assessment Tool, HUD data and maps are based on integration through mobility as the prime objective and do not take into account the desire of residents to improve the neighborhoods and schools where they currently live. The above examples demonstrate that the tool is still not fully developed and not yet helpful - the tool is only as good as its acuity. Furthermore, jurisdictions must

have the discretion to direct investments to racially-concentrated/low-income neighborhoods that are not thriving in order to improve the quality of life in place.

While we are still awaiting HUD's responses to the 1,000+ comments submitted in response to the proposed AFFH rule last year, we hope that our comments for the proposed AFFH Assessment Tool will be carefully considered. We look forward to reviewing the revised assessment tool after the completion of the 60-day comment period and the incorporation of the various comments and suggestions received by HUD. The City would be pleased to participate in any necessary discussions with HUD. We will be glad to provide additional information upon request. Should you have any questions, please feel free to either contact Rushmore Cervantes at (213) 808-8808, rushmore.cervantes@lacity.org or Douglas Guthrie at (213) 252-1810, douglas.guthrie@hacla.org.

Sincerely,



Rushmore D. Cervantes
General Manager, Los Angeles Housing + Community Investment Department



Douglas Guthrie
President & CEO, Housing Authority of the City of Los Angeles

Attachments:

- 1) HCIDLA and Partners of L.A. Letter (September 17, 2013)
- 2) Additional Data Concerns with HUD AFFH Assessment Tool



Eric Garcetti, Mayor
Mercedes M. Márquez, General Manager

Attachment # 1

September 17, 2013

Regulations Division
Office of General Counsel
Attn: Ms. Camille E. Acevedo
Associate General Counsel for Legislation and Regulations
U.S. Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, D.C. 20410-0500

Re: Comments on the Proposed Rule on Affirmatively Furthering Fair Housing (AFFH) Published on July 19, 2013 (Docket No. FR-5173-P-01)

Dear Ms. Acevedo:

The City of Los Angeles, together with the Los Angeles County and their non-profit partners, appreciate the opportunity to submit comments on proposed rule, FR-5173-P-01, AFFH. We were pleased to see the proposed rule and appreciate HUD's desire to improve the effectiveness of activities to further fair housing. We also appreciate HUD's decision to provide data to grantees for fair housing planning.

Our comments on the proposed rule are made from the vantage point of a City of almost 4 million people -- 71.3% of which belong to a minority group -- and a county where less than 30% of its population is categorized as "white alone, not Hispanic/Latino" and almost 50% as Hispanic/Latino, according to the 2010 U.S. Census. This letter is drafted by a collaborative of City/County government agencies and non-profit entities (please see Appendix for details on L.A. County and non-profit signatories). We respectfully submit these comments and recommendations with the hope of enhancing the nature of the proposed rule toward successfully operationalizing fair housing choice.

PUBLIC POLICY IMPACTS

I. Recommendation: Reduce the Emphasis on Desegregation

Respecting the Character of Minority Communities

The goal of the proposed rule appears to be to change the emphasis of grantee fair housing efforts from eliminating housing discrimination to proactively promoting desegregation. It states that HUD expects jurisdictions to take proactive steps to improve integrated living patterns and overcome historic patterns of segregation. It continuously emphasizes that desegregation is the best method of reducing racial and ethnic concentrations of poverty, and responding to the disproportionate housing needs of persons protected by the Fair Housing Act. It promotes the belief that integration/desegregation is the best way to create economic opportunities for poor ethnic and racial minorities.

A number of research studies were cited to justify this conclusion. We have reviewed the Harvard University study that compares upward income mobility across metropolitan areas. This study found, in part, that "upward mobility tended to be higher in metropolitan areas where poor families were more dispersed among mixed-income neighborhoods." The

study, however, does not establish that mixed-income neighborhoods cause increased upward mobility; it simply establishes that there is a correlation among both factors. Further, the study does not prescribe a methodology or identify factors to achieve integrated communities with greater opportunities for income mobility. The other studies cited did not appear to focus on the realities of majority-minority geographic areas such as Los Angeles, where most of the population belongs to an ethnic or racial minority group.

