

October 15, 2018

Secretary Ben Carson  
c/o Regulations Division  
Office of the General Counsel  
Rules Docket Clerk  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, Room 10276  
Washington, D.C. 20410-001

**Docket No. FR-6123-A-01-Affirmatively Furthering Fair Housing: Streamlining and Enhancements**

The National Housing Conference (NHC) welcomes the opportunity to comment on HUD's plan to streamline and enhance its Affirmatively Further Fair Housing (AFFH) regulations. The requirement created by the Fair Housing Act affects important operational features of housing and community development programs. It also represents a federal commitment to ensuring equal opportunity not only in housing but also in the health, educational, employment and other social dimensions that housing affects directly.

We commend you for your stated intention to minimize regulatory burden while more effectively aiding program participants to plan for fulfilling their obligation to affirmatively further the purposes and policies of the Fair Housing Act; create a process that is focused primarily on accomplishing positive results; provide for greater local control and innovation; seek to encourage actions that increase housing choice, including through greater housing supply; and more efficiently utilize HUD resources. However, we are concerned that your decision to withdraw the Assessment Tool and effectively suspend the requirement for submissions of Assessments of Fair Housing (AFH) for Consolidated Plan participants, thereby reverting to the Analysis of Impediments (AI) framework, will undercut this intention. Further, this creates a regulatory disincentive to bring new regulations forward in a timely manner on the part of those in this administration who may not share the stated interest.

**I. About the National Housing Conference**

NHC has been defending the American Home since 1931. We have advocated for every major piece of housing legislation since 1934, including the passage of the Fair Housing Act. We believe everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. NHC convenes and collaborates with our diverse membership and the broader housing and community development sectors to advance our policy, research and communications initiatives to effect positive change at the federal, state and local levels. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.

**II. Flawed premise**

HUD states "high failure rate" from the initial round of submissions as a primary reason for its conclusion that the Local Government Assessment Tool is "unworkable." NHC believes that this a false premise and that this is evidence of success, rather than failure. In the end, every AFH was ultimately accepted. The first round of submissions posed a steep-learning curve that resulted in trial and error for

those communities that were in the initial submission round. Future AFH submissions will benefit from the experiences of the first-round submissions now that there are tangible examples to learn from. From the initial framings of the AFFH regulations, the process was defined as iterative for both HUD and the communities that use HUD funds. Given that, HUD should have been able to identify areas of common concern and refine, rather than temporarily abandon, the AFH process.

### **III. Reinstate the Assessment Tool**

For the aforementioned reasons we believe HUD should reinstate the Assessment Tool and require communities to submit their AFHs on the timeline that was in place prior to HUD's January 2018 notice that initially implemented a suspension. Most reasonable people can agree that the AFFH process is imperfect and could be strengthened, but nearly everyone can agree that the AFH process is improved over its predecessor, the AI process.

We acknowledge the inherent difficulties in a 'fixing the ship while sailing' approach but maintain committed to the beliefs that the AFH process is significantly improved over the AI process and that communities as well as HUD can continue to learn from and improve the AFH process. The AFH requirements are the best means we currently have to ensure that communities fulfill their 50-year-old obligation to affirmatively further fair housing. Reverting to the AI process, in which communities were not required submit their AIs to HUD, let alone periodically conduct or update their AIs, benefits no one and harms the very people who the Fair Housing Act was designed to protect. Every action taken by HUD to extend the deadline or otherwise delay the submissions of AFHs is yet another year that the promise of the Fair Housing Act remains unrealized. Reverting to a process that most agree is deeply flawed is a waste of time and taxpayer resources.

