



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

Affirmatively Furthering Fair Housing: Announcement of Renewal of Approval of the Assessment Tool for Local Governments

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

ACTION: Notice.

SUMMARY: This notice announces that the Office of Management and Budget (OMB) has approved HUD's request to renew for approval under the Paperwork Reduction Act (PRA), 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). This Assessment Tool, referred to as the Local Government Assessment Tool, is used 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, including qualified PHAs (QPHAs); and (3) other collaborations in which such a local government is designated as the lead for the collaboration. Through the notice and comment process required by the PRA, HUD did make changes to the Local Government Assessment Tool approved by OMB in 2015. HUD's webpage at <https://www.hudexchange.info/programs/affh/> highlights the differences between the 2015 Local Government Assessment Tool and this 2016 Local Government Assessment

Tool. This notice also highlights significant issues raised by commenters on the 30-day notice published in the Federal Register on August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Krista Mills, Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5246, Washington, D.C. 20410; telephone number 866-234-2689 (toll-free) or 202-402-1432 (local). Individuals who are deaf or hard of hearing and individuals with 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 July 16, 2015, at 80 FR 42357, HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule. The AFFH final rule provides HUD program participants with a new approach for planning for fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing as required by the Fair Housing Act. To assist HUD program participants in improving planning to achieve meaningful fair housing outcomes, the new approach involves an “assessment tool” for use in completing the regulatory requirement to conduct an assessment of fair housing (AFH) as set out in the AFFH rule. Because of the variations in the HUD program participants subject to the AFFH rule, HUD has developed three separate assessment tools: one for local governments, which is the subject of this notice, the Local Government Assessment Tool; one for public housing agencies (PHAs), the PHA Assessment Tool; and one for States and Insular Areas, the

State and Insular Areas Assessment Tool. HUD is currently developing all tools to allow for a joint or regional collaboration with local governments of all sizes and public housing agencies. All three assessments tools, because they are information collection documents, are required to undergo the PRA notice and comment process. HUD has also committed to developing a fourth Assessment Tool specifically for use by QPHAs who choose to conduct and submit an individual AFH or that collaborate with other QPHAs to conduct and submit a joint AFH.

II. Local Government Assessment Tool

A. The PRA Process

The Local Government Assessment Tool was approved by OMB under the Paperwork Reduction Act (PRA) in December 2015, and HUD announced the approval of this tool and the availability of its use by notice published in the Federal Register on December 31, 2015, at 80 FR 81840. The Local Government Assessment Tool was approved by OMB for a period of one year and in 2016, HUD began the process for renewal of 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.

On August 23, 2016, at 81 FR 57602, HUD published its 30-day notice under the

PRA. In the 30-day notice, HUD addressed the significant issues raised by the commenters on the 60-day notice. HUD received 28 public comments in response to the 30-day notice. HUD appreciates the comments received in response to the 30-day notice, and, in developing this final version of the Assessment Tool all comments were carefully considered. The significant issues commenters raised and HUD's responses to these issues are addressed in Section II.C. of this notice. All comments submitted on the August 23, 2016, notice can be found on www.regulations.gov at <https://www.regulations.gov/docketBrowser?rpp=50&so=ASC&sb=docId&po=0&dct=PS&D=HUD-2016-0090>.

In addition, and as noted earlier in this notice, HUD has posted on its website at http://www.huduser.gov/portal/affht_pt.html and <https://www.hudexchange.info/programs/affh/>, a comparison of the Local Government Assessment Tool approved by OMB in 2016 and that approved by OMB in 2015.

B. Differences in the Local Government Assessment in 2016

This section highlights the key changes between the approved 2015 Local Government Assessment Tool and this 2016 Local Government Assessment Tool that differ from the approved 2015 Local Government Assessment Tool. A comparison draft of the 2016 Local Government Assessment Tool to the 2015 Local Government Assessment Tool that shows all of the differences can be found at <https://www.hudexchange.info/programs/affh/>.¹ The following lists the more significant differences:

- The most significant difference between the 2016 and 2015 Assessment Tools is

¹ In addition to the redline/strikeout version of the assessment tool that provides a compare of the 2016 tool to the 2015 tool, HUD also provides at <https://www.hudexchange.info/programs/affh/> a redline/strikeout of the Assessment Tool that accompanied the 30-day PRA notice and this final version.

that in the 2016 Assessment Tool, HUD has included two inserts designed to facilitate collaboration between different types of program participants that choose to conduct a joint or regional AFH with a local government as the lead entity, and to reduce burden for smaller program participants choosing to enter into joint or regional collaborations.

- The first is an insert for use by PHAs with 1,250 or fewer units, which are PHAs with a combined unit total of 1,250 or fewer public housing units and Section 8 vouchers. PHAs that collaborate with local governments are still required to complete an analysis of their service area and region, as required by the AFFH rule, but the insert is designed to make the analysis less burdensome. For PHAs with service areas in the same core-based statistical area (CBSA) as the local government, the analysis required in the insert is intended to meet the requirements of a PHA service area analysis, and it is expected that the local government's analysis of the CBSA would satisfy the PHA's regional analysis. For PHAs whose service area extends beyond, or is outside of, the local government's CBSA, the analysis in the insert must cover the PHA's service area and region. See table below:

PHA Jurisdiction/Service Area	HUD-Provided Data for PHA Region
Metropolitan and Micropolitan (CBSA) PHAs: PHA jurisdiction/service area is located within a CBSA	Maps and Tables for the CBSA
Sub-County Rural PHAs: PHA jurisdiction/service area is outside of a	Tables for the county. Maps are available for the county and if patterns of segregation,

CBSA and smaller than a county	R/ECAPs, disparities in access to opportunity extend into a broader area, maps are also available to identify such patterns, trends, and issues.
County-Wide or Larger Rural PHAs²: PHA jurisdiction/service area is outside of a CBSA and boundaries are consistent with the county or larger	Tables include data for all contiguous non-CBSA counties, in the same state, and inclusive of the PHA's county (or counties). Maps are available for all counties and if patterns of segregation, R/ECAPs, disparities in access to opportunity extend into a broader area, maps are also available to identify such patterns, trends, and issues.
Statewide PHAs: The PHA's jurisdiction/service area is the State.	HUD will generally provide data consistent with that provided to the State. Maps may be used to analyze fair housing issues that extend beyond the state's borders, where applicable, but tables are provided with data within the state's borders.

- The second insert is for use by local government consolidated plan program participants that received a CDBG grant of \$500,000 or less, including HOME consortia whose members collectively received \$500,000 or less in CDBG funds or whose members received no CDBG funds, in the most recent fiscal year prior to the due date of the joint or regional AFH.
- The 2016 Assessment Tool emphasizes that the solicitation of information on whether there are any demographic trends, policies, or practices that could lead to higher segregation in the jurisdiction or region in the future, is not to be read as HUD seeking an inventory of local laws, policies or practices. A similar instruction has been added noting that the regional analysis across multiple

² HUD acknowledges that there are other PHAs, including regional PHAs, that may have differing or unique geographies from the categories in this table. HUD may provide data in the AFFH Data and Mapping Tool for such PHAs appropriate for their geographies based on administrative and data considerations. All program participants are required to conduct an analysis of their jurisdiction and region consistent with the AFFH Final Rule.

sections is not meant to be interpreted as an inventory of local policies and practices in all of the local governments throughout the region.

- In the Disparities in Access to Opportunity section of the 2016 Assessment Tool, HUD identifies where it provides data for each of the opportunity areas to be assessed, while the instructions make clear which protected class groups the HUD-provided data includes. HUD also clarifies which questions in the Disparities in Access to Opportunity section require a jurisdictional and regional analysis.
- In the Publicly Supported Housing analysis of the 2016 tool, HUD changed the list of contributing factors that may affect the jurisdiction and region that should be considered.
- In the Disability and Access analysis of the 2016 Assessment Tool, HUD clarifies that the analysis should cover both the jurisdiction and the region as identified in the Assessment Tool.
- The accompanying instructions have been revised to reflect the changes to questions in the Assessment Tool, changes made to the HUD-provided data, and to provide additional guidance to assist program participants in conducting the AFHs.

C. Responses to Significant Issues Raised by Public Commenters on the 30-Day Notice

1. Specific Questions Posed by HUD in the 30-Day Notice

In the 30-day notice, HUD posed a series of questions for which HUD specifically sought comment.

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.

In response to this question, there were commenters that stated completion of the Assessment Tool is not necessary for the proper performance of agency functions and will not have practical utility, because agencies must already comply with income deconcentration to help eliminate R/ECAPs, and that racial and ethnic concentrations are analyzed and measures taken to eliminate segregation. The commenters stated that for many small grantees, much of the collection of information will be superfluous and will have little utility because grantees do not have the resources or capacity to address issues identified in the analysis. The commenters stated that providing additional time and “inserts” to small CDBG grantees is an inadequate response to the burden. The commenters stated that AFH is a complicated and burdensome process, and HUD should have corrected deficiencies in the comparatively simple process for Analysis of Impediments. Commenter stated that submitters have the burden of analyzing a broad set of variables, many of which they have little or no control over, such as the regional analysis over territory where they do not exercise control. Core-based statistical areas (CBSAs) often cover multiple states/counties/jurisdictions/school districts/special districts—which include urban cores, inner and outer suburbs, exurban communities, and rural jurisdictions. The commenters stated that the analyses will be time-consuming, likely unsupported by data, and provide little benefit to the Fair Housing Act goals.

