



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-10-B]

**Affirmatively Furthering Fair Housing: Local Government Assessment Tool –
Information Collection Renewal: Solicitation of Comment
30-Day Notice under Paperwork Reduction Act of 1995**

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

ACTION: Notice.

SUMMARY: This notice solicits public comment for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA) on the Local Government Assessment Tool, the assessment tool developed by HUD for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing Opportunities for Persons with AIDS (HOPWA) formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH). The Local Government Assessment Tool is also available for use for AFHs conducted by joint and regional collaborations between: (1) such local governments; (2) one or more such local governments with one or more public housing agency (PHA) partners; and (3) other collaborations in which such a local government is designated as the lead for the collaboration.

HUD is committed to issuing four 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 is for use by States and Insular Areas (State and Insular Area Assessment Tool) and joint collaborating partner local governments and/or PHAs (including Qualified PHAs) where the State is designated as the lead entity. The third assessment tool is for PHAs (including for joint collaborations among multiple PHAs). The fourth assessment tool is for Qualified PHAs (including for joint collaborations among multiple QPHAs). The next Federal Register Notice that will solicit public comment on the State and Insular Area Assessment Tool will solicit specific feedback from program participants as to how to best facilitate collaboration between program participants using this tool, including any changes to the tool or instructions that may be necessary to facilitate such collaborations.

The Office of Management and Budget (OMB) approved the Local Government Assessment Tool under the PRA for a period of one year. This notice follows HUD's solicitation of public comment for a period of 60 days on the Local Government Assessment Tool that published on March 23, 2016, and takes into consideration the public comments received in response to the 60-day notice. The 60-day notice commenced the notice and comment process required by the PRA in order to obtain approval from OMB for the information collected by the Local Government Assessment Tool. This 30-day notice completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of additional public comments received in response to this notice, HUD will seek renewal of approval from OMB of the Local Government Assessment Tool, with a renewal period of 3 years. In accordance with the PRA, the assessment tool will undergo this public comment process every 3 years to retain OMB approval.

DATES: Comment Due Date: [**Insert Date 30 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 them 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 notice. 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, D.C. 20410; telephone number 866-234-2689 (toll-free).

Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2015, at 80 FR 81840, HUD announced the availability for use of the Local Government Assessment Tool by notice published in the Federal Register. This announcement was preceded by the two Federal Register notices for public comment required by the PRA. The 60-day notice was published on September 26, 2015, at 79 FR 57949, and the 30-day notice published on July 16, 2015, at 80 FR 42108, the same day that HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule, at 80 FR 42272. The Local Government Assessment Tool, HUD's AFFH final rule, and HUD's AFFH Rule Guidebook accompanying the Local Government Assessment

Tool can all be found at <https://www.hudexchange.info/programs/affh/>. The Local Government Assessment Tool approved by OMB was assigned OMB Control Number 2529-0054, but the period of approval was for one year.

II. The 60-Day Notice for the Local Government Assessment Tool

On March 23, 2016, at 81 FR 15546, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for renewal of approval of the Local Government Assessment Tool. Although HUD made no changes to the Local Government Assessment Tool approved by OMB in December 2015, HUD specifically solicited public comment on 6 issues (inadvertently numbered as 7 in the March 23, 2016 publication). The 60-day public comment period ended on May 23, 2016. HUD received 18 public comments. The following section, Section III, highlights changes made to the Local Government Assessment Tool in response to public comment received on the 60-day notice, and further consideration of issues by HUD. Section IV responds to the significant issues raised by public commenters during the 60-day public comment period, and Section V provides HUD's estimation of the burden hours associated with the Local Government Assessment Tool, and further solicits issues for public comment, those required to be solicited by the PRA, and additional issues which HUD specifically solicits public comment.

III. Changes Made to the Local Government Assessment Tool

The following highlights changes made to the Local Government Assessment Tool in response to public comment and further consideration of issues by HUD.

Inserts. HUD has included two inserts that may be used to facilitate collaboration between different types of program participants on a joint or regional AFH with a local government.

The first is an insert for use by Qualified Public Housing Agencies (QPHAs). As a reminder, program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. Please note that QPHAs that collaborate with local governments are still required to complete an analysis of their jurisdiction and region, but HUD believes such analyses would be less burdensome due to the inclusion of this insert. For QPHAs with service areas in the same CBSA as the Local Government, the analysis required in the insert is intended to meet the requirements of a QPHA service area analysis while relying on the Local Government to complete the QPHA's regional analysis. For QPHAs whose service area extends beyond, or is outside of, the Local Government's CBSA, the analysis in the insert must cover the QPHA's service area and region.

The second insert is meant for use by local government consolidated plan program participants that receive relatively small CDBG grants and collaborate with another local government using this Assessment Tool. HUD is proposing that local governments that received a CDBG grant of \$500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH may use the insert as part of a collaboration. HOME consortia whose members collectively received less than \$500,000 in CDBG funds or received no CDBG funding, in the most recent fiscal year prior to the due date for the joint or regional AFH would also be permitted to use the insert. HUD welcomes input with regard to the utility of the proposed QPHA insert and the proposed insert for local governments that receive smaller amounts of CDBG funds for conducting the jurisdictional and regional

analysis of fair housing issues and contributing factors as well as the classifications of grantees that would be permitted to use the inserts as part of a collaboration. HUD will continue to assess the use of any such inserts at the next opportunity for Paperwork Reduction Act approval.