As we stated in our March 6, 2018 comment letter in response to HUD's January 5, 2018 notice on the suspension, HUD should allow communities that want to submit an AFH to do so and HUD should review them.<sup>1</sup> The stated goal of the extension was to provide participants with additional time and technical assistance to adjust to the new AFFH process and complete AFH submissions that can be accepted by HUD. By allowing communities to submit AFHs and by having HUD staff review them, HUD will be able to determine if communities are gaining a better understanding of the AFH process and where persisting issues remain. HUD staff may also gain a better understanding of how to make the review process more efficient. NHC has heard from several communities that still want to complete the AFH because they see value in the new process, the data and a regional approach. HUD should encourage this kind of leadership and work with those communities through the process as well as completing a review and providing feedback on these AFHs. By having communities voluntarily submit AFHs, HUD will be able to develop best practices that other communities can deploy. This also has the added benefit of allowing time for HUD to staff up their AFH review team to prepare for the coming submissions and gain an accurate sense of the staff capacity that will be required to review AFHs.

### **IV. Increase FHEO staffing**

NHC encourages HUD to use its funding authority to hire staff within the Office of Fair Housing and Equal Opportunity (FHEO). A fully staffed office should exist throughout the process from the

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<sup>1</sup> <http://www.nhc.org/wp-content/uploads/2018/03/NHC-comment-letter-on-AFH-extension.pdf>

advanced notice of proposed rulemaking to the final rule to build institutional knowledge and capacity on the changing requirements. NHC has commented on HUD's staffing levels to enforce the AFFH requirements since 2013, each time reiterating that HUD needs more well-trained people working on this important issue in order to effectively implement and enforce fair housing regulations.

#### **V. Data**

In response to question 2 of the ANPR, NHC encourages HUD and the entities subject to AFFH regulations to think about the federal data set as a floor rather than a ceiling. There is an unquestionable value in having a standardized data set that everyone can access and be judged against. Communities should be encouraged to supplement the federal data set with their own data, but should not be allowed to substitute their data for the federal data. NHC strongly opposes the proposal to allow jurisdictions to be permitted to rely upon their own experience. Empirical data, while often imperfect, is reliable and measurable. Benchmark data can be used to track progress, or lack thereof, while experience is subjective and not well-defined. The data challenges in the Local Government Assessment Tool are not new to HUD or unique to FHEO and we encourage HUD to not let perfect be the enemy of good.

#### **VI. Reporting**

NHC suggests that AFH reporting requirements be kept in-line with other existing report structures like Consolidated Plans and Consolidated Annual Performance and Evaluation Reports. We further suggest that jurisdictions annually update HUD on their AFH progress. Altering patterns of systemic and historic segregation will take sustained effort over significant amount of time, for that reason we encourage HUD to require participants to provide a detailed report of the analysis performed and to specifically detail incremental remedial actions. The annual update on AFH progress reporting should track measurable progress on those specific, incremental remedial actions.

#### **VII. Community Participation**

As laid out by Judge Beryl Howell in the *National Fair Housing Alliance et al v. Carson District et al* court case, "community participation requirements...remain active even without use of the AFH process and Assessment Tools."<sup>2</sup> We believe it is clear that jurisdictions are still subject to the AFFH requirements beyond the requirement to conduct an AFH. HUD should make clear that jurisdictions are still subject to the AFFH community participation requirements and continue providing technical assistance, guides, tools and trainings.

#### **VIII. Conclusion**

NHC appreciates the opportunity to comment on HUD's plan to streamline and enhance its AFFH regulations. The AFFH regulations, while imperfect, are the best means we have to ensure jurisdictions receiving HUD funding address the systemic and historic patterns of segregation that were, in no small part, created and maintained by the federal government through the Home Owner's Loan Corporation and the Federal Housing Administration. It is incumbent upon the federal government to help right the wrongs it fostered. We urge you to reinstate the Assessment Tool and require submissions of AFHs. If the agency still deems it necessary, we urge that the AFFH regulations be updated while each of the

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<sup>2</sup> *National Fair Housing Alliance et al v. Carson et al*. No. 1:2018-cv-01076 (D.D.C. Oct. 8, 2018)



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requirements are in effect. Don't let perfect be the enemy of the good in ensuring that everyone in America should have access to safe, decent and affordable housing in communities that offer the opportunities we all desire.

Sincerely,

A handwritten signature in black ink that reads "David M. Dworkin". The signature is written in a cursive style.

David M. Dworkin  
President and CEO