



March 6, 2018

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

Via regulations.gov

**RE: Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan, Docket No. FR-5173-N-15 (January 5, 2018)**

Dear Secretary Carson:

Texas Appleseed and Texas Housers write to provide the following comments on the Extension for Deadline of Submission of Assessment of Fair Housing for Consolidated Plan Participants published as a Notice in the Federal Register at 83 Fed.Reg. 683 (January 5, 2018) (Notice).

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change on broad-based issues of social equity, including disaster recovery and fair housing. Our goal is to ensure that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity.

Texas Low-Income Housing Information Service (Texas Housers), a non-partisan, nonprofit corporation, has worked in Texas with community leaders in neighborhoods of people of color living with low-incomes to achieve affordable, fair housing and open communities for over 25 years. Citizen engagement, civil rights enforcement and fair housing are at the center of our work.

Extending the deadline for submission of the Assessment of Fair Housing (AFH) does not address any of the issues the Department of Housing and Urban Development (HUD) cites as reasons for the extension, and imposes additional burdens on jurisdictions who have long sought guidance on how to comply with their statutory obligation to affirmatively further fair housing as required by the Fair Housing Act, 42 U.S.C. 3608. The Notice should be withdrawn and the AFH process, including use of the Assessment Tool, should be reinstated.

## I. Introduction

In 1996, the introduction to HUD's Fair Housing Planning Guide asked, "[w]ill devolution work? Will it be effective in addressing the fair housing problems in a community?"<sup>1</sup> The Government Accountability Office's (GAO) September 2010 report, *HUD Needs to Enhance its Requirements and Oversight of Jurisdictions' Fair Housing Plans*, answered that question with a resounding "no."<sup>2</sup>

The GAO found that 29% of Analyses of Impediments (AI) had not been updated within five years (11% in over 10 years) and for 6% of AIs the date of completion could not be determined, that the majority of AIs reviewed did not include time frames for implementation of recommendations or signatures of elected officials, and that some jurisdictions could not produce an AI with relevant content,<sup>3</sup> or any document identified as an AI at all, in violation of the requirements of 24 C.F.R. § 570.601(a)(2) and 24 CFR § 91.225(a) that they conduct and maintain this analysis.

In sum, [GAO's] review found limited assurances that grantees are placing needed emphasis on preparing AIs as effective planning tools to identify and address potential impediments to fair housing as required by statutes governing the CDBG and HOME programs and HUD regulations and guidance.<sup>4</sup>

Any jurisdiction that is not meeting the requirements to truthfully certify that they are affirmatively furthering fair housing by conducting an analysis of impediments to fair housing/Assessment of Fair Housing, taking meaningful action to overcome those impediments, and maintaining records of their assessment and actions is in violation of the Fair Housing Act, Section 104(b)(2) of the Housing and Community Development Act of 1994 (as amended), Section 105 of the Cranston-Gonzalez National Affordable Housing Act, and is ineligible for federal housing and community development funds. Under the HCDA, the Secretary has

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<sup>1</sup> HUD, *Fair Housing Planning Guide*, March 1996, HUD-1582B-FHEO Available at: <https://www.hud.gov/sites/documents/FHPPG.PDF>

<sup>2</sup> GAO, *Housing and Community Grants: HUD Needs to Enhance its Requirements and Oversight of Jurisdictions' Fair Housing Plans*, September 2010, GAO-10-905. Available at: <https://www.gao.gov/assets/320/311065.pdf>

<sup>3</sup> GAO, *Housing and Community Grants: HUD Needs to Enhance its Requirements and Oversight of Jurisdictions' Fair Housing Plans*, September 2010, GAO-10-905. Available at: <https://www.gao.gov/assets/320/311065.pdf>

<sup>4</sup> Five of the AIs submitted to the Secretary, to date, were one to four pages and one was an email, both at 14-15

<sup>5</sup> *Ibid.* at 10. The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this chapter."); 42 U.S.C. §5304 (a)(1) "Prior to the receipt in any fiscal year, of a grant under this title, the grantee shall have . . . provided the Secretary with the certifications required in subsection (b) of this section and, where appropriate, subsection (c) of this

authority to make grants “only if” grantees make certain submissions and certifications.<sup>5</sup>

CDBG grant funds are expressly conditioned on a jurisdiction’s certification that it will affirmatively further fair housing. “The AFFH certification [is] not mere boilerplate formality, but rather a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions.” *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc., v. Westchester County*, Case 1:06-CV-02860-DLC, Document 118 at 50-51, (S.D.N.Y, February 24, 2009). The Secretary cannot obligate funds when a grantee has failed to make a certification that is material to its eligibility to receive CDBG funds.

