November 25, 2014

Secretary Julian Castro
c/o Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St, SW Room 10276
Washington, D.C. 20410-0500

Docket No. FR-5173-N-02– Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment

Dear Secretary Castro,

The National Housing Conference (NHC) welcomes the Department of Housing and Urban Development's (HUD's) effort to better implement the obligation to affirmatively further fair housing (AFFH) as required by the National Housing Act. To improve neighborhoods and housing opportunities for all, HUD must balance housing need, civil rights, the burden on localities, and housing patterns born of a fraught history. That is no easy task. NHC appreciates the opportunity to suggest improvements to the Affirmatively Furthering Fair Housing proposed Assessment Tool in furtherance of our shared objectives. The data HUD plans to provide to local and state jurisdictions through tables and maps in the Assessment Tool should be a powerful resource to achieve a better understanding of housing trends and needs.

NHC offers several recommendations on the Assessment Tool to ensure that it helps achieve the desired outcomes of the AFFH rule:

1. Create a process to field test and improve the AFH Tool.
2. Provide clear definitions, step-by-step instructions and clarifying examples. We offer specific suggestions for improvement below.
3. Recognize the limitations of uniform national data. Recommendations below address geographic scale, time frame, and the options provided for ranking.
4. Streamline local data requirements and provide guidance to reduce the burdens on local jurisdictions.
5. Make stated fair housing strategies explicit in the Assessment of Fair Housing.
6. Offer more explicit guidance on tracking and evaluating progress.

I.   About the National Housing Conference

The National Housing Conference represents a diverse membership of housing stakeholders including tenant advocates, mortgage bankers, non-profit and for-profit home builders, property managers, policy practitioners, realtors, equity investors, and more, all of whom share a commitment to safe, decent and

affordable housing for all in America. We are the nation's oldest housing advocacy organization, dedicated to the affordable housing mission since our founding in 1931. As a nonpartisan, 501(c) 3 nonprofit, we are a research and education resource working to advance housing policy at all levels of government in order to improve housing outcomes for all in this country.

II. Create a process to field test and improve the full AFH Tool

The National Housing Conference strongly supports HUD's effort to better define and implement the obligation to affirmatively further fair housing (AFFH). Ending the patterns of segregated housing built up during our nation's history will benefit us all by creating more inclusive communities, wider pathways to economic improvement, and more opportunities for individuals and families to flourish. The requirements created by the Fair Housing Act also affects operational features of the housing and community development programs that help to fulfill its objectives and meet basic needs of Americans. All in America should have access to safe, decent, and affordable housing in communities that offer the opportunities we all desire.

The Assessment of Fair Housing (AFH) can help communities more proactively address barriers to safe, decent, and affordable housing by highlighting trends and raising up neighborhoods in need of revitalization and investment. The goal of the AFH stated in the 2013 proposed rule is to "assess fair housing determinants, prioritize fair housing issues for response, and take meaningful actions to affirmatively further fair housing." HUD also intends the process to allow "for each jurisdiction to not only undertake meaningful fair housing planning, but to have capacity and a well-considered strategy to implement actions to affirmatively further fair housing." More work is needed on the AFH for it to empower local governments to meet these goals.

While NHC supports the concept of an online, interactive tool to help local jurisdictions assess their housing needs, **it is difficult for us to comment on the efficacy of the Fair Housing Assessment Tool (the "Tool") when the tool is not available** in its final online, interactive form with key supporting elements, including the detailed instructions and important data elements and maps.   Without being able to review and test the full Tool, it is very difficult to know if using the Tool and conducting the new fair housing assessment will be overly burdensome for local governments and public housing authorities. While the example tables and maps are very helpful in terms of understanding the types of data that will be made available, the set provided for review is still incomplete. Without being able to see how the online process will work and to evaluate the usability of the Tool, we are not able to fully comment on its usefulness for meeting HUD's stated goals.

Understanding how much expertise, staff time, and other resources localities will need to complete their AFHs is key to evaluating the Tool. Without being able to see how the online process will work and if the tool is clearly intuitive and easy to use, it is impossible to assess if local jurisdictions will be able to use the tool efficiently. Based on the materials available, it appears that to use the tool effectively will require a significant staff investment or the use of a consultant. Local jurisdictions have experienced regular HOME, CDBG, and PHA funding cuts, limiting their ability to allocate extensive staff time to the AFH. Local governments would need additional resources for staff time and technical assistance to complete an AFH, based on the tool as proposed.

