

August 17, 2015

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7th Street SW., Room 10276  
Washington, DC 20410-0500

RE: Docket No. FR-5173-N-05 HUD Affirmatively Furthering Fair Housing Assessment Tool  
(30-day notice)

To Whom It May Concern:

Douglas County, Colorado has developed a response to the notice of proposed information collection (FR-5173-N-05) entitled "Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment-30-Day Notice Under Paperwork Reduction Act of 1995" published in the Federal Register on July 16, 2015.

Douglas County supports Fair Housing and has made every effort to affirmatively further fair housing for our residents. We believe the approach we have implemented since receiving Community Development Block Grant (CDBG) funds in 2004, is innovative and proactive and the right approach for our residents. We have attempted to serve as a model recipient of HUD funds by encouraging collaboration, engaging stakeholders and working to provide equal access to housing opportunities for all of our residents.

After reviewing the proposed Fair Housing Assessment Tool we find it to be unclear and ineffective. We find both Option A and Option B included as a part of the Assessment of Fair Housing (AFH), are inadequate. The Tool must be refined and parameters must be established. The County requests that HUD make substantial revisions to the Tool, as outlined in this letter.

The Tool does not clearly define the intent of what it means to affirmatively further fair housing. The information and definitions provided are vague, subjective and therefore open to interpretation. We request that HUD clarify their intent before we are asked to move forward and effectively complete an Assessment of Fair Housing.

After reviewing the contributing factors identified in the tool we find many to be contradictory in nature. Addressing one contributing factor may actually *create* barriers to furthering fair housing in another contributing factor. We request HUD provide metrics for each factor outlined in the tool. A

table should be created considering contributing factors in an urban, suburban and rural context as defined by the U.S. Census Bureau. The table should include metrics that define each contributing factor, providing grantees and housing authorities clear guidelines of what it means to successfully affirmatively further fair housing.

Once this tool has been revised, we request a full 60-day comment period in order for staff to conduct a thorough review of the tool. This tool represents significant impacts to our programs and our community and we need to ensure that we understand HUD's intent and the required steps to move forward.

Organizations such as NACo, NAHRO, NACCED, and NCDA submitted concerns during the initial 60-day comment period (ending November 25, 2014) that went largely unaddressed. For example, see NACo's response letter dated November 25, 2014, commenting on the proposed Assessment Tool. NACo urged HUD not to mandate use of the Tool. Douglas County wholeheartedly supports the comments previously offered by these organizations. We strongly encourage HUD to take seriously the responses from these organizations, as well as responses from the grantees and housing authorities that will be required to implement the Tool. Approving the Tool *as is* will negate the County's rights and seriously hamper our ability to effectively respond, manage local affairs, and affirmatively further fair housing.

The definition of Affirmatively Furthering Fair Housing must be refined. The definition is shown below with the red text indicating unclear phraseology:

*"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 action 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. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."*

NACo raised concerns about how these terms are defined in their original response letter. Essentially, how will we know when we have taken *meaningful* actions? How can we *overcome* patterns of segregation? How will we know which *opportunities* are important enough to provide access, when each

individual resident will value opportunities differently? In short, how much is enough to succeed? These are questions Douglas County expects HUD to address as part of these revisions.

The definitions and examples provided in the Assessment Tool are unclear and highly subjective. Definitions in the Tool are written in broad expansive terms, making it impossible to identify HUD's intent. In the analysis section of the Tool, a list of 40 contributing factors is put forward, with the statement that it is not an exhaustive list. Communities are expected to consider these and other factors as part of the analysis, but the definitions and examples provided remain unclear. Many of these 40 factors are ambiguous and potentially contradictory. Furthermore, as the Fair Housing Act is now being interpreted to include lack of access to opportunities, our future efforts will be ineffective because local input is diminished through the prescriptive list of contributing factors we will be obligated to address in the Tool.

Douglas County has identified several key concerns with the contributing factors provided in the Tool. First and foremost, we question why market driven factors are included on the list of examples of contributing factors. For example, the "location of employers" is an important issue driven by the free market. While the connections between work and housing choice are undeniable, local governments are limited in their influence over the market, and should not be held accountable through an Act that is meant to provide fair and equal access to housing. Douglas County supports the business community and ensures that all land development proposals are reviewed fairly during the planning process.

