

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL FAIR HOUSING ALLIANCE,  
TEXAS LOW INCOME HOUSING  
INFORMATION SERVICE, and  
TEXAS APPLESEED,

Plaintiffs,

v.

BEN CARSON and U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT,

Defendants.

Civ. Action No. 1:18-cv-01076-BAH

**FIRST AMENDED COMPLAINT**

**INTRODUCTION**

1. Fifty years ago, Congress enacted the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* That Act is best known for barring a variety of forms of housing discrimination. Less attention has been paid to its requirement that the Secretary of the U.S. Department of Housing and Urban Development (HUD) “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of” that Act. *Id.* § 3608(e)(5). Although this Affirmatively Furthering Fair Housing (AFFH) requirement was of great importance to Congress in enacting the Act, for decades, HUD inadequately enforced it. The agency has permitted more than 1,200 grantees—mostly local and state government entities—to collectively accept billions of dollars in federal housing funds annually without requiring them to take meaningful steps to address racial segregation and other fair housing problems that have long plagued their communities.

2. Recognizing that the AFFH requirement had not been adequately enforced, HUD in 2015 promulgated—through notice-and-comment rulemaking—the AFFH Rule, a regulation

requiring covered program participants, including cities and counties around the country, to take meaningful action to address longstanding segregation and otherwise carry out the Fair Housing Act's requirements. The AFFH Rule creates a rigorous process to ensure that recipients of federal housing funds identify local fair housing problems and then commit to taking concrete steps to correct them (under HUD's supervision and with considerable community input), while giving those jurisdictions flexibility to respond to local conditions. At the Rule's core is the requirement that jurisdictions prepare and submit for HUD review an Assessment of Fair Housing (AFH), a document that includes both the jurisdiction's self-diagnosis of fair housing impediments and a plan to overcome them. Jurisdictions must create these AFHs by reference to a standardized Assessment Tool that HUD creates and publishes (after notice and comment and clearance from the Office of Management & Budget) to focus jurisdictions' analysis on certain required elements of an effective and compliant AFH.

3. In January 2018, HUD issued a notice suspending for almost three years the requirement that jurisdictions prepare AFHs and submit them for HUD review, effectively suspending the Rule itself. Plaintiffs sued. Less than two weeks later, in May 2018, HUD withdrew that notice, but the agency simultaneously replaced it with another notice that accomplishes the same result by withdrawing the Assessment Tool, thus making it impossible for jurisdictions to prepare and submit AFHs. Plaintiffs National Fair Housing Alliance (NFHA), Texas Low Income Housing Information Service (Texas Housers), and Texas Appleseed bring this suit to challenge HUD's suspension of the Tool, which in effect suspends the AFFH Rule, as a violation of the Administrative Procedure Act (APA).

4. The effect of HUD's action is that jurisdictions return to the dysfunctional process that was in effect from 1995 to 2015, pursuant to which HUD required only an annual

certification that a jurisdiction had studied fair housing impediments, taken “appropriate actions” to address them, and maintained related records. As both HUD and the Government Accountability Office found, putting local jurisdictions on the honor system is ineffective. When pressed, many jurisdictions could not produce any documentation supporting their certifications; others had prepared documents that made no concrete promises or otherwise did not translate into action on the ground to address fair housing concerns. A False Claims Act suit against Westchester County, New York revealed that the County had certified compliance for years without ever assessing whether racial segregation was a problem, let alone committing to addressing the barriers to integration that were well known to exist in Westchester.

5. In response to these revelations and to ensure greater accountability for compliance with civil rights laws, in 2009, HUD began an exhaustive, six-year process of crafting a more effective AFFH enforcement regime, culminating in the promulgation of the AFFH Rule in 2015. This Rule requires every covered jurisdiction to develop, submit for HUD review, and implement a planning document—called an Assessment of Fair Housing (AFH)—that includes concrete plans to address local fair housing issues.

6. The Rule requires jurisdictions to provide extensive notice to stakeholders and to solicit public comment about fair housing problems in various communities; to consult with fair housing groups and other interested entities; and to encourage public comment on drafts of their AFHs. Jurisdictions must submit their AFHs for HUD review (along with explanations about why comments from stakeholders were or were not incorporated), and HUD must carefully review them. HUD must reject those AFHs not meeting specified requirements and require the submission of revised, compliant versions. In short, the AFFH Rule requires jurisdictions to take meaningful action to demonstrate their eligibility for federal housing funds by addressing local

fair housing issues, while requiring HUD to monitor their compliance. It includes a schedule on which various jurisdictions are to submit their first AFHs, beginning in 2016, 2017, and 2018 for a small number of jurisdictions and then ramping up in 2019.

7. In the approximately two years since it went into effect, the AFFH Rule has already paid dividends. Many jurisdictions that have gone through the AFH drafting process have committed to concrete reforms that will improve the lives of their most vulnerable residents and create more integrated, inclusive communities. They have, for example, committed to provide help for residents of predominantly African-American neighborhoods who disproportionately face unwarranted evictions; make zoning processes more inclusive for people with disabilities; and create affordable rental units in high-opportunity neighborhoods. The jurisdictions have done so after soliciting input from their communities, accepting comments from fair housing organizations and others on their initial drafts, and undergoing review by HUD (which, sometimes, has required revisions). This robust process has led to a newfound commitment to take meaningful steps towards affirmatively furthering fair housing.

8. Even before becoming Secretary of HUD, Defendant Ben Carson criticized the AFFH Rule, which he compared to “failed socialist experiments” such as “mandated busing” of schoolchildren. After he became Secretary, HUD began cutting back implementation efforts. For example, it reduced the technical assistance that it provided to help local jurisdictions craft effective and compliant AFHs.

9. On January 5, 2018, HUD abruptly announced, without prior notice or opportunity to comment, that it was suspending the AFFH Rule’s requirement that local governments complete and submit AFHs. Plaintiffs sued. Ten days later, HUD withdrew that notice, purporting to reinstate the AFFH Rule, but simultaneously issued two others that instruct

participants not to follow the AFFH Rule's requirements. Specifically, HUD withdrew the Assessment Tool, thereby making it impossible for jurisdictions to complete and submit AFHs to HUD, and thus effectively suspending the AFFH Rule indefinitely. HUD directed participants instead to revert to the Assessment of Impediments (AI) that the AFFH Rule had replaced. Once again, HUD took these actions without prior notice or an opportunity for comment.

10. HUD had no authority to suspend the Tool or to suspend the Rule in any other way without notice-and-comment procedures. The AFFH Rule specifically provides that federal housing money may not continue to flow to jurisdictions without a HUD-approved AFH. Yet HUD's action permits exactly that result for most jurisdictions in the country. Meanwhile, by abandoning the AFH process, HUD has excused compliance with a host of non-discretionary duties related to that process, including meeting regulatory deadlines for submitting AFHs and providing community members and groups with the opportunity to advance goals and strategies consistent with their fair housing missions through the public participation process.

11. Additionally, HUD's withdrawal of the Assessment Tool was arbitrary and capricious. HUD stated that the Assessment Tool had proved to be "unworkable." It based this conclusion on (1) the fact that it rejected 17 of the first 49 initially submitted AFHs, which it blamed on the Assessment Tool, and (2) its estimate that it has spent \$3.5 million so far on the AFFH Rule, an amount it said could not "scale" to the number of jurisdictions yet to submit AFHs for review. HUD did not adequately explain how these facts support withdrawing the Assessment Tool and excusing local governments from further compliance with the Rule, and they do not. In particular, HUD failed to explain why some local governments' failure to follow the Rule's clear requirements demonstrated any fundamental deficiency in the Assessment Tool. It failed to demonstrate that its expenditures will increase dramatically as more jurisdictions

submit AFHs. And above all, it failed to demonstrate that its concerns warrant the drastic step of withdrawing the Assessment Tool and shutting down the AFH process. Indeed, HUD did not consider *any* less disruptive alternatives.

12. By returning to the dysfunctional, pre-AFFH Rule regime that HUD itself concluded did not work, HUD also is violating its statutory duty under the Fair Housing Act to ensure that federal funds are used to affirmatively further fair housing. Decades of experience have shown that, left to their own devices, local jurisdictions will simply pocket federal funds and do little to further fair housing objectives. HUD made no attempt to reconcile its withdrawal of the Tool and instruction to return to the process that was in effect before the AFFH Rule with its own prior finding that the Rule is necessary.

13. HUD's action is causing irreparable harm to Plaintiffs and to others in communities across the country. Plaintiffs, organizations with purposes that include promoting fair housing, are already having their missions frustrated by HUD's action and are having to divert scarce resources from other important activities to remedy the effects of HUD's action.

14. Plaintiffs bring this action seeking preliminary and permanent injunctive relief, including a ruling that the two May 2018 Notices withdrawing the Assessment Tool and instructing participants to revert to the AI process—like the January 2018 notice before them—constitute unlawful agency action. They seek an order that HUD rescind those actions and take all necessary steps to implement and enforce the AFFH Rule.

15. Fifty years after the passage of the Fair Housing Act, it is well past time that HUD carries out its statutory duty to ensure that jurisdictions that take federal housing funds fulfill their end of the bargain and affirmatively further fair housing. HUD failed for decades to require local jurisdictions to take meaningful action with respect to racially segregated communities and

other obvious fair housing issues. It finally created a regulatory scheme to ensure that jurisdictions receiving federal funds effectuate the Act's requirements, but now has unlawfully abandoned it. Judicial intervention is necessary to vindicate the rule of law and to bring fair housing to communities that have been deprived of it for too long.

### **PARTIES**

16. The National Fair Housing Alliance (NFHA) is a national, nonprofit, public service organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Washington, DC. NFHA is a nationwide alliance of private, nonprofit, fair housing organizations, including organizations in 28 states. NFHA's mission is to promote residential integration and combat discrimination in housing based on race, national origin, disability, and other protected classes covered by federal, state, and local fair housing laws.

17. Plaintiff Texas Housers is a non-profit corporation with offices in Austin, Fort Worth, Hidalgo County, and Houston, Texas. It is the principal statewide advocacy group focused on expanding housing opportunities for low-income residents of Texas.

18. Plaintiff Texas Appleseed is a non-profit organization headquartered in Austin, Texas. Its mission is to promote social and economic justice for all Texans, including by ensuring that all Texas families can recover in the wake of natural disasters; that communities are rebuilt to be more resilient; and that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity.

19. Defendant U.S. Department of Housing and Urban Development (HUD) is an executive branch agency of the United States Government. It is charged with administering a variety of federally funded programs and funding sources. It also is responsible for ensuring that

federal programs and activities relating to housing and urban development affirmatively further fair housing.

20. Defendant Ben Carson is the Secretary of HUD and is sued in his official capacity.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 and 5 U.S.C. § 702.

22. Venue is proper in this District under 28 U.S.C. § 1391(b) and 5 U.S.C. § 703 because the claims arose in the District, Defendants reside in this District, and a substantial part of the events giving rise to this action occurred in the District.

### **FACTUAL ALLEGATIONS**

#### **A. Overview of the Fair Housing Act's AFFH Provisions and Historical Context**

23. HUD sends billions of dollars in federal funds each year to state and local jurisdictions, and those communities regularly certify both that they do not discriminate and that they are taking affirmative steps to further fair housing. But until recently, the agency has largely neglected to require those communities to do anything meaningful to fulfill those promises. HUD thus failed, until the promulgation of the AFFH Rule at issue in this case, to give appropriate force to a central part of the Fair Housing Act. That law does not simply bar overtly discriminatory actions, but also requires that federal funds are spent in ways that ameliorate (rather than exacerbate) long-standing patterns of residential segregation. It also requires that recipients of federal funds work toward those fair housing goals in the operation of their housing and community development policies, practices, and programs.



24. The AFFH requirement, like much else in the Fair Housing Act, arose from the findings of the National Advisory Committee on Civil Disorders (“Kerner Commission”). In 1967, President Johnson charged the Kerner Commission with studying the causes of recent urban unrest and recommending solutions. The Kerner Commission’s report, released in February 1968, found “[p]ervasive discrimination and segregation in employment, education and housing.” *Report of the National Advisory Commission on Civil Disorders: Summary of Report*, at 9 (1968), <https://www.hsdl.org/?view&did=35837>. It noted that federal money was being spent in ways that contributed to this segregation and recommended, among other things, that “[f]ederal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation.” *Id.* at 24.

25. When Congress enacted the Fair Housing Act weeks later, in the immediate aftermath of the assassination of Dr. Martin Luther King, Jr. and in response to the recommendations of the Kerner Commission, it sought to replace racially segregated neighborhoods with “truly integrated and balanced living patterns.” *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (citing 114 Cong. Rec. 3422, statement of FHA sponsor Senator Walter Mondale). Consistent with this legislative purpose, in addition to barring discrimination in housing, the FHA also imposed on HUD the obligation to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.” 42 U.S.C. § 3608(e)(5). Effective implementation of this provision is central to the “Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.” *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 135 S. Ct. 2507, 2525-26 (2015).

26. As the Fair Housing Act's legislative history and subsequent case law make clear, this duty to "affirmatively further fair housing" requires HUD to address segregation and other barriers to fair housing not just in its own policies and practices, but also in its oversight of its state and local jurisdictions and other entities that receive HUD grants. HUD's duty under the Fair Housing Act requires it to "do more than simply refrain from discriminating," *NAACP v. Secretary of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987). Rather, HUD also must ensure that the Fair Housing Act powers affirmative movement towards integration in communities around the country, as Congress intended.

27. Since soon after the passage of the Fair Housing Act, federal courts have recognized that HUD must adopt processes to ensure that local governments administering federal housing programs abide by this congressional mandate. In *Shannon v. U.S. Department of Housing and Urban Development*, 436 F.2d 809, 821 (3rd Cir. 1970), the court concluded that HUD "must utilize some institutionalized method" for assessing local compliance. Similarly, in *NAACP v. Secretary of Housing and Urban Development*, the First Circuit held HUD liable for its failure to use its authority to "assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." 817 F.2d at 155.

28. In response to these and other rulings, HUD adopted only modest measures that barely stanch the flow of federal funds to projects and entities that failed to further fair housing objectives. For more than two decades, the agency neglected to adopt any system for ensuring that fair housing concerns were taken seriously by the many cities, towns, and counties that collectively receive billions of dollars every year through the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) programs, notwithstanding

that the Fair Housing Act obligates all such grantees to affirmatively further fair housing and obligates HUD to ensure that they do.

29. In Fiscal Year 2017, HUD distributed \$4.615 billion in federal grants devoted to housing block grant programs, accounting for about a tenth of HUD's annual budget.<sup>1</sup> In Fiscal Year 2018, that amount is slated to rise to almost \$5.5 billion.<sup>2</sup> By far the largest such program—accounting for about two-thirds of the total, and reaching every corner of the United States—is the CDBG program, which provides annual block grants to approximately 1,210 grantees, mostly units of state and local government. *Id.*; see also *Community Development Block Grant Program – CDBG*, U.S. Department of Housing & Urban Development (last accessed May 4, 2018), [http://www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment/programs](http://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs).

30. The CDBG program, which began with the Housing and Community Development Act of 1974, is one of HUD's longest continuously running funding programs. HUD awards CDBG grants to local governments to carry out a wide range of community development activities directed toward revitalizing neighborhoods, fostering economic development, and providing improved community facilities and services. Local governments eligible for CDBG funds, known as “entitlement communities,” include the principal cities of Metropolitan Statistical Areas (MSAs); other metropolitan cities with populations of at least 50,000; and qualified urban counties with populations of at least 200,000 (excluding the population of entitled cities).

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<sup>1</sup> See *Key Programs of the U.S. Department of Housing and Urban Development Budget*, Novogradac & Company LLP (Mar. 22, 2018), <https://www.novoco.com/atom/168201>.

