

November 25, 2014

Secretary Julian Castro
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Affirmatively Furthering Fair Housing Assessment Tool, Docket No. FR-5173-N-02

Dear Secretary Castro,

On behalf of the undersigned organizations, we write to offer our comments on the Affirmatively Furthering Fair Housing (AFFH) Assessment Tool, published at 79 Fed. Reg. 57949 (Sept. 26, 2014). These comments serve to supplement previously-submitted comments on the Affirmatively Furthering Fair Housing Assessment Tool by civil rights and fair housing organizations on Nov. 4, 2014, by addressing gender-related housing concerns. The Assessment Tool is a vital step toward the implementation of the final AFFH rule and will strengthen jurisdictions' abilities to evaluate the fair housing needs in their communities.

As organizations that work to advance fair housing and the rights of survivors of domestic and sexual violence, our comments focus on how the Assessment Tool can address sex-based fair housing barriers.¹ Gender-related housing issues are insufficiently incorporated into the proposed Assessment Tool. Sex or gender is mentioned only once, on page 1 as part of the demographic summary for a jurisdiction. Yet, women often face substantial fair housing challenges that should be addressed as part of a jurisdiction's fair housing obligations.²

These comments are structured as follows:

- 1) General (overarching) comments
- 2) Response to specific questions raised by HUD in the Notice
- 3) Section-by-section analysis and comments on the Assessment Tool
- 4) Specific recommendations for forthcoming supplemental forms

Our comments on the proposed Assessment Tool are also applicable to the forthcoming supplemental forms, including the Assessment Tool for States, the Assessment Tool for PHA-only submissions, and the Assessment Tool for regional collaboratives.

1) General Comments

The proposed Assessment Tool is an important step forward in helping communities identify and overcome barriers to fair housing. However, it does not adequately address the fair housing

¹ Many of our organizations have provided comments on other aspects of the Assessment Tool. Those comments are not repeated here.

² See U.S. Conference of Mayors, Hunger and Homelessness Survey 3 (2013) (reporting that on average, 16 percent of homeless adults in the survey cities were victims of domestic violence—a group that is predominately female).

barriers faced by women, who often face substantial challenges in accessing housing and community assets.³ Victims of domestic and sexual violence are two predominately-female groups; approximately four in five victims of intimate partner violence are women, and women experience the vast majority of rapes and sexual assaults.⁴ Domestic and sexual violence are leading causes of homelessness among women.⁵ Survivors experience housing insecurity, face unique barriers to housing access, and are subject to housing discrimination.⁶ Moreover, homelessness and housing insecurity make women even more susceptible to experiencing violence in the future: sexual assault is prevalent among homeless women,⁷ and women in unstable housing situations are at greater risk of sexual harassment and assault by their landlords.⁸ The intersections between housing and domestic and sexual violence create a dangerous cycle in which violence and housing insecurity perpetuate one another. Therefore, gender considerations, and particularly a focus on domestic and sexual violence, are a necessary element of a community's Fair Housing Assessment.

For example, the Assessment Tool should be modified to require municipalities to examine laws and policies which may have an exclusionary and discriminatory impact on women and victims of gender-based violence. For example, across the country, there are municipal ordinances that impose penalties based on a tenant's alleged misconduct or repeated calls to the police that have violated the fair housing rights of domestic violence survivors. *See* discussion in section IV.C.4, *infra*. The Assessment Tool should be modified to require jurisdictions to identify exclusionary or discriminatory ordinances and assess their impact. This analysis should be incorporated into Section IV.C (Disproportionate Housing Needs) and Section IV.F (Fair Housing Compliance and Infrastructure). The repeal or modification of such laws and policies should also be a component of Part V (Fair Housing Goals and Priorities). See specific discussion of these sections in Part 3 of this comment letter, below.

³ *See* U.S. Conference of Mayors, Hunger and Homelessness Survey 2 (2012) (reporting that on average, 16 percent of homeless adults in the survey cities were victims of domestic violence—a group that is predominately female).

⁴ Shannan Catalano, U.S. Dep't of Justice, Special Report: Intimate Partner Violence, 1993-2010, at 3 (2012); Jennifer L. Truman, U.S. Dep't of Justice, Criminal Victimization, 2010, at 9 (2011).