By moving away from an equal emphasis on all forms of antidiscrimination in housing to a primary focus on desegregation, the proposed rule supports activities that gentrify neighborhoods to the detriment of long-term residents of a uniform race or class. HUD's *Regulatory Impact Analysis* ("*The Analysis*") acknowledges that promoting integrated communities presents a challenge in preserving the affordability and maintaining the true character of communities, stating:

Transformation, particularly of those neighborhoods inhabited by low-income families, can induce gentrification. Gentrification can help advance fair housing goals and integration, but it can also result in a wholesale change in the ethnic mix such that the minorities that originally populated the neighborhood exit and no longer are present.

Although *The Analysis* notes there are negative effects from gentrifying pressures, promoting integration seems to be far more important. The phrase used in *The Analysis* "...that...minorities...[e]xit and are no longer present" does not acknowledge the fact that poor people do not exit voluntarily but are forced out of their homes by landlords seeking the higher rents their properties can command nor does it acknowledge that gentrification destroys cohesive ethnic and racial neighborhoods and their support systems, forcing poor people to move to areas further away from employment and transportation. There appears to be no recognition of the fact that jurisdictions lack the economic tools to fight the impacts of gentrification, particularly in today's economic climate with property values rising, local governments' continuing budget problems and Congress' cuts to the HUD budget.

Additionally, the emphasis on desegregation is of particular concern since Los Angeles is a majority-minority city. The large percentage of minorities in Los Angeles is attributable, in part, to a significant foreign-born population that presents unique challenges. According to the National Poverty Center, foreign-born residents have almost twice the incidence of poverty as native-born residents. These households usually live in concentrated areas where neighbors speak the same language and there are relatives and friends from "back home." Many foreign-born households do not want to live in integrated areas with their language and economic challenges. We believe that HUD should value the housing choices of these households in addition to the housing choices of others who may want to move to more integrated settings.

The proposed rule assumes that the people in "minority" communities prefer a life in the suburbs; that parents and children prefer that the child take public transportation for two or more hours roundtrip to an upper income school district – and that it is safe to do so. There seems to be an implicit assumption that HUD knows what is best for residents of local communities and that is for jurisdictions to proactively promote desegregation. Effective approaches to fair housing need to be tailored to the needs and assets of the community. There are many ways to create economic opportunities and eliminate housing discrimination; no one approach should be the priority.

Residents of Poor Communities Need Affordable Housing

The proposed AFFH rule implies that affordable housing should not be built in poverty areas with a concentration of minority residents. In practice, the mandate to "foster more inclusive communities" appears to mean that affordable housing must be sited in non-impacted areas where land costs may be three or four times higher than the cost of land in lower income areas. This means that developments will take longer to finance, be much more expensive and fewer units will be built. An equally important issue is that by encouraging the development of affordable housing outside of poverty

areas with high minority concentrations, affordable housing is denied to existing area residents in need of reducing their housing cost burden.

Additionally, the proposed rule requires that if housing is constructed in poor areas, substantial revitalization efforts must take place concurrently. We fully support substantial revitalization but those efforts may not be possible due to cuts in HUD funding or competing local priorities. We believe that creating and preserving affordable housing, in and of itself, in poor areas is an important vehicle for improving the economic security and opportunity of low income and minority tenant households.

