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

Re: Docket No. FR-5173-N-15: Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants; solicitations of comment

To Whom It May Concern:

New York University’s Furman Center for Real Estate and Urban Policy appreciates the opportunity to submit comments on HUD’s extension of deadline for submission of consolidated plan participants’ Assessment of Fair Housing (AFH).1 The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy by providing academic and empirical research, promoting frank and productive discussions among stakeholders, and providing essential data and analysis to practitioners and policy makers.2

The Furman Center has conducted considerable research on residential segregation and the connection between housing and neighborhood conditions, or ‘opportunities.’ [For a summary of our recent research related to residential segregation, see Appendix A.] We also have researched the relationship between various land use and housing policies and economic and racial segregation. [Again, a list and links to relevant projects are available in Appendix A.] During the 2013-2014 academic year, the NYU Furman Center oversaw the NYU Straus Institute for the Advanced Study of Law and Justice fellowship program. This program brought together eleven scholars from around the world to spend the year at NYU focusing their research on residential segregation and inequality. In September 2013, we convened 60 leading researchers, practitioners, and policymakers for a two-day roundtable to assess the current state of research and policy analysis regarding racial and economic segregation and integration in neighborhoods and schools. On Martin Luther King Day in 2014, the Furman Center launched The

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2 These comments do not represent the institutional views (if any) of NYU, NYU School of Law, or the NYU Wagner Graduate School of Public Service. The Furman Center is grateful for the conscientious research assistance provided by students at NYU School of Law: Nelson Castano, Alexandra Hohauser, Dylan Lonergan, Keith Pulling, and Ian Swenson.
Dream Revisited, an on-line platform to bring together leading academics, researchers, practitioners, advocates, and government officials for thoughtful debates about the challenges associated with segregation and to generate the new thinking needed to help address those challenges. Discussion 16 of The Dream Revisited specifically focused on HUD’s Affirmatively Furthering Fair Housing final rule.\(^3\) On November 29, 2018, the Furman Center hosted a policy breakfast, “New York City’s Upcoming Assessment of Fair Housing: Lessons from Other Cities,” which featured a moderated panel of experts who have participated in the Assessments of Fair Housing for those early submitters.\(^4\)

In brief, based upon a comparison of 19 of the AIs and AFHs filed by the 28 jurisdictions who were first to file under the new AFH requirements, we find that the public engagement processes used under the AFH requirement were much more robust, along five distinct dimensions: the number of opportunities for public engagement; the inclusiveness of those opportunities; the provision of data for assessing public engagement; documentation and consideration of the public input; and existence of cross-jurisdictional or cross-sector engagement.

HUD should consider the cost to the public of jurisdictions returning to a less robust public engagement process during HUD’s AFH delay.

The Cost of Delay: Analysis of Impediments versus Assessment of Fair Housing

In delaying the requirement that consolidated plan participants conduct an Assessment of Fair Housing (AFH), HUD noted that affected jurisdictions must continue to comply with obligations to affirmatively further fair housing, including conducting an Analysis of Impediments (AI) to fair housing choice, the process used prior to HUD’s final AFFH rule.\(^5\) The AI process differs substantially from an AFH, and these comments will focus on what is known about a few key differences between the two processes, including some original research conducted by the Furman Center.

Prior studies

The Government Accounting Office (GAO) conducted a review of the AI process in 2010, after collecting 441 AIs and comparing them to HUD guidance, and after meeting with HUD staff across headquarters and 10 field offices.\(^6\) The GAO reported that only 64 percent of program participants appeared to have AIs that were current, and GAO questioned the usefulness

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3 A New Approach to Affirmatively Furthering Fair Housing, Sept. 28, 2015, available at [http://furmancenter.org/thestoop/entry/a-new-approach-to-affirmatively-furthering-fair-housing](http://furmancenter.org/thestoop/entry/a-new-approach-to-affirmatively-furthering-fair-housing), and attached as Exhibit B.
of many of the AIs that did exist. It concluded that “[a]bsent any changes in the AI process, they will likely continue to add limited value going forward in terms of eliminating potential impediments to fair housing that may exist across the country.” HUD’s own internal analysis in 2009 came to the same conclusion, finding that about half of the AIs it collected for the study were outdated, incomplete or otherwise of unacceptable quality.7