⁵ *Facts on Homelessness, Housing, and Violence Against Women*, National Law Ctr. on Homelessness & Poverty, http://www.nlchp.org/documents/DV_Fact_Sheet (last visited Nov. 11, 2014, 1:53 PM).

⁶ National Network to End Domestic Violence, Domestic Violence Counts 2013 3 (2014), http://nnedv.org/downloads/Census/DVCounts2013/Census13_FullReport_forweb_smallestFileSizeWhiteMargins.pdf (survey of 1,649 local domestic violence programs found that in one day, victims made 9,641 unmet request for services, and 60% of those unmet requests were for housing); National Sexual Violence Resource Center, National Survey of Advocates on Sexual Violence, Housing & Violence Against Women Act (2011), <http://www.nsvrc.org/publications/national-survey-advocates-sexual-violence-housing-and-violence-against-women-act>; *see also* Mireya Navarro, *Domestic Violence Drives Up New York Shelter Population as Housing Options are Scarce*, N.Y. Times, Nov. 11, 2014, at A1, available at http://www.nytimes.com/2014/11/11/nyregion/domestic-violence-drives-up-new-york-shelter-population-as-housing-options-are-scarce.html?_r=1.

⁷ Lisa A. Goodman, Katya Fels, & Catherine Glenn, No Safe Place: Sexual Assault in the Lives of Homeless Women (National Online Resource Ctr. on Violence Against Women, 2011), http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=558.

⁸ Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 Clearinghouse Rev. 441 (2006–2007).

Incorporating gender-based considerations into the Assessment Tool would advance HUD's fair housing work in the areas of domestic and sexual violence. As HUD has found, the denial of housing based on a woman's status as a victim of domestic violence often constitutes gender-based discrimination under the Fair Housing Act (FHA) and/or a violation of the anti-discrimination provisions of the Violence Against Women Act (VAWA).⁹ HUD has taken legal action against municipalities and landlords for engaging in illegal housing discrimination against victims of domestic violence.¹⁰ HUD has also taken legal action against landlords who perpetrate sexual violence in violation of the FHA by sexually harassing tenants and conditioning housing on the tenant's acquiescence to sexual demands.¹¹

The disproportionate housing needs of female-headed households are another gender-based fair housing concern. Female-headed households make up three-quarters of public housing and project-based Section 8 developments and represent 83% of households holding Section 8 vouchers.¹² Additionally, areas with high concentrations of female-headed households tend to have diminished fair housing choice.¹³ Jurisdictions have identified a statistically-significant correlation between high concentrations of female-headed households and diminished fair housing choice in their Analysis of Impediments to Fair Housing, which is the precursor to the Fair Housing Assessment Tool.¹⁴

⁹ Memorandum from Sara K. Pratt, Deputy Sec'y for Enforcement and Programs, Office of Fair Hous. & Equal Opportunity, U.S. Dep't of Hous. & Urban Dev. to FHEO Office Directors and FHEO Regional Directors: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9, 2011) (explaining that, "even when consistently applied, women may be disproportionately affected by [zero-tolerance] policies because, as the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers.") [hereinafter FHEO Guidance on Housing Discrimination Against Domestic Violence Victims].

¹⁰ See, e.g., Press Release, HUD No. 14-137, HUD Charges Owner of Maryland Housing Complex with Discriminating Against Victim of Domestic Violence (Oct. 31, 2014), *available at* http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-137; Press Release, HUD No. 14-121, HUD and Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence (Oct. 1, 2014), *available at* http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121; Press Release, HUD No. 14-089, HUD and New Hampshire Landlords Settle Allegations of Discrimination Against Domestic Violence Victim (July 23, 2014), *available at* http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-089;

¹¹ Press Release, HUD No. 14-126, West Virginia and Tennessee Landlords Charged with Sexual Harassment After Female Renters Coerced to Comply or Lose Home (Oct. 8, 2014), *available at* http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-126.

¹² National Low Income Housing Coalition, *Who Lives in Federally Assisted Housing?*, Housing Spotlight, Nov. 2012, at 2, *available at* <http://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

¹³ See, e.g., City of Kalamazoo, Michigan Analysis of Impediments to Fair Housing 73 (2009) (on file with author); City of Waco Analysis of Impediments to Fair Housing 88, http://www.waco-texas.com/pdf/housing/Housing%20Study/05_Fair%20Housing%20Index.pdf (last visited Nov. 12, 2014, 6:33 PM); State of Ark. Analysis of Impediments to Fair Housing 113 (2009), http://www.arkansasedc.com/sites/default/files/Section%2005_Fair%20Housing%20Index_Arkansas.pdf.