II. Recommendation: Preserve Jurisdictions' Autonomy to Choose their Investment Strategies

Creating Economically Viable Communities through Local Discretion

The purpose of CDBG is to provide decent housing, a suitable living environment, and expanded economic opportunities principally for low/moderate-income persons. Under the CDBG program, jurisdictions have the flexibility to decide which activities best meet the needs of their communities and at what level activities will be funded. The proposed rule, however, attempts to limit a grantee's right to make local decisions about these key investments. Since HUD will approve the Assessment of Fair Housing (AFH) and the Consolidated Plan (Con Plan) activities to implement it, the proposed rule strongly implies that HUD will determine whether communities are spending enough of their Con Plan funds and focusing sufficient effort on affirmatively furthering fair housing. Through this assumed system of HUD approvals, the proposed rule attempts to make AFFH the highest priority of the Con Plan rather than one of several priorities and eligible activities under CDBG. That the proposed rule does not contain a process to resolve disagreements between local grantees and HUD seems to imply that HUD's decision on the jurisdiction's use of Con Plan funds will be final with no recourse.

HUD's *Regulatory Impact Analysis* notes: "In brief, because of diversity of communities and regions across the nation and the resulting uncertainty of precise outcomes of the proposed AFFH planning process, HUD cannot quantify the benefits and cost of policies influenced by the rule." Since it is impossible to accurately quantify the outcomes, the proposed rule should unequivocally state that local jurisdictions should be given the flexibility to invest in both high- and low-income areas. Investments should be based on a community's unique demonstrated strengths.

III. Recommendations: Clarify HUD's Overall Role in the Approval Process; Ensure that the Assessment of Fair Housing (AFH) Approval Process Includes HUD's CPD and PIH Offices; Incorporating Key HUD Offices into the AFH Review

CPD and PIH Role in AFH Approval and Implementation

The proposed rule does not mention which HUD office is responsible for evaluating AFHs. It should explicitly state that the Office of Community Planning and Development (CPD) and the Office of Public and Indian Housing (PIH) will have equal authority to the Office of Fair Housing and Equal Opportunity (FHEO) in reviewing and approving submitted AFHs. The CPD must play a key role in the review since grantee Con Plan funds could potentially be withheld or withdrawn due to an unapproved AFH. Public Housing Authorities have similar issues so PIH should play a key role in reviewing their AFHs. What is the criteria for HUD's approval of the AFH? What is the process to resolve a jurisdiction's disagreement with HUD's decision?

Activities that FHEO considers meaningful to promote "greater mobility and access to communities offering vital assets such as quality schools, employment, and transportation consistent with fair housing goals" may require a prohibitively large commitment of time, effort, and money. As a result, the jurisdiction may decide to carry out other activities deemed important by the community that have been identified as a jurisdictional priority in the Con Plan. Is HUD going to refuse

to fund that jurisdiction? Who will decide whether the activities proposed in the grantee's Con Plan are meaningful and address the issues identified in the AFH? Do all of the issues identified in the AFH have to be addressed? Where will HUD and grantees find the resources necessary to carry out activities required by the AFH without sacrificing current public services and public facilities that are critical to low income residents? Over the past three years, the City of Los Angeles has lost 32% of its CDBG funds and 56% of its HOME funds due to Congressional budget cuts. Moreover, the Housing Authority of the City of Los Angeles has experienced a 15% decrease in Section 8 administrative funding and an 18% reduction in Public Housing operating funds. It appears that there may be more Congressional cuts in the near future. Will HUD require jurisdictions to ignore priority needs, identified by low-income communities, and focus on "meaningful" mobility and access to other communities?

It is proposed that the AFFH Certifications state that the program participant will take no action that is *materially inconsistent* with its obligation to affirmatively further fair housing. Who decides what is "material"? How is this determined? What are the criteria for being deemed "materially inconsistent"? The criteria should be clarified and listed in the proposed rule so that it is not a matter of interpretation by HUD staff and cash-strapped jurisdictions do not face serious financial risks carrying out approved Con Plan activities.