The GAO noted that HUD’s regulations do not specify a timeline for updating AIs, detail the content or form of AIs, or even require that AIs be submitted to HUD for review. To address those concerns, HUD’s final AFFH rule requires that AFHs be conducted with a standardized assessment tool and that jurisdictions provide measurable goals with a timeline for achieving them. As part of its justification for postponing the AFH deadline, HUD noted that 35 percent of the first AFHs submitted to HUD were initially not accepted. It failed to note, however, that the GAO and internal HUD studies of AIs had found a similar or higher rate of unacceptable AIs, even after the AI requirement had been in effect for many years.

Further, the AFH process requires that HUD give feedback on AFHs that are not accepted. HUD provided such feedback and worked with jurisdictions to resolve deficiencies in their submissions. Ultimately, almost all of the 49 first submissions were accepted. In contrast, with AIs, there is no review or feedback from HUD. Notably, HUD’s 2009 internal report found no evidence that jurisdictions were improving their AIs over time.

The combination of more precise standards, a better assessment tool, and a feedback loop seems to have produced stronger plans, according to MIT’s Justin Steil and Nicholas Kelly who compared the first 28 AFH’s (as modified in response to HUD’s comments on initial submissions) to the AI’s previously conducted by those same jurisdictions.8 They found that compared to the earlier AIs, the final AFHs included more quantifiable goals as well as more specific policies and programs meant to achieve those goals. Such results, they noted, suggest the rule is working. They concluded, “[T]he non-acceptances provided participants with the opportunity to respond to HUD feedback and to strengthen their final AFHs so as to meet their fair housing obligations. In short, the non-acceptances should be seen as a strength of the new rule not a failure.”9

Public Engagement

An additional distinction between the AI and AFH processes is public engagement: both the extent to which the public is provided avenues for participation throughout the development of the draft analysis, and the extent to which jurisdictions may be held accountable for their engagement with the public, are much clearer for the AFH process than for the AI process. The public engagement required of jurisdictions completing an AI has never been well-understood.

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8 Justin Steil and Nicholas Kelly, “Survival of the Fairest? An Analysis of Affirmatively Furthering Fair Housing Compliance”, forthcoming, Housing Policy Debate
The *Fair Housing Planning Guide*, HUD’s primary resource for jurisdictions compiling an AI, notes, “the Consolidated Plan’s certification to affirmatively further fair housing requires…jurisdictions to undertake FHP [fair housing planning -- the process resulting in an AI]. Since FHP is a component of the Consolidated Plan, the citizen participation requirement for the Consolidated Plan (24 CFR 91) applies.”¹⁰ However, the Guidance goes on to note that “HUD does not expect the jurisdiction to follow the strict citizen participation requirements for their first [AI]...[but] HUD does expect the jurisdiction to develop an AI that involves and addresses concerns of the entire community.”¹¹

This suggests that the Consolidated Plan’s citizen participation requirements would apply to all AIs completed after the first cycle. However, in discussing citizen participation plans for State and Entitlement jurisdictions, the *Fair Housing Planning Guide* “encourages…jurisdictions to follow the citizen participation and procedures identified in Subpart B of the Consolidated Plan.”¹² Further, the Guide was only precatory, so jurisdictions did not always follow its suggestions.

Indeed, in describing changes codified in the final AFFH rule, HUD stated:

“By applying the longstanding citizen participation requirements of the consolidated plan and the PHA plan to the AFH, which were not applied to the AI, HUD submits that any serious deficiencies that may be in a proposed AFH or other concerns that members of the public may have about an AFH will be addressed in the citizen participation processes.”¹³

Further, in spelling out the key differences between the AFH and AI processes, HUD noted the specific requirement that “[t]he AFH is subject to the same community participation requirements applicable to the Consolidated Plan or PHA Plan, though updated to incorporate requirements related to the AFH, and that community participation process must occur during the development of the program participant’s AFH.”¹⁴ This includes the requirement that the AFH contain a summary of the public comments and a summary of the comments or views not accepted.¹⁵ In addition to making clear that the citizen participation requirements for the Consolidated Plan apply independently to the AFH process,¹⁶ the final AFFH rule requires jurisdictions to provide a summary of the community participation process specifically for the AFH, and requires that jurisdictions target activity towards the broadest possible audience.¹⁷ In

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¹¹ Id.
¹⁵ Id.at 42315.
addition, the final rule requires that the data used to compile the AFH must be made public, and specifies that at least one public hearing on the AFH must be held before the draft AFH is published for comments. Like HUD, experts in the AI processes also interpreted the final AFFH rule to impose much more specific public engagement requirements than the AI process required.