<sup>2</sup> Peter Lawrence, *Congress Agrees to Historic Funding for HUD in Fiscal Year 2018 Omnibus Spending Bill*, Novogradac & Company LLP (Mar. 22, 2018), <https://www.novoco.com/notes-from-novogradac/congress-agrees-historic-funding-hud-fiscal-year-2018-omnibus-spending-bill>

31. Entitlement communities have discretion to develop their own programs and funding priorities, so long as they use CDBG funds consistent with certain statutory objectives, such as benefitting low- and moderate-income persons. 42 U.S.C. § 5304(b)(3). They may, for example, use CDBG funds to rehabilitate affordable housing; acquire land for new affordable housing development; improve infrastructure and public facilities in low- and moderate-income areas; or foster economic development that creates jobs for low- and moderate-income workers.

32. Each CDBG recipient must develop a document called a Consolidated Plan every three to five years and submit it to HUD for review and approval. See 24 C.F.R. §§ 570.302, 91.200-91.230. The Consolidated Plan sets out community development priorities and multiyear goals based on housing and community development needs, housing and economic market conditions, and available resources. CDBG recipients also submit to HUD each year Annual Action Plans, which summarize the specific actions and activities planned and the federal and non-federal resources that will be used. HUD uses these submissions to monitor communities' use of CDBG funds to achieve the goals of the CDBG program.

33. The majority of local governments participating in the CDBG program are on a five-year cycle and renewed their Plans most recently in 2014 or 2015. Thus, they are due to submit their next proposed Plans on various dates in 2019 or 2020. As discussed below, this timeframe also controls the timing of when the AFFH Rule requires these governments to, for the first time, submit to HUD for review and approval their Assessments of Fair Housing. The Rule thus specifically requires governments around the country in the coming months to engage in the robust process (including engagement of the community and local fair housing groups) that the AFFH Rule mandates.

34. CDBG recipients must certify that their grants will be conducted and administered in conformity with the Civil Rights Act of 1964 (which bars discrimination by recipients of federal funds on the basis of race, color, and national origin) and the Fair Housing Act. They also must certify that they will affirmatively further fair housing. 42 U.S.C. § 5304(b)(2); *see also* 24 C.F.R. § 570.601. But until the AFFH Rule’s promulgation, they were not required to submit to HUD any fair housing equivalent of the Consolidated Plan, *i.e.*, an explanation of how they will conform to the AFFH requirement. Until the mid-1990s, HUD required its grantees merely to sign a bare certification that they complied with the 42 U.S.C. § 3608(e)(5).

35. In the mid-1990s, HUD finally promulgated regulations requiring each CDBG grantee to periodically conduct a written “Analysis of Impediments to Fair Housing Choice” (AI). This regulation instructed grantees to identify impediments to fair housing choice, take appropriate actions to overcome the effects of any such impediments, and maintain records reflecting the analyses and actions taken.

36. This system was virtually toothless. HUD did not require the grantees to submit their AIs to HUD for review or approval, and the AIs themselves had no required format or goals. HUD required grantees only to certify that they had conducted an AI and were taking appropriate actions to overcome identified impediments. The agency did not require that the impediments identified be meaningful, did not offer guidance as to what would be “appropriate actions” to overcome these impediments, and did not adopt a system for compliance review. At best, AIs were paper exercises in the planning of fair housing policy that sat on municipal shelves and never translated into actual policy; at worst, meaningful assessments of fair housing problems and solutions never appeared, even on paper.

37. HUD conducted almost no oversight of this process. It did not review AIs and, except for publishing a non-binding *Fair Housing Planning Guide* in 1996, did not provide any guidance or technical assistance to grantees. It imposed no consequences when a grantee failed to produce or update an AI or to take the actions described in an AI. With HUD failing to meaningfully oversee its grantees in accordance with 42 U.S.C. § 3608, jurisdictions around the country routinely skirted their AI obligations and falsely certified their compliance with even these weak requirements.

38. In 2008, the National Commission on Fair Housing and Equal Opportunity—a body co-chaired by former HUD Secretaries Jack Kemp (a Republican) and Henry Cisneros (a Democrat)—reported: “The current federal system for ensuring fair housing compliance by state and local recipients of housing assistance has failed.... HUD requires no evidence that anything is actually being done as a condition of funding and it does not take adverse action if jurisdictions are directly involved in discriminatory actions or fail to affirmatively further fair housing.” National Commission on Fair Housing and Equal Opportunity, *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity* 44 (2008), available at <http://www.naacpldf.org/files/publications/Future%20of%20Fair%20Housing.pdf>. See also The Opportunity Agenda, *Reforming HUD’s Regulations to Affirmatively Further Fair Housing* 7 (2010), available at <https://opportunityagenda.org/sites/default/files/2017-03/2010.03ReformingHUDRegulations.pdf> (stating that “[a] range of housing experts, civil rights groups, and former HUD officials have documented the inadequacy of the current AI process,” and detailing that testimony).

39. HUD’s countenancing of rampant non-compliance with the AFFH mandate came to a head in a False Claims Act case brought against Westchester County, New York. In that

case, a whistleblower organization alleged that the County had defrauded the United States for years by continually certifying to HUD its compliance with the Fair Housing Act, even as it was deliberately concentrating affordable housing for families in a small number of heavily African-American and Latino communities and distributing CDBG funds to overwhelmingly white suburbs that refused to allow the development of affordable housing. *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc., v. Westchester Cty., N.Y.*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007); 668 F. Supp. 2d 548 (S.D.N.Y. 2009)

40. The *Westchester* case publicly exposed the failings of the AI process and the annual “certification” process. On summary judgment, the district court found that the County could produce no evidence that it even evaluated race-based impediments to fair housing, let alone did anything about them, while annually certifying compliance and accepting more than \$50 million in federal housing funds during the relevant years. 668 F. Supp. 2d at 562.

41. Following the *Westchester* decisions, HUD took a closer look at what its grantees were doing in exchange for billions of dollars of federal funds every year. It engaged in a series of hearings, listening sessions, and internal reports, and it concluded that the AI process was not working.

42. For the first time, HUD asked participating jurisdictions to produce their AIs for review, and the results were unacceptable. More than a third of jurisdictions could not or would not produce any AI at all. Of those that did produce an AI, HUD rated 49 percent as “needs improvement” or “poor.” HUD found that only 20 percent of AIs committed jurisdictions to doing *anything* on a set timeframe. See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Analysis of Impediments Study* (2009).

43. At the same time, the Government Accountability Office (GAO) was undertaking a detailed review of the AI process. It released its conclusions in a 2010 report to Congress, GAO-10-905, *Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans* (2010), available at <https://www.gao.gov/assets/320/311065.pdf> (GAO Report).

44. The GAO Report highlighted the weaknesses of the AI process and urged HUD to reform the system of fair housing oversight of HUD grantees. The report found that many jurisdictions, lacking any oversight or accountability, failed to make minimal efforts to comply even with the lax requirements of the AI system.

45. For example, the GAO found that 29 percent of jurisdictions had not completed an AI within the last five years, as recommended by HUD's *Fair Housing Planning Guide*, while 11 percent had not done so within the last 10 years; for another 6 percent the date of completion could not be determined. Since the purpose of an AI was to be a planning document for a 5-year period, these jurisdictions effectively had no operative AI at all. Many jurisdictions could not produce a document labeled an AI, and others produced perfunctory documents—or, in one case, an e-mail.

46. Even for those jurisdictions that had operative AIs, the GAO found little evidence that the AIs made a practical difference. The GAO reviewed many of the AIs that grantees had completed (and used as the basis for certifying compliance with the Fair Housing Act) and found most of them contained little more than aspirational statements of vague goals. It found, for example, that most AIs reviewed “lack time frames for implementing identified recommendations,” making it impossible “to establish clear accountability.” GAO Report at 31. Moreover, because HUD never established clear rules as to the most basic substantive and



procedural “requirements” it meant to impose—*e.g.*, a timeline on which AIs should be completed, a process for completing them, the documents’ form and content—it was virtually impossible for HUD field offices to participate meaningfully in the process and ensure compliance even if they wanted to do so. *Id.* at 25.

47. By the time the GAO Report was issued, HUD had begun the process of formulating the AFFH Rule, and the GAO Report contained specific recommendations that the Rule largely incorporated. In particular, the GAO Report recommended that HUD establish standards and a common format for grantees to use in their planning documents; that grantees be required to include time frames for completing promised actions; and that grantees be required to submit these documents to HUD for comprehensive review on a regular basis. GAO Report at 32-33.

48. Based on the GAO Report, a vast record of rulemaking comments, and its own experience, HUD concluded that the AI process did not work. That was for myriad reasons; among other things, the AI drafting process “was not well integrated into the planning efforts for expenditure of funds made by HUD program participants,” and “HUD has not, in a systematic manner, offered to its program participants the data in HUD’s possession that may better help them frame their fair housing analysis.” Final Rule: Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272, 42,275 (July 16, 2015) (AFFH Rule).

## **B. HUD AFFH Rulemaking**

49. In 2009, in response to the growing and uncontroverted evidence that it was failing to ensure that federal housing dollars were spent in ways consistent with the AFFH obligation, HUD began formulating a better system. The regulation that HUD formally proposed in 2013 and promulgated as a final rule in 2015 was the product of a comprehensive process of

outreach and study that informed the Rule's eventual design. 80 Fed. Reg. 42,272; GAO Report at 29.

50. For example, in July 2009, HUD held a listening conference in which more than 600 people participated, both in person and remotely. As Assistant Secretary for Fair Housing John Trasviña testified to Congress the next year: "There, fair housing and civil rights groups, mayors, counties, and states all voiced their desire for HUD to amend its regulations to provide more concrete, specific information about how to develop a meaningful plan for affirmatively furthering fair housing." John D. Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Statement before the Subcommittee on Housing and Community Opportunity, Committee on Financial Services, U.S. House of Representatives, Hearing on H.R. 476 Housing Fairness Act of 2009 (Jan. 20, 2010), *available at* [https://financialservices.house.gov/media/file/hearings/111/trasvina\\_-\\_hud.pdf](https://financialservices.house.gov/media/file/hearings/111/trasvina_-_hud.pdf).

51. After several years of gathering information, HUD published its proposed AFFH Rule on July 19, 2013. 78 Fed. Reg. 43,710 (July 19, 2013). It acknowledged that the problems revealed by the GAO, advocates, stakeholders, and program participants regarding the existing AI process required it to develop a new regime for AFFH enforcement. It determined that, under the AI regime, federal funding recipients did "not sufficiently promote the effective use of limited public resources to affirmatively further fair housing." 78 Fed. Reg. at 43,711.

52. HUD found that it was required to change course in order to carry out its statutory mission: "HUD and its grantees have a statutory duty to affirmatively further fair housing. *This is not an administrative requirement that can be waived by HUD.*" 80 Fed. Reg. at 42,348 (emphasis added).

53. HUD explained that it was not seeking to “mandate specific outcomes” for jurisdictions. 78 Fed. Reg. at 43,711. Rather, the AFFH Rule would structure decision-making processes in ways that ensured that local fair housing concerns would be heard, considered, and ultimately acted upon on a regular basis, with HUD review of the resulting product providing accountability. It would no longer be possible for jurisdictions to fail to produce an AI altogether, or to produce one that entirely ignored fair housing concerns (as Westchester’s had), without HUD detecting and remedying the violation.

54. To accomplish this, the AFFH Rule introduced the Assessment of Fair Housing, or AFH, as the core planning and oversight tool that integrates fair housing considerations into jurisdictions’ regular planning processes. HUD would review the adequacy of jurisdictions’ plans—but it would also assist them, in a variety of ways, rather than leaving them at sea as to how to comply with their obligation to affirmatively further fair housing. HUD committed to providing participants with national data and meaningful direction, including clear standards to follow and ample technical support. 78 Fed. Reg. at 43,714; *see also* 80 Fed. Reg. at 42,275 (reiterating these “key features” of the rule). HUD received 1,025 comments on the proposed rule.

55. HUD published its final AFFH Rule on July 16, 2015, with an effective date of August 17, 2015. The final rule addressed the public comments HUD had received and made changes in response, such as strengthening the requirement that participants identify “meaningful actions” to further fair housing. The final rule also provided for a staggered AFH submission schedule, to reduce the burden on HUD and program participants and give smaller participants extra time to prepare. It described HUD’s plans to issue guidance and technical assistance to assist with the regulation’s rollout.

56. The AFFH Rule provides for a consistent template (the AFH) that participants must complete, engage the public in reviewing, and submit to HUD for oversight at regular intervals. 24 C.F.R. § 5.154(d). Participants must use the AFH to identify local fair housing issues and make concrete plans to address them—including measurable goals and metrics for measuring success—with public input and HUD review. While the initial AFHs are an exercise in goal-setting, subsequent AFHs must review progress toward these goals, such that the process provides a cycle of accountability. 24 C.F.R. § 5.154(d)(7).

57. Under the AFFH Rule, a funding recipient “must certify that it will take meaningful actions to further the goals identified in its AFH,” 24 C.F.R. § 91.225(a)(1), with “meaningful actions” defined as “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing.” 24 C.F.R. § 5.152.

58. In conjunction with this “meaningful action” requirement, HUD for the first time provided a regulatory definition of what it means to affirmatively further fair housing. HUD defined “AFFH” as:

taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

24 C.F.R. § 5.152.

59. Thus, the regulation guarantees performance of the statutory duty to affirmatively further fair housing by requiring meaningful steps towards achieving the Fair Housing Act’s

ambitious goals. Those steps may vary widely from jurisdiction to jurisdiction, depending on local conditions and needs, but the constant is that every jurisdiction must take meaningful steps towards addressing its own barriers to fair housing.

60. Following its promulgation of the AFFH Rule, HUD issued an Assessment Tool (as required by the rule) to standardize the AFH process. The Assessment Tool was separately subject to public notice and comment under the Paperwork Reduction Act and is to be updated at regular intervals. In preparing their AFHs, local governments must use the Assessment Tool, which organizes all the required elements of an AFH into a template for simpler preparation and review. 24 CFR § 5.154(d). HUD determined that requiring program participants to use a common Assessment Tool to create their AFHs would ensure that “AFHs are developed consistently and will facilitate objective, consistent reviews.” 80 Fed. Reg. at 42,311.

61. The Assessment Tool for local governments was initially approved through the Paperwork Reduction Act process for a one-year period. *See Affirmatively Furthering Fair Housing Local Government Assessment Tool-Information Collection Renewal: Solicitation of Comment-30-Day Notice Under Paperwork Reduction Act of 1995*, 81 Fed. Reg. 57,601 (Aug. 23, 2016). After several rounds of comments and revisions, the current version of the Assessment Tool for local governments was approved in January 2017 through the Paperwork Reduction Act process for a three-year period. *See Affirmatively Furthering Fair Housing: Announcement of Renewal of Approval of the Assessment Tool for Local Governments*, 82 Fed. Reg. 4,388 (Jan. 13, 2017). HUD did not withdraw the prior version while it was obtaining approval of the current one.

62. The Tool contains questions that local governments are required to answer by reference to, among other things, HUD-provided local data and maps. Local governments must

provide a narrative description and analysis of local fair housing conditions and describe policies and practices that influence those conditions. They must provide an analysis of, among other things, residential racial segregation, racially- or ethnically-concentrated areas of poverty, disparities in access to opportunity (such as jobs or education), and the housing needs of persons with disabilities. 24 C.F.R. § 5.154(d)(2), (3). The version of the Tool for local governments that HUD withdrew in its May Notices can be seen here: <http://nationalfairhousing.org/wp-content/uploads/2018/05/Assessment-of-Fair-Housing-Tool-For-Local-Governments-2017-01.pdf>.

63. To facilitate this detailed analysis, the Rule provides for HUD to publicly issue a variety of maps and provide data customized for each participant. All of this information has been posted on HUD's website. For each participating jurisdiction, a user can see patterns of residential segregation by race, national origin, and disability; the location of affordable housing; and details such as transit, job proximity, and school proficiency. These maps and data are available at <https://egis.hud.gov/affht/>.

