



Strengthening Neighborhoods.
Improving Lives.



October 20, 2016
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-09-B] Affirmatively Furthering Fair Housing Assessment Tool for Public Housing – Information Collection: Solicitation of Comment 30-Day Notice (the “Notice”)

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) are pleased to submit comments on the Affirmatively Furthering Fair Housing (“AFFH”) Assessment of Fair Housing Tool for Public Housing Agencies (the “PHA Tool”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of more than seventy large public housing authorities (“PHAs”) own and manage nearly half of the nation’s public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low income households.

Reno & Cavanaugh represents more than one hundred PHAs throughout the country and has been working with our clients on fair housing issues throughout the years. Reno & Cavanaugh was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

Our previous comments to HUD on the PHA Tool emphasized our concerns that: (1) the PHA Tool will impose costly and burdensome requirements on PHAs, and (2) the PHA Tool fails to offer adequate protections to PHAs that make good faith, reasonable efforts to satisfy the obligations HUD has described in the Notice. As we and other commenters have noted, and as HUD has acknowledged in the Notice, there remain unanswered questions about how PHAs can efficiently and effectively use the PHA tool to collect and interpret data to yield a meaningful fair housing analysis.

Like HUD, PHAs are committed to furthering fair housing, deconcentrating poverty, and increasing integrated housing opportunities for low-income households. PHAs also share HUD's hope that, upon completion, the PHA Tool will assist PHAs and others in their efforts to take meaningful actions to affirmatively further fair housing. However, given the significant questions and uncertainty that still exists around the current PHA Tool, **we urge HUD to first create a working group comprised of a limited number of PHAs to test and refine the PHA Tool prior to nationwide implementation.**

Such a working group should consist of a small, but meaningful, sample of housing authorities and would allow HUD to ensure that the PHA Tool adequately responds to the unique needs of PHAs. In contrast to municipal governments that often have access to readily available data and resources, PHAs typically lack the geographic scope and power of municipalities, making completion of the PHA tool more challenging for PHAs than for their municipal counterparts. The additional effort to develop and test the PHA Tool in a working group setting would help answer the many important questions that PHAs, public housing industry groups, HUD, and others have raised around cost, data collection, and analysis. By testing the PHA Tool in a more limited setting, HUD could also more effectively identify the contents and delivery mechanism for the technical assistance that HUD has already committed to providing in the Notice. The HOPE VI program, the Rental Assistance Demonstration Program and many of HUD's most successful and transformative public housing initiatives have begun as demonstration programs, and we encourage HUD to replicate that approach here as well. If HUD proceeds forward with such a working group, CLPHA offers its assistance to help in these efforts.

Below we offer additional comments on the PHA Tool.

HUD should provide PHAs with funding and additional resources to support the expanded data collection and assessment activities required under AFFH.

HUD has repeatedly emphasized its commitment to providing PHAs with guidance, technical assistance, and training as they work to complete the PHA Tool. We strongly support this position and recognize that this will be of special importance to PHAs, who will now be required to describe and analyze data that may be both difficult to obtain and beyond the scope of PHAs' normal operations or experience. Without HUD-provided, readily available training and technical assistance support, PHAs would likely have to rely on expensive consultants to extract and analyze the relevant HUD-provided data and obtain the additional local data and knowledge that is required to meet their full obligations of the fair housing assessment. Accordingly, we encourage HUD to ensure that HUD's staff and consultants who will provide this guidance, training, and technical assistance have sufficient experience and expertise in assisting and undertaking these complex analyses. In addition, we anticipate that HUD will provide PHAs with increased administrative funding to support the expanded data collection and other obligations PHAs must engage in to fulfill their obligations through the PHA Tool.

The scope of the data collection and analysis required under the PHA Tool is likely to create uncertainty for PHAs and their communities as to whether the PHAs' submission of the PHA Tool has satisfied HUD's requirements. We repeat our prior request that HUD create safe harbors for PHAs that make good faith efforts to comply with the requirements of the PHA

Tool. Additionally, we ask that HUD clarify that HUD's approval of a PHA's Annual Plan or Five-Year Plan is also an approval of the PHA Tool.

We remain concerned that the PHA Tool does not provide explicit safe harbor standards for PHAs that make good faith efforts to comply with the requirements of the PHA Tool. Among other things, some PHAs may not be able to complete either the data collection or analysis required by the PHA Tool, while others may prepare a complete submission that HUD believes does not sufficiently address the PHA's obligation to affirmatively further fair housing. Similarly, there are many instances where the PHA Tool asks the PHA to provide and analyze data that may not yet be readily available or accessible.

For example, the PHA Tool requires that PHAs analyze trends and patterns of segregation and integration across jurisdictions and regions, even though HUD has not yet provided the relevant data to do so. The PHA Tool also requires PHAs to describe disparities in the entire region across program categories, including LIHTC and other multifamily assisted projects, which are typically developed by private developers – yet, even PHAs who have LIHTC and multifamily stock have no reasonable way to assess the availability of this housing outside of their service area. Furthermore, because housing authorities have no jurisdiction over government agencies or other local municipalities, they have no leverage to require production of this data or the rationale behind other jurisdictions' decisions and practices around education, health, environmental factors, or housing. Although HUD states in its response to our previous comments that “program participants must use reasonable judgment in deciding what supplemental information from among the numerous sources available would be most relevant to their analysis,” HUD still offers PHAs no assurance on whether or when such judgments will be acceptable to HUD. This in turn creates the risk that PHAs and their communities lack certainty about whether HUD wants the PHA to rely on the analysis in the PHA Tool in formulating the PHA's strategies for furthering fair housing.