HUD Response: HUD continues to submit that the Assessment Tool has substantial utility for program participants in assessing fair housing issues, identifying

significant contributing factors, formulating meaningful fair housing goals, and ultimately meeting their obligation to affirmatively further fair housing. 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. The series of questions in the Assessment Tool enables program participants to perform a meaningful assessment of key fair housing issues and contributing factors and set meaningful fair housing goals and priorities. The Assessment Tool also clearly conveys the analysis of fair housing issues and contributing factors that program participants must undertake. In essence, HUD submits that the Assessment Tool, and the entire AFH approach, better implements the AFFH mandate under the Fair Housing Act.

In terms of resource limitations, HUD is aware that program participants may be limited in the actions that they can take to overcome barriers to fair housing choice and notes 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 first understand the fair housing issues facing their communities and then work to overcome barriers to fair housing choice or disparities in access to opportunity. HUD has issued guidance on how program participants may establish appropriate goals pertaining to outreach, collaboration, etc. to address contributing factors and fair housing issues that are beyond their direct control or expertise. HUD has added clarifying instructions regarding prioritization of contributing factors and setting goals, consistent with the

AFFH Final Rule and AFFH-related guidance. These edits state that, “Program participants have discretion, within the requirements of the AFFH Rule, to analyze and interpret data and information, identify significant contributing factors, and set goals and priorities using the Assessment Tools provided by HUD. As more fully discussed in the guidance on HUD’s review of AFHs, HUD will consider local context and the resources the program participant has available.”

HUD has also made key changes to the instructions to clarify issues raised by the commenters including the scale and scope of the analysis that is required. These clarifications include that, “The questions in the Assessment Tool are written broadly by HUD to enable program participants in many different parts of the country to identify the fair housing issues that are present in their jurisdictions and regions.” These and similar clarifications are intended to note that the Assessment Tool is intended to be scalable to meet the needs of a wide variety of different local governments and potential joint and regional partners. Program participants may choose to set goals and priorities based on the level of impact they can have; for example, whether the goal will have a greater impact in the short-term versus the long-term, or vice versa. HUD also recognizes that efforts involving the need for cooperation between different agencies or between different local governments may often be dependent on having effective intergovernmental coordination.

The AFH planning framework, including prioritization of significant contributing factors and setting goals allows for program participants to match goals and policy options to different local circumstances and the different types of fair housing issues communities face. For instance, different approaches and goals may be needed in high

cost versus low cost markets, housing markets with higher vacancy versus lower vacancy rates, in areas with different patterns of single family versus mixed use development, or in areas experiencing economic or population growth versus longer-term decline.

Applying place-based, mobility, preservation and rehabilitation or incentives for new construction, affordable rental or single family approaches may be appropriate as described in the balanced approach and depending on fair housing issues and related contributing factors as identified in the AFH. The AFFH process also envisions the possibility of adopting innovative and experimental goals and priorities as a way of attempting different approaches that may yield positive fair housing outcomes.

With respect to smaller program participants, HUD continues to strive to find ways to better enable these entities to comply with their obligation to affirmatively further fair housing while recognizing their resource limitations.

In this regard, HUD published a notice in the Federal Register on October 24, 2016, at 81 FR. 73129, in which HUD announced that it moved the AFH submission deadline for grantees that receive less than \$500,000 in CDBG who would otherwise be due to submit based on the program year that begins on or after January 1, 2018, for which a new 3 to 5-year consolidated plan is due, to the program year that begins on or after January 1, 2019, for which a new 3 to 5-year consolidated plan is due. HUD believes that the one-year delay in the submission deadline will not only help program participants that receive smaller CDBG grants, but will give HUD additional time to find ways to reduce burden for program participants that receive relatively small CDBG grants, as well as for qualified public housing agencies (QPHAs) that will also begin submitting based on their first planning cycle beginning on or after January 1, 2019.

2. The accuracy of the agency's estimate of the burden of the proposed collection of information.

Several commenters stated that they could not advise whether HUD's estimate of 240 hours is accurate, but that they could advise that completion of the assessment tool is an insurmountable financial and physical burden, especially because the consolidated planning process immediately follows. A few commenters stated they had to hire consultants to do their 2015 consolidated plan (using city money, because they would have gone over the 20 percent cap using CDBG money); listed salaries and other costs. Other commenters stated that it is difficult to know what the burden will be, as administrative burdens have been doubled for early submitters because training is just now being offered and changes to the tool have been issued while participants are doing the assessments. A commenter stated that large local governments and joint/regional AFHs cannot quantify the amount of community engagement required.

Other commenters stated that the estimate of 240 hours is too low. A commenter stated that HUD's estimate is "grossly underestimated," particularly for participants that have not previously completed robust AIs. Another commenter stated that the 240 hour estimate is inadequate, due to the time required to plan and run public meetings, translate notices, interpret information; obtain and analyze supplementary data that is not included in the tool; and to review and to coordinate with several city departments, other cities in the region, the county, and the housing authority. A commenter stated that one grantee documented over 600 staff hours, and another documented 250 hours solely for community engagement. Another commenter adds that grantee staff cannot complete the AFH due to other required reports and administrative duties associated with the CDBG

program—Citizen Participation Plan, 5-Year Consolidated Plan, Annual Action Plan, Semi-Annual Labor Reports, Consolidated Annual Performance and Evaluation Report (CAPER), quarterly financial reports, Section 3 reporting, Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) report, Integrated Disbursement and Information System (IDIS) input and environmental review for each activity, sub-recipient monitoring, Federal Funding Accountability and Transparency Act (FFATA), Central Contractor Registration (CCR)/Data Universal Numbering System (DUNS), Davis-Bacon, OMB directives, and Office of Inspector General (OIG) Bulletins.

A commenter stated that the estimate should be revised after participants complete AFHs. Another commenter stated that the AFH should ask grantees to track the hours and cost for preparing the AFH.

HUD Response: HUD appreciates the comments provided on HUD's burden estimate. HUD agrees with the commenter that a more accurate estimate of the time and cost involved in preparing the AFH may not be known until program participants submit their AFHs. HUD also appreciates the suggestion made by the commenter that the AFH should ask grantees to advise of hours and costs involved in preparing their AFH. HUD intends to also continue to monitor and assess the impact and burden of implementation of the AFH process on program participants, including on the range of different fair housing outcomes.

3. Ways to enhance the quality, utility, and clarity of the information to be collected.

Commenters stated that in the segregation section, participants are asked to identify areas in the jurisdiction and region that are segregated and integrated, and

referred to Table 3 (dissimilarity index). The commenters stated that the dissimilarity index calculates values for the jurisdiction and region as a whole, does not indicate spatial patterns, and provides no values for areas within the jurisdiction and region. The commenters asked that HUD make available values for each jurisdiction within the region and a comparison. The commenters stated that the segregation section asks for tenure data, which is not provided. The commenters stated that tract-by-tract tenure data is available on HUD's Comprehensive Housing Affordability Strategy (CHAS) site but is unlikely to be accessed unless it is part of the data for which HUD requires consideration.

Commenters stated that gaps in HUD-provided data will impede assessment of needs of individuals with disabilities. Specifically, HUD should provide Federal data from (1) the Money Follows the Person program, and the Medicaid home and community-based waiver programs and options from the Center for Medicare and Medicaid Services (CMS); (2) data on persons with disabilities living in nursing facilities and intermediate care facilities for individuals with development disabilities from CMS (including data about answers by individuals in nursing facilities to a question about whether they want to leave the facility and return to the community); and (3) data on people with disabilities experiencing homelessness (from the HUD Homeless Management Information System (HMIS) and/or Annual Homeless Assessment Report (AHAR) databases). The commenters stated that despite the lack of uniform data about people with disabilities, the lack of data is not a reason to exclude consideration of the information. One of the commenters stated that the data provided on persons with disabilities should be further broken down by income and renter status. Another commenter stated that if HUD is unable to provide data on access issues for people with

disabilities, and local data is unavailable, this analysis should not be required.

Other commenters stated that the focus on R/ECAPs is misplaced without similar analysis of areas of concentrated white affluence; that identifying these areas and factors contributing to their creation and perpetuation is important to further fair housing, address segregation, and promote mobility.

Another commenter stated that HUD should explore the possibility of including more questions that would prompt a discussion within communities and regions that may have considerable concentrations of wealth, but low instances of integration, to better facilitate goal-setting for purposes of expanding fair housing choice for members of protected class groups.

Another commenter stated that HUD should provide data underlying maps as maps can help spot issues but the maps are worthless for making objective, quantitative comparisons. A commenter stated that in the disproportionate housing needs section, Tables 9 and 10 contain no data for areas within the jurisdiction and the maps are useless for quantitative analysis. The commenter stated that HUD should provide tables underlying every map. Another commenter stated that HUD's failure to provide a data mapping tool for housing authorities means that participants may need to decide whether to collaborate without adequate information, as the map examples are insufficient.

A commenter suggested that HUD provide grantees with proposed assessments that they may accept or modify to develop locally tailored approach to affirmatively further fair housing. Another commenter stated that "region" must be better defined. The commenter added that although regional assessment is a core element of the assessment, this assessment using existing HUD data will be difficult, and that it is unclear what is

required, and should be optional.

HUD Response: HUD appreciates the suggestions of the commenters. The 2016 Assessment Tool addresses some of these concerns, but not all at this time. In the 2016 Assessment Tool HUD has provided, in the instructions, that in identifying areas of segregation and integration program participants should not only focus on areas of minority concentration in their jurisdictions and regions, but also areas of majority concentration. With respect to enhanced ways to make maps and data easily accessible to program participants, HUD continues to work to make the HUD-provided data and maps easily accessible and easily readable to its program participants. HUD believes it has made considerable progress in this area, and acknowledges it has more work to do here. HUD will continue to provide updates to the AFFH Data and Mapping Tool (AFFH-T) as more current data becomes available.

