



THE UNITED STATES
CONFERENCE OF MAYORS

March 6, 2018

Office of General Counsel
Regulations Division
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0001

Re: [Docket No. FR-5173-N-15] - Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

Dear Office of General Counsel,

We thank you for extending the deadline for submissions of the Assessment of Fair Housing (AFH) for U.S. Department of Housing and Development (HUD) consolidated plan participants to improve the AFH process. As national associations representing local governments, we have concerns with the existing assessment process and tool and urge HUD to accept the following recommendations.

Reduce the Administrative Burden and Financial Cost for Consolidated Plan Participants

We request that HUD reduce the administrative burden and cost of developing the Local Government Assessment Tool by taking the following actions to streamline the AFH process.

- **Consolidated Plan (Con Plan)**
 - Require local government Con Plan participants to focus on an analysis of housing issues only.
 - Avoid duplication of AFH with the Con Plan (duplicating research, data)
 - Incorporate the Affirmatively Furthering Fair Housing (AFFH) Local Government Tool into the Con Plan.
- **AFH Tool Section B iii: Disparities in Access to Opportunity** – We urge HUD to eliminate this section of the AFH Tool for Local Government Con Plan participants. CDBG, HOME, ESG and HOPWA grantees have no expertise or control over these areas. If HUD is interested in pursuing this information, we recommend that the department work through the federal Departments of Education, Transportation, Labor, Health and Human Services and the Environmental Protection Agency to provide this analysis.
- **AFH Tool Section C: Publicly Supported Housing Demographics** – We request that HUD require local public housing authorities (PHAs) to complete this analysis.

Improve User Interface

- The User Interface, at a minimum, should be made easier to use or ideally be replaced by a template in IDIS's e-Con Plan.

- The table formatting tools are burdensome resulting in tables that spread over multiple pages and are difficult to read.
- It is difficult to copy and insert tables, graphics and maps. They must be relegated to a supplemental document attached at the end which makes the narrative hard to follow.
- The User Interface document should be exportable to Word to make it easier to create a document to share with the public.
- The HUD provided tables (and maps) should be built into the template as they are in the e-Con Plan so that the narrative can follow the tables rather than having to toggle back and forth from the table to the narrative.
- The User Interface should enable users to export the maps as jpegs and pdfs rather than having to rely on the print function to save as pdf. The resulting files are often too large to share and are very slow to open.
- The data and maps in the User Interface are not the same as the data in the public version of the data and mapping tool, leading to confusion. The data and maps should be uniform.
- The User Interface required grantees to use old versions of the data while more up to date versions were available to the public in the mapping and data tool. This should be corrected.

Correct Data Issues

- Grantees should be able to use the most recent data set rather than out of date earlier sets. It is confusing to the public to have more recent data available in the public mapping and data tool.
- The demographic trend data source was not consistent across the years of the trend analysis (Brown Longitudinal data for 1990 and 2000, Census data excluding multi-racial individuals for 2010). We question the value of the trend analysis going back to 1990. A comparison of 2000, 2010 and 2016 (or most recent Census/ACS) would be more useful.
- The opportunity indexes should be dropped. They were not intuitive and the data on which they were based was questionable.
- The school proficiency index presumed that school choices are neighborhood-based rather than citywide by lottery (which is the case in some communities) and only used 4th grade test scores.
- The segregation index only allowed for comparing the distribution of two racial/ethnic groups at a time. It overstates the degree of segregation by not considering multi-racial areas. Also, the index only focused on dissimilarity of whites with other racial/ethnic groups and did not provide for analysis of dissimilarity of blacks with Asians, etc.
- The jobs proximity index did not take into consideration public transportation access.
- HUD did not provide data on the distribution of rental and ownership housing although this data is readily available from the American Community Survey.

- The regional data and required regional analysis by race/ethnicity groups, families with children and national origin from every category of fair housing issues is not useful for local government grantees who are not submitting a regional AFH. This is more relevant for states. It should be optional for local governments.
- R/ECAPs identified on the maps did not agree with R/ECAPs identified in the raw data for the same data set. This should be consistent.
- The PHA data is inaccurate – state-funded projects are not included and some of the federal public housing projects are not contained within the HUD data.
- Further, to assist local governments in providing a full fair housing analysis in their communities, HUD needs to make the following data easily accessible:
 - Home Mortgage Disclosure Act data
 - Federal and State Fair Housing Complaint data. Often Federal and State fair housing agencies make it difficult to collect this data directly from them.

Improve the AFH Review and Approval Process

We recommend that HUD have one point of contact that understands the entire review process and can provide guidance so that there are no mixed or conflicting messages and/or guidance between the local Fair Housing and Equal Opportunity Office (FHEO), Region FHEO, and Headquarters FHEO. We recommend that HUD develop a checklist to use in reviewing and approving the AFH Tool and provide grantees with the checklist so that all parties have a clear and consistent process to follow.

Limit Legal Liability for Grantees

We recommend that HUD provide ongoing technical assistance to grantees on the legal requirements to affirmatively further fair housing. We support a robust community participation process that involves local fair housing and civil rights groups and encourage grantees to maintain ongoing communications with these groups throughout the assessment process and beyond.

Exempt Small Grantees

We recommend that HUD exempt small CDBG and HOME grantees – those that receive \$2 million or less in federal CDBG or HOME dollars – from developing the AFH tool. Instead, we recommend that these grantees submit an AFFH certification with their Con Plan. The AFFH Con Plan certification obligates a program participant to certify that it will affirmatively further fair housing, which includes the following actions:

- Conduct an analysis to identify impediments to fair housing choice within the jurisdiction
- Take appropriate actions to overcome the effects of any impediments identified through the analysis
- Maintain records reflecting the analysis and actions taken in this regard

Use Alternative Approach

The AFFH rule places a burden on local governments to develop and pursue fair housing remedies that are beyond the scope of activities that can be addressed with HUD Community Planning and Development program funding sources. A more appropriate approach would be to strengthen the requirements to consider fair housing issues on a project by project basis, as project decisions are the only ones that CDBG/HOME

program staff have direct control over. Rather than utilizing the AFFH requirements, HUD should set specific criteria for project site and neighborhood standards that are consistent across all programs.

HOME Regulation 92.202 already require participating jurisdictions (PJs) to have site and neighborhood standards for new rental housing compliant with 24 CFR 983.6(b). These regulations require PJs to avoid placing new assisted units in areas of low income and/or minority concentration and ensure that the new units are proximate to employment and transportation opportunities. There are no similar regulations for the CDBG program specifying site and neighborhood standards (other than the general requirement to comply with the Fair Housing Act).

Stricter site or neighborhood standards would likely raise the development costs of new rental housing as it would further mandate project sites that would likely be more expensive. Therefore, HUD should consider raising subsidy limits for affordable projects located in prime areas of opportunity where land and development costs are higher.

Additional Recommendation

We recommend that HUD update the CDBG program to allow grantees to construct new housing directly. Currently, grantees must use a Community Based Development Organization (CBDO) to execute this program activity.

We thank you for the opportunity to comment on the AFH process and tools. If you have any questions regarding the comments, please contact:

- Vicki Watson, National Community Development Association at vwatson@ncdaonline.org
- Daria Daniel, National Association of Counties at ddaniel@naco.org
- Gene Lowe, U.S. Conference of Mayors at glowe@mayors.org

Sincerely,

National Community Development Association
National Association of Counties
U.S. Conference of Mayors