Included below are two excerpts from the contributing factors that demonstrate the expansive terms and subjectivity that must be resolved. The language used in Land Use and Zoning Laws implies that zoning is immutable. Well-reasoned communities like Douglas County operate with a zoning ordinance that provides for a variety of zone districts, uses and lots sizes without federal interference. Rezoning options available through the land development process allows Planned Development (PD) zone districts to include multi-unit and mixed use developments. The contributing factor regarding land use below should be removed from the Tool, and local control restored:

#### Land Use and Zoning Laws

*"The term "land use and zoning laws" generally refers to regulation by local government of the use of land and buildings, including regulation of the types of activities that may be conducted, the density at which those activities may be performed, and the size, shape and location of buildings and other structures or amenities. Zoning and land use laws affect housing choice by determining where housing is built, what type of housing is built, who can live in that housing, and the cost and accessibility of the housing. Examples of such laws and policies include, but are not limited to:*

- *Limits on multi-unit developments, which may include outright bans on multi-unit developments or indirect limits such as height limits and minimum parking requirements.*
- *Minimum lot sizes.*
- *Occupancy restrictions, which regulate how many persons may occupy a property or the relationship between those persons.*
- *Inclusionary zoning practices that mandate or incentivize the creation of affordable units.*
- *Requirements for special use permits for all multifamily properties or multifamily properties serving individuals with disabilities.”*

The contributing factor identified as Displacement of Residents Due to Economic Pressures is ill conceived. Terms lacking definition are shown below in red text. Economic pressures are largely driven by market factors that jurisdictions do not influence or control. Being a relatively young county with 94% of the housing stock built after 1978, we believe the potential for residents being displaced due to economic factors in Douglas County is non-existent. This exemplifies the uniqueness of each grantee and jurisdiction. The description provided lacks clarity, purpose and the potential resolution HUD expects through implementation of the AFH. Including the description as a contributing factor implies that it *should* be addressed. The contributing factor regarding displacement of residents below should be removed from the Tool, and local control restored:

**Displacement of Residents Due to Economic Pressures**

*“The term “displacement” refers her to a resident’s undesired departure from a place where an individual has been living. “Economic pressures” may include, but are not limited to, rising rents, rising property taxes related to home prices, rehabilitation of existing structures, demolition of subsidized housing, and public and private investments in neighborhoods. Such pressures can lead to loss of existing affordable housing in areas experiencing rapid economic growth and a resulting loss of access to opportunity assets for lower income families that previously lived there. Where displacement disproportionately affects persons with certain protected characteristics, the displacement of residents due to economic pressures may exacerbate patterns of residential segregation.”*

In addition to lack of clear definition and intent, benchmarks and metrics have not been identified to guide us in determining if these factors are a fair housing concern for our community. Douglas County is concerned that the mere identification of these factors subjects all grantees to the judgment of special interest groups, as it will be financially impossible for any community to address every factor. Given that so many factors have been identified for consideration, and no clear guidelines were provided to judge them by, it will be extremely difficult to comply with the new AFH requirements.

Metrics are also needed to assist Regional HUD staff when they review grantee's AFH Tool. We are assured that the Assessment Tool will include opportunities to provide local knowledge and local data. How can HUD regional staff be expected to reasonably assess local data provided from grantees throughout a multiple-state region? An explanation of how HUDs staff will review the AFH, including the contributing factors, must be provided in the revised Tool. Metrics must be provided to facilitate a fair and consistent review of AFH submittals.

Each jurisdiction, across the nation is unique. As such, we have the right and the ability to efficiently direct local funds to have a positive impact on affirmatively furthering fair housing. Douglas County believes it is imperative to refine the intent, provide clear definitions, establish metrics and set clear parameters in the Tool. These steps are required to assist grantees and public housing authorities to move forward in *successfully* affirmatively furthering fair housing. Refinements of the Tool, followed by a 60-day comment period, are essential to this public process and will allow us to continue serving Douglas County residents in meaningful ways.

Thank you for this opportunity to comment on the AFH Tool.

Sincerely,

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