¹⁴ *Id.*

Gender should also be analyzed in the context of intersectionality¹⁵—i.e. the distinct experiences of members of one or more protected classes—by requiring analysis of fair housing issues experienced by individuals who fall into multiple protected classes.

For the foregoing reasons, the Assessment Tool should be modified to directly address sex-related housing concerns. Both sex/gender and intersectionality should be specifically referenced in Section IV.C (Disproportionate Housing Needs), Section IV.D (Disparities in Access to Community Assets and Exposure to Adverse Community Factors), Section IV.F (Fair Housing Compliance and Infrastructure), and Part V (Fair Housing Goals and Priorities). See specific discussion of these sections in Part 3 of this comment letter, below.

Finally, as the undersigned organizations and other groups have noted in prior comments, the Assessment Tool currently lacks any mention of “Action Steps” which jurisdictions should identify in order to address existing fair housing challenges in their communities. We agree with prior comments that “Action Steps” are a necessary component of the final Assessment Tool.

2) Response to specific questions raised by HUD in the Notice

Local data and local knowledge (page 57951): To improve this section, we recommend that HUD list examples of reasonably available local data and highlight ways that the community engagement process can be leveraged to obtain local data and local knowledge. For example, data regarding the demand for housing services among groups with unique housing needs, such as victims of domestic and sexual violence, may be obtained from nonprofit or government agencies that serve those populations. The Assessment Tool should also clarify that, although quantitative data is valuable, qualitative local knowledge must also be incorporated into the fair housing analysis. Jurisdictions should identify and respond to anecdotal reports of housing discrimination and barriers to fair housing, even when quantitative data is not available to confirm the qualitative local knowledge.

Community participation process (pages 57951-57952): In this section, we recommend that the template include agencies supporting survivors of domestic and sexual violence as part of the non-exhaustive checklist of types of groups that the program participant should attempt to contact and request comments.

Disability and access (page 57953): By addressing Disability and Access Issues separately, the Assessment Tool may discourage jurisdictions from considering fair housing issues faced by individuals with disabilities who are also members of other protected classes. For example, as a result of their abuse, survivors of domestic and sexual violence sometimes suffer from disabilities such as Post-Traumatic Stress Disorder,¹⁶ and may thus find it more difficult to find housing in which they can feel safe and maintain their mental health. Simultaneously, victims of

¹⁵ See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991).

¹⁶ Loring Jones, Margaret Hughes, & Ulrike Unterstaller, *Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence A Review of the Research*, 2.2 Trauma, Violence, & Abuse 99 (2001).

domestic and sexual violence often experience gender-based housing discrimination.¹⁷ The distinct Disability and Access section need not be eliminated, but jurisdictions should also be asked to identify disability and access issues throughout the Assessment Tool, whenever they relate to the issues addressed in each section of the Assessment, and jurisdictions should be asked to focus specifically on intersections between individuals with disabilities and other protected classes.

*Additional fair housing issues (page 57954): The Assessment Tool does not make it sufficiently clear that a program participant may address additional housing issues besides the ones listed on the Assessment Tool. To address this concern, each sub-section of the Assessment Tool should explicitly ask participants to consider other relevant factors besides the examples listed. For example, in Section IV(C)(4) (Determinants of Disproportionate Housing Needs), the instructions could read: “In addition to the factors listed below, please identify additional factors in your jurisdiction which may have an impact on disproportionate housing need.” Similar instructions should be provided for every section that explicitly lists non-exclusive factors that may have an impact on fair housing.

3) Section-by-section analysis and comments on the Assessment Tool

In this section, we provide comments on how certain specific sections of the Assessment Tool may be improved.

III. Community Participation Process

To the extent possible, jurisdictions should be required to solicit feedback from stakeholders who have expertise on the housing needs of every protected class. In order to ensure that the housing rights of women are protected, jurisdictions should be required to seek feedback from agencies supporting survivors of domestic and sexual violence whenever possible.

