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Affirmatively Furthering Fair Housing: Streamlining and Enhancements

To Whom It May Concern:

The Council of State Community Development Agencies (COSCDA) represents state housing and community development agencies responsible for administering the Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program and the McKinney-Vento Homeless Assistance Programs. On behalf of the members of COSCDA, I respectfully submit the following comments and questions regarding the Streamlining and Enhancements of the Affirmatively Furthering Fair Housing requirements.

General Comment:

COSCDA and its members recognize the importance of affirmatively furthering fair housing by analyzing and addressing impediments to fair housing. Years of housing discrimination have led to many lacking true housing choice. By observing the Fair Housing Act and other authorities, state grantees of CPD funds take very seriously the requirement to fully incorporate fair housing considerations into their existing planning processes. States recognize this need and requirement and are willing to work to evaluate fair housing choice in their state by identifying barriers to fair housing choice, setting fair housing goals to overcome those barriers, and ultimately taking action to overcome these barriers.

For many years, HUD did not properly respond to its statutory obligation to affirmatively further fair housing. The Analysis of Impediments (AI) process developed by HUD was not effective in ensuring that states and communities were using their HUD funds to expand housing choice, thereby fulfilling their requirement to affirmatively further fair housing. Clear, unambiguous instructions on completing an AI were not provided by HUD to CPD grantees. For some time now, states have not fully understood the specifics regarding HUD's expectations for states to affirmatively further fair housing. We appreciate the attempt HUD made in the last administration to fulfill HUD's obligation regarding this important aspect of the Fair Housing Act, and to clarify the requirements to affirmatively further fair housing. HUD promulgated the AFFH rule, developed the Assessment of Fair Housing (AFH), and proposed a separate

state tool as a guide to developing a state AFH. However, the design of the proposed state AFH Tool went well beyond a reasonable analysis at the state level of fair housing issues.

States have many differences from entitlement communities and, given their larger geographies and oversight responsibilities for smaller local sub-grantees, must be viewed differently by HUD. The amount of data requested in the state Tool was extraordinary and would take an enormous amount of time for states to complete. As we included in our written comments to the proposed state Tool, states strongly oppose HUD's proposal that states include entitlement areas in their AFHs. The cost to complete the state Tool would be excessive. In addition, HUD's requirement to assess disparities in opportunity areas went beyond what is necessary to affirmatively further fair housing. Although HUD provided national data and charts, much of the information required in the State AFH would have to be accessed at the local level. States should be provided flexibility in collecting, analyzing, and providing this local data. Collaboration with PHAs would be problematic. HUD's data is not adequate or useful in rural areas, where much of the state has responsibility.

COSCDAs encourages HUD to continue to refine the AFFH regulation and Tools to make it meaningful and feasible for state grantees.

ANPR Questions:

COSCDAs responses to the questions included in the ANPR are below:

- 1. What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (i.e., the Consolidated Plan, Annual Action Plan, or PHA Plan)?**

Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?

The AFFH community participation and consultation obligations should be fulfilled as part of the existing Consolidated Plan (Con Plan) or Annual Action Plan requirements. The Con Plan community participation and consultation provides ample opportunity to consider any obstacles to AFFH while discussing how best to use HUD CPD funds. Those present can provide their input into how these funds can be used to address any identified obstacles. A separate or additional community meeting and/or consultation is not necessary.

During previous opportunities to comment on AFFH regulations and tools, COSCDA emphasized to HUD that entitlement communities should NOT be included as part of the State AFH or AI. Local entitlement areas are already required to conduct their own separate AFH. A duplicate analysis of entitlement communities is not necessary. For the most part, states do not spend their state CPD funds in entitlement communities, which limits their ability to affect measurable change in those areas. States do not have authority in entitlement communities' decisions on use of their HUD funds or their actions to AFFH. Reviewing entitlement communities' AFHs or AIs should be optional for states, who should focus their limited resources on areas not covered by entitlements. States can have the option to consult with entitlement communities to exchange ideas on ways to jointly address fair housing concerns.