NHC supports HUD in its commitment to affirmatively furthering fair housing and believes the Assessment Tool can become an effective means to communicate expectations clearly, provide for a common understanding across jurisdictions and empower localities to improve housing outcomes. NHC also understands that HUD's resources to provide technical assistance are very limited.

With this reality in mind, NHC urges HUD to create a process for improving the Assessment Tool based on field testing. NHC has joined several other national organizations in a separate comment letter urging this approach. HUD also needs to provide clarity to communities on the minimum threshold for the AFH including what data and analysis are required and what data elements, while useful, are not mandatory. Clear expectations from HUD for what a satisfactory and complete AFH will look like are essential for local governments to have confidence about their ability to meet the AFH requirement.

To make it easier for local jurisdictions to complete the assessment and achieve HUD's desired outcomes, **HUD needs to ensure that the online tool is intuitive and easy to use, that the metrics and outcomes are clearly defined, and that each section of the Tool has detailed instructions and examples to help local governments complete their Assessments thoroughly and with confidence that they are meeting HUD's expectations.**

To help make the AFH Tool and the AFFH process a success, we offer comments and suggestions for ways HUD could expand and modify the materials, information and instructions provide with the Tool that can make it easier for local jurisdictions to use, and to clarify the types and uses of national and local data used for the analysis, while also improving its ability to meet HUD's goals of affirmatively furthering fair housing.

III.   Comments on specific aspects of the assessment tool

HUD is providing an extensive amount of data and maps to communities which will have tremendous benefits. Objective third party data provide credibility and transparency to the local fair housing assessment process. Data that are comprehensive can provide a holistic view of trends and activities on the ground. Ideally, it will lead many communities to acknowledge or realize fair housing issues that need to be addressed proactively. NHC commends HUD for the breadth and depth of the data it will provide and offers suggestions for improving the data and presentation.

A. Provide clear definitions, step-by-step instructions and clarifying examples

In order for program participants to complete the Fair Housing Assessment independently, the Tool must be accompanied by clear definitions, detailed step-by-step instructions, and clarifying examples at each step in the assessment process.

Clear Definitions. HUD's goal is to provide uniform data so that local jurisdictions can prepare an assessment of fair housing issues along common measures. In the notice, HUD has committed to providing definitions for key elements that are part of the assessment. Clear definitions of terms are important for helping to reduce burden on local jurisdictions. These definitions could be part of hard-copy instructions and could also be included as hyperlinks in online instructions.

HUD has indicated that some definitions are still forthcoming, which makes it difficult to evaluate the effectiveness of the definitions that will be available to local jurisdictions. However, we have the following specific recommendations for terms that should be clearly defined in the Analysis section (section IV, subsection of first reference in parentheses) of the Fair Housing Assessment Tool instructions to improve the proposed fair housing assessment process:

> Dissimilarity index (B.1): The AFFH Data Documentation draft (June 2013) includes a description of the dissimilarity index that could be modified and included in the fair housing assessment instructions.

> R/ECAPs (B.2): The AFFH Data Documentation draft (June 2013) includes a description of how the racially/ethnically-concentrated areas of poverty (R/ECAPs) were defined. This description could be modified and included in the fair housing assessment tool instructions. (Currently, "R/ECAP" is not spelled out in the fair housing assessment tool instructions.)

> LEP persons (B.2.i), national origin, color, family status, religion (B.2.j): These terms and the relevant categories may be unfamiliar to practitioners so HUD should provide short definitions of each.

> Significance level (B.5): In the assessment, local jurisdictions are asked to rank whether the impact of each determinant is "highly significant, moderately significant or not significant." To better enable local jurisdictions to assess and rank causes of segregation, HUD should provide clearer definitions of "highly significant, moderately significant or not significant."

> Housing needs (C.1.c), disproportionate housing needs (C.4): The AFFH Data Documentation draft (June 2013) includes a description of how disproportionate housing needs are determined that could be modified and included in the fair housing assessment tool instructions.

> Jobs proximity index (D.1.b):
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> Labor engagement index (D.1.b):
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> Transit proximity index (D.1.b):
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> Poverty exposure index (D.2.a):
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> Health hazards index (D.2.b):

The AFFH Data Documentation draft (June 2013) includes a description of how these indices were constructed. These descriptions can be modified and included in the fair housing assessment tool instructions.