IV. Recommendation: Combine Citizen Participation Processes

Streamline the AFH and Con Plan Due Dates and Processes

The proposed rule requires submission of the AFH at least 270 calendar days before the start of the program year, prior to the beginning of the 3- or 5-year Con Plan process. This timeline will result in additional staff time committed by jurisdictions, particularly as it relates to citizen participation requirements for both the AFH and Con Plan. Based on the current draft of the proposed rule, the AFH citizen participation process is duplicative of the Con Plan process. The rule is silent as to whether the community engagement process for the AFH can be combined with the Con Plan's community engagement process. If the process for both plans cannot be consolidated, this poses a potential burden on grantees who must do more with fewer funds and community members fatigued with duplicative events. Also, consolidating these processes a year before the Con Plan is due will make the Con Plan less current and perhaps less relevant.

V. Recommendation: Improve HUD-Provided Data

Strengthen the Source and Purpose of Data for the AFH

The proposed rule requires grantees to use measures HUD makes available at the national level for the AFH. However, there have been a number of weaknesses with HUD-provided data for the Con Plan. How can HUD assure that the complex data required for the AFH will be accurate? In addition, the proposed rule does not specify the type of information or data to be utilized in assessing whether local laws, policies or practices limit fair housing choice. The confines of this policy analysis are not clear; there is no guidance for this requirement. If localities provide other data, how will HUD use that data? Will localities have an opportunity to tell HUD how that data ought to be used/interpreted?

We agree with the issues raised in the 2013 *Public Housing Authorities Directors Association (PHADA) Advocate* newsletter regarding the weaknesses of HUD's data. The following reflects some of the concerns raised within *PHADA Advocate* regarding HUD's data elements for jurisdictions:

- The Mapping portal does not include tabular data; data cannot be downloaded or made into a shapefile (i.e., not simple to use for mapping purposes).
- While some measures are widely used (e.g., the index of dissimilarity and the isolation index), many have been created by HUD and there is no evidence that the Department has validated or plans to validate those measures.

- In regards to commonly-used measures, HUD has established what seems to be arbitrary, unjustified thresholds that AFHs must consider.
- HUD has not described how it intends to develop measures to share with grantees at the census tract or block level.
- The various indices created by HUD pose concerns. There is uncertainty with the following: Are thresholds HUD has suggested in its draft reasonable, too high or too low? Do measures HUD developed do what they intend? Has HUD validated any of the unique indices? Does aggregation of indices associated with access to community assets measure that access appropriately?
- HUD requires assessment of racially or ethnically concentrated areas of poverty. The proposed rule does not propose to assess poverty concentration based on any other listed protected class (e.g., national origin, religion, color, gender, familial status, or disability).
- HUD has identified six kinds of community assets and has rejected requests to provide data reflecting access to parks, libraries, recreational resources, community centers, elder service centers, health care facilities, law enforcement facilities, fire stations and food or drug retailers.

VI. Recommendation: Revise AFFH Definitions

Revise the Definitions to Reflect Housing Choice in Affirmatively Furthering Fair Housing

The desegregation priority is embodied in the proposed rule through changes in a number of standard definitions. This is another example of how HUD is attempting to promote desegregation within communities. Los Angeles (the signatories to this letter) have concerns about some of the new definitions and recommends the following changes:

- *Affirmatively Furthering Fair Housing (AFFH)* – this definition should be completely revised, the phrase "Taking proactive steps beyond simply combating discrimination" should be changed from "beyond simply" which seems to denigrate housing discrimination prevention efforts and replaced by the word "including" which would put anti-discrimination in housing on par with integration/desegregation. Also, the section of the definition, "...access to community assets for all persons protected by the Fair Housing Act," does not recognize the fact that none of the persons living in that area have access to community assets such as education, transportation, etc.

Another portion of the definition which should be changed states:

"...to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty..."

This should be replaced with

"...to reduce the isolation of income groups within communities and geographical areas and increase the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods and to foster and maintain compliance with civil rights and fair housing laws."

This recommended change incorporates language from the Congressional Findings on the Housing and Community Development Act of 1974 as amended.