The Notice’s extension of the deadline for submission of the Assessment of Fair Housing (AFH) does not address any of the issues the Department of Housing and Urban Development (HUD) cites as reasons for the extension, and imposes additional burdens on jurisdictions who have long sought guidance on how to comply with their statutory obligation to affirmatively further fair housing. HUD’s choice to extend the deadline and effectively suspend the AFH process, including for jurisdictions that have already completed or are in the process of completing an AFH, is not rationally related to the facts it cites as reasons for the extension. The Notice should be reversed and the AFH process reinstated.

II. The Notice does not contain evidence or reasoning that supports the extension of deadline for submission of the Assessment of Fair Housing for Consolidated Plan participants.

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<sup>5</sup> See, e.g. 42 U.S.C. §5302 (“The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this chapter.”); 42 U.S.C. §5304 (a)(1) “Prior to the receipt in any fiscal year of a grant . . . the grantee shall have . . . provided the Secretary with the certifications required in subsection (b) of this section and, where appropriate, subsection (c) of this section.”; 42 U.S.C. §5304(b) “**Any grant . . . shall be made only if the grantee certifies to the satisfaction of the Secretary that-- the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) of this section and has made the final statement available to the public;**” (emphasis added) These statutory requirements have been codified, see 24 C.F.R. § 91.325(a) and 24 C.F.R. § 91.325(b)(4)(ii) (applicants must certify that they are affirmatively furthering fair housing); 24 C.F.R. § 91.5 (certifications must be assertions based on “supporting evidence”); 24 C.F.R. § 91.500(a) and 24 C.F.R. §91.5 (HUD “will review” the plan in which certifications must appear, and has the authority to inspect the evidence on which certifications are based); 24 C.F.R. §570.485(c) (HUD may determine that a certification is not “satisfactory to the Secretary” based on evidence); 24 C.F.R. § 91.500(b) (HUD may “disapprove” any plan or portion thereof that is substantially incomplete, contains a certification that is not satisfactory to the Secretary within the meaning of 24 CFR 570.485(c), or is “inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act, 42 USC §12703); 24 C.F.R. §570.485(c) (HUD may require a state to submit further assurances as the Secretary deems necessary to find the grantee’s certification satisfactory.) The purpose of the Cranston-Gonzalez National Affordable Housing Act is “to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;” and “to mobilize and strengthen the abilities of the States and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing.” (42 U.S.C. §12722)

The Notice points to several alleged reasons for the extension of the AFH submission deadline, however, there is no rational connection between the facts HUD cites and the choice to extend the deadline.

- A. The AFFH rule was designed to address specific problems with the AI process identified by GAO, HUD, and advocates

GAO's report identified two major issues that contributed to the failures of the AI process; HUD's regulations did not "establis[h] standards for updating AIs or the format that they must follow," and "grantees are not required to submit their AIs to the department for review" and noted that HUD had initiated a process (which culminated in the AFFH Rule) in 2009 because it "[r]cognize[ed] the limitations in its AI requirements and oversight and enforcement approaches."<sup>6</sup> The Report also made the following recommendations for executive action:

- HUD should complete the new AFFH regulation expeditiously.
- HUD should establish standards for grantees to follow in updating their AIs and provide a format for doing so.
- HUD should require grantees to include time frames for implementing the recommendations in the AI and signatures of responsible officials.
- HUD should require routine submission of the AI to HUD for review.

HUD's own 2009 *Analysis of Impediments Study* also recommended increased guidance and assistance to grantees, a submission requirement, and guidelines for staff review of AIs.<sup>7</sup>

The Affirmatively Furthering Fair Housing Rule that HUD issued on July 16, 2015 incorporated these recommendations, creating a set of standards including metrics and milestones for implementation, a standardized format (the AFH Assessment Tool) including HUD-provided data, and a submission and review process that incorporated HUD guidance and technical assistance.

