



December 8, 2017

Submitted via e-mail: Colette.Pollard@hud.gov

Colette Pollard
Reports Management Officer, QDAM
Department of Housing and Urban Development
451 7th Street SW., Room 4176
Washington, DC 20410-5000

Re: Docket No. FR 6004-N-06: "60-Day Notice of Proposed Information Collection: Public Housing Agencies Service Areas Solicitation of Comments"

Dear Ms. Pollard:

The following comments are submitted on behalf of the National Housing Law Project (NHLP), the Center on Budget and Policy Priorities, the National Low Income Housing Coalition, and the Poverty & Race Research Action Council regarding the proposed information collection published on Wednesday October 11, 2017, "60-Day Notice of Proposed Information Collection: Public Housing Agencies Service Areas Solicitation of Comments."¹

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide.

The Center on Budget and Policy Priorities is an independent, nonprofit policy institute that conducts research and analysis on a range of federal and state policy issues affecting low-

¹ 60-Day Notice of Proposed Information Collection: Public Housing Agencies Service Areas Solicitation of Comments, 82 Fed. Reg. 47,237 (Oct. 11, 2017) (hereinafter "Proposed Notice of Information Collection").

and moderate-income families. The Center's housing work focuses on improving the effectiveness of federal low-income housing programs.

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, and fair housing organizations. NLIHC focuses on policies and programs that are in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people and people who are homeless.

The Poverty & Race Research Action Council (PRRAC) is a civil rights policy organization with a mission to connect social science research to civil rights and poverty law advocacy. PRRAC's housing policy work focuses on the enduring impacts of racial and economic segregation on education, health, criminal justice and economic inequality, and the legal and structural barriers that need to be addressed to increase residential integration.

- I. Our organizations strongly support HUD's proposed information collection and urge HUD to collect this information as expeditiously as possible.

Our organizations support HUD's proposed information collection. Data on service area boundaries is essential to complete the Affirmatively Furthering Fair Housing Data and Mapping Tool (AFFH-T) so that it can be used by PHAs using the Assessment Tool for PHAs. The AFFH-T is an important resource for use by PHAs, residents, advocates, and other stakeholders who are engaging in the Assessment of Fair Housing (AFH) process. This information is also highly relevant for informing policies related to a range of HUD programs and operations. Service area data will help PHAs carry out HUD's mission to provide safe and affordable housing to low-income families and help further desegregation and other fair housing goals.

As HUD has noted previously, the finalization of the Assessment Tool for PHAs in January 2017 did not trigger PHAs' obligation to conduct and submit an AFH; that obligation will not be triggered until the necessary data is available.² HUD cannot complete the AFFH-T for PHAs without these service area boundaries. Thus, the collection of this information is critical for the further implementation of HUD's 2015 AFFH regulation. **We urge HUD to collect this information as expeditiously as possible, so as to prevent even further delays to the triggering of the Assessment of Fair Housing requirement for PHAs.** To that end, we commend HUD for making this process electronic, and for presenting PHAs with service area boundaries for review and affirmation or correction. In effectuating this information collection, we ask HUD to emphasize to PHAs the importance of reviewing this information and responding to HUD in a prompt manner.

² Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies: Announcement of Final Approved Document, 82 Fed. Reg. 4373, 4373 (Jan. 13, 2017) ("While this Assessment Tool [for PHAs] has been approved, this Notice does not trigger the obligation of PHAs to conduct and submit an AFH in accordance with 24 CFR 5.160, as HUD has not yet provided PHAs with the data they will need. As HUD makes data available for certain PHAs, HUD will publish, in the **Federal Register**, a Notice announcing the availability of data for certain PHAs, triggering their obligation to conduct and submit an AFH, and will post such Notice on the HUD Exchange.").

- II. HUD should require PHAs to revise the on-line tool with data based on where the PHA is *currently authorized* to administer rental assistance under state and local law.

HUD has previously acknowledged that it “understands that each PHA covers a different geography and that each State’s law authorizes the PHAs’ operations differently.”³ Furthermore HUD stated it “will take this into account when obtaining the service[] areas of PHAs.”⁴ HUD will receive more reliable and accurate data if it clarifies what is required of PHAs in the information collection process. In the notice, HUD states that it will request information on a PHA’s applicable jurisdiction by presenting PHAs with an estimate of their service area boundaries based on the location of its public housing and vouchers in relation to units of local government, via an on-line tool.⁵ PHAs will then be asked to revise the estimates, if appropriate, to reflect, “areas in which they are authorized to operate under state and local law, not only the areas in which they currently operate.”⁶ Where a PHA is *authorized* to operate, however, is a complicated question of state law. A less complicated question to answer, and one that will yield more reliable, expedient, and consistent responses, is where the PHA is *currently authorized to operate*, including areas in which the PHA has an agreement with another PHA to administer rental assistance.

- A. A PHA’s potential service area is a complicated question of state law and in some cases expands far beyond jurisdictional boundaries.

Defining the areas in which PHAs are “authorized to operate” under state and local law is a complicated question that requires knowledge of (1) state-enabling legislation and (2) the authorization to broaden jurisdictional boundaries using joint power agreements and other agreements between PHAs.