Further, HUD has committed to issuing a fourth assessment tool to be used by Qualified PHAs (including joint collaborations among multiple QPHAs). HUD is also committed to continue to explore opportunities to reduce the burden of conducting AFFH analyses by consolidated planning agencies that receive relatively small amounts of HUD funding.

Jurisdictional and Regional Analysis. HUD has provided additional clarification in some questions in the Assessment Tool to specify the geographic scope of the analysis required by that question.

Contributing Factors. HUD has amended some contributing factors and provided additional clarity in the descriptions of certain contributing factors. HUD has also added the contributing factor of “lack of source of income protection.”

Instructions. HUD has provided additional explanation in certain portions of the instructions with respect to how to use the HUD-provided data and the use of local data and local knowledge when completing an Assessment of Fair Housing. Instructions have also been provided for each of the two inserts. These instructions are both general and on a question-by-question basis.

IV. Public Comments on the Local Government Assessment Tool and HUD’s Responses

General Comments

General comments offered by the commenters included the following:

The tool is burdensome and costly. Several of the commenters stated that they recognize the

importance of fair housing planning to the development of strong and sustainable communities, but stated that the Local Government Assessment Tool is burdensome, will require additional resources to complete, and grantees' resources are already strained by what they stated was the insufficient HUD funding they currently receive. The commenters stated that despite HUD's announcements that the AFH would reduce the need to hire consultants to help with fair housing planning, the opposite was true and consultants would be needed, and they would be costly. The commenters requested that HUD provide additional funding for grantees to aid them in their fair housing planning requirements. Other commenters stated that at a minimum the Local Government Assessment Tool must be streamlined for small grantees. The commenters stated that reporting and recordkeeping burden table in the 60-day notice greatly underestimates the burden. A commenter suggested that 5,000 hours is a better estimate of the hours needed to complete an AFH.

HUD Response: HUD appreciates and understands the concern of the commenters.

HUD's provision of an Assessment Tool, certain nationally-uniform data, and the inclusion of a community participation process, which should yield important information about fair housing issues in a community, are intended to relieve some of the burden associated with conducting an Assessment of Fair Housing. HUD notes that the estimation of burden is an average burden estimate and that depending on the size of the grantee or the complexity of the issues, some grantees may have higher burden hours. HUD hopes that the inclusion of a local government insert for program participants that receive smaller amounts of CDBG funding and QPHAs will also help to reduce burden when such entities choose to partner in a collaboration with a local government.

Comments related to the AFFH Data and Mapping Tool: HUD received a large number of

comments related to the HUD-provided data and the Data and Mapping Tool itself. These comments, along with the comments received on several specific data-related issues that HUD solicited public feedback on are discussed in greater detail below.

HUD Response: HUD's responses to the many substantive and valuable comments received are discussed in greater detail below.

The assessment tool duplicates other planning processes. To reduce burden, commenters requested that the AFH community participation process be combined with the citizen participation process that must be undertaken as required by HUD's Consolidated Plan regulations, and the similar public participation process required by the Public Housing Agency (PHA) plan. The commenters stated that the public participation process of the Local Government Assessment Tool is duplicative of the public participation processes required by these other planning documents.

HUD Response: HUD understands the concern of the commenters, but notes that the AFH and the Consolidated plan or PHA Plan (as applicable) are two distinct steps in the planning process. The AFH is intended to undertake a different analysis in order inform the Consolidated plan or PHA Plan. For this reason, it is important that the community have an opportunity to provide the program participant with input at each stage of the planning process. HUD also notes that while there are separate community participation processes for the different stages of the planning process, the requirements for conducting the community participation process are essentially the same. Jurisdictions may be able to appropriately conduct some outreach or hearings on both, but must be aware that submission timelines require that the AFH must be submitted 270 calendar days (for first AFHs) or 195 calendar days (for subsequent AFHs) before the start of the program year for which the next

3-5 year consolidated plan is due. It may be more likely that there be shared outreach efforts on a prior year action plan or performance report, but in any such case the AFH should be a distinct agenda item for any public hearing.

The community participation process is not effective. A commenter stated the community participation process fails to encourage a wide range of stakeholders in the AFH process, and that, in order to encourage a robust and meaningful AFH community participation process (page 1), HUD should amend question 2, as follows: “Provide a list of organizations consulted during the community participation process, including stakeholders who are working in the areas of public health, education, workforce development, environmental planning, or transportation.” The commenter stated that the tool should also specifically reference civil rights and fair housing organizations and other groups providing legal assistance to families affected by HUD programs in the community participation section. Another commenter asked HUD to change the question that seeks an explanation if there is a small turnout for the public hearing. The commenter stated that local governments may not be able to identify the reasons for a small turnout, and are likely to provide responses that are merely guesswork. The commenter asked that HUD reformulate the question to ask jurisdictions how they plan to change their outreach and other procedures next time to encourage greater turnout. The commenter stated that this approach will encourage constructive thinking about needed changes so that community participation in the fair housing planning process will improve.

HUD Response: HUD notes that the AFFH rule states, at 24 CFR 5.158(a), that “To ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and

in the incorporation of the AFH into the consolidated plan, PHA Plan, and other required planning documents.” Further, program participants are directed to “employ communications means designed to reach the broadest audience.” 24 CFR .158(a). HUD appreciates the commenter’s suggestion to amend question 2, but declines to include such language in the question at this time. HUD notes, however, that the AFFH Rule Guidebook provides additional guidance about potential groups program participants may wish to specifically consult during the community participation process. HUD also acknowledges the suggestion about the low participation question, but declines to revise it at this time.