- B. Percentage of AFHs with initial non-acceptance

We consider the non-acceptance rate a positive outcome of the AFFH process, demonstrating that HUD is taking its enforcement responsibilities seriously and holding grantees to a higher standard. However, HUD's asserted reason for issuing the Notice is the percentage of AFHs that were initially non-accepted.

HUD points to the fact that 35% of the first AFHs submitted were initially non-accepted.<sup>8</sup> In other words, well over half (65%) of grantees were able to successfully submit an AFH acceptable to HUD using a new and more rigorous process.

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<sup>6</sup> GAO Report at 22

<sup>7</sup> HUD Office of Policy Development and Research, Policy Development Division, *Analysis of Impediments Study*, January 27, 2009.

The citation of initial non-acceptance rates as justification for extending the timeline for compliance with the AFFH Rule is not rationally related to the extension of the deadline. Under the previous compliance process, which the Notice informs grantees they are to return to, the GAO found that 29% of Analyses of Impediments (AI) had not been updated within five years (11% in over 10 years) and for 6% of AIs the date of completion could not be determined, that the majority of AIs reviewed did not include time frames for implementation of recommendations or signatures of elected officials, and that some jurisdictions could not produce an AI with relevant content,<sup>9</sup> or any document identified as an AI at all, in violation of the requirements of 24 C.F.R. § 570.601(a)(2) and 24 CFR § 91.225(a) that they conduct and maintain this analysis. HUD's 2009 study found that 35% of jurisdictions could not or did not produce an AI in response to HUD's request. In other words, over a third of jurisdictions did not have an AI at all, versus the current 35% of grantees who had an AFH, but one that was initially non-accepted. The HUD study's review of the completeness and quality of the AIs also found that 49% of AIs were rated "needs improvement" or "poor", a rate far higher than 35% HUD cites as a reason to suspend the AFH process.<sup>10</sup>

HUD suspension of a process with a higher grantee success rate and return to a process with a lower grantee success rate is not a rational choice based on these facts.

#### C. Development of goals, metrics, and milestones and need for technical assistance

HUD's notice states that grantees particularly struggled to "meet the regulatory requirements of the AFFH rule, such as developing goals that could be reasonably expected to result in meaningful actions to overcome the effects of contributing factors and related fair housing issues . . . [and] develop metrics and milestones that would measure their progress as they affirmatively further fair housing." Based on our review of AFHs submitted by jurisdictions in Texas, this is an accurate assessment. Again, however, the suspension of the AFH process is not rationally related to this fact, and in fact will contribute to the exact problem HUD identifies in the Notice.

GAO's review of AIs found that only 20% of jurisdictions "included time frames for implementing recommendations for overcoming impediments."<sup>11</sup> Under the AFH process, 65% of jurisdictions submitted an AFH acceptable to HUD that included goals that HUD found could reasonably be expected to overcome the effects of contributing factors and metrics and milestones to measure progress on AFFH. HUD's suspension of a process under which a substantial additional number of jurisdictions were reaching this standard directly contradicts its stated reason for the extension.

HUD goes on to state that additional technical assistance would help participants better understand their obligations under the AFFH rule and that AFH review requires significant staff

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<sup>8</sup> HUD does not state whether those AFHs were accepted after revision.

<sup>9</sup> Five of the AIs submitted to GAO were two to four pages, and one was an email. Ibid at 14-15.

<sup>10</sup> HUD Study at 6-8.

<sup>11</sup> GAO Report at 19.

resources. We do not disagree with these assertions and encourage HUD to provide increased technical assistance. Once again, however, there is no rational connection between the asserted facts and the choice to suspend the AFH process for two years. HUD suggests that the extension “allows HUD staff to devote additional time to providing program participants, and program participants in an AFH collaboration with technical assistance on the legal objectives to affirmatively further fair housing.” There is clearly a need for further technical assistance on what it means for jurisdictions to affirmatively further fair housing, but it is not clear that technical assistance devoid of context will be helpful in doing so, and it will have extremely limited utility in helping program participants to “adjust to the new AFFH process and complete acceptable AFH submissions”, the stated purpose of the extension. Technical assistance must be connected to the AFFH rule process and tailored to the specific jurisdictions (including joint and regional collaborations) in order to result in AFHs acceptable to HUD, and more importantly, meaningful compliance with the obligation to AFFH.