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.

Commenters recommended that the AFH tool should be accessible through IDIS and eliminate redundancies and overlap between the AFH and the consolidated plan. A commenter stated that electronic submission is the only practical and logical method. Another commenter stated that there should be an option to download the maps and tables that are pre-populated with HUD-provided data (similar to the Action Plan and CAPER in the eCon Planning Suite).

A commenter stated that data should be available through the portal directly, so

that it is accessible to stakeholders without specialized training. Another commenter stated that there should be a way to download shape files and data in tabular format from the Assessment Tool for additional in-house geographic information system (GIS) analysis.

A commenter stated that it is concerning that to participate in a less-cumbersome process smaller communities must participate with another eligible community. The commenter stated that partnering to write the AFH would force the community to spend money the community does not have, particularly because HUD's new rules related to grant-based accounting have limited the administrative dollars the city can "tap into each grant."

Another commenter recommended that program participants only be required to conduct an AFH every 10 years, prior to the consolidated plan that follows the decennial census.

HUD Response: As stated in HUD's response to comments on question 3, HUD appreciates the commenters' suggestions. This 2016 version of the Assessment Tool has made progress in this area over the 2015 tool. HUD is continuing to work to increase the ease of electronic availability of the Assessment Tool, maps and data. HUD continues to work to make the HUD-provided data and maps easily accessible and easily readable to its program participants. HUD will continue to explore options for making improvements to the User Interface, to data provided and the functionality of the data tool, and providing additional guidance on using the HUD-provided data in the instructions to the Assessment Tool, as well as through other guidance materials. As HUD assesses longer-term improvements to the Assessment Tool data, HUD will continue to consider the

comments received that recommended significant changes.

In determining the frequency in which an AFH should be prepared, HUD determined that every 5 years was an appropriate time period, similar to the time period for the PHA 5-year plan and the 5-year consolidated plan (although some consolidated plans are submitted every 3 years at the election of the program participant).

5.³ Whether the inclusion of the “inserts” for Qualified PHAs (QPHAs) and small program participants will facilitate collaboration; whether entities anticipate collaborating; (a): any changes to inserts that would facilitate collaboration; (b): changes that would provide more robust fair housing analysis; (c): any changes that would encourage collaboration.

In response to this question, commenters had a variety of suggestions. Several commenters stated that QPHA inserts will facilitate collaboration and that inclusion of the inserts is headed in the right direction. The commenters, however, suggested removing regional analysis by QPHAs so QPHAs can focus on areas for which they have control, and local governments can focus on larger regional control areas. The commenters stated that adoption of this proposal would reduce duplicative analysis for overlapping areas, but if not adopted, HUD must clarify when QPHAs and small program participants must conduct a regional analysis.

Another commenter recommended that to facilitate collaboration, the assessment tool should allow focus on “known” areas of concentration and on “known” locations of R/ECAPs and protected class groups, and HUD should provide data on protected class groups in PHA service area as this information is not readily known to QPHAs.

³ The prior Notice inadvertently numbered this question as question 6. For clarity, this and the following questions have been renumbered in this summary.

A commenter stated that HUD should substantially restructure the questions and accompanying instructions for the inserts. The commenter stated that it understood HUD's efforts to streamline the process for program participants with fewer resources, but stated the questions run the risk of sending a message to these program participants that they are being held to a different standard of analysis. The commenter stated that the AFFH rule already provides flexibility to smaller program participants when conducting joint or regional collaborations by allowing them to "divide work as they choose," and the inserts may inhibit community participation, as the analysis of these program participants will be separated from the rest of the fair housing analysis in the Assessment Tool. The commenter recommended that the inserts explicitly instruct these program participants to consider the sections of the assessment tool outside of the Fair Housing Analysis section, such as community participation and the assessment of past goals, actions, and strategies. The commenter stated that if HUD retains these inserts, HUD must provide instructions at the beginning of each section of the insert that cross reference the remaining pieces of the analysis in the main portion of the Assessment Tool.

A commenter stated that in the QPHA insert, HUD should include a question regarding the QPHA's service area using geographic boundaries and other indicators commonly known in the community. The commenter stated that this will help place the maps in the HUD-provided data into context for the QPHA analysis and better facilitate community participation on the QPHA insert.

Another commenter stated that the disparities in access to opportunity question in the insert combines several questions, which is not conducive to a meaningful analysis.

The commenter stated that the instructions in the QPHA insert are unclear as to whether QPHAs would have to review Table 12 (opportunity indices), which implies QPHAs are being held to a different standard. Other commenters recommended that the disparities in access to opportunity section of the QPHA insert be made optional for QPHAs because they do not have the skill set to meaningfully analyze transportation or education policies. Another commenter stated that program participants should be required to identify contributing factors in the inserts and that the disparities in access to opportunity section of the insert should include the same sub-questions as the main Assessment Tool. The commenter stated that the “secondary” participants should identify whether their own policies and processes contribute to segregation, lack of access to opportunity indices, or other fair housing issues.

A commenter stated that the “policies and practices” section of the QPHA insert should ask the QPHA to consider its admissions and occupancy policies more broadly, including grounds for denial of admission, as well as grounds for eviction or subsidy termination. The commenter stated that the grounds for which the QPHA decides to admit or evict a family, or terminate a subsidy can raise fair housing concerns. The commenter also recommended that this section ask the QPHA to outline its policies regarding providing access to persons with disabilities and LEP persons.

Another commenter stated that the list of programmatic barriers is too cursory and PHAs should examine a more comprehensive list of programmatic barriers, and that the list should include source of income and other discrimination, availability of landlord outreach programs, low payment standards, portability restrictions, inspection delays, refusal to extend search times, lack of notice to families of their choices, lack of

assistance in locating housing in opportunity areas, and geographic concentration of apartment listings provided to Housing Choice Voucher (HCV) families by the PHA.

Other commenters recommended that joint participants should adopt explicit measures to ensure that the community participation process includes the focused solicitation of information and recommendations pertinent to each individual participant, as well as the combined AFH.

A commenter stated that some small grantees are located outside of metropolitan statistical areas (MSAs), and the commenter suggested working with the National Community Development Association (NCDA) to reduce the scope of the proposed insert.

Other commenters stated that the insert does not provide enough of an incentive for small grantees to collaborate. The commenters stated that providing additional time and offering these inserts is an inadequate response to the burden small entities face in conducting an AFH.

A commenter did not propose changes to the inserts but recommended that HUD raise the threshold of those PHAs that may use the QPHA insert to PHAs with 2,000 total units instead of 550 total units. The commenter also recommended that HUD raise the threshold for small program participants that may use the insert to those that receive a CDBG grant of (at least) \$1 million or less, stating that this would reduce administrative burden and would benefit HUD staff by reducing the number of separate AFH submissions. Another commenter requested that HUD provide an additional 60-day comment period on the inserts since they were not introduced until the 30-day notice.

HUD Response: As noted earlier in this notice, HUD has raised the threshold for

use of the insert from QPHAs with 550 or fewer units to PHAs with 1,250 or fewer units, which is reflected in the redline/strikeout version of the Assessment Tool that provides a comparison of the 2016 tool to the 2015 tool, HUD also provides at <https://www.hudexchange.info/programs/affh/> a redline/strikeout of the Assessment Tool that accompanied the 30-day PRA notice and this final version. This redline/strikeout version reflects the many changes that HUD made in response to public comment. The accompanying instructions for the insert also address questions of the commenters seeking clarification about certain aspects of the inserts.

With respect to additional time to comment on the inserts, HUD submits that 30 days was sufficient time to comment, and PHAs and grantees that received a CDBG grant of \$500,000 or less are not required to undertake the analysis provided by the inserts. They may use the inserts or the main portions of the Assessment Tool to undertake the required analysis.

HUD disagrees with the comment that the addition of streamlined Assessment Tool (inserts) for smaller program participants might inadvertently send a message that such smaller program participants are being held to a different standard of analysis. As HUD stated in the Preamble to the AFFH Final Rule, "...HUD commits to tailor its AFHs to the program participant in a manner that strives to reduce burden and create an achievable AFH for all involved. HUD intends to provide, in the Assessment Tool, a set of questions in a standard format to clarify and ease the analysis that program participants must undertake. The Assessment Tool, coupled with the data provided by HUD, is designed to provide an easier way to undertake a fair housing assessment." 80 FR. 42345 (July 16, 2015). Moreover, the inclusion of the inserts is also intended to facilitate joint

and regional partnerships with smaller program participants. Such partnerships can result not only in improved planning and fair housing analysis but in intergovernmental and interagency cooperation and collaboration in goal setting, program operations and results.

Also, in the inserts for smaller program participants, HUD has adopted a modified approach in the final Assessment Tool for identifying contributing factors. The approach adopted also attempts to address the issue of burden for these smaller agencies, by combining the identification of such factors for the four fair housing issues assessed in the Assessment Tool (Segregation, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) in one step. This is intended to reduce any unnecessary duplication of effort and to better focus the analysis and identification steps to help produce meaningful fair housing goals.