64. The AFFH Rule provides that, in preparing the AFH, the funding recipient must provide for "meaningful community participation," including through public hearings—publicized by "means designed to reach the broadest audience"—and through public review of an initial AFH draft. 24 C.F.R. § 5.158(a); *see also* 80 Fed Reg. at 42,300 ("public input is a fundamental and necessary component in the AFH process"). The jurisdiction also must consult with a number of designated community organizations, including but not limited to fair housing organizations, *see* 24 C.F.R. § 91.100(a), (e)(1), as well as "any organizations that have relevant knowledge or data to inform the AFH and that are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH, the consolidated plan, and their

implementation.” 24 C.F.R. § 91.100(e)(2). This consultation “must occur at various points in the fair housing planning process,” including not only with respect to the drafting of the AFH, but also with respect to implementation of the AFH’s goals through the Consolidated Plan. 24 C.F.R. § 91.100(e)(3).

65. The completed AFH must include a summary of comments received, and explanations as to why any recommended changes to the draft AFH were not accepted. 24 C.F.R. § 5.154(d)(6).

66. Once a funding recipient has prepared and submitted an AFH, the Rule specifically contemplates and requires an iterative process between HUD and funding recipients. It calls on HUD not simply to pass judgment on AFHs, but to help funding recipients improve them and meet the AFFH Rule’s rigorous requirements.

67. The AFFH Rule requires HUD to review every Assessment of Fair Housing. HUD must “determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting,” 24 C.F.R § 5.162(a). The agency may not “accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete,” 24 C.F.R. § 5.162(b). An AFH can be “substantially incomplete” for, among other things, failure to meet the required community participation and consultation requirements. 24 C.F.R. § 5.162(b)(1)(ii)(A). If HUD does not accept an Assessment, it must specify the reasons the Assessment has not been accepted and “provide guidance on how the AFH should be revised in order to be accepted.” 24 C.F.R. § 5.162(b)(2). If an Assessment fails to meet any required element, HUD must deem it incomplete and require revision, even if other elements are complete. 24 C.F.R. § 5.162(b)(1)(ii)(B).

68. The AFFH Rule establishes that each jurisdiction must complete and submit an AFH every three to five years—depending on that jurisdiction’s Consolidated Plan submission schedule—and do so in a way that integrates fair housing concerns into the Consolidated Plan that CDBG recipients already prepare on a similar schedule. 24 C.F.R. § 5.160.

69. Each CDBG recipient must complete and submit an AFH ahead of its Consolidated Plan schedule, so that financial and other commitments to implement the AFHs can be included in the next Consolidated Plan. Both the process of developing the Consolidated Plan and the Plan’s substance must then reflect various components of the AFH. *See* 24 C.F.R. § 5.160(a)(1)(i); 80 Fed. Reg. at 42,287; *see also* 24 C.F.R. § 91.105(e)(1)(i) (requiring that Consolidated Plan hearings include presentation of “proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH”); 24 C.F.R. § 91.215(a)(5)(i) (CDBG participant must “[d]escribe how the priorities and specific objectives of the jurisdiction...will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH”).

70. In order to ensure that HUD’s review could be rigorous, HUD considered and rejected a proposal that a funding recipient submit an AFH at the same time as its proposed Consolidated Plan. HUD reasoned that it was necessary to build in several months’ gap between the submissions to ensure that, prior to submission of the Consolidated Plan, “the affected communities would have already had the opportunity to review and comment on the AFH, HUD will have the opportunity to identify any deficiencies in the AFH, and the program participant will have the opportunity to correct any deficiencies, prior to incorporation of the AFH into the consolidated plan or PHA Plan, such that funding to program participants will not be delayed.” 80 Fed. Reg. at 42,311. Thus, HUD constructed a schedule that permits it to initially reject



AFHs—and then work with jurisdictions to improve them—as part of the routine process rather than as extraordinary event that seriously endangers federal funding.

71. The Consolidated Plan that follows must include fair housing elements that have been approved in the AFH. *See* 24 C.F.R. § 91.500(b); *see also* 80 Fed. Reg. at 42,299. An accepted AFH is now a requirement for HUD’s approval of the Consolidated Plan, 24 C.F.R. § 5.162(d), which in turn is a prerequisite for funding by the CDBG program. The AFFH Rule gives HUD only limited authority to excuse non-compliance with these requirements; if any jurisdiction fails to submit a Consolidated Plan that includes an approved AFH by August 16 of the federal fiscal year in question, that failure “will *automatically* result in the loss of the CDBG funds to which the jurisdiction would otherwise be entitled.” 24 C.F.R. § 5.162(d)(1) (emphasis added).

72. HUD set the dates for submission and review of AFHs on a staggered schedule, such that only a minority of jurisdictions must submit AFHs prior to 2019. The AFFH Rule requires jurisdictions to submit their first AFH by 270 calendar days before the beginning of their next CDBG program year. 24 C.F.R. § 5.160(a)(1). For most CDBG jurisdictions, this schedule requires that jurisdictions submit AFHs between April 2019 and early October 2020. Additionally, HUD postponed until 2019 the date by which any jurisdiction receiving an award of \$500,000 or less was required to make a submission. *See* 81 Fed. Reg. 73,129 (Oct. 24, 2016). Thus, HUD structured the schedule of submissions such that 2017 and 2018 would be used as learning years in which both HUD and early-submitting jurisdictions (none of which are small jurisdictions) gained expertise with the process.

73. In the AFFH Rule, HUD committed itself to formulating specialized Assessment Tools for program participants with different needs. Accordingly, the Rule sets out different

deadlines for first submissions for different types of entities, *e.g.*, larger local jurisdictions, smaller local jurisdictions, public housing authorities, and groups of entities that will participate jointly/regionally. 24 C.F.R. § 5.160(1)(i). It then provides:

If the time frame specified in this paragraph (a)(1) would result in a first AFH submission date that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or lead entity, the participant(s)' submission deadline will be extended as specified in that Assessment Tool publication to a date that will not be less than 9 months from the date of publication of the Assessment Tool.

24 C.F.R. § 5.160(1)(ii).

74. The AFFH Rule thus provides that, if HUD creates and publishes a specialized Assessment Tool for a category of program participants, any AFHs that otherwise would be due from those participants in the next 9 months are slightly postponed, to ensure that the participants have time to address the specific features of the new Assessment Tool.

75. The AFFH Rule makes concrete what had been a largely theoretical statutory obligation to affirmatively further fair housing for jurisdictions that accept federal housing funds. Those jurisdictions now must make fair housing considerations—both identifying fair housing issues and making plans to overcome them—part of their core planning processes, and HUD will regularly check their work and help them improve upon it.

### **C. Secretary Carson's Public Opposition to the AFFH Rule**

76. Secretary Carson has been outspoken in opposing the AFFH Rule, before and after he was nominated to his position.

77. In an article published in 2015, Secretary Carson criticized the AFFH Rule at length, equating it to “mandatory busing” of schoolchildren. Ben S. Carson, *Experimenting With Failed Socialism Again*, Wash. Times, July 23, 2015, available at <https://www.washingtontimes.com/news/2015/jul/23/ben-carson-obamas-housing-rules-try-to->

accomplish-/. He condemned both the AFFH Rule and a Supreme Court decision recognizing that the Fair Housing Act bars disparate impact discrimination, stating that “based on the history of failed socialist experiments in this country, entrusting the government to get it right can prove downright dangerous.” *Id.*

78. In his confirmation hearing, Secretary Carson reiterated his hostility to the AFFH Rule. In response to a question from Senator Sherrod Brown regarding his 2015 article, Secretary Carson said:

As you probably know, that Act says that we want people who are receiving HUD grants to look around and see if they find anything that looks like discrimination and then we want them to come up with a solution on how to solve the problem. They’re not responding to people saying that there’s a problem, they’re saying go and look for a problem and then give us a solution. And what I believe to be the case is we have people sitting around their desks in Washington D.C. deciding on how things should be done—you know—telling mayors and commissioners that you need to build this place right here and you need to put these kinds of people at it.<sup>3</sup>

79. In an interview after being confirmed, Secretary Carson said in response to a question about these prior statements that he “believe[s] in fair housing” but not in “extra manipulation and cost.” Accordingly, he said about the AFFH Rule: “So we just have to reinterpret it, that’s all.”<sup>4</sup>

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<sup>3</sup> *Housing and Urban Development Secretary Confirmation Hearing Before the Senate Banking, Housing and Urban Affairs Comm.* (Jan. 12, 2017) (statement of Ben S. Carson, Nominee, Housing and Urban Development Secretary), available at <https://www.c-span.org/video/?421258-1/hud-secretary-nominee-ben-carson-testifies-confirmation-hearing&start=2552>.

<sup>4</sup> Joseph Lawler & Al Weaver, *Ben Carson: HUD Will “Reinterpret” Obama Housing Discrimination Rule*, Wash. Examiner, July 20, 2017, available at <https://www.washingtonexaminer.com/ben-carson-hud-will-reinterpret-obama-housing-discrimination-rule>

80. Since Secretary Carson took office, HUD has provided no new guidance and has stopped providing the same level of technical support that it previously offered to jurisdictions preparing AFHs.

**D. HUD's January 5 and May 23 Suspensions of the AFFH Rule**

81. Without providing advance notice or opportunity for comment, on January 5, 2018, HUD published a three-page notice in the Federal Register abruptly suspending the key requirements of the AFFH Rule. *See* Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, 83 Fed. Reg. 683 (Jan. 5, 2018) (attached as Exhibit A).

82. HUD's notice announced that no local government would be required to submit AFHs until the next scheduled submission date that falls after October 31, 2020, nor would HUD review AFHs submitted to it until after that date. 83 Fed. Reg. at 684.

83. HUD stated that this suspension of the AFFH Rule's requirements was necessary because, "[b]ased on initial reviews," the agency concluded that "program participants need additional time and technical assistance to adjust to the new AFFH process and complete AFH submissions that can be accepted by HUD." 83 Fed. Reg. at 684.

84. HUD stated that "additional technical assistance may result in program participants better understanding their obligations under the AFFH Rule." 83 Fed. Reg. at 685. It further stated that "enhancing its technical assistance" would result in fewer resources expended by program participants "because they are more likely to submit an initial AFH that can be accepted by HUD." *Id.* HUD also stated that it could use the additional time to improve the Assessment Tool. 83 Fed. Reg. at 685.

85. Although it failed to take comments before acting, HUD said it would accept comments on its action until March 6, 2018. 83 Fed. Reg. at 685. Almost all of the comments HUD received criticized its action.

86. Since issuing the January 2018 notice suspending the AFFH Rule's requirements, purportedly to improve technical assistance, HUD has not taken any public actions aimed at improving its technical assistance.

87. On May 8, 2018, Plaintiffs filed this lawsuit and their motion for a preliminary injunction.

88. On May 18, 2018, HUD issued three related notices, all of which were published in the Federal Register on May 23, 2018.

89. The first notice withdrew the January 5 action suspending the AFFH Rule. *See* Exhibit B.

90. The second notice withdrew the Assessment Tool for local governments. *See* Exhibit C. It instructed participants that they should not follow the procedures of the AFFH Rule.

91. The third notice announced that local jurisdictions could meet their AFFH duty if they acted "in accordance with pre-existing requirements" in place before the AFFH Rule was promulgated. *See* Exhibit D.

92. The second and third notices described above are the same in practical effect as the January 5 notice suspending the AFFH Rule's requirements.

93. The May Notices (Exhibits C and D) instruct local governments to revert to the failed AI process, *i.e.*, prepare an Analysis of Impediments without HUD assistance, "take appropriate actions," and then "maintain records reflecting the analysis and actions," without submitting anything for HUD review. 83 Fed. Reg. at 23,927. HUD did not explain why it now

believed this process would be effective; indeed, it did not even acknowledge that the AFFH Rule was adopted precisely because of its own conclusion (and that of GAO) that the AI process had failed to ensure that federal funds were used to affirmatively further fair housing, as the Fair Housing Act requires. *See, e.g.*, 78 Fed. Reg. at 43,711 (finding that, under the AI regime, federal funding recipients did “not sufficiently promote the effective use of limited public resources to affirmatively further fair housing”).

94. As a consequence of removing the AFH requirement indefinitely, HUD has also violated the regulatory requirement that it not distribute federal funds to recipients without an approved AFH.

95. HUD stated that it was taking this action because the Assessment Tool had proved to be “unworkable” with respect to the first 49 AFH submissions HUD reviewed. HUD pointed to the fact that it initially rejected 17 of the first 49 submissions and required jurisdictions to revise them and requested that the submitters of 14 others provide revisions or addendums before considering them. 83 Fed. Reg. at 23924. It said this “excessively high rate of unacceptable AFHs was due, in large measure, to problems with the Local Government Assessment Tool.” *Id.* It identified seven common problems in the first round of AFH submissions and, with little discussion, attributed each of them to deficiencies in the Tool. *Id.* at 23,924-25. For example, HUD observed that many jurisdictions failed to follow the AFFH Rule’s community participation requirements, with one jurisdiction giving the public only three days to comment on a draft AFH when the Rule requires at least 30. *Id.* at 23,924 (citing 24 C.F.R. § 91.105(b)(4)). HUD did not explain why such blatant failure to follow the regulatory text demonstrates that the Assessment Tool is so “unworkable” as to justify suspending the Rule.

96. HUD described the goals section as the most problematic, noting that this “was an issue in or the sole reason for the majority of initially non-accepted AFHs.” *Id.* at [p.11]. HUD failed to provide an explanation why it deemed this a failure of the Assessment Tool. As with the participation requirements, HUD also pointed to participant failures to initially follow basic directions provided in the Rule, Assessment Tool, and guidance, such as failing to provide metrics or to complete a provided chart. HUD did not explain why any of this was properly attributed to an “unworkable” Assessment Tool, nor why it could not be remedied with steps short of withdrawing the Assessment Tool and thus effectively suspending the AFFH Rule.

97. HUD also stated that it had “provided substantial technical assistance to this initial round of program participants, even for the AFHs that have been accepted.” 83 Fed. Reg. 23,925. It said it did not have the resources to provide the same level of assistance to the 104 local government participants scheduled to submit AFHs in 2018 and the 752 scheduled to submit in 2019. *Id.* To back up this assertion, HUD offered only that it “estimates that it has spent over \$3.5 million on technical assistance.” *Id.* It did not provide any further detail regarding that estimate or explain its conclusion that such expenditures would scale up proportionally to the number of submissions rather than being fixed program costs (such as HUD’s regional trainings), or costs in large part incurred to generate training material for ongoing use. It asserted in conclusory fashion that it did not believe future submissions would benefit from “efficiency gains over time from experience working with the Tool,” 80 Fed. Reg. at 23,924, without attempting to support that conclusion.

98. HUD did not identify any legal authority permitting it, by withdrawing an already approved Assessment Tool without replacing it, to effectively suspend the requirement that

covered jurisdictions submit AFHs on a timeline corresponding with their next Consolidated Plan submission.

99. HUD did not identify any legal authority permitting it not to review already submitted AFHs, notwithstanding that the AFFH Rule requires HUD to undertake such reviews and make determinations on each submitted AFH. *See* 24 C.F.R. § 5.162(a).

100. HUD did not identify any legal authority permitting it to distribute federal housing funds based solely on a certification that a jurisdiction complied with the pre-AFFH Rule requirements, notwithstanding that the AFFH Rule bars HUD from approving a Consolidated Plan in the absence of an accepted AFH. *See* 24 C.F.R. § 5.162(d) (“If a program participant does not have an accepted AFH, HUD will disapprove a consolidated plan.”).

**E. HUD’s Experience with the First Set of AFH Submissions Provided No Reason to Suspend the Rule.**

101. Not only did HUD thus lack legal authority to suspend the AFFH Rule’s core requirements by withdrawing the Assessment Tool without replacing it, the evidence before it did not support this action. That some municipalities failed in their initial submissions to meet the Rule’s requirements reaffirms, rather than calls into question, why HUD thought the Rule necessary in the first place: left to their own devices, many municipalities will fail to take their obligations under the Fair Housing Act seriously. That they continue to need HUD enforcement and oversight is not a reason to remove such oversight, particularly where HUD, under Secretary Carson, has cut back on its technical assistance offerings to local jurisdictions and stopped issuing technical guidance to its own staff.