The proof that the AFH process requires or encourages a more robust public engagement process, however, lies in the actual implementation. To better assess whether the AFH requirements resulted in differences in the quality, quantity, and breadth of the public engagement, we build from the work of Steil and Kelly, who compared the 28 early AFHs submitted to HUD to the previous AI submitted by the same jurisdiction.

Following Steil and Kelly, we have analyzed 19 of the 28 AFHs that were submitted between October 2016 (the first submission date) and July of 2017, as well as the most recent AI each of those jurisdictions filed before the AFFH rule came into effect, to examine the public engagement processes the jurisdictions used for each.

We assess differences in the public engagement processes between AIs and AFHs along five dimensions: the number of opportunities for public engagement; the inclusiveness of those opportunities; the provision of data for assessing public engagement; documentation and consideration of the public input; and existence of cross-jurisdictional or cross-sector engagement.

Number of opportunities for public engagement:

Although both the AI and AFH public engagement processes often included public forums or hearings, some more targeted “stakeholder” or “focus” group meetings, as well as surveys, the AFH process provided many more opportunities for the general public and specific community, public housing, or non-profit housing organizations to participate. Table 1 provides an overview of the differences in both the number of opportunities for input, and the number of people participating in those opportunities:

Table 1: Number of opportunities for public engagement and number of people participating in those opportunities:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th># of Public Forums, Community Meetings or Focus Groups</th>
<th># of People Participating in Forums, Focus Groups or Surveys</th>
</tr>
</thead>
<tbody>
<tr>
<td>AI</td>
<td>AFH</td>
<td>AI</td>
</tr>
</tbody>
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18 Id. § 91.105 (b)(1)(i); (e)(1)(iii).
20 As Steil and Kelly note, the 28 jurisdictions that were the first required to submit AFHs were essentially a random sample of all HUD grant recipients, because the submission dates for the AFHs are determined by the five-year cycle of the municipalities’ Consolidated Plan submissions, a schedule in place before the AFFH rule was issued. Steil and Kelly, supra n. 9, at 12.
21 Links to each jurisdictions AI and AFH can be found at: https://steil.mit.edu/civil-rights-and-fair-housing-city.
Where data exist to permit comparison, in all but one case, the AFH process provided a greater number of opportunities for public engagement than the AI. More than half of the 13 jurisdictions that detailed the number of public opportunities under both processes experienced at least a fourfold increase when shifting to the AFH. These opportunities also included a larger number of participants.

**Inclusiveness of opportunities for public engagement:**

The breadth of public participation depends in part upon the strategies used to reach out to different communities and people, and to make participation as easy as possible for them. The jurisdictions’ outreach in the AFH process often involved distributing materials in multiple languages, and some held meetings in languages other than English, while only a few jurisdictions described outreach tailored to people whose native language is not English in their discussion of public engagement during their AI process. Jurisdictions used a much more robust set of communication channels to solicit participation in their AFH process than in their AI process. Further, the jurisdictions often structured their AFH processes to make participation opportunities available at more times and places, and in formats that would better facilitate broad participation, than the processes used to prepare their AIs.
For example:

- Nashville, Tennessee, used newspaper and radio ads, social media, publicly posted flyers, and email distribution lists to solicit engagement in the AFH, while it appears to have used only email lists in the AI process.

- Philadelphia, Pennsylvania, which had held only one public hearing during its AI process, held eight community meetings and three stakeholder meetings in its AFH process. It also deliberately scheduled the meetings in the evening, although at the request of advocates for people with disabilities, one meeting was held in the late afternoon to better match public transportation schedules. Each meeting was held in a well-known community-based location, easily accessible to public transportation. The City engaged consultants to reach out to Latino communities and held one of the meetings in Spanish.