HUD notes that all program participants using the full Assessment Tool also have the option of completing the analysis and identification of contributing factors steps in a variety of ways that make the most sense to them. HUD has added general instruction to the Assessment Tool to clarify this. For instance, program participants may choose to complete several of the analysis sections first and then consider and identify contributing factors as a next step for those sections. HUD acknowledges that contributing factors can often affect more than one fair housing issue. Some program participants may find it beneficial for them to identify contributing factors in combination across fair housing issues after completing the analysis for those sections first. The User Interface is set up in a way to allow for this approach.

As noted above, HUD has raised the threshold of those PHAs that may use the insert to PHAs with 1,250 total units instead of 550 total units. HUD will continue to

consider efforts to reduce administrative effort on all program participants, including PHAs and local governments. As lessons are learned, in the future, there may be opportunities to consider further enhancements to the Assessment Tool. HUD will continue to enhance the instructions and guidance on the analysis of jurisdictions and regions where there are new construction, rehabilitation of existing housing, mobility, and community revitalization, supporting program participants in conducting their AFH.

Regarding the public comment that the PHA insert should ask the PHA to “consider its admissions and occupancy policies more broadly,” HUD has made revisions to instructions and the contributing factors definitions that clarify the demographic analysis of protected classes living in public housing, Housing Choice Vouchers residences, and other publicly supported housing developments as related to the fair housing concerns on the concentration due to admissions, income targeting, and the demographic composition and protected class characteristics of applicants on the array of publicly supported housing waiting lists.

Regarding the public comments on PHA service areas and the need for HUD to provide accurate data for these important agencies, HUD reiterates its commitment to provide data that is useful for their AFHs. HUD’s statements on the known limitations of national level data, maps and tables when applied in rural areas is intended as an acknowledgement of the need for flexibility for these agencies in conducting an AFH. Local data and local knowledge can often be useful or more readily applied to the questions and issues raised by the Assessment Tool. For instance, dot density maps may have limitations for large geographic areas with low population densities. In addition, as stated HUD will be providing data for individual PHA service areas as this information

becomes available. Although, HUD has provided clearer instructions in the Assessment Tool related to the PHA Regional Analysis required regional analysis for PHAs in different geographic areas, which includes multiple parts to this explanation: (1) a description of the service area, also known as the jurisdiction, of various size PHAs in terms of their authorized geographic operations; (2) a description of the PHA's region for purposes of analysis under the AFFH rule; (3) a description of the HUD-provided data for the PHA's applicable region; (4) instructions related to use of data and identification of fair housing issues and related contributing factors for different size PHAs; and (5) instructions related to rural PHAs, State PHAs, and PHAs in Insular Areas.

6. Clarity of changes in content/structure of questions in Disparities in Access to Opportunity with respect to protected classes. Also, whether appropriate analysis can be conducted if other protected classes are assessed only in "Additional Information" questions. Should protected classes be specified in each question? Additional question in Disparities in Access to Opportunity about all protected classes?

A commenter stated that an analysis of disparities in access to environmentally healthy neighborhoods is necessary for CDBG program participants, as grantees must do environmental review for each CDBG activity. The commenter stated that applying this to each protected class would be difficult, and that small entitlements do not have the financial capability to use CDBG funds to effect significant change with respect to this area of analysis.

Another commenter stated that the question relating to environmental policies should ask about siting and permitting processes, cumulative impact analyses, legislative or regulatory protections such as health impact assessments, and funding distribution

processes that impact activities such as remediation. The commenter stated that these structural factors contribute to cumulative impacts of environmental burdens and should be included in the index and contributing factors appendix. The commenter stated that participants should assess, using local data and local knowledge, a range of environmental health factors (in addition to air quality), including soil and water toxins, mold, standing water and water-borne illnesses due to inadequate drainage, violence, and inequitable distributions of benefits such as park space.

Other commenters stated that HUD has provided more structure and clearer directions for the disparities in access to opportunity section, and that such restructuring and clarity have made it sufficient to conduct the analysis for additional protected classes within the “Additional Information” question if there is sufficient space in that field. The commenters stated, however, that HUD should include the protected class groups within each question in this section to facilitate responses.

Another commenter stated that the questions in the disparities in access to opportunity section are clear and will yield a meaningful analysis, but that the data provided is provided only by race/ethnicity, national origin, and familial status. The commenter stated that it would be helpful if HUD provided data for other protected classes (sex, disability, age), and if HUD provided a more detailed breakdown of ethnicity (i.e., “Asian” broken into subcategories), and to cross-tabulate the categories with housing cost burden and median income by census tract—to facilitate meaningful analysis in large, diverse cities. The commenter stated that, if HUD cannot provide such data perhaps HUD can provide guidance on obtaining custom tabulations.

A commenter stated that an appropriate analysis would include an assessment of

all protected classes in each section; specification of protected class groups would ensure that participants address each group without considering whether groups were not included or inadvertently omitted. Another commenter similarly recommended that HUD include questions in each subsection of the disparities in access to opportunity section about other protected classes, not just those for which HUD is providing data, stating that doing so would provide for a fuller analysis within each subsection without requiring the program participant to revisit the topic in the “additional information” section. The commenter expressed concern about waiting until the “additional information” section to conduct such an analysis could result in the exclusion of this portion of the analysis.

Another commenter recommended that HUD restructure the disparities in access to opportunity section, stating that the questions in each subsection should, ask program participants to examine HUD-provided data, local data, and local knowledge for all protected classes under the Fair Housing Act, and describe: (1) disparities in access to opportunity for the given opportunity indicator; (2) how disparities regarding that opportunity indicator “relate to residential living patterns in the jurisdiction and region”; and (3) “programs, policies, or funding mechanisms that affect disparities” in access to a particular opportunity indicator. The commenter stated that if this structure is not feasible, HUD should, at a minimum, include questions about all protected classes under the Fair Housing Act in each subsection.

A commenter stated that HUD should not add additional questions about disparities in access to particular opportunities because these questions will be addressed within the primary text. Another commenter similarly stated that an additional question related to disparities to the particular opportunity based on all protected classes would be

redundant and too general.

A commenter stated that the education questions do not assess students' actual access to proficient schools, and whether residential segregation results in educational segregation. The commenter stated that the questions must assess student presence or participation, and should ask: (1) the distribution of children by race/ethnicity attending proficient schools in the jurisdiction/region; (2) racial segregation in public schools in the jurisdiction/region; and (3) economic segregation of public schools in the region/jurisdiction.

Another commenter stated that HUD should delete "participant's own" in qualifying "local data and knowledge" as participants should not only use local data and knowledge available within their own departments when assessing disparities in access to opportunity.

A commenter stated the term "access" is vague and risks confusion or evasion by program participants, and recommended that HUD clarify that access is measured by both the physical proximity to employment, educational, environmental, and transportation assets, and actual rates of participation in programs and institutions (such as actual rates of enrollment in proficient schools). The commenter further stated that the quality of transportation to these assets may be relevant in assessing access.

Another commenter stated that program participants should use local data and local knowledge to evaluate transportation policy, as well as cost and access, as transportation can drive revitalization/gentrification, or can bypass poorer communities. The commenter stated that program participants should assess the approval, financing, and civil rights oversight of transportation policies.

HUD Response: The redline/strikeout draft of the tool that compares this final version to the 2015 tool reflects the many changes that HUD made to the 2015 approved version, primarily in response to comments that HUD received on the 60-day PRA notice. HUD made some additional minor changes in response to the 30-day notice, but believes that the structure of this section of the tool in the version of the tool that accompanied the 30-day presents the appropriate questions to yield a meaningful analysis.

2. Other Issues Raised by the Public Commenters

Contributing Factors

Several commenters offered suggestions on contributing factors. A commenter stated that the contributing factor of “Land use and zoning laws” (for segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs) is too narrow a categorization of local public policies affecting housing choice for lower income households. The commenter suggested replacing with: “public policies that limit or promote production of affordable housing.” Commenters stated that important categories of policies include: permitted project scale and density, provision of local financial resources, assistance with site selection, reduction of unnecessary parking requirements, fee reductions or waivers for affordable housing, reduction of administrative delays, permitted manufactured housing, and inclusionary housing policies. The commenter stated that “Lack of support for developing and preserving affordable housing” is a critical contributing factor for disproportionate housing needs section of the Assessment Tool.

Another commenter asked under what circumstances HUD expects program

participants to identify the contributing factor of “displacement of residents due to economic pressures.” The commenter recommended that the analysis of housing be limited to the jurisdiction.

Commenters stated that the contributing factor of “lack of source of income protection” fails to account for the different nature of housing voucher programs. The commenters stated that at the Federal level, Congress has not enacted a law to require private development owners to participate in any voucher programs.

Several commenters thanked HUD for including barriers to fair housing choice faced by victims of domestic violence and harassment, and requested that HUD make certain changes to how this is accomplished based on VAWA and HUD’s recent final Harassment Rule. One of the commenters stated that the contributing factor “Lack of housing support for victims of sexual harassment, including victims of domestic violence” should be divided into two factors because, as drafted, the factor conflates two distinct concepts that should be considered separately: (1) displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking (additions due to VAWA); and (2) sexual and other forms of harassment. Harassment includes quid pro quo and hostile environment—and harassment due to membership in any protected class gives rise to FHA liability. The commenter stated that the first contributing factor should be included in Disparities in Access to Opportunity, Disproportionate Housing Needs, and Publicly Supported Housing, and recommended that the second factor be included in Disparities in Access to Opportunity, Disproportionate Housing Needs, and Publicly Supported Housing. The commenter proposed descriptions for both contributing factors to add to Appendix C.