102. Even before promulgating the AFFH Rule, HUD began taking steps to prepare jurisdictions to comply with it. Since at least Fiscal Year 2012, Congress has appropriated



significant funds for HUD's technical assistance efforts, and much of that money has been devoted to the implementation of the Affirmatively Furthering Fair Housing Rule.

103. HUD and its agents have designed regional, multi-day trainings delivered around the country for participating jurisdictions; drafted guidance on how to use the AFH tool; and answered questions submitted through the HUD Exchange website. At one point, HUD's agents even provided direct, on-site assistance to multiple program participants. HUD staff prepared and published the *AFFH Rule Guidebook*, while HUD staff and the agency's technical assistance contractors answered questions from program participants by phone or e-mail. Video trainings and additional fact sheets on issues such as public participation, regional assessments, and goal prioritization and formation are available on HUD's website.

104. HUD's willingness to deploy available technical resources to help jurisdictions formulate compliant AFHs changed in 2017, when HUD began to sow the bureaucratic seeds necessary to undermine or, to use Secretary Carson's word, "re-interpret" the AFFH Rule. Despite funding appropriated by Congress for technical assistance and the availability of a highly trained team of technical assistance providers, HUD has willfully and systematically underutilized technical assistance resources available to it.

105. For example, HUD no longer permitted its contractors or staff to engage in on-site technical assistance. Additionally, HUD failed to publish further guidance and ceased to monitor and respond to questions about the AFFH Rule submitted through the HUD Exchange Ask-A-Question portal.

106. In large part due to HUD's own failure to assist them—as well as suspicion that HUD no longer has the will to enforce the AFFH Rule vigorously—some jurisdictions submitted inadequate AFHs that properly required rejection. Where HUD initially rejected an AFH, it often

did so because the jurisdiction failed to include even the basic components of a functional AFH. For example, municipalities whose AFHs were rejected ignored segregation in an entire section of their jurisdiction (notwithstanding maps that should have made such segregation obvious); failed to include any metrics or milestones to measure improvements in fair housing; failed to analyze the data HUD had provided to the jurisdiction; and/or failed to consider housing barriers for key constituents, such as persons residing in public housing. That jurisdictions failed to include basic components does not reasonably demonstrate a fundamental flaw in the Assessment Tool.

107. HUD's description of the record before it when suspending the AFFH Rule's requirements also is incomplete in a way that makes its analysis unreasonable. HUD focuses only on the additional work that HUD and local jurisdictions are required to do to implement the AFFH Rule and entirely ignores the Rule's already evident benefits. Despite HUD's less than robust efforts to make the Rule work, the AFH submissions it received before suspending the Rule demonstrate that, on balance, the Rule was vastly improving jurisdictions' commitment to fair housing, which in turn was providing tangible benefits for individuals.

108. As HUD acknowledged, most of the 49 submissions it received cleared the high bar the AFFH Rule sets even in their first submission. Thus, 32 of the 49 jurisdictions were immediately on the path to finally meeting the Fair Housing Act's requirements in exchange for the federal money they receive. HUD did not contend the Rule did not work for those jurisdictions, nor would such a contention be reasonable.

109. With respect to the 17 jurisdictions whose submissions it initially rejected, HUD paints a misleading picture by failing to acknowledge or consider relevant facts. Most of those 17 submissions that HUD initially rejected were improved through a collaborative process between

HUD and the jurisdictions, and all but a few of them have already been accepted after revision. One of those that has not—from the Hidalgo County Regional Consortium (Hidalgo County) in Texas—is described further in the next section regarding harm to Plaintiffs. That submission was deeply flawed and was properly rejected; HUD’s suspension of the AFFH Rule ended the process that would have improved it.

110. Accordingly, what HUD characterizes as a failure—that 17 submissions were initially rejected—is in fact a success, because those jurisdictions were properly required to improve their inadequate AFHs. This is precisely how the Rule was written to work: HUD review, individualized feedback, and AFH revision by participants are all explicitly contemplated. See 24 CFR §§ 5.162(a) and (b). After decades in which participants had operated without oversight, it was to be expected that many participants would need assistance to meet a new level of accountability. And by and large they have, eventually, met the challenge.

111. One study of the 28 AFHs submitted to HUD between October 2016 and July 2017 (that is, the majority of the 49 on which HUD based its decision) compared those submissions to the AIs previously prepared by the same participants, and found striking improvements. Whereas the AIs contained nebulous goals, the AFHs contained more concrete ones. See Justin Steil & Nicholas Kelly, *Survival of the Fairest? An Analysis of Affirmatively Furthering Fair Housing Compliance* (Sep. 15, 2017) (working paper for The Future of Housing Policy in the U.S. Conference, University of Pennsylvania), *available at* [http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/research/Steil\\_Kelly\\_Survival\\_of\\_Fairest](http://web.mit.edu/afs/athena.mit.edu/org/f/fairhousing/research/Steil_Kelly_Survival_of_Fairest)

.pdf. In the past, most municipalities did not set a single goal that included a quantifiable metric of success or concrete policy to be enacted. Now, almost all did.<sup>5</sup>

112. For example, Paramount, California committed to making (by explicit deadlines) specific amendments to its zoning ordinance to make its housing more inclusive, such as allowing group homes for people with disabilities in residential zones. New Orleans, Louisiana promised to increase homeownership by Section 8 voucher recipients by 10 percent annually. Chester County, Pennsylvania committed to creating 200 new affordable rental units in high opportunity neighborhoods across the county by 2021. El Paso County, Colorado similarly promised to assist in the development of 100 publicly supported affordable housing units in areas of opportunity. All of these commitments can be monitored and their success measured.

113. A representative success story is the AFH which Philadelphia completed and HUD approved. In accordance with the AFFH Rule's community participation requirements, Philadelphia conducted a survey in both English and Spanish (receiving more than 5,000 responses, including more than 900 from residents of high-poverty neighborhoods), conducted focus groups around the city, took comments on an initial (weak) draft AFH, and otherwise made far greater effort than it ever had to learn about barriers to fair housing in its own communities. The substantive results were striking. For example, the city's final AFH identified widespread evictions in neighborhoods where predominantly racial minorities live as a substantial barrier to fair housing. It committed the city to taking concrete steps in response, including creating an "eviction prevention project" pursuant to which lawyers and advocates will represent those facing unjust eviction.

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<sup>5</sup> Submitted AFHs can be viewed at: <https://furtheringfairhousing.mit.edu/assessment-fair-housing-city>.

114. These outcomes are exactly the sort of concrete, locally driven commitments to fair housing that were rarely made under the AI regime and that the AFFH Rule was intended to promote, assist, and require. And they were made with greater community input, thanks to the AFFH Rule's requirements in that regard. All utilized the Assessment Tool to arrive at these impressive outcomes.

115. One study, which was submitted to HUD in response to its call for comments on the suspension of the Rule, found that the AFH process in virtually all cases provided a greater level of public engagement than the AI process had. That meant, for example, more public meetings and notice provided in more places and media (as well as in more languages) to ensure that more members of the public were aware of the process and had the opportunity to participate. It also meant greater acknowledgment of public input in the AFH itself. For example, Nashville, Tennessee's AFH spent 107 pages detailing public comments received and its response to them; it had devoted nine pages of its AI to such topics. *See* Furman Center Comment Letter, *available at* <https://www.regulations.gov/document?D=HUD-2018-0001-0036> (last visited Apr. 26, 2018).

116. As HUD stated in the Final Rule, the extent to which the AFFH Rule increases burden on program participants was expected to depend on how seriously those jurisdictions took their AFFH obligations all along. *See* 80 Fed. Reg. at 42,273. HUD fully expected that those jurisdictions that had flouted their obligations for years would face some increased burden when finally made to comply. It estimated that participating jurisdictions overall would incur compliance costs of about \$25 million, while HUD itself would incur about \$9 million in resource costs. *Id.* In its May Notices, HUD cited its estimate that it has spent \$3.5 million so far

as evidence that the Assessment Tool is “unworkable,” but it did not offer any basis to conclude that the amount was unreasonable or unexpected.

117. HUD also ignored that jurisdictions already have learned from the successes and failures of the first submitters and will continue to do so. Many of the first accepted AFHs have become models for other jurisdictions to follow—as those which have not been accepted have become models for what not to do; any extra time and resources that may have gone into formulating and reviewing them will not necessarily be required with respect to future submissions. HUD’s conclusory statement that “efficiency gains over time from experience working with the Tool would be unlikely to address HUD’s concerns,” 83 Fed. Reg. 23,924, is unsupported by the record.

**F. HUD’s Action Will Harm Plaintiffs If Not Enjoined**

118. Defendants’ unlawful actions have caused Plaintiffs to suffer irreparable and ongoing injury for which there is no adequate remedy at law. These unlawful actions will continue to cause injury to Plaintiffs unless and until injunctive relief is granted. Defendants’ suspension of the AFFH Rule’s core requirements is frustrating Plaintiffs’ missions. In response, Texas Appleseed and Texas Housers (Texas Plaintiffs) have had to divert resources they were planning to devote to other activities critical to their missions to remedying the effects of Defendants’ action in municipalities around Texas. NFHA, meanwhile, has had to divert resources to assisting its members around the country in similar efforts to combat the effects of Defendants’ action.

*1. Harm to Texas Plaintiffs*

119. Both Texas Plaintiffs contributed to the development of the AFFH Rule (including by submitting comments) and have devoted considerable resources to ensuring that it

is implemented properly in Texas. They have relied heavily on the AFH Rule's requirements, which ensure that local jurisdictions take fair housing seriously rather than continuing to perpetuate the patterns of residential racial segregation and discriminatory use of federal funds that historically have plagued much of Texas.

120. For example, since 2008, the Texas Plaintiffs have devoted substantial time and resources (including filing multiple complaints with HUD) to requiring state and local governments to spend federal disaster relief money in ways that are non-discriminatory and affirmatively further fair housing. They have played a large role in the creation of an AI for the State of Texas that requires specific steps to address disaster relief discrimination, including training for local grantees and a commitment to spend disaster recovery money in certain ways. They also have developed, with the State of Texas, a form for local jurisdictions to use to assess and report their compliance with AFFH requirements with respect to the use of disaster relief money and have closely monitored local jurisdictions' compliance.

121. Since the AFFH Rule's promulgation, the Texas Plaintiffs have devoted resources to the development of effective AFHs in a number of communities and regions. In particular, they have provided substantial input into the development of municipal AFHs in Fort Worth, Corpus Christi, and League City. They also have helped organize community members and assisted in the development of a regional AFH in the Hidalgo County region, covering 19 jurisdictions and housing authorities. They have spent thousands of dollars in staff time and resources in various Texas communities, providing public education to municipalities, planners, and attorneys. These efforts have begun to pay dividends in large part because of specific protections that the AFFH Rule provides. HUD's suspension of the Rule's requirements, if not

enjoined, will frustrate Texas Plaintiffs' efforts to ensure fair housing in the communities they serve.

122. The efforts of the Texas Plaintiffs, combined with the AFFH Rule's protections, have substantially increased the degree of public participation in each community's AFH process. The AFFH Rule's requirements have amplified the ability of individuals, grassroots groups, and advocacy groups like Texas Plaintiffs to identify, publicly articulate, and force jurisdictions to grapple with local fair housing problems that previously went unaddressed. If HUD's suspension of the Rule's requirements is not enjoined, Texas Plaintiffs will be required to repeat and redouble their efforts to ensure fair housing in the communities they serve, because there will be no AFH process in which such local input must be considered, nor any process by which HUD will review the AFH and determine whether it complies with the AFFH Rule's procedural and substantive requirements.

123. As one illustration, the Texas Plaintiffs devoted substantial resources to ensuring that, when Hidalgo County prepared its AFH (as one of the first AFH submitters in Texas), community participation was more robust. Among other things, they prepared a lengthy comment letter advising County officials to provide multiple forums in which interested residents could participate, ensured that materials were prepared in Spanish, and saw to it that notice and opportunity to participate was given to the predominantly Latino population living in "colonias," *i.e.*, plots of land outside incorporated cities that often lack infrastructure such as water, sewage, electricity, and paved roads. Hidalgo County historically has ignored the needs of the people living there (even as it takes federal funds and certifies AFFH compliance), but the AFFH Rule's requirements provide a mechanism for the Texas Plaintiffs to force the county to consider those needs.



124. The AFH that Hidalgo County submitted to HUD in 2017 nonetheless was deficient. It failed, among other things, to grapple with the publicly stated needs of colonias residents or to engage with the comments Texas Plaintiffs and others provided. Texas Plaintiffs sent HUD a letter alerting the agency to these problems, and on December 12, 2017, HUD rejected the submitted AFH, requiring the County to submit a revised one by March 12, 2018. Hidalgo County's AFH thus is one of the 17 initially rejected submissions upon which HUD relies as a reason to suspend the Rule.

125. Relying on the AFFH Rule's requirements, Texas Plaintiffs spent thousands of dollars in staff time, materials, and other resources to create the conditions under which fair housing finally could come to Hidalgo County. Just when those efforts seemed to be bearing fruit—with HUD rejecting the County's initial submission and requiring it to prepare a revised submission that reflects an effort to, finally, take its AFFH obligations seriously—HUD's action endangers this progress. Now HUD will not require Hidalgo County to submit an AFH that meets the AFFH Rule's requirements, although it already has found that Hidalgo County has not made a sufficient commitment to affirmatively further fair housing.

126. HUD's abdication of its statutory responsibility, if not enjoined, will require Texas Housers and Texas Appleseed to expend considerable additional resources to bring fair housing to Hidalgo County without HUD's assistance and without the benefit of the public participation requirement embedded in the AFFH Rule. The County, no longer needing HUD approval, now has no incentive to meaningfully improve its rejected AFH or otherwise address the housing needs that have plagued many of its residents for too long. Indeed, the County has told Texas Plaintiffs that it has no intention of remedying the deficiencies from its rejected AFH now that HUD will not require it to do so. That means that Texas Plaintiffs will have to expend

considerable resources making fair housing a reality in Hidalgo County that they would not have to expend if HUD were enforcing the requirements of the AFFH Rule.

127. Similarly, in the City of Corpus Christi, which also had an AFH due on January 4, 2018, the Texas Plaintiffs expended substantial staff time and out-of-pocket expenses consulting extensively with local advocates, encouraged HUD to offer the City an extension of time to incorporate changes based on the devastating impact of Hurricane Harvey on the City and surrounding region, and submitted comments on the AFH. The City declined the extension and submitted an AFH that barely acknowledged massive housing loss, extended displacement, and infrastructure impacts caused by one of the costliest disasters in U.S. history. Because of HUD's unlawful suspension of the AFFH Rule, HUD will not review that defective AFH, leaving the City with no obligation to improve it and no incentive otherwise to make concrete plans to address fair housing concerns in disaster relief. The Texas Plaintiffs therefore will have to expend considerable resources trying to make fair housing a reality in Corpus Christi, including by monitoring the use of hundreds of millions of dollars in federal disaster relief money that will be flowing to the region. These activities will require considerably more effort and expenditure of resources than if HUD had not suspended the AFFH Rule.

128. Meanwhile, with Fort Worth's AFH coming due, Texas Housers hired an employee, set up an office in that city, engaged in discussion with community leaders and municipal employees, and otherwise devoted considerable resources to laying the groundwork for the development and then implementation of an AFH that would make fair housing in Fort Worth, finally, a reality. Just as it was nearly time for Fort Worth to submit a draft to HUD, HUD announced that it would no longer accept or review AFHs. As a consequence, Fort Worth decided not to complete an AFH. Rather, it will rely on the former AI process to support its

claim that it has met its AFFH obligations. Texas Housers thus will have to devote still more resources in Fort Worth to sustain or recreate a climate and process in which community members and city officials are able to air their significant concerns about segregation and unequal access to opportunity for families of color. It also will have to spend more resources, in the absence of HUD review, monitoring Fort Worth's use of federal funds to ensure compliance with federal law. Those are resources it would not have to expend if HUD continued to enforce the AFFH Rule.