The "AFFH" definition should be revised to read as follows:

Taking proactive steps including combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it

means taking steps proactively to reduce the isolation of income groups within communities and geographical areas and increase the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods and to foster and maintain compliance with civil rights and fair housing laws. For participants subject to this subpart, these ends will be accomplished primarily by making investments with federal and other resources, instituting strategies, or taking other actions that address or mitigate fair housing issues identified in an assessment of fair housing (AFH) and promoting fair housing choice for all consistent with the policies of the Fair Housing Act.

- *Disproportionate Housing Needs*—the proposed definition seems to indicate that affordable housing projects should only house families in protected classes with disproportionate housing needs and exclude other low-income individuals who qualify for such housing. Does this mean that federal funds should be devoted only to helping those in a protected class and not others with the same economic challenges? We recommend that the definition be changed so that disproportionate housing need be quantified so housing needs for members of a protected class are at least “20 percent” higher than the percentage of persons in the category as a whole, rather than the “10 percent” included within the definition.

The “Disproportionate Housing Needs” definition should be revised to read as follows:

Exists when the percentage of extremely low-income, low-income, moderate-income, and middle-income families in a category of housing need who are members of a protected class is at least 20 percent higher than the percentage of persons in the category as a whole. For this purpose, categories of housing need are cost burden and severe cost burden, overcrowding (especially for large families) and substandard housing conditions. The terms cost burden, severe cost burden, overcrowding, extremely low-income family, low-income family, moderate-income family, and middle-income family are defined in 24 CFR 91.5.

- *Fair Housing Choice*—this definition states: “For persons with disabilities, fair housing choice includes access to accessible housing, and, for disabled persons in institutional or other residential environment...” The definition should be revised to state: “For persons with disabilities, fair housing choice is the ability to live where they choose. This includes access to accessible housing, and, for disabled persons in institutional or other residential environment, housing in the most integrated setting appropriate as required under law, if they so desire, including disability-related services that an individual needs to live in such housing. Fair Housing Choice also means recognizing that not all people with disabilities desire to live in an integrated setting and that those people have the right to choose to reside with others with the same disability in housing built to meet their needs that includes services focusing on that specific disability.”

The “Fair Housing Choice” definition should be revised to read as follows:

Individuals and families have the information, options, and protection to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or handicap. It encompasses actual choice, which means the existence of realistic housing options; protected choice, which means housing that can be accessed without discrimination; and enabled choice, which means the availability and realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice is the ability to live where they choose. This includes access to accessible housing, and, for disabled persons in institutional or other residential environment, housing in the most integrated setting appropriate as required under law, if they so desire, including disability-related services that an individual needs to live in such housing. Fair Housing Choice also means recognizing that not all people with disabilities desire to live in an integrated setting and that those people have the right to choose to reside with others with the same disability in housing built to meet their needs that includes disability-related services focusing on that specific disability.

- *Fair Housing Issue*—this definition should omit the following: "Ongoing local or regional segregation or the need to support integrated communities; racial or ethnic concentrations of poverty; disparities in access to community assets; disproportionate housing needs based on race, color, religion, sex, familial status, national origin, or handicap..." and replace it with "Unequal housing opportunities for persons in a protected class under federal law..."

The "Fair Housing Issue" definition should be revised to read as follows:

Unequal housing opportunities for persons in a protected class under federal law; and evidence of illegal discrimination or violations of existing civil rights law, regulations, or guidance, as well any other condition that impedes or fails to advance fair housing choice.

- *Integration*—the reference to "Metropolitan Statistical Area as a whole" should be removed. MSAs cover areas that a single jurisdiction cannot cause to change since multiple jurisdictions are captured in a single MSA. This seems to mean that cities are responsible for exporting poor people in protected classes to surrounding counties and recruiting people not in protected classes into their own cities. As noted previously, this would lead to gentrification and would have a negative impact on poor people living in areas that are attractive to gentrification. Gentrification leads to isolation of low-income families and a further decrease in socioeconomic opportunities. There needs to be recognition that it is important to retain the character of communities while investing more resources in the area rather than attempting to remove people who have cultural, ethnic and historical connections to their neighborhoods.