A commenter suggested adding “Eviction policies and practices in the geographic area” to the list of contributing factors in the following sections of the Assessment Tool: R/ECAPs, disparities in access to opportunity, and disproportionate housing needs. The commenter stated that eviction causes poverty, makes it difficult for such tenants to find housing, and tenants are unlikely to report habitability problems. The commenter stated that people living in R/ECAPs, minorities, and individuals with disabilities disproportionately experience eviction. Commenter stated that Appendix C includes “eviction policies and procedures” as part of a list relating to public housing, but that discussion of eviction should not be limited to public housing.

Another commenter stated that HUD has provided a sufficient array of contributing factors, and should allow participants the flexibility to identify other factors relevant to the jurisdiction and region (rather than requiring analysis of additional inapplicable factors). Another commenter stated that the instructions on contributing factors should make clear that program participants are required to identify contributing factors that are not listed in the HUD-provided lists if that contributing factor creates, perpetuates, contributes to, or increases the severity of at least one fair housing issue.

A commenter recommended that HUD add the contributing factor of “Adverse housing decisions and policies based on criminal history” to the list of contributing factors based on HUD’s recently issued guidance on this subject. The commenter stated that the analysis should not be confined to the publicly supported housing section, but should be assessed more broadly, and include the private housing market. The commenter also recommended HUD include a new contributing factor of “Lack of meaningful language access for individuals with limited English proficiency” and stated that it should

be included in all sections of the assessment tool, except the disability and access section. The commenter also suggested that in the description of “community opposition,” HUD include “lack of political will” that results from successful community opposition.

HUD Response: Both redline/strikeout versions provided at <https://www.hudexchange.info/programs/affh/> reflect the changes made in response to public comment received during 2016. In the instructions provided to the final approved Assessment Tool, HUD clarifies that while program participants are required to identify those factors that significantly create, contribute to, perpetuate, or increase the severity of one or more fair housing issues, program participants are not required to conduct separate statistical or similar analyses to determine which factors to identify and need only rely on the information considered in the community participation process, assessment of past goals and actions, and fair housing analysis sections of the Assessment Tool, including information obtained through the community participation process to meet its obligations to identify contributing factors under the AFFH Rule.

In addition, the instructions highlight that program participants have flexibility in how they choose to prioritize significant contributing factors, so long as they give highest priority to those factors that limit or deny fair housing choice, access to opportunity, or negatively impact fair housing or civil rights compliance. Once fair housing issues and contributing factors have been identified and prioritized, the program participant has options in how to set goals for overcoming the effects of contributing factors and related fair housing issues. In setting goals, relevant considerations for doing so may include the resources, the likely effectiveness of the policy options that are available to the program participant, and collaborative goals among joint or regional partners.

Also, HUD agrees with the commenter regarding the scope of the land use and zoning laws contributing factor. Specifically, HUD has responded to the comment by adding language to the contributing factor on “Land Use and Zoning.” Additional language was added to clarify that this contributing factor might include, “[the lack] of support for development and preservation of affordable housing (may include efforts for neighborhood stabilization, green building, transit oriented development, and smart growth development).” HUD also agrees with the commenter on this issue and the relationship between the analysis of “disproportionate housing needs” and potential policy goals. Additional clarification on this subject are discussed in this Notice, below in the HUD responses to comments related to publicly supported housing.

User Interface

A commenter stated that user Interface is difficult to navigate. Another commenter stated that, within the Assessment Tool, it would be helpful to be able to view and print the entire document (the AFH tool webinar indicated each section would need to be printed separately). Other commenters recommended that HUD migrate the assessment tool from the User Interface to the existing IDIS e-Con planning suite which grantees are already familiar with, and this would enable closer integration of the AFH with Consolidated Plans and Action Plans.

HUD Response: During the year since the Local Government Assessment Tool was approved in 2015, HUD has spent considerable time striving to make the User Interface easier to navigate. HUD believes that the current version is easier but acknowledges additional work is still needed. HUD will continue to further improve the User Interface, as well as the AFFH Data and Mapping Tool, to meet the needs of

different program participants.

AFFH-T & HUD-Provided Data

Several commenters stated that the data and mapping tool has often failed to load, and has crashed various browser. A commenter stated that when the AFFHT does work, it loads each map and changes to the map very slowly when it works. The commenter expressed concern about the utility of the tool when multiple agencies are using it. The commenter stated that HUD must ensure that the data is accurate, for example the geocoding from IMS/PIC. Another commenter requested that the loading speed for the maps be increased.

Several commenters raised concerns about the dots in the dot density map. Commenters stated that the following: the size of the dots in the dot density maps should be adjustable to see them more clearly; when you zoom in the dot-size stays constant; if one adjusts the monitor, one loses portions of the map; there is insufficient contrast between colors at that size; the remaining dots shift if one is in the Table of Contents (TOC) and deselect a category; and that if one re-selects a category, the dots shift again, but not to their original position. The commenters stated that all of these issues should be corrected.

Commenters also raised issues about the maps and tables. With respect to maps, a commenter asked why the R/ECAP on Map 2 is different from the other maps, and another commenter stated that there are data errors in Map 5 as several Public Housing locations are missing, and several multifamily markers come up with Null, and some are misidentified, e.g., a hotel is listed as multifamily, and some markers are not active. Other commenters recommended that the HCV maps be layered with the publicly supported

housing maps to comprehensively understand all subsidized housing in an area. Another commenter stated that currently, the assessment tool allows only 17 different maps to be displayed and indices can generally only be layered with demographic data. The commenter suggested that participants be able to choose from a menu of layers to use in one map and participants be able to layer more than one set of data over the indices (higher levels of user customization), and further stating that it should be easier to find the data sources for the 17 maps to facilitate verification and in-house analysis

With respect to tables, a commenter stated that Tables 9 and 10 do not provide a useful basis for comparing the needs of families with children with publicly supported units, as the tables do not distinguish renter from homeowner needs and do not contain income group information available in the CHAS data (those with incomes less than 30 percent of area median income (AMI) need different policies than those at 60-80 percent of AMI). Another commenter stated that Tables 5, 6, 8, and 11 for use in the publicly supported housing section do not include low-income housing tax credits (LIHTC) units (although the instructions indicate that Map 5 produces LIHTC data and the data documentation incorrectly lists it as on Table 8). The commenter stated that, without LIHTC data, answers to the questions in this section have little value, as the data does not show current affordable housing. The commenter stated that Table 6 is misleading as “Housing Type” counts households by race/ethnicity, but the next section shows race/ethnicity for the total population, and stated that note 2 in the table is wrong.

Other commenters recommended that HUD add LIHTC projects, and provide separate breakouts of elderly and family public housing, and Section 202 and 811 developments. A commenter urged HUD to add demographic data for individual LIHTC

developments to the AFFHT, stating that given the prevalence of the LIHTC program, it is imperative to have this information in order for communities to conduct a robust assessment of fair housing choice in a jurisdiction and region. The commenter also expressed support for differentiating between 4 percent and 9 percent tax credits in the AFFHT.

Commenters stated that HUD should clarify: (1) how scattered site public housing is shown on the map and in the tables; (2) how units removed from the PIC as part of RAD will be shown on the map and in tables; and (3) how units with more than one subsidy (LIHTC, Section 8) are shown on the map and in tables. Another commenter stated that because the distribution of Section 8 vouchers may be different than project-based, it may be helpful to understand how multifamily rental stock is distributed (in addition to landlords' acceptance of Section 8 vouchers). The commenter further suggested that HUD provide data on additional tenant characteristics including national origin, limited English proficiency (LEP), age, etc.

Other commenters asked if there is an assumption that all analysis of segregation and integration will be at the census tract level. A commenter stated that voucher data should be available on the census tract level. Another commenter suggested that AFH downloadable data be available at census tract level (rather than jurisdictional level) to aid local data analysis, as it would be helpful for participants to be able to select areas on the map and obtain data for that selection—whether census tract or group of census tracts—to approximate neighborhoods and planning districts.

Commenters stated that on May 18, HUD stated that the R/ECAP map data was updated from 2006-2010 to 2009-2013 American Community Survey (ACS); however,

the commenter stated that it is unclear which maps HUD was referring to and whether the rest of the ACS data in the maps and tables is 2006-2010 or 2009-2013. Commenters recommended that each table specify which ACS data is used. Another commenter stated that all data provided by HUD should be current ACS data in map and table format for accurate analysis and interpretation.

A commenter recommended that HUD provide standardized calculations of the changes in demographic and other trends over time and of comparisons between the community and CBSA region, so grantees do not need to do the calculations themselves. The commenter stated that HUD should provide national data related to schools and education and allow grantees to supplement as needed with local data and knowledge. The commenter also stated that an analysis of fair lending is more central to a fair housing analysis than some of the opportunity index measures. HUD should provide data on home purchase loans by race/ethnicity and trends, and data on HECM loans.

A commenter stated that HUD did not decide whether to exclude college students from the poverty rate in R/ECAPs, and asked that HUD reconsider excluding college students from the poverty rate calculation or calculate the poverty rate with and without college students. Another commenter expressed concern about how to appropriately define R/ECAPs in rural areas, stating that HUD should provide suggestions for how QPHAs should define R/ECAPs in rural areas, and notes that these suggestions could be included in the instructions to the assessment tool or in additional guidance.

A commenter recommended that HUD provide data on evictions and subsidy terminations in the AFFHT, stating that this will allow program participants and members of the community to be able to evaluate the extent to which members of protected class

groups are experiencing evictions and subsidy terminations.