Integrate planning information in one system. Commenters requested that HUD develop an interface in the Integrated Disbursement and Information System (IDIS) so that grantees may efficiently transfer its Assessment Tool data into their Consolidated Plan and Annual Action Plans.

HUD Response: HUD understands the difficulty in having several different systems for grantees and will continue to evaluate the feasibility of combining systems or having systems connect to one another to pull information from one plan into a subsequent plan.

Undertake consultation with local practitioners. Commenters stated that before implementing the next version of the Local Government Assessment Tool, HUD should undertake consultation with local practitioners.

HUD Response: HUD appreciates this comment, and will seek opportunities in the future to use public feedback including from local government agencies in order to improve the effectiveness and utility and minimize burden of the assessment tool. Local governments are strongly encouraged to submit comments in response to this and other notices regarding assessment tools since that is the primary mechanism for providing feedback under the

Paperwork Reduction Act.

Remove list of Contributing Factors. A commenter stated that contributing factors should be removed from the tool because each entitlement jurisdiction should have the freedom to identify the contributing factors that are meaningful to their unique community. The commenter stated that by including this list, HUD introduces predisposed biases and assumes a Fair Housing Impact that may or may not exist. The commenter further stated that a mere correlation to contributing factors does not necessarily cause decreased access to opportunity.

HUD Response: HUD appreciates the commenter's view that local governments should have the freedom to identify contributing factors that are unique to their community. HUD notes that the list provided is of "potential" contributing factors only, and an option for "other" exists on that list. Program participants are encouraged to identify any other contributing factors that are unique to their communities. HUD provides the list of potential contributing factors, which consists of some of the most common contributing factors affecting fair housing issues, in an effort to reduce burden for program participants so that they do not need to come up with a list of factors on their own.

The tool does not address the Housing Choice Voucher (HCV) program. A commenter stated that the Assessment Tool leaves out any questions regarding the HCV program, which is a central part of the Section 8 Administrative plan. The commenter stated that the tool should be revised to include questions related to fair housing, including low payment standards, portability restrictions, inspection delays, refusal to extend search times, lack of notice to families of their choices, lack of assistance to families in locating housing in opportunity areas, and geographic concentration of apartment listings provided to HCV families by the PHA.

HUD Response: HUD appreciates the commenter's suggestion to include additional questions about the HCV program. HUD notes that there are certain questions that relate to the HCV program, however, the issues the commenter raises are addressed through contributing factors, as opposed to individual questions in the Assessment Tool. HUD notes that the descriptions of a number of contributing factors highlight the issues raised by the commenter. In order to not impose additional burden on program participants, HUD declines to add specific questions at this time.

It is not clear how the Assessment Tool addresses homelessness. A commenter stated that many of the issues asked in the Assessment Tool also affect the homeless population, which is made up of persons in protected classes. The commenter stated the section on disproportionate housing needs should include data and analysis on the population of people experiencing homelessness that are currently unhoused. The commenter asked that HUD include "access to public space for people experiencing homelessness" as a contributing factor throughout the assessment. The commenter further stated that laws that criminalize homelessness or otherwise burden the use or access to public space for those without shelter or housing have a deleterious and segregative impact on living patterns and fair housing opportunity that is not captured in any of the other contributing factors. The commenter stated that HUD should specifically reference laws that have the effect of restricting or allowing provision of services to persons experiencing homelessness (including transitional shelters, day shelters, soup kitchens, or other provision of services) in the definitions of "land use and zoning laws" as well as "occupancy codes and restrictions." The commenter suggested, alternatively, that HUD could create a factor that mirrors "regulatory barriers to providing housing and supportive services for persons with disabilities," which appears to serve the same purpose

with respect to the fair housing analysis, but for persons with disabilities as opposed to those experiencing homelessness.

HUD Response: HUD appreciates this suggestion and has added language to the instructions relating to the use of local data and local knowledge with respect to homelessness, and added to the description of the contributing factors of “Land use and zoning laws” and “Occupancy codes and restrictions.” The addition to the “Land use and zoning laws” description provides, “Restriction of provision of housing or services to persons experiencing homelessness, such as limiting transitional shelters, day shelters, soup kitchens, the provision of other services, or limitations on homeless persons’ access areas that are open to the public (e.g. anti-loitering or nuisance ordinances).” and the addition to the “Occupancy codes and restrictions” descriptions provides, “Restriction of provision of services to persons experiencing homelessness, such as limiting transitional shelters, day shelters, soup kitchens, or other provision of services.” HUD has also noted in the instructions for the Disproportionate Housing Needs section that the HUD-provided data do not include data on persons experiencing homelessness. HUD notes that such data is available from a variety of sources and the analysis relating to disproportionate housing needs may benefit from the use of local data and local knowledge.

HUD further notes that consolidated planning requires an assessment of homeless needs, facilities and services, and a strategy for addressing homelessness.

Include availability of housing at different affordability levels. A few commenters stated that the availability of housing at different affordability levels needs to be included in the definitions of the contributing factors of “location and type of affordable housing” and “availability of affordable units in a range of sizes.” The commenters stated that it should be

part of the analysis of restrictions placed on affordable housing through other contributing factors, including but not limited to “land use and zoning laws” and “occupancy codes and restrictions.” The commenter stated that the current description of “Land Use and Zoning Laws” lists “[i]nclusionary zoning practices that mandate or incentivize the creation of affordable units,” and instead the words “lack of” should be added to the very beginning of the description as inclusionary zoning is a tool with the potential to expand access for low-income families who seek to move to lower-poverty.