To remove this uncertainty, we urge HUD to create a safe harbor within the PHA Tool. This safe harbor standard would provide that PHAs will not be subject to liability for their inability to obtain third-party local knowledge or data as long as those PHAs make good faith, reasonable efforts to identify relevant local knowledge or data and note this lack of available information in the PHA Tool submission. Additionally, in recognition of the many PHAs operating in jurisdictions that are not equivalent to Metropolitan Statistical Areas or city/county borders, we also urge HUD to create a safe harbor standard for PHAs that use good faith, reasonable efforts in determining the most relevant one (or two or three) data sets or political boundaries for use in completing the PHA Tool.

In addition to the safe harbor standard described above, we encourage HUD to clarify that HUD's approval of a PHA's Annual Plan or Five-Year Plan is also an approval of the PHA Tool. We believe that this approval is already included in the existing PHA plan regulations at 24 CFR Part 903, which provide the process for HUD approval of PHA plans. As noted in 24 CFR 903.23(a), HUD's approval of the PHA Plan includes a review of whether the PHA Plan is consistent with the data available to HUD, which data would include the PHA Tool. However, because these regulations do not explicitly address approval of the submission of the PHA Tool, we ask that HUD clarify that approval of the PHA Plan includes approval of the PHA Tool. This

explicit approval process would serve two purposes. First, it would provide PHAs with the assurance to know that their certified PHA Tool meets HUD's standards and fulfills the PHA's duty under the AFFH. Second, it will provide HUD with a formal mechanism to document its assessment, review, and approval of a PHA's completion of the PHA Tool obligation. HUD's implementation of the safe harbor provision and the approval process described above will help transform what is currently a very uncertain process into one that provides PHAs with the knowledge and certainty that they are in full compliance with their PHA Tool obligations.

HUD should not disregard HUD's and PHAs' commitments to preserving safe, decent, affordable housing in existing communities.

In the final AFFH rule, HUD recognizes that strategies for affirmatively furthering fair housing may include removing barriers to high opportunity areas, as well as investing in the revitalization of existing neighborhoods. However, though the final AFFH rule encourages a balanced approach to fair housing planning, the PHA Tool lacks preservation-related questions and guidance, suggesting that development in non-impacted areas is simply a more legitimate goal than the preservation of existing housing that is not within an "area of opportunity". The PHA Tool contains neither questions that directly assess the preference of residents to remain in their own neighborhoods nor any direct questions to help a PHA document that preservation and rehabilitation of these existing communities is the most appropriate way for the PHA to further fair housing while also respecting the rights of residents to remain in their homes and communities. It also fails to account for the need to preserve housing in gentrifying neighborhoods that may rapidly become "areas of opportunity".

In our previous comments, we requested that HUD: (1) modify the PHA Tool to include questions about housing preservation strategies, and (2) include a statement in the PHA Tool instructions noting that preservation is an equally appropriate means of affirmatively furthering fair housing. In its response, HUD said that it would consider adding questions on how to evaluate tenant viewpoints on relocation and mobility from neighborhoods of concentration to more integrated areas and that it would consider giving instructions to PHAs on using community participation to solicit feedback on the preservation of properties, among others. However, we would encourage HUD to more explicitly state that preservation is an equally valid strategy for furthering fair housing. Similarly, we ask that HUD also consider adding questions about community reinvestment and/or any site-specific projects underway to restore deteriorated housing. As a result, we encourage HUD to include a stronger and more explicit focus on preservation of affordable housing in the final PHA Tool.

Finally, in addition to our comments described above, we wish to re-emphasize our recommendation that HUD create a working group comprised of a limited number of PHAs to test and refine the PHA Tool before the PHA Tool is implemented. Such a working group would provide HUD with practical information about the strengths and limitations of the PHA Tool. The smaller scale of the working group would also allow HUD and to resolve some of the administrative challenges associated with the PHA Tool before the PHA Tool is released on a national level. Some of HUD's most successful public housing initiatives began as small-scale demonstration programs, and we encourage HUD to adopt this approach for the PHA Tool as well. Both CLPHA and Reno & Cavanaugh share HUD's goal of creating a PHA Tool that

most effectively and affirmatively furthers fair housing, and we look forward to the opportunity to collaborate with HUD on a working group that tests and refines the PHA Tool so that it can most effectively be used by PHAs to affirmatively further fair housing.

Thank you for the opportunity to comment on the PHA Tool. If you have any questions, please do not hesitate to contact us.

Sincerely,



Sunia Zaterman
Executive Director
CLPHA



Stephen I. Holmquist
Member
Reno & Cavanaugh, PLLC