- Long Beach, California, held 31 meetings during its AFH process, five times the number it held in preparing its AI, and used a survey available in English, Spanish, Khmer, and Tagalog to solicit information about experiences with housing discrimination. The survey was distributed through social media, outreach to 45 groups, and a door-to-door campaign in racially or ethnically concentrated areas of poverty. Meetings with community residents were held on Saturdays in different neighborhoods.

In addition, many jurisdictions chose to bring the AFH discussion to different populations in their own communities or places in which those populations tend to be, rather than expecting the public to attend stand-alone AFH meetings organized by the jurisdiction. Some jurisdictions also chose not to lead the discussions, but rather to use trusted non-profits to facilitate the discussions. For example:

- Anchorage, Alaska, adopted a strategy of going to existing meetings and events of organizations serving various racial and ethnic groups, rather than requiring those communities to attend separate public hearings in order to participate. The jurisdiction also disseminated fair housing materials to nonprofit organizations serving Anchorage’s culturally diverse population, and offered language interpreters to clients with limited English proficiency (LEP) at the DHHS Public Health Services (PHS) and Women Infants & Children (WIC) offices, including the WIC office located on the Alaska Native health campus. In contrast, the AI Anchorage submitted just two years earlier makes no mention of any outreach to the public.

Data to allow assessment of the quality of the public engagement:

The final AFHs consistently provided more comprehensive documentation of the engagement process and the extent of participation actually achieved. Although AIs sometimes mentioned interviews with stakeholders and other community members, they only rarely detailed the exact number of opportunities provided or the number of people participating, so there was

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little information HUD or other reviewers could use to assess the success of the engagement process. The AFH’s, on the other hand, typically provided quantitative metrics. The following jurisdictions, for example, provided little detail in their AIs about outreach strategies, who participated in public engagement activities, what those participants contributed, or how the jurisdiction took contributions into account: Anchorage, AL; Chester, PA; El Paso, CO; Lewisville, TX; Long Beach, CA; New Orleans, LA; Philadelphia, PA; Rochelle, NY; Savannah, GA; Seattle, WA; and Springdale, AR. Each of those jurisdictions provided significant detail about their efforts to encourage public participation in their AFH processes, however.

For example,

- Nashville provided considerable detail about its processes in its AFH, but little description of its methods in the AI. Nashville’s AFH documents the social media posts it used (noting the number of people who saw the post and the number of those who clicked on the link, shared a post, etc.); the advertisements of the public hearings used; and lists of the non-profit groups and government agencies that were consulted. The AI, on the other hand, notes only that the public “meetings were advertised via flyers distributed by the MDHA using its various email distribution lists. Nonprofits receiving the posters were asked to print and post or distribute them as appropriate.”

The AFH assessment tool asks jurisdictions to describe the general success of their outreach activities, which prompted jurisdictions to reflect on steps they could have taken to improve their outreach process. Many noted the need to allow more time for participation; others noted the need for more outreach to people whose first language was not English or Spanish. These observations, combined with the quantitative metrics about public engagement that the AFHs provided, should help HUD and local stakeholders hold the jurisdiction accountable for improving outreach efforts in the future.

**Documentation and consideration of public’s input:**

As previously noted, HUD’s final AFFH rule clarified that, similar to Consolidated Plans and PHA Plans, AFHs must provide a summary of public comments and a summary of comments or views not accepted and the reasons for non-acceptance. While the AFHs provided documentation of comments received, jurisdictions generally did not provide detail, other than summaries of survey responses, in their AIs.

For example,

- In Nashville, the AI devoted a total of nine pages to public engagement, including details about the jurisdictions’ responses. The AFH, on the other hand, devotes a total of 107 pages to detailing the comments offered in public meetings, and the jurisdiction’s

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responses to those comments.

Surely the practice of documenting both the public’s suggestions and the jurisdiction’s responses makes it more likely both that the jurisdiction thinks through the comments, and that others sympathetic to the comment will be able to hold the jurisdiction accountable for addressing the concern in the next round of the assessment. Knowing that one’s comments will be included in the AFH may well increase the likelihood of submitting a comment in the first place.