Detailed and Step-by-Step Instructions. HUD has committed to providing "step-by-step guidance" for using the fair housing assessment tool. The guidance and instructions that are currently available for review need far more information and better organization to be truly "step-by step." Having detailed, step-by-step instructions will be very helpful for completing local fair housing assessments. For every element of the fair housing assessment, HUD needs to provide more detailed instructions to reduce

burden on local jurisdictions and to help enable them to complete the fair housing assessment without the need for outside technical assistance. We have provided recommendations on just a few specific steps in the fair housing assessment guidance where there needs to be more detailed instructions (section of the Fair Housing Tool Assessment is at the beginning of each comment):

A.1. Describe demographic patterns…and describe trends over the past 10 years.
To help local jurisdictions understand what data they should be referencing in order to describe patterns and trends, it would be helpful if HUD provided either a fill-in-the-blank style format or an example for local jurisdictions to follow. HUD should provide guidance on what groups, patterns, and trends local jurisdictions should focus on when they write their demographic summaries. Otherwise, there is the potential for a lengthy, unfocused summary that is burdensome to produce and overall not particularly helpful for beginning an assessment of fair housing issues.

B.1.a. Describe and compare segregation levels…Identify the racial/ethnic groups that experience the highest levels of segregation…
We recommend that HUD provide more guidance to help local jurisdictions "describe and compare" segregation levels either with a fill-in-the-blank format or a specific example local jurisdictions can follow. To identify groups with the highest levels of segregation, local jurisdictions would benefit from specific instructions from HUD on what measures to be referring to in order to make this judgment (e.g. "Refer to column 2 on Table 3 to identify which group has the highest level of segregation as measured by the dissimilarity index.")

B.2.d., B.2.e. Identify neighborhoods or areas…where segregation or integration…has changed over time.
The dissimilarity index is being provided by HUD as a measure of segregation at the jurisdiction and region level (see comments below on the appropriateness of jurisdiction/regional dissimilarity indices.) In the fair housing assessment tool instructions, local jurisdictions are asked to comment on patterns and trends in segregation at the neighborhood or area level. HUD needs to clarify how local jurisdictions use the dot density maps—which show somewhat different data than the dissimilarity index—to discuss segregation and integration. Being asked to comment on segregation/integration using two different sets of data can create confusion unless users have instructions on how to compare and contrast the different measures.

B.7.a. Discuss how admission preferences/public support or public opposition…affect residency patterns/contributes to decisions regarding the amount of such housing…
In these cases, it would be helpful if HUD first instructs local jurisdictions simply to describe their admissions preferences and public support separately before commenting on their impact.

D.b.i., D.b.ii. Describe any disparities in proximity to jobs and labor market engagement by race/ethnicity…Compare and contrast neighborhoods with high access…neighborhoods with low access.
HUD should provide more guidance to help local jurisdictions in describing disparities and comparing and contrasting neighborhoods. HUD could suggest examples of the specific data

points or patterns on the map local jurisdictions should be looking at in order to complete this and similar elements.

Clarifying Examples. Examples for each element of the fair housing assessment would be very helpful and would reduce burden on local jurisdictions. By having an example they can follow when preparing their own assessments, local jurisdictions would spend less time determining what types of data to reference and how to interpret patterns and change. These examples would reference specific tables and maps and specific columns or rows of data in tables or specific examples of clustering or spread in maps. We therefore recommend including examples in the Fair Housing Assessment Tool instructions.

Examples will also be helpful in the community participation section. As proposed, this section does not provide enough information to jurisdictions for them to understand what is expected in terms of community participation. HUD should set a minimum standard in terms of outreach and community engagement. NHC would not recommend a process focused solely on public meetings, as those are not always the best avenue for detailed and constructive public participation. Achieving good fair housing outcomes through policy change often requires more detailed interaction between community members and local government than a public meeting format allows. HUD should provide suggestions and examples on ways to conduct community outreach and strategies for effective community participation. A program guide with types of organizations that should be included in the community engagement process and for the various sections in the AFH would also be helpful.