A commenter stated that HUD-provided data about disability has a variety of limitations and suggests requiring local governments to supplement with local data, and suggested that data on disability that is available to HUD be made available to localities, such as national data on disabilities among veterans. The commenter stated that HUD should obtain more data from local governments about the needs and opportunities for people with disabilities at a more granular level; the data and analysis should differentiate between physically accessible units for people with mobility and sensory disabilities, and the need for independent, supported, and shared housing options for people with disabilities including mental health and intellectual disabilities, and people with traumatic brain injuries.

Another commenter stated that it is pleased that HUD advised that it would provide additional data on homeownership and rental housing but asks when this data will be available.

Commenters stated that HUD should provide a schedule of planned data updates in advance to minimize mid-stream revisions of the AFH. A commenter stated that some data is over 5 years old and that data sets should be updated annually.

HUD Response: HUD continues to thank all of the public commenters for their valuable and ongoing feedback on the AFFH Data and Mapping Tool, both via these public comments and through the HUD Exchange “Ask A Question” portal (<https://www.hudexchange.info/get-assistance/my-question/>).

HUD offers the following responses to specific comments as follows:

Regarding comments on the display of map information, HUD will continue to

monitor and implement ways to improve performance, including improving the visual display of information and options for users to make adjustments according to their needs. Also, HUD is adopting a change in the maps for publicly supported housing by combining two separate maps into one map that can display Housing Choice Vouchers along with other housing programs simultaneously.

HUD continues to work with program participants to improve geocoding accuracy of HUD administrative data. In addition, HUD will review and revise the data documentation and its footnotes and provide other explanatory language.

Regarding comments on how current the HUD-provided data is and the frequency of updates, HUD will schedule regular updates and will provide notice of any updates on the HUD Exchange website. HUD will also provide guidance clarifying that program participants that have started conducting an AFH will not be required to use all newly updated data. HUD is also working on making improvements to the AFFH Data and Mapping Tool to minimize the effects of data updates on program participants while they are completing their AFH.

Regarding the provision of additional types and formats for data, HUD notes that raw data is available for download directly from the HUD Exchange site, where all other AFFH guidance and materials are also provided. HUD is planning to make the raw ge-enabled data available in GIS Open Data site where it can be downloaded in multiple open formats including GIS format.

Regarding LIHTC related data, HUD continues to administer and improve the LIHTC data on projects placed-in-service and LIHTC tenant demographic data. HUD will work to provide data for AFFH-T at an appropriate level of geography (e.g., State,

County, City, development, etc.) as the data becomes available and verified for consistency and reliability. These data may be available in a variety of formats external to the AFFH-T Data and Mapping tool. It is not expected that development level tenant data will be available in the near term due to current data quality issues. Additionally, compliance with federal privacy requirements will limit certain development-level data that will be available in the future. For background on data that are currently available, please see HUD's report, "Data on Tenants in LIHTC Units as of December 31, 2013" which is available at <https://www.huduser.gov/portal/publications/data-tenants-LIHTC.html>. HUD will also continue to pursue additional guidance on potential sources of readily and easily accessible information that may be useful as supplementary local data.

Regarding the specific comment on scattered site public housing developments, HUD confirms that such developments are included in the maps and tables when they are listed as a single development in the HUD PIC administrative data system. HUD has added an instruction to the Assessment Tool noting this and advising program participants to use caution when considering such developments, particularly as it relates to census tract demographics. HUD intends to address this issue over time, as needed, but advises that this may involve addressing the issues on a case by case basis. Program participants are empowered to use local data and local knowledge in this and other cases where such information is superior to the HUD-provided data.

In regard to the public comment regarding the use of data for joint collaborations between multiple agencies, HUD notes that the User Interface currently allows individual program participants to access the maps and tables that are relevant for their own

jurisdiction. HUD is making further improvements to gather information on PHA service areas and will add this significant new information to the AFFH-T as it becomes available. Specifically regarding information relevant to PHAs, HUD is adding additional tables and functionality for maps to provide information on the assisted housing stock and residents served by individual PHAs. Also, HUD is exploring options for posting AFHs as an online resource for program participants and the public.

Regarding comments on whether to exclude college students from the calculation of R/ECAPs, HUD is taking the comments into consideration and has not made any changes at this time. Any changes to the methodology in the future will be communicated through updates on HUD Exchange.

Publicly Supported Housing Section

A commenter stated that there is no data on publicly supported housing by “bedroom size” and until the data is available, HUD should delete the question referencing bedroom size. The commenter stated that the analysis of comparing the demographics of publicly supported housing occupants to the demographics of the areas in which they are located implies that when the demographics comport with one another, this represents a positive fair housing outcome, but HUD has barred this approach. Other commenters recommended removing the new question added in the publicly supported housing section, stating that the comparison of the demographics of the types of publicly supported housing between the jurisdiction and region is not the right approach to the AFH.

A commenter requested that HUD clarify the categories it expects participants to compare and what “same category in the region” means. The commenters expressed

concern that the question implies a causal relationship that is difficult or impossible for localities to assess, and further stated that the various programs have different requirements and eligible populations, and without controlling for this, the comparisons may be incorrect or misleading. A commenter stated that the comparison would not take into account critical factors that limit participation in publicly supported housing—including federal requirements such as income limits (rather than the jurisdiction's choices). The commenter also stated that the data sets and responses required are unreasonable, as reliable data is unavailable and in many subsidized projects, data gathering and reporting is not required.

HUD Response: HUD appreciates the comments received on the new question asking for a regional comparison of publicly supported housing. Specifically, this question asks for a comparison of the demographics of assisted housing in separate publicly supported housing program categories to the regional demographics for that same program category. Based on feedback, HUD has decided to retain this question in the final Assessment Tool and has made several clarifications in the instructions. The instructions clarify the specific comparisons that are being asked. HUD has also added an instruction that is generally applicable to all regional publicly supported housing questions providing additional context. Consistent with the balanced approach, there are a myriad of public policy options available to program participants involving preservation, mobility and siting of new housing opportunities when appropriate in relation to fair housing issues and related contributing factors. As with all questions in the Assessment Tool, on a continuing basis, HUD will consider and assess the utility of this question as it relates to conducting a meaningful fair housing analysis.

The added instruction states, “Conducting a regional analysis can help identify fair housing issues in a broader context, for instance if fair housing issues in the jurisdiction are affected by regional factors, and can inform regional solutions and goal setting. For example, depending on what the regional analysis shows, and always dependent on local conditions, regional solutions could include coordinated or merged waitlists, increasing HCV portability opportunities, affirmative marketing across jurisdictional lines, administering Section 8 vouchers on a regional basis with active mobility counseling, landlord recruitment (including sharing of landlord lists across PHAs) to provide greater access to housing in areas with opportunity or the need for the preservation of affordable housing. This regional analysis can also be compared to the Disproportionate Housing Needs conducted above.”

In a broader context related to the balanced approach to affirmatively furthering fair housing, HUD has made a number of modifications to the Assessment Tool to recognize the importance of preserving existing affordable housing in connection with affirmative fair housing goals and strategies in connection with community revitalization. As HUD’s own studies on worst case needs for affordable housing make clear, there is an ongoing national crisis in housing affordability that particularly affects lower income families. In many local and regional housing markets, low income households are priced out of the market altogether with some form of income support or housing subsidy being needed to access decent, safe and affordable housing. This makes the preservation of the existing limited supply of long-term affordable stock a key component of any balanced approach to addressing the findings drawn from assessments of fair housing. At the same time, HUD maintains the importance of mobility solutions in connection with affirmative

fair housing goals and strategies, and notes that such strategies are not mutually exclusive.

In support of HUD's commitment to the balanced approach to addressing fair housing issues, a number of key changes have been made to the Assessment Tool.

1) Added the contributing factor on the "Loss of Affordable Housing." This factor was previously released for public comment as part of the Assessment Tool for State and Insular Areas. This potential contributing factor notes that, "The loss of existing affordable housing can limit the housing choices and exacerbate fair housing issues affecting protected class groups." This factor, along with the contributing factor on "displacement of residents due to economic pressures" allows program participants to recognize the need to preserve affordable housing in areas undergoing economic improvement as a way of maintaining access to opportunity assets for low-income residents and protected class groups as these areas experience increased access.

2) The Assessment Tool has strengthened the connection between the analysis of disproportionate housing needs and the analysis in the publicly supported housing section. These include adding an instruction noting that the analysis in these sections can be compared to each other, as well as by clarifying the analysis questions in the inserts for PHAs with 1,250 units or fewer and smaller local governments to compare the demographics of who is receiving housing assistance with disproportionate housing needs. The instructions to the 1,250 units or fewer PHA insert have also been clarified to note the policy linkage between this analysis and the overriding housing needs analysis required in the PHA Plan as one possible practical application of the AFH analysis.

3) Adding instructions on LIHTC. The instructions indicate that program

participants may distinguish between nine and four percent tax credits and the different uses that each can be used for, while analyzing the relation of such tax credit properties to fair housing issues and related contributing factors, including distinguishing for rehabilitation and preservation of affordable housing and for the various priorities available to state allocating agencies in meeting unique housing needs in their jurisdictions, in the context of identifying fair housing issues and related contributing factors.

4) Adding more detail to the instructions for the additional information questions in the Publicly Supported Housing section. These questions provide an opportunity for program participants to reference or highlight efforts intended to preserve affordability in order to meet unmet and disproportionate housing needs in the context of fair housing issues and related contributing factors. The added instructions state that, “Program participants may describe efforts aimed at preserving affordable housing, including use of funds for rehabilitation, enacting tenant right to purchase requirements, providing incentives to extend existing affordable use agreements and preventing Section 8 opt-outs, encouraging the use of RAD conversion and the PBRA transfer authority. Program participants may also describe positive community assets and organizations, including community development corporations, non-profits, tenant organizations, community credit unions and community gardens.”