129. The Texas Plaintiffs will continue to work to promote fair housing in those two municipalities and elsewhere in Texas, but they have lost the benefit of the AFFH Rule's requirements, pursuant to which municipalities must consult with them at regular intervals, must review and engage with their comments and concerns, must reach out to community members, and more. They also have lost the benefit of HUD review of submitted AFHs (and the Texas Plaintiffs' comments on them), along with the prospect of HUD non-acceptance of AFHs that inadequately assess fair housing conditions and/or fail to commit to concrete solutions. These consequences of HUD's action frustrate Texas Plaintiffs' mission of achieving fair housing for the communities they serve.

130. Texas Plaintiffs have taken or will take many specific actions to counter the effects of HUD's suspension of the AFH submission requirement and convince local government program participants to nonetheless take their fair housing obligations seriously. Such actions include:

- Producing a video to educate the public (including affected grantees) about the impact of the Rule and grantees' continuing obligation to affirmatively further fair housing notwithstanding HUD's action;

- Developing a fact sheet for advocates statewide on the effect of HUD's action;
- Responding to continuing requests for information and resources;
- Engaging in ongoing public education efforts, including community forums on fair housing in Amarillo and Fort Worth; meeting with Hidalgo County; writing advocacy pieces; and advising attorneys, community groups, and consultants working on now-suspended AFHs on the impact of HUD's suspension of the AFH submission requirement on ongoing fair housing obligations; and
- Writing letters to the 65 most immediately impacted jurisdictions regarding their continued obligation to affirmatively further fair housing, an in-process action which by itself will take about 120 hours of staff time.

131. The Texas Plaintiffs have had to divert resources in many other ways to ensure that the interest in fair housing that the AFFH Rule created is not lost while the Rule's core requirements are suspended. For example, Texas Housers' staff continues to meet on a regular basis with community groups in Hidalgo County, to keep them engaged in long-term efforts to secure additional housing and community development resources for the colonias and otherwise combat discrimination on the basis of national origin. Texas Housers also continues to invest resources in educating grassroots groups in Hidalgo County about their rights to equitable flood drainage, the need to reform subdivision rules, and the rights of non-English speakers to receive information about public programs in a language and format they can understand. Without the focused AFH process that provides a specific forum for articulating these grassroots concerns at specific times—and requires the County to listen to and address them—these efforts are much more inefficient, requiring far more of Texas Housers' time and achieving less tangible results.

132. HUD's unlawful suspension of the AFH process has greatly undermined Texas Plaintiffs' ability to accomplish their missions and is making them divert resources to activities they would not otherwise have engaged in, just to get to an inferior result. Because of HUD's action, Texas Plaintiffs have diverted their resources and will continue to divert their resources to educating funding recipients and community members that jurisdictions still must comply with the AFFH statutory requirements notwithstanding HUD's refusal to enforce them. They consequently have had to cut back on important activities they would be pursuing if not for HUD's suspension of the AFFH Rule's requirements.

133. For example, Texas Plaintiffs have had to substantially curtail their grassroots outreach, education, and policy and legal support in Houston and surrounding areas recovering from the effects of Hurricane Harvey. If not for their need to counteract the effects of HUD's action, Texas Plaintiffs would be deeply engaged in research, data analysis, policy and legal support, and public education concerning various recovery issues, including State and municipal compliance with civil rights obligations associated with federal disaster recovery funding programs and the effectiveness and efficiency of State and municipal programs offering disaster recovery services and supports to low-income families.

134. Counteracting the effects of HUD's unlawful action also limits the Texas Plaintiffs' ability to engage in outreach and education for low-income families in places like Beaumont and Port Arthur, where low-income families are disproportionately exposed to environmental hazards that cause persistent health problems, as well as in Amarillo, where Texas Plaintiffs had begun to meet with community groups to talk about fair housing problems and develop advocacy strategies, but now must suspend such efforts.

135. Texas Appleseed has also been required to divert the time of the head of its Disaster Recovery and Fair Housing Project away from developing a project to protect land rights of African Americans who own “heir property,” *i.e.*, land that has been passed down informally from generation to generation without recorded transactions—complicating, among other things, eligibility for federal benefits for disaster recovery—and from providing input on the revision of the zoning code in Austin, Texas, to address patterns of segregation and access to opportunity in that city. Other organizational representatives have diverted resources away from fundraising and other programmatic work to assist with these projects and to address various other capacity issues caused by the shift in focus relating to HUD’s suspension of the AFH process.

2. *Harm to NFHA*

136. The Texas-specific harm being suffered by the Texas Plaintiffs is representative of the harm that NFHA and its members are suffering around the country.

137. NFHA is a non-profit corporation dedicated to ending discrimination in housing. NFHA works to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, community development, investigation of fair housing violations, and enforcement. Its mission is being frustrated by HUD’s unlawful decision to suspend the AFFH Rule’s requirements. To counteract the effects of HUD’s action, NFHA has been forced to divert resources away from other important projects.

138. Since the late 1980s, NFHA has worked to encourage HUD to do more to implement and enforce the Fair Housing Act’s requirement that recipients of federal funds affirmatively further fair housing. Among other things, it has long called on HUD to enact

procedures that ensure AFFH compliance. When HUD has been unwilling to effectively enforce the AFFH requirement, NFHA has had to expend resources in its stead.

139. When HUD modified the Analysis of Impediments process in 1995 and issued the *Fair Housing Planning Guide* in 1996, NFHA was intimately involved with the implementation of the AI process on the ground. Among other things, it trained its members and worked with them locally to develop AIs; held educational sessions at conferences; and helped HUD identify key fair housing issues that funding recipients should address in their AIs.

140. In 2001, NFHA developed and disseminated a template for developing AIs, because HUD's *Fair Housing Planning Guide* had proven inadequate for that task. NFHA's template was widely distributed and used nationally.

141. NFHA and its members have played a key role in the development and implementation of local AIs across the country.

142. Based on its experience with the failed AI process, NFHA was one of the leading advocates pushing for the creation of the AFFH Rule to replace it. Along with partners, NFHA created and supported the National Commission on Fair Housing and Equal Opportunity. This Commission conducted five public hearings and gathered evidence regarding, among other things, HUD's progress in implementing the AFFH obligation. Its report, published in 2008, concluded that "[t]he current federal system for ensuring fair housing compliance by state and local recipients of housing assistance has failed" and recommended many specific changes. National Commission on Fair Housing and Equal Opportunity, *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity* 44 (2008), available at <http://www.naacpldf.org/files/publications/Future%20of%20Fair%20Housing.pdf>.

143. NFHA devoted considerable resources to assisting HUD with developing the AFFH Rule. Among other things, it participated in HUD's public hearings and submitted written comments on the proposed AFFH Rule itself and the AFH template.

144. Once HUD issued the final AFFH Rule, NFHA and its members worked in local communities across the country to generate effective community participation and substantive provisions in AFHs that would make meaningful differences to communities. NFHA members have actively participated in the AFH planning process in many jurisdictions, with NFHA providing resources, guidance, and strategic help. NFHA has posted on its website an extensive list of AFFH resources and materials to assist its members and the grantees themselves.

145. HUD's action, if not enjoined, will diminish the benefits that NFHA derives from all this work already done and will frustrate the accomplishment of NFHA's mission. NFHA engages in a variety of activities aimed at advancing fair housing priorities around the country. The AFFH Rule's requirements, when in effect, make NFHA's efforts more efficient and effective. Not only does the Rule provide NFHA and its members greater ability to ensure that fair housing considerations are included in municipal planning decisions, but its standardized process and formalized rules make it much simpler for NFHA to advise and assist its members in effectively engaging at the local level. HUD now has removed those regulatory benefits, directly harming NFHA's ability to achieve fair housing and help its members to do the same.

146. HUD's abrupt suspension of the AFFH Rule's requirements has required NFHA to divert resources to educating and counseling its members, civil rights organizations, and affordable housing stakeholders about HUD's action and how to achieve fair housing locally under much more challenging circumstances. Such diversion will continue unless and until HUD's action is enjoined.



147. Because of NFHA's long-standing commitment to and expertise regarding the AFFH statutory obligation (before and after the promulgation of the AFFH Rule), its members and other civil rights and affordable housing stakeholders look to it for education and counseling regarding HUD's notice and how to promote effective fair housing planning without the AFFH Rule's protections. NFHA is expending considerable financial and human resources on this education and counseling.

148. For example, NFHA staff gave presentations concerning the notice and its effects to the Leadership Conference on Civil and Human Rights Fair Housing and Fair Lending Taskforce; Americans for Financial Reform Housing and Foreclosure Working Group; and the Affirmatively Furthering Fair Housing Working Group of NFHA's members.

149. NFHA staff members have begun developing a comprehensive side-by-side analysis of the differences between the AFH and AI processes for use in educating and counseling its members. NFHA will disseminate this document to its members upon its completion and will expend further resources continuing to update it.

150. NFHA has engaged in and will need to continue to engage in individualized counseling regarding HUD's action with its members located in strategic areas throughout the country. These efforts, which already have required considerable staff time, have been necessary and will continue to be necessary to educate members about the notice's impact and the most effective means for ensuring effective fair housing planning without the AFFH Rule's protections. NFHA has had to identify those areas most immediately affected by HUD's actions, such as where local government program participants submitted AFHs prior to January 5 but did not receive HUD's acceptance of their submissions, and then conduct outreach to its members

and other allied local civil rights and affordable housing advocates operating in those jurisdictions.

151. The amount of resources that NFHA must divert to such activities will increase in the coming months, because most local government program participants would have had AFHs due in the next two years pursuant to the AFFH Rule. Hundreds of local governments in the coming months will have to determine whether to use the Assessment Tool (though it is “officially” withdrawn) to fulfill their AI obligations prior to developing their Consolidated Plans, and whether they will adhere to the AFFH Rule’s timeline and procedural protections. NFHA will have to continue to divert resources from its planned operations to helping these jurisdictions, its members, and other civil rights and affordable housing groups further fair housing in these uncertain circumstances. And it will not be able to do so in such a targeted way, because of the much larger number of jurisdictions at issue.

152. In the absence of HUD oversight, NFHA is preparing to devote substantial resources to outreach, public education, and advocacy to assist its members and community groups working to ensure that jurisdictions formulate AIs that are robust as possible (given the circumstances) and then monitoring compliance. Through this work, NFHA plans to blunt, as best it can, the negative impact of HUD’s action. It will have to devote resources to assisting its members and others with respect to monitoring and enforcing AFFH compliance in the absence of effective monitoring and enforcement by HUD. NFHA would not have to devote nearly the same level of resources to such tasks with the AFFH Rule in place.

153. As a result of HUD’s action, funding recipients that already were at work on assessments—many of which would have been due not much more than a year from now—have

halted their work. Accordingly, NFHA and its members will face a more onerous task in helping these jurisdictions develop effective AFHs after the lengthy period of delay.

## CAUSES OF ACTION

### First Cause of Action

#### **Administrative Procedure Act – Agency Action Taken Without Observance of Procedure Required by Law**

154. The APA empowers this Court to hold unlawful and set aside agency actions taken “without observance of procedure required by law.” 5 U.S.C § 706(2)(D).

155. Without following notice-and-comment procedure, HUD has suspended indefinitely the AFH process required by the properly promulgated AFFH Rule.

156. Without notice-and-comment procedure, HUD has reinstated the AI process that was superseded by the AFFH Rule and does not exist in current regulation.

157. Without notice-and-comment procedure, HUD has suspended all the subsidiary requirements of the AFH process, including the AFFH Rule’s community participation procedural rules, by instructing participating local governments to not use the Assessment Tool and to revert to the AI process.

158. Without notice-and-comment procedure, HUD has suspended the requirement of the AFFH Rule that jurisdictions certify that they meet the Rule’s definition of affirmatively furthering fair housing and has suspended the requirement that jurisdictions meet the fair housing requirements that the AFFH Rule added to the Consolidated Plan process as a condition of receipt of federal funds.

159. Pursuant to the APA, HUD was required to undertake notice-and-comment rulemaking to revise the AFFH Rule, including changing the dates on which jurisdictions are required to submit their first AFHs for HUD review.

160. By failing to engage in notice-and-comment rulemaking before taking the actions described above, HUD failed to observe procedures required by law, in contravention of the APA.

**Second Cause of Action**  
**Administrative Procedure Act – Agency Action That is Arbitrary, Capricious, or an Abuse of Discretion**

161. The APA empowers this Court to “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion or not otherwise in accordance with law.” 5 U.S.C. § 706(2)(A).

162. HUD withdrew the Assessment Tool, thus effectively suspending the AFFH Rule’s requirements, based on its conclusion that the Assessment Tool had proved to be “unworkable.” HUD failed to justify this conclusion based on facts in the record. In particular, it did not adequately explain why any concerns it had with respect to initial non-acceptance of submitted AFHs were attributable to the Tool, as opposed to local governments failing to follow clear requirements.

163. HUD stated that it had expended too many resources assisting the 49 jurisdictions that had submitted AFHs, such that it could not scale those expenditures to assist the greater number of jurisdictions due to submit AFHs in 2018. In support, it offered only the conclusory assertion that it had expended \$3.5 million on the AFFH Rule so far. HUD failed to support its conclusion that the \$3.5 million it expended so far indicates that its expenditures will be substantially higher in future years.

164. HUD offered no explanation as to why it chose the drastic remedy of withdrawing the Assessment Tool without replacing it. HUD failed to consider less disruptive alternatives, such as formulating additional technical assistance documents that clarified points of confusion,

and did not explain why it cannot improve the Assessment Tool while the existing tool is in effect, as it has done before.

165. HUD's reasoning ignores key evidence that was before the agency and improperly focuses on what the agency now perceives to be the Rule's costs without considering the benefits flowing from the Rule.

166. HUD's reasoning fails to acknowledge that almost all jurisdictions participating in the process so far have successfully submitted compliant AFHs, either on first submission or after work with HUD. It fails to acknowledge that these AFHs contain far more concrete, measurable commitments to further fair housing than were in the AIs prepared by the same jurisdictions.

167. HUD has not explained why it is acceptable to return to the AI regime that, as the agency itself has found, does not work. It did not acknowledge its own findings in promulgating the Rule regarding the ineffectiveness of the AI regime.

168. HUD's withdrawal of the Assessment Tool and instruction to participants to revert to the AI process are arbitrary, capricious, or an abuse of discretion, in contravention of the APA.

### **Third Cause of Action**

#### **Administrative Procedure Act – Agency Action Not in Accordance with Law**

169. The APA empowers this Court to set aside an agency action that is "not in accordance with law." 5 U.S.C. 706(2)(A).

170. In promulgating the AFFH Rule, HUD found that it needed a new and robust approach to ensuring that local governments and other grantees take actions that meet their obligations under the Fair Housing Act as recipients of federal housing funds. HUD found that its previous practices had not been effective in leading to meaningful action regarding segregation, concentrated poverty, disparities in access to community assets, and other problems

that the Fair Housing Act requires funding recipients to address. It adopted the AFFH Rule to bring its own practices and its grantees' practices into compliance with the statutory requirement. 80 Fed. Reg. at 42,275.

171. HUD has an affirmative obligation under the Fair Housing Act to ensure that federal housing programs are administered, and federal housing funds spent, in a manner that furthers fair housing. The AFFH obligation requires both addressing actions that are actively discriminatory and taking affirmative steps to overcome barriers to fair housing choice that, in many cases, are the products of long-standing structural and institutional racism. 42 U.S.C. §§ 3608(d), (e)(5). As HUD has stated, where a program participant “has the ability to create opportunities outside of the segregated, low-income areas but declines to do so,” that raises a serious question as to whether the participant is meeting its obligation to affirmatively further fair housing. 80 Fed Reg. 42279. HUD is now making a comparable decision.