The existing AFH process provides both opportunities for additional time and technical assistance. The process of submitting an AFH to HUD for review and the opportunity to revise an initially non-accepted AFH in accordance with specific guidance from HUD offers grantees precisely what HUD says it is suspending this process to accomplish. HUD has provided grantees, including Dallas Regional and Harris County Regional, with pre-submission extensions under the current process as well.

Texas Appleseed conducted interviews with grantees and grant management consultants representing 18 CDBG-DR recipients following a process with some similarities to the AFH process, the Fair Housing Activities Statement-Texas (FHAAT) process following Hurricanes Ike and Dolly in 2008, under which applicants for CDBG-DR funds were required to fill out a fair housing assessment and submit it to the State of Texas for both initial and ongoing compliance review. Access to more in-depth training and technical assistance was an almost universal request from grantees, particularly from small communities that reported an ongoing lack of clarity about what was required for many of the individual action items. According to one grant consultant, the state could have improved the FHAAT process by having “a true training session on what the impediments are, each one of them...and how those impediments can apply to . . . communities.” In other words, program participants wanted technical assistance not only on the broader concept of AFFH, but on how to apply those concepts to their individual communities and identify how they could take action to address them. Despite a number of challenges, including the small size of many of the jurisdictions that were CDBG-DR recipients but not entitlement jurisdictions, many survey participants expressed their view that requiring communities to go through the FHAAT assessment and review process was beneficial, overall, because of its positive effects on awareness of fair housing.

“The FHAAT process was a good idea because it kept fair housing at the forefront and forced us to go back and review it once in a while to make sure we were complying. So, it is serving a very good and useful purpose, and we look at it quite frequently and test ourselves to make sure we are complying with what we say we are going to comply with.”

- City Official, medium jurisdiction

“We have had several people come to us [regarding] various scenarios presented in the training...and they were like, ‘You know, I never stopped to think of that being a fair housing issue. It’s just something we’ve always done, and we never thought of what the ramifications might be.’ I think this is a very positive thing with regard to the leadership, and I think has opened our eyes more to Affirmatively Furthering Fair Housing.”

- Grant Consultant

In addition to the statistics cited above, an analysis comparing AFH submissions with prior AIs by the same jurisdictions conducted by the Massachusetts Institute of Technology (MIT) found substantial improvements in the robustness of municipal goals (defined as goals that set out a quantifiable metric or commit to a new policy) between the AI and the AFH.<sup>12</sup> The researchers found that only 5% of the AI goals contained a quantifiable metric or new policy, but 33% of AFH goals included such metrics or policies, and that these goals represented a five-fold increase in goals that aimed to “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics” as required by the AFFH rule and Fair Housing Act obligation to AFFH.

#### D. Burdens on grantee jurisdictions

The AFFH regulation was designed to address burdens identified by both process reviews and grantees themselves, in particular the lack of guidance and standardized format for AIs, and the cost of obtaining and analyzing data. Notice does not give grantees “additional time and technical assistance to adjust to the new AFH process and complete AFH submissions that can be accepted by HUD”, it throws grantees back into a regime without guidance or format, and without the submission and revision process to help them produce AFHs that can be accepted by HUD. How can grantees adjust to a process that has effectively been suspended?

HUD’s 2009 Study found that jurisdictions were not “systematically and consistently improving the content and quality of AIs as they bring them up to date.”<sup>13</sup> This is reflected by our experience in Texas, which includes challenges to the AIs and certifications of several jurisdictions, including the State of Texas itself.

In 2009, our organizations filed a Fair Housing Complaint against the State of Texas which included allegations that the State’s AI was substantially incomplete for reasons including the State’s failure to analyze race-based impediments to fair housing choice, failure to address segregation, and failure to ensure the AFFH compliance of its subrecipients.<sup>14</sup> That Complaint resulted in a Conciliation Agreement, which required Texas to conduct a new AI and submit it to

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<sup>12</sup> Justin Steil and Nicholas Kelly, “Snatching Defeat from the Jaws of Victory: HUD Suspends AFFH Rule that was Delivering Meaningful Civil Rights Progress”, *PRRAC: Poverty & Race*, Vol. 26: No. 4 (October-December 2017)

<sup>13</sup> HUD Study at 10

<sup>14</sup> See Fair Housing Complaint, Texas Appleseed and TxLHIS v. State of Texas, Available at: <https://www.texasappleseed.org/sites/default/files/24-FairHousingComplaint.pdf>