**Engagement with other agencies to work across jurisdictional and subject-matter silos:**

An additional way to measure the breadth of the engagement process is to consider involvement by agencies other than the consolidated plan participant, both within a jurisdiction and beyond. A stated goal of HUD’s final AFFH rule is to “[e]ncourage and facilitate regional approaches to address fair housing issues, including collaboration across jurisdictions and PHAs.”25 In addition, “[b]ecause housing units are part of a community and do not exist in a vacuum…HUD’s Assessment Tool, which includes a section on community assets and exposure to adverse community factors, is meant to aid program participants in determining if and where conditions exist that may restrict fair housing choice and access to opportunity.”26

In response to comments on the scope of HUD’s proposed rule, HUD also clarified that non-housing goals and actions are within the AFH purview. Specifically,

> “Once fair housing issues and contributing factors have been identified, the scope of actions that program participants may decide to take, and are capable of taking, to address these fair housing issues and contributing factors may often be broader than the scope of the program participants’ activities receiving the HUD or Federal assistance that trigger the obligation to affirmatively further fair housing.”27

While assessing such regional or non-housing goals was beyond the scope of Steil and Kelly’s research, they did include information on whether such goals were included in jurisdictions’ AIs and AFHs. They found that, on average, AFHs were more likely than AIs to contain: goals of regional cooperation or coordination; improvements to transportation; economic development goals such as increased workforce training or job creation; and environmental goals, such as improvements in air and water quality or parks.28

We might expect that participation by regional or ‘non-housing’ stakeholders in the AFH process could increase the likelihood of a jurisdiction’s AFH including regional or community-asset goals, or the likelihood that such goals might be achieved. For the 19 jurisdictions we assessed, the AFH process often involved agencies with a wide range of subject-matter mandates, while the AIs did not mention or detail outreach beyond the usual housing-related agencies. For

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25 Final Rule at 42273.
26 Final Rule at 42282.
27 Final Rule at 42286.
example,

- In Chester County, Pennsylvania, the AFH process, unlike the AI process, involved the Health Department, Human Services agencies (Aging; Children, Youth and Families; Drug & Alcohol; Managed Behavioral Healthcare; Mental Health/Intellectual & Developmental Disabilities), Education, the County Opportunities Industrialization Center (Employment), Veterans Affairs, the Workforce Development Board, and the County’s Transportation Management Association.

In terms of cross-agency or cross-jurisdiction collaboration, 13 of the 19 AFHs were joint submissions with a public housing agency, other consolidate plan participant, or both.

Conclusion:

Based upon a comparison of 19 of the AIs and AFHs filed by the 28 jurisdictions who were first to file under the new AFH requirements, we find that the public engagement processes used under the AFH requirement were much more robust: the number of opportunities for participation were much higher; many more people participated; the jurisdictions used a far broader array of communication channels in an effort to reach a wide range of communities within the jurisdiction; and jurisdictions were more likely to provide opportunities for participation at times and places more accessible to members of different communities. Under the AFHs, jurisdictions used communications channels to reach people for whom English is not their first language, and were generally better at providing materials and meetings in languages other than English.

Further, jurisdictions documented their outreach efforts and participation rates in much more detail under the AFH processes than they had in their AIs. Jurisdictions summarized comments received in their AFHs, while few had done so in their AIs.

Finally, under the AFHs, most jurisdictions collaborated either with their public housing authority or another jurisdiction (or both). Jurisdictions documented considerable interaction across subject-matter siloes – with housing officials reaching out to their counterparts in agencies devoted to education, transportation, health, workforce development, and many other subjects. Such cross-agency consultation was rarely discussed in AIs.

A significant cost of HUD’s decision to postpone the deadline for jurisdictions to submit their AFHs is that the improvements already seen in the opportunities for public participation, and the extent of the public’s take-up of those opportunities, under the AFH requirements, will be delayed. HUD should consider this sacrifice in the quantity and quality of public engagement
likely to result from postponing the AFH deadline.

Sincerely,

Vicki Been
Faculty Director

Katherine O’Regan
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