IV. Analysis

IV.B. Segregation/Integration and R/ECAPs

IV.B.7. Publicly Supported Housing and Mobility Policies

Throughout this section, jurisdictions should be required to identify the impact of admission preferences, designations, mobility policies, and other publicly supported housing practices on victims of domestic violence, dating violence, stalking, and sexual assault, the majority of whom are women.

IV.B.8. Provide additional relevant information, if any, about publicly supported housing and mobility programs in the Jurisdiction and Region

¹⁷ See Section 1, *supra*.

The Assessment Tool should require assessment of whether PHA plans and Admission and Continued Occupancy Policies comply with the Fair Housing Act and housing-related provisions of other laws that advance fair housing, such as the Violence Against Women Act (VAWA).¹⁸ Protections set out in VAWA ensure access to publicly supported housing for individuals who are victims of or have been impacted by domestic violence, dating violence, stalking, and sexual assault, a group that is disproportionately made up of women. In particular, the Assessment Tool should require analysis of the impact of the following policies on VAWA-covered residents: admissions preferences or designations (as noted in Part III.B.7); treatment of negative credit, criminal, and rental histories due to abuse in the admissions process; policies relating to crime occurring at the property; family break-up policies; voucher portability processes; and PHA emergency transfer policies. These policies may not be included in an assessment of neighborhood choice under Part III.B.7 unless explicitly flagged.

IV.C. Disproportionate Housing Needs

IV.C.1. Demographic Patterns

In addition to household considerations based on race/ethnicity, family size, family status, and national origin, this section should provide data based on sex at both the individual and household (i.e. female-headed household) level. Additionally, this section should provide data on intersectionality¹⁹—i.e. the distinct experiences of members of one or more protected classes—by requiring analysis of fair housing issues experienced by individuals who fall into multiple protected classes. For example, women of color and female-headed households with children are intersectional groups that often have disproportionate housing needs.

IV.C.3. Provide additional information, if any, about groups experiencing disproportionate housing needs in the jurisdiction (e.g., religion, color, families with children).

This section should prompt jurisdictions to analyze whether survivors of domestic and sexual violence are experiencing disproportionate housing needs in the jurisdiction.

IV.C.4. Determinants of Disproportionate Housing Needs

We recommend adding the determinant: “Ordinances that impose penalties on residents based on requests for police or emergency assistance, and/or criminal or other activity at the property, regardless of whether the resident committed the conduct.”

These laws – often called nuisance, disorderly behavior or crime-free ordinances – generally provide for a fine, license revocation, or other penalty against a landlord based on requests for

¹⁸ See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (October 27, 2010); HUD Notice: The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, Docket No. FR-5720-N-01 (July 31, 2013), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=VAWA2013.pdf>.

¹⁹ See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Soc. Rev. 117 (2012).; Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. of Sociology 1 (2012); Kimberle Crenshaw, *supra* note 15.

police assistance or other activity occurring at the property, even when the tenant is a victim of crime. In practice, nuisance ordinances can violate the rights of protected groups, including women, people with disabilities, and people of color.²⁰ In particular, women seeking police assistance in response to domestic violence may face eviction for “too many” calls to the police.²¹ Nuisance ordinances have also been shown to have a disproportionate impact on domestic violence victims, the vast majority of whom are women, and minority communities.²²

IV.D. Disparities in Access to Community Assets and Exposure to Adverse Community Factors

IV.D.1. Disparities in Access to Community Assets

IV.D.1.d. Other community assets

Access to domestic and sexual violence services, as well as police and emergency services are an essential community asset toward ensuring the safety and security of individuals and families in their homes. The Assessment Tool should require analysis of difference in availability and accessibility of these services.

IV.D.3. Identify and discuss any overarching patterns of access to assets and exposure to adverse community factors based on race/ethnicity, national origin and familial status. For example, identify neighborhoods that experience an aggregate of poor access to assets and high exposure to adverse factors.

This section should be amended to include sex as a factor, in addition to race/ethnicity, national origin, and familial status. Additionally, this section should require analysis of adverse community factors experienced by individuals who fall into multiple protected classes, such as women of color.