HUD for approval.<sup>15</sup>In 2011, at the request of Texas Housers, HUD reviewed the City of Houston’s AI and found it incomplete and unacceptable for reasons including the failure to identify and address patterns of segregation based on race and national origins, failure to address access to housing and opportunity for persons with disabilities, and failure to contain actions to address the impediments that were identified or maintain documents and records.<sup>16</sup> In 2014, HUD signed a Voluntary Compliance Agreement with the City of Dallas that included specific requirements for updating the City’s AI. In all three cases, HUD review, guidance, and enforcement resulted in substantially improved AIs, but in all three cases, a complaint from an outside advocacy group was required to trigger review, resulting in delays substantially longer than the timeline for revision of an AFH under the rule.

The AFH process is still relatively new, and we would anticipate that grantees will have some difficulty completing the process successfully, particularly those that did not have substantive AIs (or an AI at all) in the past. We also anticipate that a jurisdiction’s first AFH will be the most difficult, not only because the process is new, but also because jurisdictions may have to gather and incorporate historical information and context that it will not necessarily need to update in subsequent AFHs. The AFH will be substantially easier for jurisdictions to conduct in subsequent years (and require fewer resources) as they build expertise and become increasingly familiar with the concepts and process. As the rollout of the process continues, jurisdictions will have an increasing number of completed AFHs and amount of HUD guidance to refer to for examples of both exemplary analyses and how to fix specific AFH deficiencies.

This is also a relatively new process to HUD, and we would similarly expect that the resources the department has to expend to decrease over time both as internal expertise and processes are refined and as grantees need less technical assistance for future submissions. However, neither jurisdictions nor HUD can increase their expertise and ability to accomplish the AFH process with fewer resources if they are not engaged in the AFH process. Not only does a two year delay do nothing but postpone the issues HUD claims justify this Notice, it imposes increased burdens on grantees, many of which were already involved in the AFH process, and who must now scramble to figure out what the extension means to them and how to comply with a process whose lack of guidance and certainty the AFFH rule was intended to remedy.

The Notice places particular burdens on jurisdictions that completed and submitted AFHs but have not received notice of acceptance or have received a letter of non-acceptance from HUD. These jurisdictions are simply told to “use the information contained in their draft AFHs to conduct the required AI analysis,” which certainly sounds like they are being told to start over and do an entire separate analysis, but with no guidance, standards, or assessment tool.

### III. Fair Housing Assessments in Texas

Participating jurisdictions in Texas provide examples of the contradictory effects of the Notice.

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<sup>15</sup> Available at: <https://www.texasappleseed.org/sites/default/files/ApprovedConciliationAgreement.pdf>

<sup>16</sup> FHEO Letter to the City of Houston, November 30, 2011



## A. Hidalgo Regional Assessment of Fair Housing

On December 12, 2017, HUD sent a letter of non-acceptance to the Hidalgo County Collaborating Program Participants notifying them of the reasons their AFH was not accepted and providing guidance on how to resolve the identified issues. Hidalgo County's revised AFH would have been due March 12, 2018. HUD found that the AFH was substantially incomplete and inconsistent with civil rights laws because the fair housing goals and priorities Hidalgo County identified lacked a clear description of how the goals related to contributing factors and fair housing issues and the AFH lacked metrics and milestones for evaluating progress towards those goals.

HUD's letter of non-acceptance provided specific feedback and guidance on the AFH goals. The Federal Register Notice states that program participants should not submit a revised AFH, but "use the information contained in their draft AFH to conduct the required AI analysis." HUD's issuance of the Notice leaves Hidalgo County in an untenable position; it does not have an analysis or assessment that complies with 24 C.F.R. § 570.601(a)(2) and 24 CFR § 91.225(a) and cannot take appropriate actions under the analysis it does have, because those proposed goals have already been determined to be insufficient. Hidalgo County has done months of substantive work to conduct an Assessment of Fair Housing, even if the submitted draft needed further revisions, and HUD has essentially told the County to start over, using an undefined process with no specific format, and no guidance or technical assistance.

## B. Corpus Christi

The City of Corpus Christi submitted its AFH on January 4, 2018. HUD's extension means that HUD will not review the AFH and provide technical assistance on any necessary revisions. The fact that the version of the Corpus Christi AFH presented for public comment is substantially incomplete and inconsistent with civil rights laws and does not meet the requirements for public participation, analysis, assessment, and goal setting set out in 24 C.F.R §5.158 and 24 C.F.R §5.154(d) makes the suspension of review and guidance for jurisdictions particularly problematic for Corpus Christi.