172. In suspending core provisions of the AFFH Rule, HUD abdicated its statutory responsibilities. It now is once again distributing federal housing funds without ensuring that local government grantees take the steps necessary to comply with their obligation to affirmatively further fair housing.

173. HUD's effective suspension of the AFFH Rule violates the Fair Housing Act, in contravention of the APA.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

(a) Enter a declaratory judgment that HUD's May 23, 2018 decision to withdraw its current Assessment Tool without replacing it, and to instruct participating local governments to revert to the AI process is arbitrary, capricious, an abuse of discretion or contrary to law, and without observance of procedure required by law;

(b) Issue preliminary and permanent injunctions requiring HUD to rescind its two May 23, 2018 notices withdrawing the Assessment Tool and directing local governments to revert to the pre-AFFH Rule process, and requiring HUD to timely implement and enforce all the requirements of the AFFH Rule going forward;

(c) Direct HUD to take all affirmative steps necessary to remedy the effects of the illegal conduct described herein and to prevent similar occurrences in the future;

(d) Award Plaintiffs their reasonable attorneys' fees and costs; and

(e) Order such other relief as this Court deems just and equitable.

Dated: May 29, 2018

Respectfully submitted,

/s/ Sasha Samberg-Champion

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# **EXHIBIT**

**A**

*Contact Person:* Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435-8363, [wrightds@csr.nih.gov](mailto:wrightds@csr.nih.gov).

*Name of Committee:* Vascular and Hematology Integrated Review Group, Hypertension and Microcirculation Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Orlando East UCF, 1959 N. Alafaya Trail, Orlando, FL 32822.

*Contact Person:* Ai-Ping Zou, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301-408-9497, [zouai@mail.nih.gov](mailto:zouai@mail.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Grand, 2350 M Street NW, Washington, DC 20037.

*Contact Person:* Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892-7892, 301-755-4335, [greg.shelness@nih.gov](mailto:greg.shelness@nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

*Contact Person:* James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301-806-8065, [lijames@csr.nih.gov](mailto:lijames@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Glia Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

*Contact Person:* Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301-537-9986, [macarthurlh@csr.nih.gov](mailto:macarthurlh@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

*Contact Person:* Ying-Yee Kong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5185, Bethesda, MD 20892, [ying-ye.kong@nih.gov](mailto:ying-ye.kong@nih.gov).

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review Group, Neuroscience and Ophthalmic Imaging Technologies Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington, DC Downtown Hotel, 999 Ninth Street, Washington, DC 20001.

*Contact Person:* Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301-379-3793, [bennetty@csr.nih.gov](mailto:bennetty@csr.nih.gov).

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

*Contact Person:* Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301-435-0677, [mannel@csr.nih.gov](mailto:mannel@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Baltimore Washington Airport, 1100 Old Elkridge Landing Road, Linthicum Heights, MD 21090.

*Contact Person:* Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-435-6809, [beheraak@csr.nih.gov](mailto:beheraak@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Neurodegeneration Study Section.

*Date:* February 8–9, 2018.

*Time:* 8:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* SpringHill Suites San Diego Downtown/Bayfront, 900 Bayfront Court, San Diego, CA 92101.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301-435-1203, [taupenol@csr.nih.gov](mailto:taupenol@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Integrative Nutrition and Metabolic Processes.

*Date:* February 8, 2018.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Grand, 2350 M Street NW, Washington, DC 20037.

*Contact Person:* Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, [hunnicuttr@csr.nih.gov](mailto:hunnicuttr@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

*Dated:* December 29, 2017.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018-00052 Filed 1-4-18; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-15]

### Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

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

**ACTION:** Notice.

**SUMMARY:** This notice advises that HUD is extending the deadline for submission of an Assessment of Fair Housing (AFH) by local government consolidated plan program participants to their next AFH submission date that falls after October 31, 2020. Such program participants will not be required to submit an AFH using the current Office of Management and Budget (OMB)-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No: 2529-0054), but must continue to comply with existing obligations to affirmatively further fair housing. Local government program participants that have already submitted an AFH that has been accepted by HUD must continue to execute the goals of that AFH.

**DATES:**

*Applicability Date:* January 5, 2018.

*Comment Due Date:* March 6, 2018.

**ADDRESSES:** Interested persons are invited to submit comments responsive to this notice to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. *Submission of Hard Copy Comments.* Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to <http://www.regulations.gov> without change.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Comments.* All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m., Eastern Time, weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is

a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On 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, 42 U.S.C. 3608. To assist HUD program participants in meeting this obligation, the AFFH rule provides that program participants must conduct an Assessment of Fair Housing (AFH) using an "Assessment Tool." HUD's AFFH regulations provide for a staggered AFH submission deadline for its program participants. (See 24 CFR 5.160.)

On October 24, 2016, at 81 FR 73129, HUD published a notice extending the deadline for submission of an AFH for local government consolidated plan participants that received in Fiscal Year (FY) 2015, or receive in a subsequent fiscal year, a CDBG grant of \$500,000 or less, or in the case of a HOME consortium, whose members collectively received a CDBG grant of \$500,000 or less, from the program year that begins on or after January 1, 2018, to the program year that begins on or after January 1, 2019 for which a new consolidated plan is due. By notice published in the **Federal Register** on January 13, 2017, at 82 FR 4388, HUD announced the renewal of approval of the Assessment Tool 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 AFH, and in some joint and regional collaborations,

as explained in that notice. This Assessment Tool is referred to as the Assessment of Fair Housing Tool for Local Governments.

This notice extends the deadline for submission of an Assessment of Fair Housing (AFH) to all local government consolidated plan program participants until their next AFH submission deadline that falls after October 31, 2020. (See 24 CFR 5.160(a) for information about how to calculate a program participant's AFH submission deadline.) The AFFH rule requires that program participants have no less than 9 months after the publication of the OMB-approved assessment tool to submit their AFH. Therefore, the Department selected the October 31, 2020 date in anticipation that it will complete the Paperwork Reduction Act requirements and receive OMB approval to renew the Assessment of Fair Housing Tool for Local Governments by January 31, 2020. Local government program participants will not be required to submit an AFH using the current OMB-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No. 2529-0054), but must continue to comply with existing statutory obligations to affirmatively further fair housing. (See 42 U.S.C. 3608.) Local government program participants who qualified for an extension under the October 24, 2016 notice are also covered by this notice, extending their deadline for submission of an AFH to their next AFH submission deadline (See 24 CFR 5.160(a).) that falls after October 31, 2020.

Based on the initial AFH reviews, HUD believes that program participants need additional time and technical assistance to adjust to the new AFFH process and complete AFH submissions that can be accepted by HUD. HUD's decision is informed by the review of AFH submissions received. Based on the first 49 AFH initial submissions that received a determination of accept, non-accept, or deemed accepted from HUD, the Department found that many program participants are striving to meet the requirements of the AFFH rule. In 2017, the Department conducted an evaluation of these submissions and found that more than a third (35%) were initially non-accepted.

HUD's analysis identified several reasons that merit a delay of AFH submission deadlines, including program participants' need for additional technical assistance. HUD determined that many program participants struggled to meet the regulatory requirements of the AFFH rule, such as developing goals that

could be reasonably expected to result in meaningful actions to overcome the effects of contributing factors and related fair housing issues. Further, program participants struggled to develop metrics and milestones that would measure their progress as they affirmatively furthering fair housing. HUD determined that program participants' frequent misunderstanding of how to set clear goals, metrics, and milestones that addressed their identified contributing factors and related fair housing issues often resulted in non-accepted AFHs. HUD believes that additional technical assistance may result in program participants better understanding their obligations under the AFFH rule. HUD also believes that by enhancing its technical assistance that resources expended by program participants will be reduced because they are more likely to submit an initial AFH that can be accepted by HUD.

Additionally, HUD determined that significant staff resources are required when deciding that an AFH will not be accepted because it is inconsistent with fair housing or civil rights requirements or substantially incomplete, or both. (See 24 CFR 5.162 (a)(2)(b).) HUD believes that it can reduce the resources expended by program participants by examining and revising its technical assistance content and methods of delivery so that program participants' AFHs are more likely to meet the regulatory requirements on first submission.

In order to reduce burden for program participants in conducting AFHs that meet the regulatory requirements, HUD, in the AFFH rule, encourages program participants to share resources and to address fair housing issues from a broader perspective by collaborating and submitting a single AFH. Nonetheless, HUD believes that some joint and regional collaborations that were non-accepted on their first submission may have benefited from technical assistance early in the process. For example, the largest regional AFH submitted to HUD consisted of 19 program participants. In its review of the AFH, HUD determined that each of the 19 program participants met the regulatory standards for nonacceptance. HUD believes that improving technical assistance for collaborative AFHs will enable collaborations to more efficiently use their resources to address fair housing issues that cross jurisdictional boundaries.

Based on the initial AFH reviews, HUD believes that local government program participants need additional time and technical assistance from HUD to adjust to the new AFFH process and

complete acceptable AFH submissions. HUD also believes it can use this time to improve its Data and Mapping Tool (AFFH-T) and the User Interface (AFFH-UI). The extension period allows HUD to further refine its materials to provide additional guidance to program participants. Finally, this extension allows HUD staff to devote additional time to providing program participants, and program participants in an AFH collaboration, with technical assistance on the legal objective to affirmatively further fair housing.

Consolidated plan program participants must continue to comply with existing, ongoing obligations to affirmatively further fair housing. Until a consolidated plan program participant is required to submit an AFH, it will continue to provide the AFFH Consolidated plan certification in accordance with the requirements that existed prior to August 17, 2015. See 24 CFR 5.160(a)(3). The requirements obligated a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions.

For Consolidated plan program participants that are starting a new 3–5-year Consolidated plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD, Fair Housing Planning Guide (1996), available at <https://www.hud.gov/sites/documents/FHFG.PDF> until those consolidated plan program participants submit an AFH after October 31, 2020. HUD encourages consolidated plan program participants to use the data and mapping tool and the AFH Assessment Tool as resources for program participants that are updating their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.<sup>1</sup>

Program participants that have already submitted an AFH which has

<sup>1</sup> Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: "How can States Collaborate with Local Governments or PHAs?". The guidance is available at: <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>. This guidance is generally applicable to all types of program participants.

been accepted by HUD must continue to execute the goals of that accepted AFH and are not required to conduct a separate AI. Program participants that are covered by this notice and that may have already begun work on an AFH may continue to do so, as the AFFH rule may provide program participants with a useful framework for complying with their AFFH obligation.

HUD will discontinue the review of AFHs currently under review and will not render an accept, deemed accepted, or non-accept determination. Program participants that received a non-accept decision from HUD on their AFH submission and are preparing to re-submit an AFH are also covered by this notice and should not submit their revised AFHs. HUD encourages these program participants to use the information contained in their draft AFHs to conduct the required AI analysis. Finally, program participants prepared to submit their first AFH are covered by this notice and should not submit an AFH to HUD. Program participants that have not received an accept or non-accept determination from HUD, or that have received a non-accept but will no longer be required to resubmit their AFH, are still required to prepare an AI, as described above in this notice.

HUD is issuing this notice for applicability immediately upon publication. Program participants must continue to affirmatively further fair housing as required by the Fair Housing Act. 42 U.S.C. 3608.

Although HUD is issuing this notice for applicability immediately upon publication, it also invites public comment for a period of 60-days on the extension. HUD will consider all the comments in its ongoing process of reviewing the Assessment of Fair Housing Tool for Local Governments.

Dated: January 2, 2018.

**Anna Maria Farias,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018–00106 Filed 1–4–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[Docket No. BOEM–2017–0020]

#### Outer Continental Shelf Official Protraction Diagrams MMAA104000

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Availability of World Geodetic System Datum of 1984 Outer

# **EXHIBIT**

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question the jurisdiction's AFFH certification by providing notice to the jurisdiction that HUD believes the AFFH certification to be inaccurate and provide the jurisdiction an opportunity to comment. If, after the notice and opportunity to comment is given to the jurisdiction, HUD determines that the AFFH certification is inaccurate, HUD will reject the certification. Rejection of the certification renders the Consolidated Plan substantially incomplete and constitutes grounds for HUD to disapprove the Consolidated Plan as submitted.<sup>7</sup> A jurisdiction cannot receive its Community Development Block Grants (CDBG), HOME, Emergency Solutions Grants (ESG), or Housing for Persons With AIDs (HOPWA) program grants until the Consolidated Plan is approved.

Dated: May 18, 2018.

**Anna Maria Farías,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11145 Filed 5-21-18; 4:15 pm]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-16]

### Affirmatively Furthering Fair Housing: Withdrawal of Notice Extending the Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

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

**ACTION:** Notice; withdrawal.

**SUMMARY:** This notice withdraws HUD's January 5, 2018, notice extending the submission deadline for an Assessment of Fair Housing (AFH) by local government consolidated plan program participants.

**DATES:** Applicable May 23, 2018, the document published at 83 FR 683 on January 5, 2018, is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** HUD's Affirmatively Furthering Fair Housing (AFFH) regulations (24 CFR 5.150-5.168) provide that program participants must submit an Assessment of Fair Housing (AFH) using a HUD-provided assessment tool. See *e.g.*, 24 CFR 5.154. The regulations further provide a schedule of time frames by which different types of program participants must submit an assessment using the appropriate HUD-provided tool. See 24 CFR 5.160(a). These time frames are connected to an individual program participant's multi-year consolidated planning process. On January 5, 2018, at 83 FR 683, HUD published a **Federal Register** notice extending the time frame applicable to local government consolidated plan program participants. HUD is withdrawing the January 5, 2018, notice. If HUD later finds it prudent to revise the regulations, including by revising the submission schedule, HUD will publish a notice of proposed rulemaking to that effect for public comment.

Dated: May 18, 2018.

**Anna Maria Farías,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11143 Filed 5-21-18; 4:15 pm]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2018-N048;  
FXES1113080000-178-FF08E00000]

### Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

**DATES:** Comments on these permit applications must be received on or before June 22, 2018.

**ADDRESSES:** Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and

Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, CA 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Daniel Marquez, Fish and Wildlife Biologist; see ADDRESSES (telephone: 760-431-9440; fax: 760-431-9624).

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests

### Applicants

*Permit No. TE-204436*

Applicant: Johanna Kisner, Orcutt, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE-185595*

Applicant: Kelly Bayne, Sacramento, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardii*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE-101462*

Applicant: Peter Sarafian, Los Osos, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Morro shoulderband snail (Banded dune) (*Helminthoglypta walkeriana*) in

<sup>7</sup> See 24 CFR 91.500.

**EXHIBIT**

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consultancies, and research grants or contracts. The selected candidates must fill out the U.S. Office of Government Ethics (OGE) Confidential Financial Disclosure Report, OGE Form 450. Disclosure of this information is necessary to determine if the selected candidate is involved in any activity that may pose a potential conflict with their official duties as a member of the committee.

A nomination package should include the following information for each nominee: (1) A letter of nomination from an employer, a colleague, or a professional organization stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of the NACNHSC, and the nominee's field(s) of expertise); (2) a letter of interest from the nominee stating the reasons they would like to serve on the NACNHSC; (3) a biographical sketch of the nominee, a copy of his/her curriculum vitae, and his/her contact information (address, daytime telephone number, and email address); and (4) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

HRSA will collect and retain nomination packages to create a pool of possible future NACNHSC voting members. When a vacancy occurs, the agency will review nomination packages from the appropriate category and may contact nominees at that time. Nominations should be updated and resubmitted every 4 years to continue to be considered for committee vacancies.

HHS strives to ensure a balance of the membership of NACNHSC in terms of points of view presented and the committee's function and makes every effort to ensure the representation of women, all ethnic and racial groups, and people with disabilities on HHS Federal Advisory Committees. Therefore, we encourage nominations of qualified candidates from these groups and endeavor to make appointments to NACNHSC without discrimination on basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

*Authority:* Section 337 of the Public Health Service Act (42 U.S.C. 254j), as amended. NACNHSC is governed by provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets for the formation and use of advisory committees, and applies to the extent that the provisions of FACA do not

conflict with the requirements of PHS Section 337.