The "Integration" definition should be revised to read as follows:

Based on the most recent decennial Census and other data sources as determined by HUD to be statistically valid, that particular geographic areas within a jurisdiction do not contain high concentrations of persons of a particular race, color, religion, sex, familial status, national origin, or handicap when compared to the jurisdiction. For individuals with disabilities, integration also means that such individuals are housed in the most integrated setting appropriate, if they so desire. The most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the American Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

- *Segregation*—The definition should not include the phrase: "...a particular housing development, or..."; this could lead to individual projects having to deny eligible applicants housing if they do not meet particular characteristics needed to create integrated housing on a project by project basis. For example, in some cities, affordable housing projects are almost 100% African-American. Does that mean that no more African-Americans can rent an apartment until the development is integrated by the percentage of race, ethnicity, age, familial status, disability, etc. in the jurisdiction? In Los Angeles, the Housing Authority offers units via a "blind" method. Once a family is certified for admission, they are offered units based solely on the bedroom size needed – to factor in protected class categories would be in effect, discriminatory.

The definition should also remove the phrase: "...or other causes" from the section stating: "...compared to the jurisdiction or Metropolitan Statistical Area, as a whole resulting from fair housing determinants or other causes." Also, the definition should state: "For persons with disabilities, segregation *may* include the failure to provide housing in the most integrated setting possible." Currently, the definition does not include "may," this is necessary to support the fact that people with disabilities have the choice to live where they want, even in settings HUD would deem segregated, because it met their needs.

The "Segregation" definition should be revised to read as follows:

Geographic areas, based on the most recent decennial Census and other data sources determined by HUD to be statistically valid, with high concentrations of persons of a particular race, color, religion, sex,

familial status, national origin, or with a disability in a jurisdiction, compared to the jurisdiction or Metropolitan Statistical Area, as a whole resulting from fair housing determinants. For persons with disabilities, segregation may include the failure to provide housing in the most integrated setting possible.

VII. Recommendation: Amend the Proposed Rule and Provide a New Comment Period

Revise the Proposed Rule

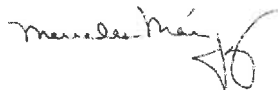
HUD should revise the proposed rule in accordance with the aforementioned comments and recommendations. HUD should then release an amended proposed rule with a new 90-day comment period.

CONCLUSION

The City of Los Angeles, together with the Los Angeles County and their non-profit partners, fully support HUD's intent to create a new rule that affirmatively furthers fair housing. We believe the current proposed rule can be strengthened to ensure that its implementation does not result in devastating disinvestment in poor neighborhoods. People in racially-concentrated/low-income communities must have an opportunity to move into an area that is thriving economically and socially; similarly, jurisdictions must have the discretion to direct investments to racially-concentrated/low-income neighborhoods that are not thriving in order to improve the quality of life there. It is imperative that HUD continue its 30-year partnership, allowing jurisdictions the discretion to determine how they invest CPD funds.

We hope that our comments will be carefully considered and we look forward to reviewing an amended rule during a subsequent comment period. The City and its partners are eager to participate in any discussions with HUD. We will be glad to provide additional information upon request. Should you have any questions, please feel free to contact me at (213) 808-8808 or mercedes.marquez@lacity.org.