HUD Response: HUD notes that the contributing factor of “Location and type of affordable housing” does include the concept of different levels of affordability. HUD specifically notes that “What is ‘affordable’ varies by circumstance...” HUD has added “lack of” prior to the bullet point in the description of “Land use and zoning laws” that reads “Inclusionary zoning practices that mandate or incentivize the creation of affordable units.”

The tool should address sex discrimination. A few commenters stated that the tool does not mention any questions or prompting related to sex discrimination, and stated that there are several groups that suffer under sex discrimination, such as domestic violence survivors, members of the LGBT community, and victims of sexual harassment. The commenters stated that there are no questions in the tool that directly prompt the jurisdiction to consider barriers to fair housing choice and opportunity for these populations, and that there are no questions that focus on how sexual harassment creates barriers to fair housing choice. The commenters recommended that local nuisance ordinances that negatively impact crime victims be specifically addressed in the AFFH certification process and Local Government Assessment Tool to ensure that meaningful actions are taken on the front end to avoid sex discrimination violations of the Fair Housing Act. The commenters stated that there are policies that

penalize property owners based on the number of times police are called, crime victims, including domestic violence victims, have been evicted, threatened with eviction, and denied housing because of calls to the police for domestic violence incidents. The commenters stated that the repeal or modification of such laws and policies should be a component of the Fair Housing Goals and Priorities.

HUD Response: HUD appreciates these commenters suggestions and notes that “sex” is one of the protected characteristics under the Fair Housing Act that must be analyzed in the AFH. HUD notes that there are two tables included in the AFFHT that include data relating to sex. Those tables are Table 1 and Table 2, which provide demographic data for the jurisdiction and region. Table 1 provides demographic data from 2010, while Table 2 provides demographic data for 1990, 2000, and 2010 in order to evaluate trends over time. There are several contributing factors listed in the Assessment Tool that speak to the issues raised by these commenters. For example, the description of the contributing factor or “Lack of state or local fair housing laws,” includes protections based on sexual orientation and survivors of domestic violence. HUD has also added a potential contributing factor of “Lack of housing support for victims of sexual harassment, including victims of domestic violence” to the Disparities in Access to Opportunity Section of the Assessment Tool.

The impediments highlighted by the Government Accountability Office (GAO) are outside of a grantee’s control. A GAO analysis of 30 Analyses of Impediments (AIs) highlighted the most common impediments to fair housing choice: zoning and site selection, inadequate public services in low- and moderate-income areas, less favorable mortgage terms from private lenders, and lack of information about fair housing rights and responsibilities (GAO, 2010). Some commenters stated that these common impediments are outside of the local

government's control. The commenter stated that local governments generally do not have the authority to require a change in zoning or site selection (other than site selection with projects it has funded, which is very small compared to the private market). The commenter stated that the one impediment that the commenter can focus on is access to information about fair housing rights and responsibilities.

HUD Response: Program participants covered by the AFFH rule have both an obligation to comply with the regulation and to affirmatively further fair housing under the Fair Housing Act. *See* 24 CFR 5.150-5.180; 42 U.S.C. 3608(d), (e). One of the primary purposes of the Assessment Tool is to consider a wide range of policies, practices, and activities underway in a program participant's jurisdiction and region and to consider how its policies, practices, or activities may facilitate or present barriers to fair housing choice and access to opportunity, and to further consider actions that a program participant may take to overcome such barriers. HUD is aware that program participants may be limited in the actions that they can take to overcome barriers to fair housing choice and that the AFH process does not mandate specific outcomes. However, that does not mean that no actions can be taken, or that program participants should not strive to overcome barriers to fair housing choice or disparities in access to opportunity.

HUD needs to provide more guidance. A commenter stated that HUD has provided extremely little technical guidance, the commenter seeks technical guidance on the role of HUD's Office of General Counsel in the AFH process, and the expectation of HUD's Office of Fair Housing and Equal Opportunity in reviewing the assessments, what the impact is on the community if the plan is rejected and the community's recourse, and best practices. The commenter requested that HUD provides sample documents such as request for proposals (RFP) language

for those seeking consultants and Memorandums of Understandings between collaborators.

HUD Response: HUD will continue to provide guidance relating to the AFFH rule and the AFH. HUD recently released a new guidance document titled, “Guidance on HUD’s Review of Assessments of Fair Housing (AFH),” and is available at

<https://www.hudexchange.info/resource/5069/guidance-on-huds-review-of-assessments-of-fair-housing-afh/>.

Comment: Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs). R/ECAPs.

One commenter noted several concerns with HUD’s definition of R/ECAPs including both the 50 percent minority threshold and the alternate poverty threshold (three times the CBSA poverty rate when this is lower than 40 percent poverty). As to the 50 percent minority threshold, the commenter noted that in majority-minority jurisdictions, that tracts that could be considered integrated based on an even distribution of the jurisdiction’s demographic makeup, would still meet the R/ECAP threshold for minority concentration. Regarding the alternative poverty rate measure the commenter noted that HUD’s approach may deviate from the body of evidence on concentrated poverty. The commenter also recommended that both minority population and poverty rate measures should be considered separately and not combined.