Dated: May 17, 2018.

**Jay Womack,**

*Acting Deputy Director, Division of Executive Secretariat.*

[FR Doc. 2018-11034 Filed 5-22-18; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-17]

### Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments

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

**ACTION:** Notice.

**SUMMARY:** HUD announces the withdrawal of the Local Government Assessment Tool developed by HUD for use by local governments that receive Community Development Block Grants, HOME Investment Partnerships Program, Emergency Solutions Grants, or Housing Opportunities for Persons With AIDS formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH) under the Affirmatively Furthering Fair Housing (AFFH) regulations. Through **Federal Register** notice published on January 13, 2017, HUD announced the Office of Management and Budget's renewed approval of the Assessment Tool under the Paperwork Reduction Act. Since that time, HUD has become aware of significant deficiencies in the Tool impeding completion of meaningful assessments by program participants. HUD therefore is withdrawing the Local Government Assessment Tool because it is inadequate to accomplish its purpose of guiding program participants to produce meaningful AFHs. Following this withdrawal of the Local Government Assessment Tool, HUD will review the Assessment Tool and its function under the AFFH regulations to make it less burdensome and more helpful in creating impactful fair housing goals. Accordingly, this withdrawal notice also solicits comments and suggestions geared to creating a less burdensome and more helpful AFH Tool for local governments.

**DATES:**

*Applicability Date:* May 23, 2018.

*Comment Due Date:* Comments on improvement to the AFH Tool for Local Governments are due on or before July 23, 2018.

**ADDRESSES:** Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. There are two methods for submitting public comments.

*1. Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

*2. Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Comments.* All comments and communications submitted to HUD will be available, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and

downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 16, 2015, HUD published in the **Federal Register** its Affirmatively Furthering Fair Housing (AFFH) final rule.<sup>1</sup> The AFFH final rule provided HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further fair housing. The AFFH regulations are codified in 24 CFR part 5, subpart A.<sup>2</sup>

To assist program participants, the revised 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 been developing separate Assessment Tools for use by different types of program participants. In addition to Assessment Tools for use by public housing agencies (PHAs) and States and Insular Areas, there is one for local governments, which is the subject of this notice. It is called the Local Government Assessment Tool. All the Assessments Tools, because they are information collection documents, are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).<sup>3</sup>

The Local Government Assessment Tool was developed by HUD for use by local governments that receive Community Development Block Grants, HOME Investment Partnerships Program, Emergency Solutions Grants, or Housing Opportunities for Persons With AIDS formula funding from HUD, when conducting and submitting their AFH. OMB granted PRA approval of the initial iteration of the Local Government Assessment Tool in December 2015, and HUD announced the approval and the availability of the Tool’s use by notice

published in the **Federal Register** on December 31, 2015.<sup>4</sup> The initial iteration of the Local Government Assessment Tool (known as “LG2015”) was approved by OMB for a period of one year. In 2016, HUD began the process for renewed approval of that information collection device.

The PRA establishes a notice and comment process for information collection approvals, involving the publication of two **Federal Register** notices, one for 60 days of public comments and another for a 30-day comment period.<sup>5</sup> HUD’s 60-day notice for renewed approval of the Local Government Assessment Tool was published on March 23, 2016.<sup>6</sup> The 30-day notice was published on August 23, 2016, and addressed the significant issues raised by the comments received on the 60-day notice.<sup>7</sup>

HUD announced the renewed PRA approval by OMB of a Local Government Assessment Tool through **Federal Register** notice published on January 13, 2017.<sup>8</sup> In addition to announcing the PRA approval of the Tool, the January 13, 2017, notice addressed the significant issues raised by the comments received in response to the 30-day notice. This current version of the Tool, which is the subject of this notice, is known as “LG2017.”<sup>9</sup>

**II. This Notice—Withdrawal of the Local Government Assessment Tool**

Through this notice, HUD announces its withdrawal of the current version of the Local Government Assessment Tool (OMB Control No: 2529-0054). As noted above, the PRA establishes a notice-and-comment process for information collection approvals, but not for withdrawals. Accordingly, this withdrawal is effective immediately.

In the January 13, 2017, **Federal Register** notice announcing the availability of that Assessment Tool, HUD noted its agreement with commenters 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.”<sup>10</sup> Accordingly, that notice stated that “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 fair housing outcomes.”<sup>11</sup> Consistent with this response to comments, since the publication of this notice on January 13, 2017, HUD has become aware of significant deficiencies in the Tool that have made it unduly burdensome for program participants to use the Tool to create acceptable and meaningful AFHs with impactful fair housing goals.

HUD’s decision is, in part, informed by its review of the initial round of AFH submissions that were developed using the Local Government Assessment Tool. This review led HUD to conclude that the Tool is unworkable based upon: (1) The high failure rate from the initial round of submissions; and (2) the level of technical assistance HUD provided to this initial round of 49 AFHs, which cannot be scaled up to accommodate the increase in the number of local government program participants with AFH submission deadlines in 2018 and 2019.

*1. Experience With the Initial Group of AFH Submissions Demonstrates That the Tool Is Unduly Burdensome and Ineffective at Assisting Program Participants With the Creation of Acceptable AFHs*

Between October 2016 and December 2017, HUD received, reviewed, and issued initial decisions on 49 AFHs submitted by local government program participants. In 2018, the Department conducted an evaluation of these submissions and found that, among this initial group of 49 AFH submissions, a significant proportion of program participants had difficulty completing or understanding how to use the Tool to complete acceptable AFHs. Indeed, the proportion of submissions determined to be unacceptable indicates that the Tool was unduly burdensome and not working as an effective device to assist program participants with the creation of acceptable and meaningful AFHs with impactful fair housing goals.

For instance, only 37% of the initial 49 submissions (18/49) had been determined to be acceptable on initial submission. HUD returned 35% of these (17/49) as unacceptable. Many other AFH submissions (28% or 14/49) were accepted only after the program participants submitted revisions and additional information in the form of addendums in response to HUD’s

<sup>4</sup> 80 FR 81840.

<sup>5</sup> See, e.g., 44 U.S.C. 3506-07.

<sup>6</sup> 81 FR 15546.

<sup>7</sup> 81 FR 57602.

<sup>8</sup> 83 FR 4368.

<sup>9</sup> Both the original iteration (LG2015) and current version (LG2017) of the Local Government Assessment Tool are available at <https://www.hudexchange.info/resource/5216/assessment-of-fair-housing-tool-for-local-governments/>. Program participants with a due date of October 13, 2017 or earlier were required to use the LG2015 version of the Assessment Tool. Program participants with a due date of October 14, 2017, or later must use the LG2017 version of the Assessment Tool. This notice pertains to the current (LG2017) version.

<sup>10</sup> 82 FR 4391.

<sup>11</sup> *Id.*

<sup>1</sup> 80 FR 42357.

<sup>2</sup> §§ 5.150-5.168.

<sup>3</sup> 44 U.S.C. 3501 *et seq.*

technical assistance. Taken together, 63% of the 49 AFHs submitted were either: (a) Returned as unacceptable and have not been successfully resubmitted, or (b) accepted only after the program participant supplied necessary additional information and revisions.

Tellingly, despite the fact that joint and regional submissions benefit from the sharing of resources by program participants, enabling them to address fair housing issues from the broader perspective provided by collaboration, joint and regional collaborations nonetheless suffered from the same defects as individual AFH submissions. For example, the largest regional AFH submitted to HUD involved a total of 19 program participants. In its review of the AFH, HUD determined that each of the 19 program participants would have met the regulatory standards for nonacceptance.

Additionally, many jurisdictions found it necessary to incur additional expense to hire consultants to complete their AFHs. Particularly in light of the high initial fail rates, this fact further demonstrates that the Assessment Tool is unduly burdensome as an information collection device and must be improved to reduce the burden upon respondents.

HUD's analysis shows that the excessively high rate of unacceptable AFHs was due, in large measure, to problems with the Local Government Assessment Tool, and that efficiency gains over time from experience working with the Tool would be unlikely to address HUD's concerns about both the inadequacy of the Tool and the burden to program participants in using the Tool to complete acceptable AFHs. Specifically, HUD's analysis found a pattern of problems with the initial 49 AFH submissions, indicating at least seven different categories of critical problems with the Local Government Assessment Tool: (a) Inadequate community participation; (b) insufficient use of local data and knowledge; (c) lack of regional analysis; (d) problems with identification of contributing factors; (e) prioritization of contributing factors; (f) problems with setting goals; and (g) inadequate responses due to duplication of questions. While there may have been myriad issues that caused an individual AFH submission to have been non-accepted, in the aggregate, this summary of issues describes the basis for HUD's determination that the Assessment Tool is ineffective and unduly burdensome on program participants.

(a) *Inadequate Community Participation.* A significant cause of the high non-acceptance rate was inadequate community participation.

The AFFH regulations require program participants to "give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other required planning documents."<sup>12</sup> However, the questions in the Local Government Assessment Tool regarding community participation have resulted in confusion. The questions vaguely incorporate by reference the existing community participation requirements in HUD's Consolidated Plan regulations<sup>13</sup> and the comparable requirements in HUD's Public Housing regulations.<sup>14</sup> The questions do not explicitly state the specific requirements or ask that program participants explain how they met these specific requirements. As a result, many of the initial AFH submissions did not fulfill these requirements and/or did not explain in their responses how they fulfilled the requirements. For example, the regulation at 24 CFR 91.105(b)(4) requires a period of not less than 30 calendar days for comment by the community; however, one community posted a draft AFH for public comment on a Friday and submitted the final AFH to HUD the following Monday, after providing only three days for public comment.<sup>15</sup>

(b) *Insufficient Use of Local Data and Knowledge.* The Assessment Tool requires local governments to utilize their local data and local knowledge to supplement the HUD-provided data, or, when appropriate, to replace HUD-provided data. HUD requires the use of local data only if the program participants can find and use such data at little or no cost. While many program participants utilized local data and local knowledge exactly as intended, a substantial number did not. The absence of local data, or failure to use it, resulted in an inability to address issues in a community that have not manifested themselves in the HUD-provided data. For example, when discussing environmental health issues, one program participant did not identify multiple Superfund locations in their jurisdiction. While this is information that a local government would know, specific Superfund locations are not noted on HUD maps. The questions in the Tool thus are inadequate to inform

the program participants when to use local data and knowledge.<sup>16</sup>

(c) *Lack of Regional Analysis.* Questions throughout the Assessment Tool require program participants to undertake both a jurisdictional and a regional analysis of fair housing issues. Many of the 49 AFH submissions did not complete or adequately complete the regional component of the analysis of fair housing issues. Others may have completed the analysis but did so in a way that did not compare the jurisdiction to the region. The regional analysis is often a critical component of the AFH because fair housing issues may cross jurisdictional boundaries and demographic trends may extend across entire regions. HUD provides both jurisdictional and regional data through the AFFH data and mapping tool for each program participant. However, the Assessment Tool inadequately guides program participants in the use of such data to perform the type of regional analysis of fair housing issues that would be necessary for an acceptable AFH.

(d) *Identification of Contributing Factors.* Throughout the analysis of fair housing issues, the Assessment Tool requires that the program participant identify the contributing factors that create, contribute to, or perpetuate fair housing issues in their community. However, the Assessment Tool does not explicitly require the program participant to connect the identified contributing factors to the fair housing issues they will address until the final section where the program participant determines goals to overcome those contributing factors.

Because the Assessment Tool fails to instruct the program participants to connect these concepts, many of the 49 AFH submissions identified contributing factors which did not logically connect to the analysis of fair housing issues undertaken. In addition, factors which the program participants themselves identified in other portions of the Assessment Tool were not identified in the responses to these questions. For example, one AFH included 3 pages of detailed analysis of Home Mortgage Disclosure Act (HMDA) information outlining the lending discrimination occurring, yet the program participants did not identify lending discrimination as a contributing factor.<sup>17</sup>

(e) *Prioritization of Contributing Factors.* The final section of the

<sup>12</sup> 24 CFR 5.158(a).

<sup>13</sup> 24 CFR part 91.

<sup>14</sup> 24 CFR part 903.

<sup>15</sup> See, e.g., Section III, Questions 1–4 of LG2015 and LG2017.

<sup>16</sup> See, e.g., Section V, Questions B.3.1.a.3/ B.3.1.b.3/B.3.1.c.3/B.3.1.d.3/B.3.1.e.3 (LG2017).

<sup>17</sup> See, e.g., Section V, Questions B.1.3/B.2.3/ B.3.3/B.4.3/C.3/D.7 (LG2015 and LG2017).

Assessment Tool requires that the program participant(s) prioritize the contributing factors identified for each fair housing issue analyzed in the fair housing analysis sections. The program participant(s) must then justify the prioritization of the contributing factors. Finally, the program participant(s) set goals designed to overcome the contributing factors identified as significant. Jurisdictions must reasonably exercise their discretion to prioritize contributing factors. The justification provides an opportunity to explain the prioritization method selected. Many of the 49 submissions either included in this question contributing factors not identified in the

analysis of fair housing issues or did not include the contributing factors that were identified. Many program participants also did not explain their prioritization method. Without this critical link, the analysis of fair housing issues and the goals do not connect, making the AFH unacceptable. The Assessment Tool thus fails to provide adequate guidance for the prioritization of contributing factors.<sup>18</sup>

(f) *Goals Section was Highly Problematic.* The goals section was an issue in or the sole reason for the majority of initially non-accepted AFHs. In several submissions, the goals were not likely to result in meaningful actions, lacked metrics and milestones,

were not linked to contributing factors and fair housing issues, and generally lacked adequate discussion.

Program participants are responsible for identifying their own fair housing goals. However, the goals set by the program participant must connect to the analysis of fair housing issues *and* result in meaningful actions to affirmatively further fair housing.

These goals will then be incorporated into Consolidated Plans and Public Housing Plans. Along with extensive guidance, HUD provides the following chart in the assessment tool to assist program participants in completing this question.

Goal	Contributing factors	Fair housing issues	Metrics, milestones, and timeframe for achievement	Responsible program participant(s)

Discussion:

Many of the 49 AFHs reviewed were deficient in this section, which is the culmination of the AFH. Goals were frequently overbroad or would not result in meaningful actions, for example, to “increase housing choice,” or “partner with . . . .” Program participants frequently failed to connect their fair housing goals to the AFH analysis, or to the contributing factors or fair housing issues identified in the AFH.

Metrics and milestones for evaluating the accomplishment of fair housing goals were the most frequent source of deficiency in this section. However, frequently those established in the AFHs were neither time-bound nor measurable. The discussion section of the chart is a program participant’s opportunity to explain the goal to ensure that HUD understands its intention and can often counter-balance deficiencies in or confusion caused by other sections of the chart. Many of the program participants did not complete this section or provided only a vague discussion. HUD is therefore concerned that the roadmap provided in the Assessment Tool is inadequate to lead to the development of effective goals.<sup>19</sup>

(g) *Inadequate Responses Due to Duplication.* The Local Government Assessment Tool contains several questions that have elicited inadequate responses which merely duplicate previous responses to other questions

within the Tool without responding fully to the specific question asked. The lack of clarity in the questions led to responses that merely assumed a question was being asked twice and thus failed to respond fully to the question at hand. Similarities in the sentence structure and terminology used in the questions may have caused program participants to overlook slight or nuanced differences between questions.<sup>20</sup>

*2. HUD Does Not Have the Resources To Provide a Similar Level of Technical Assistance to Expanding Numbers of Program Participants in 2018 and 2019*

Because of these significant problems with the Tool, HUD has provided substantial technical assistance to this initial round of program participants, even for the AFHs that have been accepted. HUD does not have the resources to continue to provide program participants with the level of technical assistance that they would need to submit acceptable AFHs using the current version of the Local Government Assessment Tool. Despite the fact that many jurisdictions reportedly have found it necessary to engage consultants to complete the Assessment Tool, HUD estimates that it has spent over \$3.5 million on technical assistance for the initial round of 49 AFH submissions. In addition to contract technical assistance services,

significant HUD staff resources are required to review an AFH for acceptability and to communicate with program participants regarding HUD’s determination to accept or non-accept an AFH.