HUD thanks the commenter that stated that the “analysis of comparing the demographics of publicly supported housing occupants to the demographics of the areas in which they are located implies that when the demographics comport with one another, this represents a positive fair housing outcome, but HUD has barred this approach.”

However, HUD notes that this analysis can assist in understanding who is being served in the housing programs, where they have housing opportunities, and how the location impacts the residents' access to opportunities. Thus, the same demographics in the public housing project in the census tract it is in may or may not represent a fair housing issue.

Community Participation

A commenter stated that the requirement to describe how communications were designed to reach “the broadest audience possible” should be deleted as participants are submitting other information about community participation. The commenter stated that asking grantees to evaluate why there was low attendance is irrelevant and asks grantees to impute meaning without substantive information.

Another commenter stated that there should be substantive community participation questions in the tool (not only suggestions in the Guidebook) in order to show its importance, communicate what constitutes the parameters of meaningful participation, and enable HUD, community members, and participants to understand what constitutes sufficient community participation. The commenter recommended that HUD include more substantive content in the tool's community participation process and direct participants to assess whether engagement has occurred to multiple groups, stakeholders, and protected classes for information relevant to each section of the tool. The commenter stated that stakeholders from multiple sectors should be actively solicited early on and throughout the AFH process, as stakeholders may be unaware of housing planning processes and localities with the most severe fair housing issues may suffer the most severe deficits in equitable public engagement. The commenter further stated that the assessment tool should ask, for example, that participants “Describe efforts to include

persons or organizations with local knowledge relating to public health, education, transportation, workforce development, or environmental quality.” The commenter also recommended that the tool require documentation of compliance with regulatory consultation requirements. See, e.g. 24 CFR 91.100.

Another commenter stated that effective, robust community participation is fundamental to the successful implementation of the AFFH regulation. The commenter commended HUD for retaining the question regarding low participation, as this question is crucial in assessing the extent to which efforts were made to “give the public reasonable opportunities for involvement in the development of the AFH.” The commenter recommended that the first question in the community participation section be amended to include other PHA resident outreach. The commenter also recommended that the instructions for the second question in the community participation section be improved by adding a checklist for the types of organizations that local governments and PHAs should consider consulting (see, e.g., 24 CFR 91.100). The commenter further recommended that HUD consider adding examples of organizations that may fit within the broader categories, such as legal services organizations, which are community-based organizations that serve protected class members. The commenter requested that the instructions also remind program participants that they must explain why any comments from the community participation process were not accepted by the program participant.

A commenter suggested that HUD ask program participants, in the community participation section of the tool to describe how it ensured accessibility including physical accessibility, effective communications, accessible websites and electronic materials, materials in alternate formats, and reasonable accommodations.

HUD Response: In response to public commenters who were concerned that the question on levels of participation would require the program participant to speculate on possible reasons for low participation, HUD has revised that specific question and accompanying instruction. In the broader context, HUD notes that the area of encouraging and incorporating public involvement in planning activities is a growing field of interest and that there are likely to be technological ideas and solutions that may be worthy of additional interest and inquiry over time.

Local Data/Local Knowledge

A commenter stated that HUD should require local governments to use local data and local knowledge (rather than allowing program participants to state that such data is unavailable) about individuals with disabilities in home or community-based settings (including Medicaid and local government funded services), those in institutional settings (nursing homes, board and care homes (“adult homes” or “adult care homes”), assisted living facilities, and individuals ready for discharge from psychiatric hospitals). The commenter stated that if HUD does not require participants to use local data and local knowledge, AFH plans may have disparate and disadvantageous consideration of people with disabilities. Another commenter stated that HUD should provide additional guidance as to the types of local data and local knowledge that are likely available.

Other commenters stated that HUD should require (or at least encourage) participants to consult and coordinate with other public agencies and other entities, such as academic institutions. A commenter stated that participants will not interpret “reasonable amount of search” to include consultation and coordination, and suggests adding: “However, the requirement to engage in a reasonable amount of searching means

that a reasonable effort should be made to consult and coordinate with public agencies and public entities with access to relevant local data and local knowledge” to the instructions for the tool.

A commenter urged HUD to include a section that substantively guides participants’ efforts to include local data and local knowledge, and requires participants to document strategies such as outreach to other government agencies. The commenter recommended that HUD issue guidance on institutionalizing informational pipelines among agencies and enforcement entities, and collaborations with local stakeholders, and provide lists of common resources to consult.

A commenter recommended that HUD add a section within the tool that requires program participants to evaluate their efforts and processes to incorporate local data and local knowledge (similar to the community participation section).

Another commenter recommended that program participants should encourage members of the community and other stakeholders to submit local data as part of the community participation process, and this should be added to the instructions to the tool. The commenter recommended that HUD include examples to provide some clarity on HUD’s expectations with respect to the program participant’s obligation to review local data received during the community participation process.

A commenter stated that the instructions regarding local data, specifically the language telling program participants that they “need not expend extensive resources,” should be qualified and should depend on factors such as the size of the program participant and the division of responsibilities in a joint or regional collaboration.

HUD Response: HUD did not agree to the suggestion to remove language from

the Assessment Tool noting that program participants are not required to expend extensive resources in reviewing or validating complex reports or studies submitted by outside parties during the community participation process. The language states, “[program participants] are required to consider the information received during the community participation process, but need not expend extensive resources in doing so.” This is consistent with past HUD statements on the topic. For example, as HUD stated in the PRA Notice on the initial Local Government Assessment Tool on September 26, 2014:

“In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH, whether in the Analysis section of the Assessment or in Section III of the AFH with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.”

HUD also notes that the requirements to conduct community participation and consultation are detailed for consolidated plan grantees in 24 CFR Part 91, Subpart B and 24 CFR 5.158.

Specific Suggestions for the Assessment Tool

A commenter expressed disagreement with the newly added sentence that states

“Participants should focus on patterns that affect the jurisdiction and region rather than creating an inventory of local laws, policies, or practices,” stating that requiring a detailed list of policies and practices that encourage or discourage affordable housing and mobility of lower income households is useful. The commenter stated that each category in the disparities in access to opportunity section asks for jurisdiction and region, except for the third item, implying that the question only asks about the jurisdiction. The commenter recommended that the question should also ask about region, because suburbs should provide resources and remove barriers for affordable housing, and cities should identify needed regional changes.

Another commenter stated that HUD risks diluting housing patterns to peripheral matters not directly tied to segregation, stating that HUD should leave education to DOE, transportation to DOT, workforce development to DOL, health to HHS, and environment to EPA.

Other commenters recommended deleting the Assessment of Past Goals and Actions section because it duplicates information participants have previously submitted to HUD.

A commenter stated that parenthetical references to sections of the Code of Federal Regulations are confusing and recommended deleting such citations.

A commenter stated that conducting a trend analysis over 27 years with data available at only 10-year intervals is meaningless and should be deleted. The commenter stated that certain questions require participants to make speculative assumptions about causality and should be deleted, and recommended that, before requiring an analysis of education, HUD and DOE should develop (and provide to grantees) data about the

relationships between school attendance, school performance, and residency. The commenter stated that in many districts, school assignment is no longer connected to residency, policies differ among districts, students in one community may attend schools in other districts with different policies, and students in one R/ECAP may attend a broad array of schools with widely varying performance. The commenter recommended that the regional analysis of access to high performing schools should not include schools in communities up to 128 miles apart, stating that the regional assessment of access to transportation should only require localities to assess access to transportation in or near their jurisdiction, and that HUD should not be asking for a regional analysis in the “additional information” questions.

Other commenters stated that Olmstead planning is primarily a State activity, but that local governments also have Olmstead obligations, and in some States disability service systems are largely controlled by local government agencies. One of the commenters stated that the tool and Guidebook provide insufficient guidance about Olmstead and the relationship between States and local governments with respect to Olmstead planning. The commenter recommended HUD develop additional guidance to better ensure that connections are made between the States and local governments engaged in AFH planning.

Another commenter recommended that HUD include specific prompts aimed at assessing the jurisdiction’s compliance with the Olmstead integration mandate, specifically “To what degree do people with disabilities have meaningful access to integrated housing opportunities that are not solely in special needs housing, group homes, assisted living, and other congregate housing options? For persons with

disabilities that require supportive housing, the commenter asked whether they are able to choose to receive the supports they need in housing of their choice; that is, are supportive housing options available within integrated housing developments.

A commenter stated that, in the Disability and Access section, HUD should provide a more specific definition of “infrastructure,” recommending limiting “public infrastructure” to the external physical environment and excluding buildings, consistent with the distinction in the AFH Desktop between infrastructure, accessible housing, and accessible government facilities.

Another commenter stated that with respect to the Assessment of Past Goals and Actions section, HUD must ensure that the AFH delivers concrete mechanisms for progress and accountability, stating that program participants should describe fair housing strategies, and whether they have institutionalized mechanisms (such as interagency partnerships) to facilitate implementation.

A commenter stated that the tool ask about civil rights enforcement (pending complaints, resources, and efficacy of protections, enforcement, and remedies). The commenter recommended that participants be specifically instructed to examine the sufficiency of enforcement infrastructure in related areas, such as Title VI and environmental protections.

Another commenter stated that HUD should revise the “additional information” sections throughout the tool. The commenter stated this should be done so that important considerations are not omitted from the core fair housing analysis, as this analysis informs the selection of contributing factors and goal setting.