HUD Response: HUD thanks the commenter for this feedback. While HUD is declining to adopt changes to the R/ECAP thresholds and methodology at time, it should be noted that program participants are allowed and encouraged to provide any useful additional information, explanation or analysis in their AFH submissions. For instance, an agency in a majority-minority jurisdiction should note this in its analysis of segregation and R/ECAPs. Similarly, an agency in a jurisdiction where HUD’s R/ECAP calculation uses the alternative

measure to the 40 percent of poverty threshold may make note of this and provide any pertinent discussion of its actual local poverty rate and how that affects how many tracts reflect either of the poverty rate measures (i.e. how many meet 40 percent of poverty compared to the R/ECAPs shown in the HUD provided data). R/ECAP analysis should also be accompanied by discussion of qualitative factors including local knowledge on neighborhood conditions that are not apparent from the baseline HUD-provided data. Such qualitative discussion may also include consideration of overall market and neighborhood conditions in R/ECAPs themselves or in the areas surrounding them (e.g. are such areas experiencing economic improvements or whether they have access to opportunity assets) or whether they may be immigrant communities with assets or social networks that may not be apparent from the HUD data alone.

Comments in Response to HUD Specific Issues for Comment

As noted earlier, HUD solicited comment on 6 specific issues.

The first five specific issues for which HUD requested public feedback related to the HUD-provided data. These questions were:

1. Should R/ECAPs be amended to exclude college students from the calculation of poverty rate?
2. Should HUD provide additional data on homeownership and rental housing, including maps and tables (e.g. data on percent of owner and renter occupied housing by area, maps showing patterns of home ownership and renter occupied housing together with demographics of race/ethnicity, and homeownership/rental rates by protected class group)?
3. Are there changes or improvements that can be made to the Opportunity Index measures? For example, should HUD include additional national data related to schools and education? Should HUD change the variables included in the Labor Market Engagement Index? Are there

changes to the transportation indices (currently Transit Trips and Low Transportation Costs) that can be made to better inform a fair housing analysis of *transportation access and whether* transportation provides access to areas of opportunity? Should HUD adjust the Environmental Health Index with new variables and/or a revised formula?

4. Should HUD add Home Mortgage Disclosure Act (HMDA) data to inform a fair housing analysis of lending practices and trends? Which types of HMDA data would be most useful (e.g., loan origination data, data on conventional loans compared to FHA loans, etc.)?
5. Should HUD distinguish between 9 percent and 4 percent tax credits in the Low-Income Housing Tax Credit (LIHTC) data being provided, including in maps of development locations?

Comments: HUD received numerous comments related to these specific questions as well as to more general comments on the HUD-provided data overall and to the AFFH Data and Mapping Tool.

Numerous comments were received on the specific data related questions that HUD included in the 60-Day PRA Notice. These included numerous comments on the opportunity indices, additional data to consider adding to the Data and Mapping Tool, and suggestions for improving the methodology used for some of the components on the data provided.

Commenters expressed concern that the analysis of HUD-provided data will require a high level of expertise that may not be available to localities given their limited budgets. Some commenters expressed concerns with the data in terms of being the most current available.

Numerous comments provided suggestions for improving the Data and Mapping Tool's functionality including items such as visual display of the maps and providing users with more options in terms of turning on and off layers of data. Many comments expressed

concerns with the complexity of the data being provided and limited ability of program participant staff to understand and assess the information.

HUD Response: HUD appreciates the valuable feedback provided by public commenters on the questions relating to the HUD-provided data and the HUD AFFH Data and Mapping Tool. At this time, HUD has determined that it will be adding additional data on homeownership and rental housing. This data will include maps showing the percent (rate) of owner-occupied and renter-occupied housing by census tract. It will also include a table showing rate of owner-occupied and renter occupied housing by race/ethnicity group at the jurisdiction and region levels. HUD is also considering adding rental housing affordability data for the purpose of facilitating analysis in the PHA Assessment Tool. This new data will facilitate the AFFH analysis, including for existing questions on these topics that were previously included in the assessment tool as published on 12/31/2016.

The comments that were received on the specific questions that HUD included in the 60-Day PRA Notice included numerous substantive and informed suggestions and recommendations. These comments will prove invaluable to helping improve the HUD-provided data, including the opportunity indices, the underlying methodology for many elements and other potential data sources that may be provided in the future. The comments and recommendations will help improve the data being provided to better assist program participants and facilitate their assessments of fair housing.

The Department is taking comments into consideration for making additional improvements to the AFFH Data and Mapping Tool for the benefit of grantees and the public. Many of the comments will prove useful in making further refinements and improvements to the Data and Mapping Tool over time.

HUD is also committed to providing data in a readily understandable manner for the lay user. HUD does not expect program participants to hire statisticians or data experts to utilize the HUD-provided data. HUD has provided several resources to assist program participants and the public in using the HUD-provided data, including webinars, fact sheets, and user guides. HUD has further committed to addressing program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process. The AFFH Rule Guidebook is available at <https://www.hudexchange.info/resource/4866/affh-rule-guidebook/>.

With regard to comments on the frequency of HUD updates to the data provided, HUD expects to update the data provided in the data and mapping tool (AFFHT) on an ongoing basis as is feasible. HUD will provide notification to the public and program participants when such updates occur on the HUD Exchange.

In addition, HUD intends to add additional data resources to the AFFH Data and Mapping Tool which would be optional for grantees to use as supplemental information and would not require a specific response within the assessment tool. This will add flexibility for HUD to make improvements over time and provide grantees access to additional data directly through the AFFH Data and Mapping Tool portal that they may choose to consider or adopt as they complete their Assessment of Fair Housing.

