

**HEARING BEFORE THE  
HOUSE FINANCIAL SERVICES COMMITTEE  
ON  
THE FUTURE OF HOUSING IN AMERICA: 50  
YEARS OF HUD AND ITS IMPACT ON FEDERAL  
HOUSING POLICY  
STATEMENT FOR THE RECORD  
BY  
THE HONORABLE DAVID WEAVER  
VICE CHAIR OF THE BOARD OF  
DOUGLAS COUNTY COMMISSIONERS**

**OCTOBER 22, 2015**

Chairman Hensarling, Ranking Member Waters, Members of the Committee, thank you for holding this important hearing today on HUD and its impacts on housing policy.

My name is David Weaver and I am a County Commissioner in Douglas County Colorado. I want to submit this statement for the record because like so many other counties all across the country, we want to highlight concerns we have with recent HUD rule-making (FR-5173-N-05 – “Affirmatively Furthering Fair Housing Assessment Tool”).

Douglas County remains firmly committed to the goals of the Fair Housing Act and our mandate to affirmatively further fair housing. We are deeply concerned by the proposed information collection containing the Assessment of Fair Housing (AFH) Tool. According to the Department's own discussion of the rule, future iterations will be more streamlined and improved. While Douglas County is encouraged by the Department's recognition of the shortcomings of the revised Tool, we are disappointed by the Department's willingness to nevertheless pursue its implementation.

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

After reviewing the proposed Fair Housing Assessment Tool we feel HUD's implementation of this Tool will result in an overreach that leads to social engineering. We find both Option A and Option B included as a part of the Assessment of Fair Housing (AFH), are inadequate. The current Tool is unacceptable and must be refined. The County requests that HUD develop a new Tool that clearly outlines their intent and establishes measurable parameters, as outlined in this letter.

The Tool appears to have been written specifically for dense urban cities on the west coast. It will not work for rural and suburban communities in the western half of the United States. In addition, it does not clearly define the intent of what it means to affirmatively further fair housing. The information and definitions provided are vague, subjective and therefore open to interpretation. HUD must clarify their intent before asking communities to move forward and effectively complete an Assessment of Fair Housing.

After reviewing the contributing factors identified in the Tool we find many to be contradictory in nature. Addressing one contributing factor may actually *create* barriers to furthering fair housing in another contributing factor. We request HUD provide metrics for each factor outlined in the Tool. A table should be created considering contributing factors in an urban, suburban and rural context as defined by the U.S. Census Bureau. The table should include metrics that define each contributing factor, providing grantees and housing authorities clear guidelines of what it means to successfully affirmatively further fair housing. Once a new Tool has been developed, we request a full 60-day comment period in order for the staff responsible for implementing the Tool to conduct a thorough review.

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

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

*"Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful action that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."*

NACo raised concerns about how these terms are defined in their original response letter. Essentially, how will we know when we have taken *meaningful* actions? How can we *overcome* patterns of segregation? How will we know which *opportunities* are important enough to provide access, when each individual resident will value opportunities differently? In short, how much is enough to succeed? These are questions Douglas County expects HUD to address and incorporate into a revised Tool.

The definitions and examples provided in the Assessment Tool are unclear and highly subjective. Definitions in the Tool are written in broad expansive terms, making it impossible to identify HUD's intent. In the analysis section of the Tool, a list of 40 contributing factors is put forward, with the statement that it is not an exhaustive list. The fact that HUD expects communities to consider these factors, many of which are outside of our control, with no guidance is clearly an overreach on their part. Many of these 40 factors are ambiguous and potentially contradictory. Furthermore, as the Fair Housing Act is now being interpreted to include lack of access to opportunities, our future efforts will be ineffective because local input is diminished through the prescriptive list of contributing factors we will be obligated to address in the Tool.

Douglas County has identified several key concerns with the contributing factors provided in the Tool. First and foremost, we question why market driven factors are included on the list of examples of contributing factors. For example, the "location of employers" is an important issue driven by the free market. While the connections between work and housing choice are

undeniable, local governments are limited in their influence over the market, and should not be held accountable through an Act that is meant to provide fair and equal access to housing. Douglas County supports the business community and ensures that all land development proposals are reviewed fairly during the planning process.

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

#### Land Use and Zoning Laws

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

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

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

**Displacement of Residents Due to Economic Pressures**

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

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

Metrics are also needed to assist Regional HUD staff when they review grantee's AFH Tool. We are assured that the Assessment Tool will include opportunities to provide local knowledge and local data. How can HUD regional staff be expected to reasonably assess local data provided from grantees throughout a multiple-state region? The revised Tool must include metrics and approval standards which are glaringly absent from the current version of the Tool. HUD Regional staff will need this guidance to facilitate a fair and consistent review of AFH submittals.

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

Mr. Chairman, we need this Committee's help on this very important issue. As I stated at the start of this statement, Douglas County is committed to the goals of the Fair Housing Act and our mandate to affirmatively further fair housing, but HUD's proposal takes us backwards and will do more harm than good for our residents. We hope the Committee will look deeper into this issue and work with Douglas County and others on a solution that achieves everyone's goals.

Thank you for the opportunity to submit these comments and should you or your staff have any questions regarding my comments and our concerns, please feel free to contact me anytime as I would be happy to discuss this issue further with you or your staff.