- 2. How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?**

We appreciate HUD providing demographic data with the AFH Tools to assist grantees in developing their AFH, however the last data provided by HUD for the local AFH tool and the proposed state Tool did not provide deep level demographic data for analysis for states with large geographies and particularly for rural areas. States should be allowed the flexibility to determine how data-driven fair housing planning for rural and other areas of the state can be done at little or no cost to the state. The use of HUD-provided data should be optional. States provide CPD funds to mostly rural balance-of-state areas where housing data is sometimes difficult to obtain. Small rural towns and localities do not have the resources to routinely collect the type of meaningful data needed to analyze fair housing choice. States will most likely need to obtain and analyze this information in the balance-of-state areas at the county level and below, to the extent that it currently exists or could be attained without extensive and costly efforts. This state or local information can be presented in place of or in addition to the HUD-provided data. To be helpful, HUD could provide examples of state or local-level data that they recommend that states use.

In addition, States should be able to provide qualitative information as well, to highlight or supplement and enhance their quantitative information provided.

- 3. How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERs), or utilize an alternative structure?**

COSCEA agrees that states should provide a reasonable report of their analysis, which would include a description of how the state determined the impediments in the non-entitled areas of each part of the state, including the results of public participation and consultation, how the state determined the recommendations to overcome the obstacles, and the development of goals. The level of the analysis must be appropriate, however, for states and must not create an unreasonable administrative burden. States cannot be expected to provide the same level of detail as entitlement communities, given their large geographical area. The CAPER should be used to annually report on the progress made toward the goals that were identified in the analysis. A new AFH or AI should be completed every five years, along the same timeframe as the Con Plan.

- 4. Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able**

to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?

HUD can provide a list of types of possible obstacles to fair housing that program participants must address as part of their AFFH efforts, however states should be able to determine the number and types of obstacles to address. Regarding regional collaboration, states should be allowed the flexibility to determine the extent of regional collaboration that will allow more effective action against obstacles. State should not be required to collaborate with local PHAs, but perhaps HUD could provide a monetary incentive to collaborate regionally and with PHAs through pilot programs at the state level, since PHAs often are not familiar with CPD programs and may not have the staff and resources available for doing a fair housing analysis. As we wrote many times previously in our comments on the Tools, states should NOT be held accountable for areas outside of their control. Examples of obstacles that states could seek to address that can be determined in a broader, statewide analysis were included in the proposed state Tool.

It is important that states and other HUD grantees know what fair housing analyses, whether AFH or AI, will be acceptable to HUD. Perhaps HUD could include some minimal criteria for acceptance in an accompanying guidebook that allows for grantees to expand on. Examples would be helpful.

5. How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?

States take very seriously the requirement to AFFH, and states are aware that there are many obstacles to fair housing goals in their state. That being stated, states should be allowed to establish their objectives to address obstacles and to develop milestones for measuring progress. The State AFH can list the obstacles and explain how the state will address them as well as the metrics for measurement of progress. HUD will see the identified obstacles in the analysis, and can determine whether the state has developed reasonable and effective goals and action steps to meet those goals.

6. How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?

Grantees need measureable goals that can be reviewed every year to see that progress has been made toward meeting those goals. Some of the obstacles may have been identified in balance-of-state areas that did not apply for state CPD funds. How can the state review efforts to AFFH in these areas? The state has no jurisdiction over these areas and there are limits to state authority to impact local zoning decisions and other policies at the local level. However, for state CPD sub-grantees, the state can

monitor to see the progress that has been made towards their stated goals and objectives according to a reasonable timeframe.

HUD needs to clarify the conditions for HUD rejection of the AFH. Many local entitlement communities submitted their AFHs after using the local AFH tool, however, many AFHs were rejected by HUD. Grantees need to have some guidance on what is acceptable to HUD as an “approved” AFH, and need information on HUD’s approval process. Completing a State AFH can be very expensive, and states do not want to duplicate this costly process multiple times due to misunderstandings of what is expected.

7. Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e., “safe harbors”), and if so, what should they be?