With regards to providing LIHTC data distinguishing between 4 percent and 9 percent tax credits, HUD will consider options for providing this data in the future. HUD reiterates its acknowledgement of the different policy considerations that should be taken into account, particularly as regards the use of 4 percent tax credits for rehabilitation and preservation of the existing affordable housing stock.

Comment: Several comments were received on the Environmentally Healthy Neighborhoods Index. These comments included suggestions for other environmental related issues that should be captured in the assessment tool.

HUD Response: HUD will take all comments on the opportunity indices under consideration. HUD also notes that many of the other environmental-related issues are captured in the descriptions of the various potential contributing factors in the Disparities in Access to Opportunity section of the Assessment Tool. For example, “Lack of public investment in specific neighborhoods, including services and amenities,” is described as follows: “The term “public investment” refers here to the money government spends on housing and community development, including public facilities, infrastructure, and services. Services and amenities refer to services and amenities provided by local or state governments. These services often include sanitation, water, streets, schools, emergency services, social services, parks and transportation. Lack of or disparities in the provision of municipal and state services and amenities have an impact on housing choice and the quality of communities. Inequalities can include, but are not limited to disparity in physical infrastructure (such as whether or not roads are paved or sidewalks are provided and kept up); differences in access to water or sewer lines, trash pickup, or snow plowing. Amenities can include, but are not limited to recreational facilities, libraries, and parks. Variance in the comparative quality and array of municipal and state services across neighborhoods impacts fair housing choice.” HUD also notes in response to the issue of cost of water and sanitation services that the data provided for housing cost burden includes the cost of utilities. In addition to the specific questions relating to data issues, HUD also solicited public feedback on the following specific question: Should HUD make any other changes to the

Local Government Assessment Tool to facilitate joint or regional collaboration or facilitate a meaningful fair housing analysis and priority and goal setting?

Comments: A few commenters responded to this question stating no – that collaboration needs time to form on its own, and that pushing grantees towards collaboration is not helpful or useful. The commenters stated that, in particular, first round grantees will have little time to focus on collaboration, and regionalism is not related to the courts disparate impact decision. The commenters stated that regional collaboration means more centralized government planning and reduction of local government authority. The commenters stated that, at this stage, HUD should refrain from pushing grantees to collaborate without additional time to absorb the requirements of the tool. The commenters stated that HUD has still not provided concrete guidance on what a collaboration would look like and how a collaboration would take “meaningful actions” to further its goals identified in the AFH, and stated that commenters need this guidance. Another commenter cautioned that requirements for collaboration should not result in bias against individual plans.

Other commenters stated that requirement for a regional analysis should be made optional, and stated that it will only be important for those jurisdictions that choose to collaborate on a regional plan, and only increases administrative burden on those who complete their plan independently. The commenters suggested that the tool include some questions specifically focused on collaboration so that grantees will have some idea of HUD’s expectations regarding collaboration.

A commenter stated that for collaborations between PHAs and cities dual data sets are sometimes not available. In a similar vein, a commenter stated that there will be issues with tracking school age children with collaborations between PHAs and cities because each use

different mechanisms to track such children what with all the different schooling options (public, private, charter, etc.). The commenter recommended HUD reconsider the approach to overlaying education and housing data to facilitate data collection for a meaningful AFH in this type of collaboration.

Another commenter recommended that for jurisdictions coming together in a regional collaboration, a supplemental section to be completed separately by each jurisdiction in the regional AFH, that indicates that jurisdiction's role in the fair housing issues identified, and specific goals that each jurisdiction can take to contribute to the regional goals identified in the regional AFH.

Some commenters were concerned about the lists of potential contributing factors, stating that by including this list, HUD introduces predisposed biases and assumes a Fair Housing Impact that may or may not exist. A mere correlation to contributing factors does not necessarily cause decreased access to opportunity.

A commenter stated that the Local Government Assessment Tool should be conformed to the PHA Assessment Tool. The commenter stated that if a local government takes the lead in a regional consortium, or with its local PHA, it will undermine the assessment if detailed PHA analyses are omitted from the form. The commenter stated that the Local Government Tool should also contain data from the State tool such as details on the LIHTC program, and questions on disparities related to public health services and public safety.

HUD Response: The benefits of joint collaboration include a joint assessment of their shared issues and potentially for establishing shared goals leading to better coordination of program activities for the benefit of program recipients and overcoming the effects of fair housing issues. In addition, the experience of collaborating on the analysis and other parts

of the assessment itself can provide ongoing benefits over time, as different types of housing and community development agencies work together in different contexts. HUD notes that it has added “inserts” in order to help facilitate collaborations among different types of program participants. HUD specifically solicits comments below, related to this newly added content of the Assessment Tool.

As HUD has stated in previous notices, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including for States and Insular Areas, and for PHAs not submitting an AFH in a joint or regional collaboration with a local government. In addition, HUD has stated that the basic structure of the Assessment Tool for Local Governments would be illustrative of the questions that will be asked of all program participants. *See* 80 FR 42,109 (July 16, 2015).

V. Overview of Information Collection

Under the PRA, HUD is required to report the following:

Title of Proposal: Assessment of FairHousing Tool

OMB Control Number, if applicable: 2529-0054

Description of the need for the information and proposed use: The purpose of HUD’s Affirmatively Furthering Fair Housing (AFFH) final rule is to provide HUD program participants with a more effective approach to fair housing planning so that they are better able to meet their statutory duty to affirmatively further fair housing. In this regard, the final rule requires HUD program participants to conduct and submit an AFH. In the AFH, program participants must identify and evaluate fair housing issues, and factors significantly contributing to fair housing issues (contributing factors) in the program participant’s jurisdiction and region.