Although HUD anticipated providing technical assistance to program participants to assist them in submitting acceptable assessments, the amount of assistance that has proved to be required with the current version of the Local Government Assessment Tool is not sustainable particularly in light of the significant increase in AFH submissions scheduled to occur in 2018 and 2019. In 2018, for example, 104 local government program participants are scheduled to submit AFHs to HUD. In 2019, the number of local governments originally scheduled to submit their AFHs rises to 752. The level of technical assistance provided to the initial 49 participants could not be extended to these numbers of AFHs due in 2018 and 2019.

And due to the deficiencies in the Local Government Assessment Tool, HUD believes that, without the withdrawal and revision of the Tool, a high percentage of AFHs in future rounds of submissions would not be initially acceptable. Because the problems with the Tool have created the above-described patterns of deficiencies in AFH submissions even from collaborative groups leveraging the resources of multiple jurisdictions, HUD

<sup>18</sup> See, e.g., Section VI, Question 1 (LG2015 and LG2017).

<sup>19</sup> See, e.g., Section VI, Question 2 (LG2015 and LG2017).

<sup>20</sup> See, e.g., Section III, Question 3; Section IV, Question 1; Section V, Questions B.1.1.b/B.3/B.4/C.1.2/D.2.a (LG2017).

does not believe that the level of technical assistance it has been required to provide to the initial 49 AFHs would decrease meaningfully as result of expanded usage of the Tool. As a result, in 2018 and 2019, HUD would not be able to provide all program participants with the extent of assistance provided to those in the initial round of AFHs, meaning that these participants would not have the help they would need to correct their assessments. This would lead to a great deal of uncertainty for program participants as to how to submit an acceptable AFH. Such uncertainty would, in turn, lead to uncertainty regarding the status of their HUD-funded programs so long as they do not have an accepted AFH in place.

*3. In Light of HUD and Local Government Program Participants' Resource Limitations, Temporary Withdrawal of the Local Government Assessment Tool Is Necessary as the Most Efficient Way To Resolve the Tool's Significant Deficiencies*

HUD is withdrawing the Tool to produce a more effective and less burdensome Assessment Tool. These improvements to the Tool will make it more effective in assisting program participants with the creation of meaningful assessments with impactful fair housing goals to help them plan to fulfill their legal obligation to affirmatively further fair housing. Withdrawal and revision of the Assessment Tool will also conserve HUD's limited resources, allowing HUD to use those limited resources more effectively to help program participants produce meaningful improvements in the communities they serve. HUD also believes that investing additional time to improve its Data and Mapping Tool (AFFH-T) and the User Interface (AFFH-UI) will result in more substantive assessments with greater fair housing impact.

**III. Effects of Withdrawal of Assessment Tool**

The AFFH regulations at 24 CFR 5.160(a)(1)(ii) provide that if the specified AFH submission deadline results in a submission date that is less than 9 months after the Assessment Tool designed for the relevant type of program participant is available for use, "the participants(s)' submission deadline will be extended . . . to a date that will be not less than 9 months from the date of publication of the Assessment Tool." For example, in the case of the Assessment Tool for use by PHAs, HUD published a notice in January 2017, advising that the Assessment Tool had been approved

pursuant to the PRA process, but was not yet available for use by PHAs because the HUD data needed to make the Assessment Tool workable was not yet available.<sup>21</sup> Accordingly, under 24 CFR 5.160(a)(1)(ii), the deadline for first AFH submissions by PHAs was extended until a workable Assessment Tool becomes available.

Similarly, in the case of the Local Government Assessment Tool, HUD has determined that the current iteration of the Tool, although published after PRA procedures, is substantively deficient and unduly burdensome because it has resulted in great expense to program participants and HUD, yet it is not adequately guiding participants through the creation of acceptable AFHs. Accordingly, HUD is immediately withdrawing the Local Government Assessment Tool. As a result, local jurisdictions do not have an approved Assessment Tool that is published and available for use in completing the AFHs. Pursuant to 24 CFR 5.160(a)(1)(ii), the deadline for local government program participants to submit a first AFH is thus extended to a date not less than 9 months following the future publication of a revised and approved Local Government Assessment Tool. HUD is immediately seeking comment on ways to make the Local Government Assessment Tool workable and effective. Pursuant to 24 CFR 5.160(a)(1)(ii), the future published notice announcing that a revised and approved Local Government Assessment Tool is available will also provide program participants with the revised due date for first AFH submissions.

Consolidated plan program participants that have not yet submitted their first AFHs must nonetheless continue to comply with existing, ongoing legal obligations to affirmatively further fair housing (legal obligations which AFHs were merely intended to help participants plan to fulfill). Pursuant to 24 CFR 5.160(a)(3), until a consolidated plan program participant submits its first AFH, it will continue to provide the AFFH certification with its Consolidated Plan, in accordance with the requirements that existed prior to August 17, 2015. Those requirements obligate a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain

records reflecting the analysis and actions.

For Consolidated plan program participants that are starting a new 3–5-year Consolidated plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD, Fair Housing Planning Guide (1996), available at <https://www.hud.gov/sites/documents/FHFG.PDF>. The data HUD has developed in order to implement the AFFH rule will remain available for program participants to use in conducting their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.<sup>22</sup>

Program participants that have already submitted an AFH which has been accepted by HUD must continue to execute the goals of that accepted AFH and are not required to conduct a separate AI. HUD will discontinue the review of AFHs submitted by local governments that are currently under review and will not render a decision to accept or not accept. In cases where HUD denied acceptance of an AFH submission that used the withdrawn Local Government Assessment Tool and the program participant(s) were preparing to re-submit an AFH, the participant(s) should not submit a revised AFH. Finally, local governments prepared to submit their first AFH should not submit an AFH to HUD. Local governments that have not received an accept or non-accept determination from HUD, or that have received a non-accept but will no longer be required to resubmit their AFH, are still required to prepare an AI, as described above in this notice. Program participants must continue to fulfill their legal obligations to affirmatively further fair housing.

**IV. Request for Public Comment on Improvements to the Local Government Assessment Tool**

This notice offers the opportunity for the public to provide information and recommendations on revisions to the Local Government Assessment Tool. HUD welcomes and will consider all

<sup>22</sup> Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: "How can States Collaborate with Local Governments or PHAs?". The guidance is available at: <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>. This guidance is generally applicable to all types of program participants.

<sup>21</sup> 82 FR 4373.

responses to this notice when reconsidering the Assessment Tool

Dated: May 18, 2018.

**Anna Maria Fariás,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11146 Filed 5-21-18; 4:15 pm]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-18]

### Affirmatively Furthering Fair Housing (AFFH): Responsibility To Conduct Analysis of Impediments

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

**ACTION:** Notice.

**SUMMARY:** By notice published elsewhere in today's **Federal Register**, HUD has withdrawn the current version of the information collection device used by local government program participants to assess fair housing issues as part of their planning for use of housing and community development block grants. The device is referred to as the Local Government Assessment Tool; the resulting assessment is referred to as an Assessment of Fair Housing (AFH). As explained in that notice, the withdrawal of the lack of a working information collection device means that a program participant that has not yet submitted an AFH using that device that has been accepted by HUD must continue to carry out its duty to affirmatively further fair housing by, inter alia, continuing to assess fair housing issues as part of planning for use of housing and community development block grants in accordance with pre-existing requirements. The pre-existing requirements referred to the fair housing assessment as an "analysis of impediments to fair housing choice" (AI). This notice reminds program participants of the requirements and standards for completing the AI.

**DATES:** *Applicability Date:* May 23, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free

Federal Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On July 16, 2015, HUD published in the **Federal Register** its Affirmatively Furthering Fair Housing (AFFH) final rule.<sup>1</sup> The AFFH final rule provides HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further fair housing. To assist HUD program participants in meeting this obligation, the AFFH rule provides that program participants must conduct an Assessment of Fair Housing (AFH) using an "Assessment Tool." The AFFH regulations are codified in 24 CFR part 5, subpart A (§§ 5.150-5.168).

Through notice published elsewhere in today's **Federal Register**, HUD announces its withdrawal of the Local Government Assessment Tool (OMB Control No: 2529-0054). As explained in that notice, the AFFH regulations at 24 CFR 5.160(a)(1)(ii) provide that if the specified AFH submission deadline results in a submission date that is less than 9 months after the Assessment Tool designed for the relevant type of program participant is available for use, "the participant(s)' submission deadline will be extended . . . to a date that will be not less than 9 months from the date of publication of the Assessment Tool." As a result of the withdrawal of the Local Government Assessment Tool and the lack of available HUD data for the PHA Assessment Tool, currently no type of program participant has an Assessment Tool available for use.<sup>2</sup> Pursuant to 24 CFR 5.160(a)(1)(ii), the deadline for local government program participants to submit a first AFH is thus extended to a date not less than 9 months following the future publication of a revised and approved Local Government Assessment Tool.

In the meantime, as explained in the notice withdrawing the Local Government Assessment Tool, Consolidated Plan program participants that have not yet submitted an assessment using a HUD-provided assessment tool that must be accepted, must nonetheless continue to comply with existing, ongoing legal obligations to affirmatively further fair housing. Congress has repeatedly reinforced this mandate, requiring in the Housing and Community Development Act of 1974 and the Cranston-Gonzalez National Affordable Housing Act, for example, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will

affirmatively further fair housing.<sup>3</sup> Pursuant to 24 CFR 5.160(a)(3), until a Consolidated Plan program participant submits its first accepted AFH, it will continue to provide the AFFH certification with its Consolidated Plan, in accordance with the requirements that existed prior to August 17, 2015.<sup>4</sup> Those requirements obligate a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions.

Program participants are hereby reminded that the legal obligation to affirmatively further fair housing remains in effect, and that HUD places a high priority upon the responsibility of program participants to ensure that their AIs serve as effective fair housing planning tools. For Consolidated Plan program participants that are starting a new 3-5-year Consolidated Plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD Fair Housing Planning Guide (1996).<sup>5</sup> The data HUD has developed in order to implement the AFFH rule will remain available for program participants to use in conducting their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.<sup>6</sup>

Further, program participants are hereby reminded that if HUD believes the AI or actions taken to affirmatively further fair housing to be inadequate, HUD may require submission of the full AI and other documentation. If HUD concludes that the AI is substantially incomplete, or the actions taken were plainly inappropriate to address the identified impediments, HUD may

<sup>3</sup> See, e.g., 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15).

<sup>4</sup> See, e.g., 24 CFR 91.225(a)(1) (2014); 24 CFR 91.325(a)(1) (2014).

<sup>5</sup> Available at <https://www.hud.gov/sites/documents/FHPG.PDF>.

<sup>6</sup> Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: "How can States Collaborate with Local Governments or PHAs?". The guidance is available at: <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>. This guidance is generally applicable to all types of program participants.

<sup>1</sup> 80 FR 42357.

<sup>2</sup> See 82 FR 4373.

# **EXHIBIT**

**D**

responses to this notice when reconsidering the Assessment Tool

Dated: May 18, 2018.

**Anna Maria Fariás,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11146 Filed 5-21-18; 4:15 pm]

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In the meantime, as explained in the notice withdrawing the Local Government Assessment Tool, Consolidated Plan program participants that have not yet submitted an assessment using a HUD-provided assessment tool that must be accepted, must nonetheless continue to comply with existing, ongoing legal obligations to affirmatively further fair housing. Congress has repeatedly reinforced this mandate, requiring in the Housing and Community Development Act of 1974 and the Cranston-Gonzalez National Affordable Housing Act, for example, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will

affirmatively further fair housing.<sup>3</sup> Pursuant to 24 CFR 5.160(a)(3), until a Consolidated Plan program participant submits its first accepted AFH, it will continue to provide the AFFH certification with its Consolidated Plan, in accordance with the requirements that existed prior to August 17, 2015.<sup>4</sup> Those requirements obligate a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions.

Program participants are hereby reminded that the legal obligation to affirmatively further fair housing remains in effect, and that HUD places a high priority upon the responsibility of program participants to ensure that their AIs serve as effective fair housing planning tools. For Consolidated Plan program participants that are starting a new 3-5-year Consolidated Plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD Fair Housing Planning Guide (1996).<sup>5</sup> The data HUD has developed in order to implement the AFFH rule will remain available for program participants to use in conducting their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.<sup>6</sup>

Further, program participants are hereby reminded that if HUD believes the AI or actions taken to affirmatively further fair housing to be inadequate, HUD may require submission of the full AI and other documentation. If HUD concludes that the AI is substantially incomplete, or the actions taken were plainly inappropriate to address the identified impediments, HUD may

<sup>3</sup> See, e.g., 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15).

<sup>4</sup> See, e.g., 24 CFR 91.225(a)(1) (2014); 24 CFR 91.325(a)(1) (2014).

<sup>5</sup> Available at <https://www.hud.gov/sites/documents/FHPG.PDF>.

<sup>6</sup> Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: "How can States Collaborate with Local Governments or PHAs?". The guidance is available at: <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>. This guidance is generally applicable to all types of program participants.

<sup>1</sup> 80 FR 42357.

<sup>2</sup> See 82 FR 4373.



question the jurisdiction's AFFH certification by providing notice to the jurisdiction that HUD believes the AFFH certification to be inaccurate and provide the jurisdiction an opportunity to comment. If, after the notice and opportunity to comment is given to the jurisdiction, HUD determines that the AFFH certification is inaccurate, HUD will reject the certification. Rejection of the certification renders the Consolidated Plan substantially incomplete and constitutes grounds for HUD to disapprove the Consolidated Plan as submitted.<sup>7</sup> A jurisdiction cannot receive its Community Development Block Grants (CDBG), HOME, Emergency Solutions Grants (ESG), or Housing for Persons With AIDs (HOPWA) program grants until the Consolidated Plan is approved.

Dated: May 18, 2018.

**Anna Maria Farías,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11145 Filed 5-21-18; 4:15 pm]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-16]

### Affirmatively Furthering Fair Housing: Withdrawal of Notice Extending the Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

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

**ACTION:** Notice; withdrawal.

**SUMMARY:** This notice withdraws HUD's January 5, 2018, notice extending the submission deadline for an Assessment of Fair Housing (AFH) by local government consolidated plan program participants.

**DATES:** Applicable May 23, 2018, the document published at 83 FR 683 on January 5, 2018, is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202-402-6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** HUD's Affirmatively Furthering Fair Housing (AFFH) regulations (24 CFR 5.150-5.168) provide that program participants must submit an Assessment of Fair Housing (AFH) using a HUD-provided assessment tool. See *e.g.*, 24 CFR 5.154. The regulations further provide a schedule of time frames by which different types of program participants must submit an assessment using the appropriate HUD-provided tool. See 24 CFR 5.160(a). These time frames are connected to an individual program participant's multi-year consolidated planning process. On January 5, 2018, at 83 FR 683, HUD published a **Federal Register** notice extending the time frame applicable to local government consolidated plan program participants. HUD is withdrawing the January 5, 2018, notice. If HUD later finds it prudent to revise the regulations, including by revising the submission schedule, HUD will publish a notice of proposed rulemaking to that effect for public comment.

Dated: May 18, 2018.

**Anna Maria Farías,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2018-11143 Filed 5-21-18; 4:15 pm]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2018-N048;  
FXES1113080000-178-FF08E00000]

### Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

**DATES:** Comments on these permit applications must be received on or before June 22, 2018.

**ADDRESSES:** Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and

Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, CA 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Daniel Marquez, Fish and Wildlife Biologist; see ADDRESSES (telephone: 760-431-9440; fax: 760-431-9624).

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests

### Applicants

*Permit No. TE-204436*

Applicant: Johanna Kisner, Orcutt, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE-185595*

Applicant: Kelly Bayne, Sacramento, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardii*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE-101462*

Applicant: Peter Sarafian, Los Osos, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Morro shoulderband snail (Banded dune) (*Helminthoglypta walkeriana*) in

<sup>7</sup> See 24 CFR 91.500.