HUD should not specify safe harbors. HUD could offer examples of actions that they see as effective at fulfilling the requirement to AFFH, but not as safe harbors. Different obstacles require different actions that depend on the specific state, therefore it would be difficult for HUD to develop a complete safe harbor list.

8. Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist program participants in meeting their AFFH obligations?

Allow grantees to balance re-investment in troubled neighborhoods with creating low-income housing in “opportunity areas”. HUD should be careful to assure that the rule is not used to shift public resources away from low-income areas of minority concentration. We do not want grantees to interpret the AFFH rule as an encouragement to essentially red-line low-income areas of minority concentration from receiving CPD funds as a way of deconcentrating poverty. These communities continue to need revitalization/reinvestment, anti-displacement programs, and alleviation of substandard housing conditions, consistent with the purposes and requirements of some of the core programs governed by the Con Plan, as well as other HUD and other community development programs. Grantees should be given the flexibility to determine fair housing goals and actions that should include improving low-income neighborhoods of color, as well as improving social and physical mobility, and providing opportunities to live in other areas that might have access to better education, jobs and services. The policies contained in an AFH or AI should focus on providing options to allow equal choice in housing, free from discrimination and not imposing a massive shift of funding to one geographic area based on social and demographic data.

Modify the requirement to address disparities in access to opportunity. In the proposed state Tool, states were required to address disparities in access to non-housing “opportunities” such as education, employment, public health and safety, and transportation and environmentally healthy neighborhoods which goes beyond what we feel is necessary to affirmatively further fair housing. It will be unbelievably difficult for state agencies with the mission to do housing and community development to complete the type of analysis that would be required regarding the “Disparities in Access to Opportunity Areas”. HUD asked for an incredible amount of information to be researched, analyzed and provided. COSCDA recommends that HUD either provide its own complete data on disparities in opportunity areas to states that can be used in the development of the AFH or significantly change its expectations on the extent of analysis of the basic opportunity areas, and that HUD provide clear guidance on its

expectations of states (including any responsive goals, milestones, and corresponding timeframes appropriately tailored to states) regarding these disparities.

HUD-provided maps and data charts were not very useful for states. These could assist in the development of the state AFH, however the quality of the maps was insufficient to provide an accurate assessment of fair housing condition throughout a state. COSCDA recommends that HUD-provided maps include at least county-level data or smaller, that data include margin-of-error, and that states have the flexibility to determine when the inclusion of fine-scale local data is appropriate. If HUD plans to provide maps and data charts to assist state grantees, we ask that HUD consult with COSCDA and other state grantees when these maps are released and provide ample opportunity for additional comments.

Emphasize that states are not required to collaborate with PHAs, but encouraged. COSCDA recommends that HUD clearly state that the inclusion of QPHAs in the State AFH is optional, and that HUD should not require states to collect and analyze fair housing information regarding QPHAs in the state. When states choose to collaborate with QPHAs, states should not be the responsible entity for collecting and analyzing information from the QPHAs.

COSCD A has many other comments regarding the proposed state Tool, which can be found [here](#).

Conclusion

States take seriously their requirement to AFFH, however states will always be very limited in how they can actually use CPD funds to effectively further fair housing. CPD funds are but a small part of what is needed at a state level to successfully address all impediments to fair housing. In some instances, affecting change may require reforms to local policies that are beyond a state's legal authority. Many fair housing challenges are best addressed at the local level. States should be able to set meaningful, achievable fair housing goals based on the resources they control and authority they legally hold.

COSCD A recommends that HUD seek input from COSCD A and our members on the development of requirements for states to affirmatively further fair housing. When HUD began work on the proposed state tool in 2016, COSCD A participated in a working group of state grantees with HUD that reviewed the proposed state Tool and provided comments to HUD on how it could be improved. HUD commented that it felt that the process was very helpful. COSCD A stands ready to assist HUD in any way to ensure that the end product is a useful, meaningful and achievable mechanism for states to assess fair housing.

Please do not hesitate to contact me at 202-293-5820 if you need more information on any of our comments or recommendations.

Sincerely,

Dianne E. Taylor
Executive Director