The Assessment Tool is the standardized document designed to aid program participants in conducting the required assessment of fair housing issues and contributing factors and priority and goal setting. The Assessment Tool asks a series of questions that program participants must respond to in carrying out an assessment of fair housing issues and contributing factors, and setting meaningful fair housing goals and priorities to overcome them.

Agency form numbers, if applicable: Not applicable

Members of affected public: As noted earlier in this document, local governments that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD when conducting and submitting their own AFH, and any PHAs that choose to partner with such local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.

Please see table below.

REPORTING AND RECORDKEEPING BURDEN

	Number of respondents *	Number of responses per respondent	Frequency of response **	Estimated average time for requirement (in hours)	Estimated burden (in hours)
CFR Section Reference: § 5.154(d) (Assessment of Fair Housing).	2,294 total entities (1,194 Entitlement Jurisdictions and approximately 1,100 PHAs) *	1	Once every five years (or three years in the case of 3- Year Consolidated Plans) **		
Entitlement Jurisdiction	1,194			240 ***	286,560

PHAs	1,100			120 ****	132,000
Total	2,294				418,560

* This template is primarily designed for local government program participants, of which there are approximately 1,194, and PHAs seeking to join with local governments on a jointly submitted AFH. The estimate of 1,100 PHA joint partners is a modest decrease from the previous estimate of 1,314 PHAs that was included in the 60-Day PRA Notice. This change is discussed in more detail below.

There are 3,942 PHAs, and HUD estimates that approximately 1,100 of PHAs may seek to join with a local government and submit a joint AFH. The Total Number of responses for local government entitlement jurisdictions includes all 1,194 such agencies. The total hours and burden are based on the total estimated number of both types of program participants and the “estimated average time” listed for type of program participant.

** The timing of submission depends upon whether a local government program participant submits its consolidated plan every 3 years or every 5 years.

*** The estimate of 240 hours is an average across all local government program participants, with some having either higher or lower actual burden.

**** PHAs participating in joint submissions using the Assessment Tool under this notice are assumed to have some fixed costs, including staff training, conducting community participation costs, but reduced costs for conducting the analysis in the assessment itself.

Comparison of Burden Estimate with Estimate from the 60-Day Notice

The total estimated burden of 418,560 hours is a reduction from the estimate of 444,240

total hours that was included in the 60-Day PRA Notice for this assessment tool. All of the reduction is attributable to a revision of the estimate of the number of public housing agencies that are estimated to enter into joint partnerships using this tool, rather than any revision in the estimated burden to be incurred by individual agencies using the tool.

This revision is discussed in more detail below.

Note on Costs for Smaller Agencies

HUD acknowledges that actual participation in joint and regional partnerships may differ from these initial estimates and may vary according to a variety of factors such as the availability of local or state agency potential joint participants. For more information on the range of costs, see the Regulatory Impact Analysis that was issued by HUD to accompany the AFFH Proposed Rule. (Available at https://www.huduser.gov/portal/publications/pdf/FR-5173-P-01_Affirmatively_Furthering_Fair_Housing_RIA.pdf)

Smaller agencies are estimated to have lower costs, based on both the required scope of analysis and scope of their responsibilities and program resources. All agencies however will have some fixed costs, including for training for staff and conducting community participation. HUD will continue to provide additional assistance including training materials, resources and opportunities. HUD's goal is to help agencies in meeting the goal of affirmatively furthering fair housing.

HUD reiterates the commitment it made in the December 31, 2015 Notice announcing the initial one-year implementation period for the local government assessment tool, to:

“[further address] program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process.”

HUD has also added a significant new option that is intended to reduce burden for smaller consolidated planning agencies while assisting them in affirmatively furthering fair housing. This is the streamlined assessment “insert” for local government agencies that choose to partner with another local government acting as a lead entity for a joint or regional partnership. For purposes of estimating burden hours, all local government agencies, including those that might use this new streamlined “insert” assessment, are included in the overall average burden estimate applied to all 1,194 consolidated planning agencies. Smaller local governments are already estimated to have lower costs within that average to complete an assessment.

Joint and Regional Cooperation

As mission-dedicated public agencies, all types of housing and community development agencies share a common purpose in providing affordable housing to families and individuals most in need and improving neighborhoods and communities. While HUD recognizes that there may be some benefit to agencies in terms of cost sharing to complete planning requirements, HUD acknowledges that the primary benefits of joint participation may likely not be directly related to such administrative considerations. Indeed, cross-agency collaboration entails its own costs, including additional staff time for communication and coordination. Rather, the benefits are more likely to result from identifying common shared issues, contributing factors, concerns, obstacles, goals, and strategies and actions, in order to better meet their shared mission and improve program outcomes. Some objectives may also be better met through coordinating program activities and impact across jurisdictional boundaries. There may also be other indirect benefits from interagency coordination and communication and information sharing that are not easily

quantified.

Explanation of Revision in PHA Participation Estimates

HUD is including the following information in the 30-Day PRA Notices for all three of the assessment tools that are currently undergoing public notice and comment. The information is intended to facilitate public review of HUD's burden estimates.

HUD is revising its burden estimates for PHAs, including how many agencies will join with other entities (i.e. with State agencies, local governments, or with other PHAs), from the initial estimates included in the 60-Day PRA Notices for the three assessment tools.