B. Recognize the limitations of uniform, national data
HUD has committed to providing "nationally uniform data to local jurisdictions for meaningful fair housing planning." Making these data available to local jurisdictions is a tremendous benefit to localities. We commend HUD's efforts to expand access to demographic, economic and other data that can help local jurisdictions with fair housing planning. However, the data provided by HUD need to be relevant and appropriate for the local fair housing assessment and should also recognize how geographic scale, time frame and HUD-provided options could affect local jurisdictions' fair housing assessments and planning.

Geographic Scale. We recommend that HUD better evaluate the limitations of providing data at different geographic scales and, where appropriate, provide guidance to local jurisdictions about how to either use comparable local data or how to assess caveats associated with the HUD-provided data.

First, HUD has stated it will provide some common demographic data to local jurisdictions at the Census tract or block group level (from the ACS 5-year file). However, the instructions are for local jurisdictions to report patterns and trends at the "neighborhood or area" level. Local neighborhood boundaries generally do not line up with Census tract or block group boundaries. Some local jurisdictions have compiled demographic and other data at the neighborhood scale. HUD should provide explicit guidance for how local jurisdictions should use their own neighborhood level data to respond to the fair housing assessment. In addition, HUD should provide explicit instructions for how local jurisdictions should report on "neighborhoods or areas" that do not conform to the local, sub-jurisdiction data provided by HUD.

Second, the dissimilarity index that HUD will provide "represents a summary measure of the extent to which the distribution of any two groups (frequently racial or ethnic groups) differ across Census tracts or block groups." It is unclear from the Fair Housing Assessment Tool instructions whether the dissimilarity index is being calculated and provided at the jurisdiction (and region) level or at some sub-jurisdiction level such as Census tracts. HUD needs to clarify the specific dissimilarity data that will be provided and, if the dissimilarity index and index trend data are provided at the tract level, how the data will be provided in tabular form that is easy to read. (Some jurisdictions will have dozens of Census tracts and hundreds of block groups.)

Indices of segregation are highly sensitive to the scale of geography at which they are reported.[1] HUD should be aware that the analysis of dissimilarity indices will vary tremendously if jurisdictions are provided a jurisdiction-level index versus indices for Census tracts or block groups. Furthermore, the type of dissimilarity index that HUD is providing can mask some very important patterns of residential settlement. For example, the dissimilarity index can show two jurisdictions have much higher shares of African Americans than the overall regional share. However, even with the same dissimilarity index, in one jurisdiction, the African American population can be integrated in communities throughout the jurisdiction while in the other the African American population can be concentrated in a very few neighborhoods. Thus, we recommend that HUD offer guidance so that local jurisdictions understand the possible nuances of the dissimilarity index data and explain how they should assess the dissimilarity index data alongside the other demographic data provided at the sub-jurisdiction level.

Timeframe. We recognize the challenge of providing timely, uniform, local data but we wanted to suggest ways HUD could help local jurisdictions evaluate the appropriateness of the data provided given changing local conditions. In particular, HUD is providing demographic data from the 2006-2010 American Community Survey (ACS) and labor market data from 2010 (LED). In some fast-growing jurisdictions, the conditions on the ground could be substantially different in 2014 than in the 2006-2010 period, which spans much of the economic recession. Because 2008-2012 ACS 5-year data are available, we recommend that HUD provide this most recent data to local jurisdictions and to establish a plan for providing updated 5-year ACS data as it is released annually by the Census Bureau. In addition, HUD should provide guidance for how local jurisdictions should use their own more up-to-date data, if available.

Options. In the Fair Housing Assessment Tool, there are several sections that ask local jurisdictions to assess and rank determinants of particular outcomes. HUD needs to be aware that the options provided in each of these sections can impact local jurisdictions' fair housing assessments. We have three specific recommendations around the options provided in the determinants sections of the Fair Housing Assessment Tool.

1) HUD should provide descriptions of options provided so that local jurisdictions have a common understanding of terms. For example, what is meant by occupancy restrictions, patterns of community opposition, and municipal and state services and amenities? Some of the

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[1] Östh, John, William A. V. Clark and Bo Malmberg. Measuring the Scale of Segregation Using k-Nearest Neighbor Aggregates. *Geographic Analysis.* Early view published online 12 September 2014.

determinants sections include outcomes that are more descriptive which makes it easier for local jurisdictions to respond.

2) In some cases, we recommend that determinant options be split up into more specific options. For example, the option "Land use and zoning laws" has several components and some may be applicable to a jurisdiction while others are not. Therefore, this category should be split out into several categories.