First, PHA jurisdiction is generally limited to the authority granted in state-enabling statutes.⁷ Individual states enable the formation of a range of PHAs and tend to explicitly enable a combination of municipal,⁸ county,⁹ state,¹⁰ and regional¹¹ PHAs. Second, even where a PHA is operating within its geographic boundary, PHAs in many states may use the authority granted by joint powers statutes to extend their jurisdiction and service area. For example, some PHAs have used the authority granted by joint powers statutes to form consortia or other voluntary regional housing agencies, which broaden the PHA’s service area.¹²

³ Affirmatively Furthering Fair Housing: Assessment Tool for Public Housing Agencies—Information Collection: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995, 81 Fed. Reg. 64,475, 64,493 (Sept. 20, 2016).

⁴ *Id.*

⁵ Proposed Notice of Information Collection at 47,237.

⁶ *Id.*

⁷ 42 U.S.C. § 1437a(b)(6)(A); 42 U.S.C. § 1437a(6)(B).

⁸ See e.g. OR. REV. STAT. § 456.075.

⁹ See e.g. COLO. REV. STAT. § 29-4-508

¹⁰ See e.g. HAW. REV. STAT. § 356D:1-29.

¹¹ See e.g. TENN. CODE ANN § 13-20-502(a).

¹² 1974 Iowa Op. Att’y Gen. No. 74-10-13 (Iowa A.G.); 1974 WL 353879.

While the question of where a PHA is generally authorized to operate is important data for HUD to obtain, due to the legal complexities inherent in addressing the jurisdictional questions above, it is unlikely that HUD will be able to gather uniform and reliable data about *potential* service areas at this time. Therefore, we suggest that HUD clarify that for purposes of this notice, PHAs should revise the tool and provide data based on where the PHA **is currently authorized to operate** – even if they are not currently administering rental assistance in that area.

Massachusetts provides an excellent example of the complexities surrounding PHA jurisdiction and why it is important to simplify the definition. By court order, PHAs in Massachusetts have statewide jurisdiction to administer Housing Choice Vouchers. However, despite the fact that PHAs across the state are authorized to administer vouchers anywhere in Massachusetts, many still employ the portability procedures set forth in federal regulations, whether as a matter of comity to other PHAs, due to distance and the resulting costs of inspection, or because they lack understanding of the judicial order.

It is important to note that there may be areas in which a PHA is currently authorized to administer rental assistance but it is not doing so due to external factors such as source of income discrimination or high rents. While the difference between areas where the PHA is actually providing rental assistance and where it could provide rental assistance is a central consideration in any fair housing analysis, it is impractical to capture that data in HUD's on-line tool. Therefore, HUD should make clear that PHAs must take this data into consideration when assessing fair housing barriers elsewhere in its AFH, but not in response to this particular data collection to define service area boundaries.

- B. HUD should require PHAs to report data on where they can currently operate including where their service area has expanded due to an agreement with another PHA.

In lieu of requiring PHAs to report on the authorization to administer rental assistance more generally, HUD should explicitly require PHAs to include as part of their service area all geographic regions in which it is partnering with other agencies to administer housing programs including:

- Areas in which it provides services as part of a regional housing collaborative (even if the PHAs are not consolidated);
- Areas where the PHA administers vouchers as part of a portability agreement (including “absorption agreements” where PHAs agree to absorb each other’s vouchers once ported) with a partner agency typically to reduce the administrative burdens associated with the portability process (outside of what is required under the portability regulations with respect to billing and other paperwork);
- Any specific areas in which it provides services through an MOU or joint powers

- agreement; and
- If the agency participates in a consortium, the joint jurisdiction of the entire consortium.

Adding this language will provide clarity and consistency to the information collection process. It will also provide important data to consumers about PHA jurisdiction.

Importantly, vouchers that are ported to other jurisdictions under a classic portability arrangement should not be included in the service area definition or on the PHA's service area map, although it is essential information for a fair housing analysis. HUD should make publicly available data that shows where participants are porting their vouchers.

- III. HUD should be clear in its information collection and subsequent Assessment Tool instructions that PHA responses do not indicate where they could administer rental assistance if the PHA entered into a consortium or other type of agreement with another PHA.

HUD should clarify that the responses to the information collection do not indicate whether the PHA can administer rental assistance by entering into an agreement with another PHA using the mechanisms described above. Additionally, any subsequent guidance, Assessment Tool instructions, or updates to the AFFH Rule Guidebook should indicate that the service area boundaries may not demonstrate the fullest possible extent of PHA jurisdiction that is allowed under state law, but that the service area information provided represents the boundaries of where the PHA is currently authorized to administer rental assistance.

This clarification is important from a general fair housing perspective, as well as for the AFH process more specifically. Understanding the full range of geographies that a PHA could serve will reveal the extent to which PHAs can expand fair housing choice by, for example, opening up lower poverty neighborhoods to assisted families. In the AFH process, a PHA using mechanisms such as participation in a consortium, or expanding its service area through a joint powers agreement, present potential options for PHAs considering goals to expand housing choice for the families they serve. Furthermore, if there are state or local barriers to expansion of a PHA service area, this may, under certain circumstances, constitute a contributing factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. As PHAs complete the AFH process, either alone, with other PHAs, or with state or local governments, PHAs would benefit from guidance from HUD about ways in which expansion of PHAs service areas can be one potential avenue by which they can affirmatively further fair housing. Of course, the extent to which any action or policy affirmatively furthers fair housing depends upon local and regional circumstances.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Deborah Thrope (dthrope@nhlp.org) should you wish to clarify our organizations' position on these important issues.

Sincerely,



Deborah Thrope and Renee Williams, National Housing Law Project



Barbara Sard, Center on Budget and Policy Priorities



Ed Gramlich, National Low Income Housing Coalition



Philip Tegeler, Poverty & Race Research Action Council