These revisions are based on several key changes and considerations:

- 1) HUD has added new option for QPHAs, to match the approach already presented in the State Assessment Tool as issued for the 60-Day PRA Notice, to facilitate joint partnerships with Local Governments or other PHAs using a streamlined "insert" assessment. Using this option, it is expected that the analysis of the QPHA's region would be met by the overall AFH submission, provided the QPHA's service area is within the jurisdictional and regional scope of the local government's Assessment of Fair Housing, with the QPHA responsible for answering the specific questions for its own programs and service area included in the insert.
- 2) HUD's commitment to issuing a separate assessment tool specifically for QPHAs that will be issued using a separate public notice and comment Paperwork Reduction Act process. This QPHA assessment tool would be available as an option for these agencies to submit an AFH rather than using one of the other assessment tools. HUD assumes that many QPHAs would take advantage of this option, particularly those QPHAs that may not be able to enter into a joint or regional collaboration with another partner. HUD is

committing to working with QPHAs in the implementation of the AFFH Rule. This additional assessment tool to be developed by HUD with public input will be for use by QPHAs opting to submit an AFH on their own or with other QPHAs in a joint collaboration.

- 3) Public feedback received on all three assessment tools combined with refinements to the HUD burden estimate.

Based on these considerations, HUD has refined the estimate of PHAs that would be likely to enter into joint collaborations with potential lead entities. In general, PHAs are estimated to be most likely to partner with a local government, next most likely to join with another PHA and least likely to join with a State agency.

While all PHAs, regardless of size or location are able and encouraged to join with State agencies, for purposes of estimating burden hours, the PHAs that are assumed to be most likely to partner with States are QPHAs that are located outside of CBSAs.

Under these assumptions, approximately one-third of QPHAs are estimated to use the QHPA template that will be developed by HUD specifically for their use (as lead entities and/or as joint participants), and approximately two-thirds are estimated to enter into joint partnerships using one of the QPHA streamlined assessment “inserts” available under the three existing tools. These estimates are outlined in the following table:

Overview of Estimated PHA Lead Entities and Joint Participant Collaborations

	QPHA outside CBSA	QPHA inside CBSA	PHA (non-Q)	Total
PHA Assessment Tool				
(PHA acting as lead entity)	x	x	814	814
joint partner using PHA template	x	300	100	400
Local Government Assessment Tool (# of PHA joint collaborations)	x	900	200	1,100
State Assessment Tool (# of PHA joint collaborations)	665	x	x	665
subtotal	665	1,200	1,114	
QPHA template	358	605		963
Total	1,023	1,805		3,942

Solicitation of Specific Comment on the Local Government Assessment Tool

HUD specifically requests comment on the following subject:

HUD has added the following new question (noted in underline)

“Are certain racial/ethnic groups more likely to be residing in one category of publicly supported housing than other categories (public housing, project-based Section 8, Other HUD Multifamily Assisted developments, and Housing Choice Voucher (HCV)) in the jurisdiction? Compare the racial/ethnic demographics of each category of publicly

supported housing for the jurisdiction to the demographics of the same category in the region.”

The proposed new question is designed to assist program participants in conducting a regional analysis of fair housing issues and contributing factors related to publicly supported housing to inform goal setting and fair housing planning. As a reminder, fair housing issues include segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. Questions are intended to help program participants analyze fair housing issues and the factors that play a significant role in contributing to them.

HUD seeks feedback on the utility of the proposed new question as well as any alternative proposals for analyzing fair housing issues and contributing factors using assisted housing tenant characteristics at a regional level.

HUD seeks to provide questions that will help program participants conduct a meaningful analysis of fair housing issues from a regional perspective to inform goal setting and effective fair housing planning. Commenters should bear in mind the HUD provided data for regional analysis are provided at the CBSA level.

Solicitation of Comment Required by the PRA

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool 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.
- (6) Whether the inclusion of the “inserts” for Qualified PHAs (QPHAs) and small program participants will facilitate collaboration between local governments and these program participants and whether these entities anticipate collaborating to conduct and submit a joint or regional AFH. Please note any changes to these inserts that a) would better facilitate collaboration; b) provide for a more robust and meaningful fair housing analysis; and c) encourage collaboration among these program participants that do not anticipate collaborating at this time.
- (7) Whether HUD’s change to the structure and content of the questions in the Disparities in Access to Opportunity section with respect to the protected class groups that program participants must analyze is sufficiently clear and will yield a meaningful fair housing analysis. Additionally, HUD specifically solicits comment on whether an appropriate fair housing analysis can and will be conducted if the other protected class groups are assessed only in the “Additional Information” question at the end of the section, as opposed to in each subsection and question in the larger Disparities in Access to Opportunity section. HUD also requests comment on whether it would be most efficient for program participants to have the protected class groups specified in each question in this section. If

so, please provide an explanation. Alternatively, HUD requests comment on whether each subsection within the Disparities in Access to Opportunity section should include an additional question related to disparities in access to the particular opportunity assessed based on all of the protected classes under the Fair Housing Act.

- (8) Whether HUD should include any other contributing factors or amend any of the descriptions of the contributing factors to more accurately assess fair housing issues affecting program participants' jurisdictions and regions. 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 30 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-10-A).

HUD encourages interested parties to submit comment in response to these questions.

Dated: August 17, 2016

Inez C. Downs
Department Reports Management Officer
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