3) HUD could include more neutral determinants of racial-ethnic and immigrant segregation including cultural and institutional determinants. For example, many new immigrants cluster in one area to take advantage of social and familial networks that help with integration into the U.S.

C. Streamline local data requirements and provide guidance to reduce the burdens on local jurisdictions

The types and amounts of local data asked for in the Fair Housing Assessment are often not available or will be unduly burdensome for many local jurisdictions to collect. We recommend that HUD streamline the amount of local data requested and provide guidance for collecting local data, including recommendations for sources and procedures.

We recognize the importance of local data and community input to provide on-the-ground insights on local conditions. However, the reliance on locally-collected data for the fair housing assessment involves a trade-off. The benefits of local data need to be considered in light of the burden the collection of local data can create for localities, particularly smaller localities with fewer staff and resources. Where local data is requested, we recommend HUD provide suggestions for data sources and examples of how some local jurisdictions have found or collected various data elements. For example, if a particular jurisdiction has been successful in obtaining disability data from a particular state office, this information would be helpful for other localities to provide a potential starting place as they seek out their own data on disability. In addition, HUD should provide guidance for how localities should use more up-to-date and neighborhood specific data, if available, to supplement or stand in for the local data HUD provides (see above).

Disability and Access. A major area of concern is the level of data on persons with disabilities and the supply of housing that is accessible to persons with different types of disabilities (Section E). In our experience working with local jurisdictions on housing needs analyses, it is very difficult, even among jurisdictions with large housing staffs and dedicated resources for data collection, to have a good handle on this particular category of housing need and supply. NHC recommends that HUD provide strategies for collecting disability data and examples.

Project-Level Data. We also suggest that the request for local data on the siting of particular subsidized housing projects within segregated neighborhoods or areas is vague and could create confusion and burden for local jurisdictions. If possible, HUD should provide guidance for how local jurisdictions might approach collecting project-level data, including processes to collect resident data, how to deal with any

confidentiality issues, and how to determine how many and what types of projects local jurisdictions should collect data on.

Other Demographic Data. Finally, the request from HUD for local jurisdictions to collect socioeconomic data not readily available from public sources, particularly religion and color, likely will pose significant burden for local jurisdictions. We recommend that HUD provide guidance for how local jurisdictions can either collect data on the demographic characteristics or pull together impressionistic data from local sources to respond to these elements in the fair housing assessment.

D. Make stated fair housing strategies explicit in the Assessment of Fair Housing

To make the proposed fair housing rule most effective, while at the same time minimizing the burden on local jurisdictions, we recommend HUD provide additional guidance on specific policies and programs that have been demonstrated to be effective at promoting fair housing goals. The Fair Housing Assessment asks local jurisdictions to list fair housing issues identified through the assessment, to describe one or more goals related to each issue and to describe how each issue will be addressed by the stated goals.

A key missing element in the Fair Housing Assessment Tool is a description of policies and strategies that the local jurisdiction will undertake to meet the goals related to the identified fair housing issues. We recommend that HUD provide references to effective local fair housing strategies and evidence-based best practices that local jurisdictions can make use of in developing their own strategies. HUD has resources on local best practices it could share. In addition, NHC's housingpolicy.org website is an online resource for state and local housing policy that provides valuable information to local housing planners and practitioners.

E. Offer more explicit guidance on tracking and evaluating progress

The current Fair Housing Assessment Tool lacks sufficient instructions and guidance for how local jurisdictions will evaluate fair housing interventions and track progress towards meeting fair housing goals. We recommend that HUD establish specific metrics and timeframes for evaluating progress toward meeting fair housing goals. We are concerned that the enhanced assessment process is not adequately linked to interventions and to specific measures of success. We urge HUD to provide more explicit guidelines to localities for evaluating progress toward meeting fair housing goals.

IV.   Conclusion

NHC commends HUD for its proactive efforts to further fair housing at the local level through the provision of the Assessment Tool. The Assessment of Fair Housing will help make progress toward addressing residential segregation and empowering communities to think creatively about their investments to better support communities. NHC urges HUD to consider the comments it receives, make improvements to the tool and release the online version for review and testing. However, NHC also encourages HUD to continue moving forward with implementation as these are important and needed changes. Please contact Rebekah King, Policy Associate (rking@nhc.org) with any questions.

Sincerely,

Chris Estes
President and CEO