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The Honorable Anna Maria Fariás
Assistant Secretary
Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Submitted via: <http://www.regulations.gov>

Re: Request for Comments Regarding Affirmatively Furthering Fair Housing:
Withdrawal of the Assessment Tool for Local Governments:
Docket No. FR-5173-N-17

Dear Assistant Secretary Fariás:

The NATIONAL ASSOCIATION OF REALTORS®, representing 1.3 million real estate professionals across the United States, has a long history of supporting fair housing including critical support for the 1988 Amendments to the Fair Housing Act and policies which support effective enforcement of the Act. NAR previously commented and commended the U.S. Department of Housing and Urban Development (HUD) for its rules implementing the Fair Housing Act's statutory requirement to affirmatively further fair housing. NAR particularly applauded the requirement for public participation and the consideration of factors in a particular jurisdiction, that contribute to a fair housing issue. NAR previously sent comments objecting to the tool promulgated by HUD in 2015 because it pre-judged that certain factors contribute to fair housing issues instead of requiring local jurisdictions to identify those factors. The following comments address the Affirmatively Furthering Fair Housing Local Government Assessment Tool (tool), reemphasizing NAR comments sent at the time the tool was released.

The NATIONAL ASSOCIATION OF REALTORS® does not believe the failure to develop an effective tool relieves HUD of its statutory obligation to affirmatively further fair housing, especially when considering funding for local jurisdiction programs. It has been fifty years since passage of the Fair Housing Act, and delays in implementing this rule have adversely affected homeownership and equal opportunity. NAR has identified that community-based issues, such as access to quality education, healthy communities and economic opportunities, are barriers to equal housing opportunity. Disparities in communities impact the ability of REALTORS® to serve those markets. The homeownership rate for African Americans remains at basically the same level it was in 1968; many communities remain nearly as segregated as they were in 1968. It is of utmost importance that the Affirmatively Furthering Fair Housing requirement be implemented as soon as possible.

NAR believes a clearly outlined tool is helpful for local government entities to complete their obligations as outlined in the Affirmatively Furthering Fair Housing regulations announced on July 16, 2015. HUD has a statutory obligation to administer its programs in a manner that affirmatively furthers fair housing. For communities receiving HUD funds, including CDBG grants, HUD should assess whether there are fair housing issues in that community and whether those issues are being meaningfully addressed. It is critical to the success of efforts to effectively address fair housing issues that local



government entities and the communities they serve identify factors that contribute to those issues and determine the actions they will take to address those issues. However, the tool announced on December 31, 2015, has several flaws that make it less than useful for the purposes it was designed. Specifically, the tool is confusing in how it describes factors that may contribute to fair housing issues, confuses factors and contributing factors, and includes suggestions on legislative and other remedies.

1. The Affirmatively Furthering Fair Housing Final Rule defines a contributing factor as a factor that “creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues.” Therefore, a factor does not become a contributing factor unless it meets the criteria in this definition. HUD should not be listing factors as contributing factors, but instead requiring jurisdictions to evaluate whether there are factors that do so contribute. It is helpful that HUD has identified a number of factors it wishes to be examined, but the listing of those factors and the instructions in the form should in no way presuppose that the factor is a contributing factor in all situations. Such a presupposition will impact the accuracy and effectiveness of a community’s fair housing assessment. By presenting a set of factors as contributing factors, it biases the responders to assume that those factors always have a fair housing impact. NAR suggests that the listing of factors in the form should be referenced more neutrally, such as “Factors to be considered may include”.
2. The naming of each “factor” is confusing. Some factors are listed with a value, such as “Lack of Community Revitalization Strategies.” Others are simply statements of issues or factors without a value attached, such as “Land Use and Zoning Laws”. The list of factors should be listed without values, simply a statement, such as “Community Revitalization Strategies”.
3. The descriptions of each factor should be titled differently and should remove statements that indicate the factor is assumed to contribute to fair housing issues. Instead, the description should identify what the factor is, and pose questions that might be examined to determine whether it does impact fair housing.

For example, the first sentence of the description of “The availability of affordable units in a range of sizes” is a conclusion that may or may not apply in all jurisdictions:

“The provision of affordable housing is often important to individuals with certain protected characteristics because groups are disproportionately represented among those who would benefit from low-cost housing.”

The conclusion in the above sentence may or not be true, but the factor is not described until the third sentence, followed by questions to be considered in the fourth sentence:

“This contributing factor refers to the availability of units that a low- or moderate-income family could rent or buy, including one-bedroom units and multi-bedroom units for larger families. When considering availability, consider transportation costs, school quality and other important factors in housing choice.”

Finally, the phrase in the last sentence below is a conclusion rather than asking for an analysis of its fair housing impact:

“Whether affordable units are available with a greater number of bedrooms and in a range of different geographic locations may be a particular barrier facing families with children.”

NAR urges that “Appendix C – Contributing Factors Descriptions” should be retitled and rewritten to remove bias and encourage local governments to analyze the impact of the issues.

4. A number of the descriptions of “contributing factors” also include recommendations for remedies, including several recommendations for local and state legislation. This runs contrary to HUD’s explicit statement in the Executive Summary outlining the purpose of the Final Affirmatively Furthering Fair Housing Rule:

“While the statutory duty to affirmatively further fair housing requires program participants to affirmatively further fair housing, this final rule does not mandate specific outcomes for the planning process (emphasis added). Instead, recognizing the importance of local decision-making (emphasis added), the new approach establishes basic parameters to help guide public sector housing and community development planning and investment decisions in being better informed about fair housing concerns and consequently help program participants to be better positioned to fulfill their obligation to affirmatively further fair housing.”

For example:

- i. At the end of the description titled “Lack of assistance for housing accessibility modifications” there is a statement “Jurisdictions may consider establishing a modification fund...”
- ii. At the end of “Lack of local private fair housing outreach and enforcement” includes a statement “Activities to raise awareness may include technical training...”
- iii. At the end of “Source of Income discrimination” includes the following “A number of jurisdictions have passed local laws prohibiting source of income discrimination, which is one way to open housing options that increase fair housing choice.”

There is no place in the Fair Housing Assessment form or its appendices where it is appropriate for HUD to mandate or suggest specific legislation or specific remedies to address fair housing issues, and the descriptions of factors should not include either direct or indirect suggestions for actions to address factors, and in particular should not include recommendations for legislation. It is the responsibility of the jurisdiction receiving HUD and CDBG funds to identify and implement measurable actions to address the factors that it has determined contribute to fair housing issues.

If, during the preparation of its Fair Housing Assessment, a jurisdiction desires technical assistance from HUD regarding meaningful actions to address discrimination, providing examples of successful efforts in other communities may be helpful through a best practices format.

The analysis and planning necessary to affirmatively further fair housing should be based on communities identifying fair housing issues, examining the factors that contribute to those issues and developing meaningful approaches to address those issues. The best approach is to encourage analysis and decision-making at the local level. The assessment form as proposed takes away from local analysis and decision-making, reducing the effectiveness of the tool in addressing the issues a community faces.

NAR supports the provision of key data elements to each jurisdiction with an encouragement that they supplement the data provided by locally available information. The Affirmatively Furthering Fair Housing requirement in the Fair Housing Act is critically important to achieving a housing market free from discrimination, increase access to homeownership, and ending segregated living patterns. The tool and regulations put forth a problem-solving mechanism to allow local communities to identify and address how fair housing issues impact their communities. NAR expects that HUD will fulfill its obligation to make sure that local communities, when receiving HUD and CDBG funds, fulfill their obligation as well.

Sincerely,



Elizabeth Mendenhall
2018 President, National Association of REALTORS®