Sincerely,



MERCEDES MÁRQUEZ

General Manager, Los Angeles Housing + Community Investment Department



DOUGLAS GUTHRIE

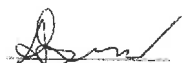
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SEAN ROGAN
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ANDREW GROSS
Principal, Thomas Safran & Associates



PAULINA GONZALEZ
Executive Director, Strategic Actions for a Just Economy (SAJE)



MARIA CABILDO
President, East LA Community Corporation

APPENDIX

Description of Los Angeles County Agency:

- **Community Development Commission/Housing Authority of the County of Los Angeles** – serves in the County of Los Angeles as an affordable housing, and community and economic development agency, while the Housing Authority administers both the Section 8 Housing Choice Voucher and Public Housing programs. The Section 8 Housing Choice Voucher Program currently assists approximately 23,000 families through a partnership with over 13,000 property owners. The Public Housing program manages 3,336 public and other affordable housing units throughout Los Angeles County.

Description of Non-profit Agencies:

- **Little Tokyo Service Center (LTSC)** -- a non-profit, community-based organization, which has provided services for over 30 years to the greater Los Angeles community. With a staff of 135, LTSC provides individual and family counseling, services for home-bound monolingual seniors, case management, crisis hotline, caregiver support services, affordable housing, community organizing, small business assistance, support groups, mental health services, childcare, pre-school, after-school programs, child abuse prevention programs, domestic violence prevention, family literacy programs, health education, and translation services. LTSC provides services in many languages including Japanese, Chinese, Korean, and Spanish.
- **Thomas Safran & Associates (TSA)** – consists of over 140 employees and 35 years of experience developing affordable housing, managing properties and delivering meaningful social services to low-income seniors and families. TSA has developed over 4,500 units, and currently owns and manages over 3,500 units in Southern California. While building and managing profitable housing for its investors, TSA's highest goal is to enhance the world in which everyone lives and to enrich the lives of the people who reside in their buildings.
- **SAJE (Strategic Actions for a Just Economy)** – comprised of 10 staff with an active membership of 200 people; SAJE's mission is to change public and corporate policy in a manner that provides concrete economic benefit to working-class people, increases the economic rights of working class people, and builds leadership through a movement for economic justice. In the process, SAJE also creates models of economic democracy that are replicable and sustainable.
- **East LA Community Corporation (ELACC)** -- founded in 1995 as a community-based, non-profit corporation, located in Los Angeles whose mission is to advocate for economic and social justice in the communities of Boyle Heights and East Los Angeles by building grassroots leadership, developing affordable housing and neighborhood assets and providing access to economic development opportunities for low and moderate income families. To date, ELACC has developed over 400 units of affordable housing impacting the lives of over 2,000 individuals.



ADDITIONAL DATA CONCERNS WITH HUD AFFH ASSESSMENT TOOL

GENERAL COMMENTS

- A. What guidance will be provided to ensure that grantees weigh/evaluate local data against related indices in an objective manner? Especially considering that local data may be point based and indices are polygon based. For example, the Transit Index value that is assigned for each block group (polygon) is created by using complex formulas. However, the GTFS data that HUD is plugging into these formulas do not contain future transit stations, only existing ones. If a locality has a GIS file with the new station locations in a point file, there is no way for the local jurisdiction to bring this data into the transit index. How are localities supposed to weigh point data within the block group values assigned by the formula objectively?
- B. Are local jurisdictions allowed to substitute one or more HUD Index (Indices) for a Local or State index or multiple indices?
- C. How does HUD define "local knowledge" and in what way is this to be evaluated from a data assessment standpoint?
- D. The data assessment tool asks jurisdictions to highlight what "stands out". Given that the majority of the data provided will have been considered from a statistically significant and objective standpoint, how does this subjective definition of "stand out" weigh against the objective data? Is HUD encouraging grantees to "eyeball" factors? How will HUD ensure that subjective measures are not politicized and unfairly treat a certain group, neighborhood, area or political district differently from another with the same data score/factors?
- E. Prior to the next comment period, each tool and data set must be fully accessible.
- F. How will HUD provide fixes for certain data elements that may be inaccurate.
- G. Based on our experiences with the eCon Planning Suite, all of the data that HUD made available was only available for viewing on a cloud and did not lend itself to analysis. It was not fully downloadable by grantees, nor were grantees allowed to upload local data into the cloud. This lack of accessibility in both downloading and uploading data made it impossible to analyze. Therefore, to complete the Consolidated Plan, the City of Los Angeles was unable to utilize any of the HUD data. Instead it spent a significant amount of time and resources creating GIS based maps and conducting data analysis. There will be significant issues in completing HUD's required analysis if HUD data is not downloadable and remains in the "cloud."
- H. Regarding HUD's inclusion of national origin and religion in the data, what is the validity of such data? The local Public Housing Authority does not collect nor report to HUD on religion or national origin. Where does this data originate? If FHEO is going to require the collection of religion and national origin data, is the Public and Indian Housing and Multi-family section of HUD planning to revise HUD Forms 50058 and 50059?