IV.E. Disability and Access

Throughout this and other sections, jurisdictions should be asked to consider intersections between individuals with disabilities and other protected classes. This will help jurisdictions identify any unique fair housing issues that may be experienced specifically by a certain subset of individuals with disabilities who are also members of another protected class. For example, as

²⁰ See, e.g., Complaint, *Briggs v. Borough of Norristown*, NO. 2:13-cv-02191-ER (E.D.P.A. Apr. 29, 2013); Housing Discrimination Complaint, Assistant Secretary for Fair Housing & Equal Opportunity vs. Borough of Norristown, PA, Title VII Case No. 03-13-0277-8, Section 109 Case No. 03-13-0277-9 (June 5, 2013), available at https://www.aclu.org/sites/default/files/assets/hud_complaint.pdf.

²¹ See Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. Times (Aug. 16, 2013).

²² See FHEO Guidance on Housing Discrimination Against Domestic Violence Victims, *supra* note 9 (explaining that, “even when consistently applied, women may be disproportionately affected by [zero-tolerance] policies because, as the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers.”); see also Matthew Desmond & Nicol Valdez, *supra* note 19 (a study analyzing the impact of a Milwaukee chronic nuisance ordinance found that domestic violence accounted for only 3.8% of city residents’ calls to police, but constituted 16% of 911 calls that were classified as a nuisance – a significant overrepresentation).

a result of their abuse, survivors of domestic and sexual violence sometimes suffer from disabilities such as Post-Traumatic Stress Disorder,²³ and may thus find it more difficult to find housing in which they can feel safe and maintain their mental health. Simultaneously, victims of domestic and sexual violence often experience gender-based housing discrimination.²⁴

IV.F. Fair Housing Compliance and Infrastructure

This section should be amended to ask jurisdictions to specifically identify state and local laws that provide housing protections to additional protected classes other than those enumerated in the Fair Housing Act (e.g. victims of domestic and sexual violence²⁵) and ask jurisdictions to summarize any unresolved matters related to these laws.

We also recommend that “Lack of services, shelter, and long-term housing support for survivors of domestic and sexual violence” be added to the list as an infrastructure issue that can impact fair housing compliance, particularly for women.

V. Fair Housing Goals and Priorities

“Action Steps” should be added to this section of the Assessment Tool. In the “Action Steps,” the Assessment Tool should require jurisdictions to be specific about the actions they will take to address gender-based discrimination and barriers to fair housing for women in their communities. Examples of specific actions include, but are not limited to, the allocation of resources to target the housing needs of specific protected classes (e.g. funding for shelters that serve gender-based violence survivors); the assertion of housing rights for groups that traditionally experience discrimination (e.g. allowing public housing tenants to move to a new apartment in order to ensure their security when they have experienced domestic or sexual violence); and the repeal of laws and policies which discriminate against a protected class (e.g. eliminating chronic nuisance ordinances that result in impermissible discrimination against domestic violence victims).

To ensure meaningful implementation, the Assessment Tool should direct jurisdictions to include planned actions in the Consolidated Plan. This inclusion would be in line with the Violence Against Women Act’s requirements that jurisdictions’ consolidated plans include assessments of estimated housing needs of victims of domestic violence, dating violence, sexual assault, and stalking.²⁶

²³ Loring Jones, Margaret Hughes, & Ulrike Unterstaller, *Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence A Review of the Research*, 2.2 Trauma, Violence, & Abuse 99 (2001).

²⁴ See Section 1, *supra*.

²⁵ See National Housing Law Project, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2014), available at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf> (compiling state and local laws).

²⁶ 42 U.S.C.A. § 12705(b)(1).

4) Specific recommendations on forthcoming supplemental forms

In the forthcoming Assessment Tool for PHA-only submissions, PHAs should be required to analyze their annual plans and Admission and Continued Occupancy Policies (ACOPs) for compliance with the Fair Housing Act and housing-related provisions of other laws, such as the Violence Against Women Act. PHAs should specifically analyze existing or potential admissions priorities for groups with disproportionate housing needs. For example, PHAs should consider admissions priorities for domestic and sexual violence survivors in their communities as well as emergency transfer policies for domestic and sexual violence survivors already living in public housing, in order to respond to the disproportionate housing needs faced by survivors.

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Thank you in advance for the opportunity to comment, and we would be happy to meet to discuss any of these issues in greater detail. If you have any questions, please contact Sandra Park, Senior Staff Attorney, ACLU Women's Rights Project, at spark@aclu.org or (212) 519-7871.

Sincerely,

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