A commenter recommended that HUD encourage local jurisdictions to share

information about waiting list demographics and specifically solicit information about applicants' needs for accessibility (physical and sensory) in its waiting list applications. The commenter stated that this information should be used in determining the needs of the jurisdiction to create more accessible housing, offer a reasonable modifications fund, or otherwise offer low-cost loans for accessibility modifications.

Another commenter made several specific recommendations for revising the various sections of the tool. The commenter stated that, for example, the segregation analysis includes a reference to disability and that "segregated setting" be defined to include housing that is exclusively for persons with disabilities. The commenter recommended that certain contributing factors be added to other sections of the tool. The commenter also recommended that HUD ask jurisdictions to report on the loss of housing for persons with disabilities, particularly where developments have adopted tenancy preferences for senior citizens to the exclusion of persons with disabilities. The commenter stated that jurisdictions should evaluate the impact of the loss of housing for persons with disabilities in these situations and plan for how to mitigate them.

A commenter recommended that when referring to R/ECAPs, HUD not use the phrase "transforming R/ECAPs by addressing the combined effects of segregation and poverty," and instead use the phrase "expanding opportunity into R/ECAPs." The commenter stated that there are community assets that may exist within R/ECAPs that residents would like to retain, while still attracting investment, opportunity, and expanding fair housing choice in the community.

A commenter recommended that HUD include a question about the unequal provision of services and disparities in infrastructure in the jurisdiction.

Another commenter stated that “mobility” is used both to refer to geographic mobility and mobility disabilities, and suggested using terms “geographic mobility” and “physical mobility.”

A commenter stated that local governments ensure that their own housing programs and facilities are accessible, and suggested that the tool ask local governments to state how they ensure accessibility throughout their own housing programs and the projects they fund. The commenter expressed appreciation for the emphasis given to the needs of people with disabilities by separating out the section on disabilities; however, many parts of the required analysis fail to require an analysis of disability needs and opportunities—either in the relevant or disability sections. The commenter recommended that the tool require local governments to include: (1) the number, location, and geographic distribution of Uniform Federal Accessibility Standards (UFAS) units with mobility and sensory disability accessibility in housing subsidized with federal funds; (2) how the locality informs people with disabilities about accessible units; (3) how the locality monitors the distribution of accessible units throughout each project subsidized with federal or other funds; (4) how the locality monitors the availability of accessible units including the number of individuals with disabilities on waiting and transfer lists; (5) how the locality monitors the marketing of accessible units to individuals with disabilities; and (6) how the locality insures that its building and permitting departments are requiring compliance with federal accessibility laws.

Another commenter suggested including questions about segregation of people with disabilities in the Segregation and R/ECAP sections of the tool, including whether the lack of accessible housing contributes to concentrations in R/ECAP areas, and

whether land use, zoning laws, occupancy codes and restrictions, or lack of investment contribute to segregation in facilities that only house people with disabilities or fail to provide housing in integrated settings. The commenter also recommended asking participants to provide data about the availability of accessible transportation throughout the locality. The commenter also suggested adding “disability” to the list of protected class groups in the disproportionate housing needs section, because such individuals often face high costs burdens. The commenter recommended adding the following question: “Compare the needs of families with a member with a disability who needs accessible features to the available housing stock with such accessible features in each category of publicly supported housing for the jurisdiction and region” in the disproportionate housing needs section.

This same commenter recommended that people with disabilities be included in all portions of analysis including the publicly supported housing section and in the disability section, and program participants should be required to discuss compliance with Section 504 and the Americans with Disabilities Act. The commenter stated that the questions in the disability and access section should more specifically distinguish between people with mobility and sensory disabilities and people who need supported and integrated housing. The commenter expressed concern that participants will not provide information about barriers, needs, and solutions for people with different types of disabilities. The commenter suggested that local governments separate out the locality’s own compliance from general problems in the region. The commenter also suggested rewording the bullet that says: “state or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes,

and other integrated settings” to read: “state or local laws, policies, or practices that discourage or prohibit individuals with disabilities from living in apartments, family homes, supported housing, shared housing, and other integrated settings.” The commenter stated adoption of this language deletes “placed in,” which implies a lack of choice, and expands the options that should be, but often are not, available to people with disabilities; recent proposed ordinances in California have proposed restricting shared and supported housing, and sober living situations. In the fair housing enforcement section, the commenter suggested adding “pending administrative complaints or lawsuits against the locality alleging fair housing violations or discrimination” to the first question and asked HUD to add a question soliciting information on how localities handle discrimination in their respective jurisdictions.

HUD Response: HUD appreciates all of the commenters’ specific suggestions. As to the first comment, HUD thanks the commenter but believes that the analysis of residential living patterns within a jurisdiction and region does not require an inventory of laws and policies under an assessment and planning tool to create solutions and goals that respond to the fair housing and disparities in access issues identified.

HUD appreciates the commenters’ feedback related to the contributing factors, and notes that some of the definitions have been revised.

HUD recognizes the public commenters’ feedback in regard to school proficiency, and notes that it will continue to evaluate and consider best practices involving school performance, attendance and residency issues that impact access of protected classes to proficient schools.

Regarding the comment that persons with disabilities be included in all portions

of analysis including the Publicly Supported Housing section, HUD notes that the instructions state that: “The Fair Housing Act protects individuals on the basis of race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability. HUD has provided data for [the Publicly Supported Housing] section only on race/ethnicity, national origin, familial status, and limited data on disability. Include any relevant information about other protected characteristics – but note that the analysis of disability is also specifically considered in Section V(D). Program participants may include an analysis of disability here, but still must include such analysis in Section V(D).”

Miscellaneous

One commenter asked whether the tool raises the level of scrutiny for housing above Lindsey v. Normet’s minimum level of scrutiny. The commenters stated that it is clear that the Administration does not want to raise the level of scrutiny because that would move housing issues from the political process to the courts, nonetheless, the Administration has clearly concluded that Lindsey is no longer good law. The commenters stated that the tool proposes fairness and dignity components to property (whereas Lindsey did not raise the level of scrutiny because that would interfere with the right to property). The commenters stated the Administration’s statement of interest in Bell v. Boise stated that homelessness is an individual who is “assaulted, unconstitutionally, in her or his housing.” The commenter asked the following questions: What is the relation between the statement of interest and the tool? According to West Virginia v. Barnette, a fact is an individually enforceable right in court (vs. a fact for the political process), and the level of scrutiny is raised, if, inter alia, the fact is “unaffected

by assaults upon it.” Is it the position of the Tool that housing is such a fact? What is the relation of the Collection Financial Standards (CFS) housing component to the tool? The commenters stated that according to Lindsey, the level of scrutiny for housing cannot be raised, and that Lindsey was premised on there not being a fairness component to housing and that there is such a thing as homelessness (which is contradicted by the Boise Statement of Interest). The commenters stated the tool contradicts both of these premises. The commenter stated that the government should give an instruction in the Tool (or explain why it did not) stating that the Tool is premised on the policy that Lindsey is no longer good law, housing is an individually enforceable right, and the level of scrutiny is above the minimum level.

Other commenters recommended that HUD defer implementation of the AFH process until all elements applicable to each type of program participant are publicly available. Another commenter stated that HUD should revise submittal deadlines until after it has tested the HUD-provided data, incorporated final comments into the tool, and provided adequate training; otherwise, early submitters may submit AFHs with questionable or misunderstood data.

A commenter stated that HUD should extend the deadline for comments or solicit comments again to allow grantees to respond because most grantees are busy with CAPER submissions due September 30.

A commenter identified a city as one of the most highly segregated cities in the area by race, ethnicity, poverty, and housing choice. The commenter stated that it appears that, due to predatory lending practices that led to the foreclosure crisis, homes in the city’s predominantly minority working class neighborhoods that were previously family-

owned have been purchased in foreclosure by slumlords and these neighborhoods are now the victims of predatory rental and eviction practices. The commenter stated that the city did not update its AI for approximately 20 years (although it finally completed an AI this year).

Another commenter requested notification from HUD when AFFH documents are published that impact local governments.

HUD Response: HUD appreciates the commenters' suggestions. HUD reviewed the case law cited by the commenter and has concluded that the cases are not applicable to the obligation to affirmatively further fair housing under the Fair Housing Act and under the AFFH rule. HUD continues to assert that the AFFH rule and the Assessment Tool implementing the requirements contained in the regulation will better facilitate compliance with the AFFH mandate under the Fair Housing Act.

In response to concerns raised regarding predatory lending and other single family and mortgage-related comments, HUD notes that these issues can be addressed in several ways in the existing Assessment Tool. The segregation section provides for an analysis of owner-occupied and rental housing, by location. The contributing factors that can be considered under this section include Private Discrimination, Lending Practices and Access to Financial Services. Issues raised by commenters related to landlord tenant and eviction policies and practices can likewise be considered, including through changes that HUD has made to the Assessment Tool in the final stage, for instance in the contributing factor on Private Discrimination.

III. Summary

In issuing this Local Government Assessment Tool, approved for renewal under

the Paperwork Reduction Act, HUD has strived to reach the appropriate balance in having program participants produce a meaningful assessment of fair housing that carefully considers barriers to fair housing choice and accessing opportunity and how such barriers can be overcome in respective jurisdictions and regions without being unduly burdensome. 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. While HUD is not specifically soliciting comment for another prescribed period, HUD welcomes feedback from HUD grantees that use this tool on their experience with this tool.

Dated: January 5, 2017

Bryan Greene, General Deputy Assistant Secretary
for Fair Housing and Equal Opportunity

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