SPECIFIC COMMENTS BASED ON SECTIONS IN DATA DOCUMENTATION

SECTION 2. DEFINING RACIALLY/ETHNICALLY CONCENTRATED AREAS OF POVERTY



R/ECAP: “The racial/ethnic concentration threshold is straightforward: RCAP/ECAPs must have a non-white population of 50 percent or more.”

Dissimilarity Index: Represents a summary measure of the extent to which the distribution of any two groups (frequently racial or ethnic groups) differs across census tracts or block groups. These will take into account such things as disabled populations and immigrant populations.

- A. How will immigrant populations be defined by HUD and how will undocumented immigrants be accounted for if they are not officially counted in the US Census?

Isolation Indices: Compares a group's share of the overall population in a jurisdiction to the average neighborhood share for members of that group.

- A. How do R/ECAPs, Isolation Indices and Dissimilarity Indices weigh against one another?
- B. Will all of these factors be weighed together in one index? If not, what guidance will be provided so that grantees can evaluate these factors separately?

SECTION 3. ANALYZING SEGREGATION

- A. What does this look like in Los Angeles?
- B. How are historic ethnic enclaves taken into account?
- C. How do future transit amenities play into or are evaluated against current segregation patterns from a planning perspective?

“The measures...will be coupled with geospatial presentations of racial/ethnic patterns over time so that program participants can visualize the evolving patterns in their community.”

- D. What time period will be reflected? Does it predate Race Restricted Covenants and/or Redlining?

SECTION 4. ANALYZING COMMUNITY ASSET INDICATORS

- A. How is “neighborhood” defined geographically by HUD?

SECTION 4.3. JOB ACCESS MODEL

- A. This model should be renamed job “proximity” instead of “access”. The distance of a job center to a residential area alone does not define access, but merely proximity.
- B. Job access should take into account several factors including quality of public transit.

SECTION 4.6. TRANSIT INDEX

- A. The GTFS data set does not contain transit information on future planned stations. How will local jurisdictions plug this information into the overall index?
- B. How are new stations to be evaluated as points to an index which is a polygon?
- C. The NAISC codes that are being used to indicate “Amenities” only includes NAICS codes 44-45 arts and education, 71 recreation, 72 food and accommodations. However many low income local communities may have a different opinion of what they consider amenities, and may include different NAISC codes such as a long standing local clinic or a community center (code 62 health care and social assistance), and want to define these amenities themselves. In many areas in Los Angeles, such as in the Westlake area, a single business serves as the umbrella for hundreds of vendors that many not all have business licenses captured by data, how can localities ensure that these vendors also weigh into the data as the hundreds businesses that they are, instead of just the one.



SECTION 4.7. SOURCES

- A. Can all jurisdictions substitute a HUD Index for a Local or State Index or Local or State index for one provided by HUD? For example, can California's 2014 Cal Enviro 2.0 index which weighs socioeconomic indicators and environmental indicators together, replace the HUD 2005 Health Hazards Exposure Index as well as the 5 year 2006-2010 Poverty Index (or some other index)?