In addition to the inadequacy of its public participation process and the City of Corpus Christi's failure to include the type of specific, measurable, and meaningful goals, priorities, strategies, and actions, the AFH fails to incorporate material and substantial changes to local and regional conditions resulting from Hurricane Harvey. Hurricane Harvey hit the Coastal Bend area as a Category 4 hurricane, destroying thousands of housing units across the region along with businesses and infrastructure. Corpus Christi will be making decisions about how to spend millions of dollars in federal fund for disaster recovery, including Community Development Block Grants for Disaster Recovery (CDBG-DR) funds, subject to the affirmatively furthering fair housing requirement without a fair housing analysis or plan, and without HUD review and feedback on even an assessment of pre-storm conditions.

### C. Montgomery County Assessment of Fair Housing

Montgomery County submitted its Assessment of Fair Housing on January 4, 2018, the day before HUD published the extension. The County has been left with no HUD review, no guidance or technical assistance if its AFH is inadequate, and no guidance, because its AFH has been submitted but not accepted, on how to turn its AFH into an Analysis of Impediments. Montgomery County has engaged in months of substantive work to conduct an Assessment of Fair Housing, and HUD has essentially told the County to start over, using an undefined process with no specific format, and no guidance or technical assistance.

### D. Dallas and Harris County Regional Assessments of Fair Housing

Both Dallas and Harris County have stated that they intend to continue their ongoing Assessments of Fair Housing, which is commendable. We note that both regional collaborations have invested significant resources in these Assessments, but once again, these jurisdictions will be denied the guidance of a HUD review and technical assistance with any deficiencies in their final AFHs.

## IV. Conclusion

The AI process, according to HUD itself, was failing to produce substantial progress on affirmatively furthering fair housing, neither breaking down segregation nor fostering inclusive communities with equitable access to opportunity.

The Fair Housing Act was passed 50 years ago this April, but we can still see, in stark relief, the “two societies – one black, one white – separate and unequal” that the Kerner Commission’s 1968 report warned us about. The Black homeownership rate was just over 40% in 2015, almost unchanged since 1968, and the median White family has almost 10 times as much wealth as the median Black family. Black families are 2.5 times as likely to be in poverty as Whites, and infant mortality for Black infants as compared to white infants is even higher than it was in 1968.<sup>17</sup> School segregation is actually worse than it was in 1968.<sup>18</sup> Not only do one in six African American students and one in nine Hispanic/Latinx students attend schools that are at least 99% children of color, 71% of all African American public school students and 73% of all Hispanic/Latinx public school students attended high-poverty schools during the same period. Only 28% of all White public school students attended high-poverty schools.<sup>19</sup> Residential patterns in Austin and other Texas cities replicate the racial distribution mandated by 1934 Federal Housing Administration maps that redlined minority communities. African Americans

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<sup>17</sup> <http://www.epi.org/publication/50-years-after-the-kerner-commission/>

<sup>18</sup> <https://thinkprogress.org/american-schools-are-more-segregated-now-than-they-were-in-1968-and-the-supreme-court-doesnt-care-cc7abbf6651c/>

<sup>19</sup> GARY ORFIELD & CHUNGMEI LEE, *CIVIL RIGHTS PROJECT, WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY* 19, *tbl.7* (2005).

and Hispanic/Latinx households have much greater exposure to environmental and health risks like air pollution, toxic waste, and industrial land uses.<sup>20</sup>

This lack of progress on civil rights and equal access to opportunity is shameful. After 50 years, HUD cannot say to communities of color, people with disabilities, families with children, and other protected classes that they must wait another two years, particularly when it cannot offer a factual or reasoned justification for its decision. The Notice should be withdrawn and the AFH process, including use of the Assessment Tool, should be reinstated.

Madison Sloan  
Director, Disaster Recovery and Fair Housing Project  
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John Henneberger  
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Texas Low Income Housing and Information Service

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<sup>20</sup> Lara Cushing MPH, MA, John Faust PhD, Laura Meehan August MPH, Rose Cendak MS, Walker Wieland BA, and George Alexeeff PhD, “Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool”, *American Journal of Public Health*, October 9, 2015. Available at: <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2015.302643>