



THE UNITED STATES
CONFERENCE OF MAYORS

October 15, 2018

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0001

Re: [Docket No. FR-6123-A-01] - Affirmatively Furthering Fair Housing: Streamlining and Enhancements

Dear Office of the General Counsel:

Background of the Associations Providing Comments

NCDA

The National Community Development Association is a national non-profit organization which represents over 400 local government agencies across the country which administer U.S. Department of Housing and Urban Development (HUD) community development and affordable housing grants. NCDA's members administer the CDBG program, HOME program, Section 108, ESG program, Continuum of Care program, HOPWA, and lead hazard grants.

NACo

Founded in 1935, the National Association of Counties unites America's 3069 county governments through national advocacy, best practices and research.

USCM

The U.S. Conference of Mayors is the official non-partisan organization of cities with populations of 30,000 or more. There are 1,408 such cities in the country today.

On behalf of our collective members, thank you for the opportunity to comment on this advanced notice. The comments below are based on a survey of CDBG grantees. A total of 107 grantees representing all regions of the country responded to the survey. The respondents included a mix of small to large grantees; administering between \$310,000 and \$57 million in annual CDBG funds. As national associations representing local governments, we urge HUD to accept the following comments in crafting a revised Affirmatively Furthering Fair Housing (AFFH) regulation and process.

What type of community participation and consultation should grantees take in fulfilling their AFFH obligations?

All grantees should take actions to solicit community participation and feedback in fulfilling their affirmatively furthering fair housing obligations. The consultation should be part of the Consolidated Plan process. Grantees should be given the flexibility to decide what actions to take in soliciting community participation and feedback. These actions could take the form of public hearings, focus

groups, meetings, surveys, community listening sessions, forums and workshops. The effort should be broad and inclusive of groups and individuals that represent all protected classes.

For jurisdictions that receive an annual CDBG allocation greater than \$2 million, the community participation and consultation process should mirror that of the current Consolidated Plan process at 24 CFR Part 91 which includes an extensive list of entities that grantees must consult with as part of the AFFH community consultation process. According to the Con Plan regulations at 24 CFR Part 91.100, the consultation must occur with organizations that have relevant knowledge or data to inform the AFFH planning process and that are sufficiently independent and representative to provide meaningful feedback to jurisdictions. This list should include, but is not limited to, the following entities:

- public and private agencies, including community-based and regionally-based organizations that represent protected class members
- organizations that enforce fair housing laws
- business and civic leaders
- public housing agencies
- affordable housing providers
- local elected officials
- public

Should public input on AFFH be included as part of the Consolidated Plan process or conducted as part of a separate process?

YES. The respondents, 74 percent, overwhelmingly said the public input process should be included as part of the Consolidated Plan process, instead of being conducted separately. Including the process in the Con Plan will decrease administrative burden and cost for grantees and align the HUD-required planning components.

How should the rule weigh the costs and benefits of data collection and analysis?

As it stands now, the data collection and analysis process outweigh the costs for many jurisdictions with limited capacity and limited funds to complete the task. The existing process must be streamlined to reduce burden and costs for *all* grantees. It should not be a one size fits all approach, however. The extent of adherence to data collection and analysis in developing a plan should vary depending on the amount of funding awarded to a community. The collection of information will likely yield more benefit for larger grantees that administer multiple HUD funding (and other) sources and that have the capacity to carry out a wide range of housing and community development activities. For small grantees administering only a small amount of CDBG and/or HOME funds for a narrow range of activities the data collection and analysis will impose significant burden and cost.

Small grantees should not be expected to do the same depth of analysis as large grantees. Small grantees that receive \$2 million or less in CDBG annual funding should be allowed to follow the Analysis of Impediments (AI) requirements and adjust the requirements based on capacity. The AI provides guidance to grantees on assembling information and data for conducting an analysis of impediments to fair housing choice. The AI also encourages jurisdictions to use existing available data, including local data. Most jurisdictions, but small jurisdictions, particularly, do not have the resources to hire staff or a consultant to collect data and conduct their fair housing analysis. Many of these jurisdictions have one

or two people to staff their entire CDBG program. Although the CDBG program provides one of the highest federal administrative caps at 20 percent, it is still insufficient to fully compensate for the large amount of regulatory oversight and monitoring that is required of grantees. Further, the HOME administrative cap of 10 percent is also inadequate in providing administrative resources to grantees and we urge HUD to support an increase in the cap.

Data collection and analysis can take a great deal of time in the overall development of any plan. Even with HUD providing the data, the analysis process takes time. Separate additional funds should be provided to grantees to collect and analyze the data.

Should the proposed rule allow grantees to develop or use the data of their choice or should all grantees be required to use a uniform data set?

According to the survey results, the proposed rule should provide both options. HUD should provide a uniform data set for grantees to use but allow grantees the option to develop their own data set or use local data or the data of their choice to supplement or replace the HUD data set.

HUD should continue to maintain its national database for those grantees with an approved AFH and to provide access to pre-established data sets for other grantees to use at their discretion. However, communities have found HUD's data to be out-of-date and inaccurate, in some cases. Any data provided by HUD must be current, accurate, simple, user friendly and clear.

Instead of a data-centric approach, should jurisdictions be allowed to rely upon their own experiences?

Both. HUD should give jurisdictions the flexibility to use both a data-centric approach and/or allow jurisdictions to rely upon their own experiences.

Should grantees be required to provide a detailed report to HUD on the analysis performed or only summarize the goals?

No. Of the 103 respondents that answered this question on the survey, 73 percent said that grantees should only be required to provide HUD with a summary of the goals, not a full detailed report.

Should grantees continue reporting annually on their AFFH actions and results in their annual action plan and CAPER?

Yes. Of the 105 respondents that answered this question on the survey, 77 percent said that grantees should continue reporting annually on their AFFH actions and results in their annual action plan and CAPER.

Should AFFH planning and/or results be integrated into existing report structures as Con Plans and CAPERS or utilize an alternative structure?

Yes. Of the 104 respondents that answered this question on the survey, 85 percent said that AFFH planning and/or results should be integrated into existing report structures such as Con Plans and CAPERS.

Should HUD incentivize grantees to collaborate regionally to identify and address obstacles to affirmatively further fair housing?

Yes. Of the 102 respondents that answered this question, 74 percent said that HUD should incentivize grantees to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing.

Jurisdictions in metropolitan areas, particularly, should be incentivized to work together to identify and address obstacles. Regional data collection and analysis that cover multiple jurisdictions should also be incentivized for metro areas because housing markets are broader than the individual CDBG jurisdictions. HUD should also incentivize contiguous consortia to work together to identify and address obstacles.

Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles?

Yes. Of the 102 respondents that answered this question, 82 percent said that HUD should incentive 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?

Obstacles will vary from community to community and jurisdictions should be given the flexibility to determine the obstacles and address them accordingly. But the focus, of course, should be on any actions that restrict or impede housing choice for the protected classes of which the grantee has control and can reasonably be expected to address with their federal grant funds.

Examples

- Rehabilitation of affordable housing
- Unfair housing practices
- Physical disability access
- Zoning requirements and building codes (to the extent that grantees have any control over these areas)
- Lead safe housing
- Lack of affordable housing in opportunity neighborhoods and communities
- Revitalization of low-income neighborhoods

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?

Each jurisdiction is different, so flexibility is needed. Fair housing is an issue that can have large variances from area to area depending on population size, demographics, and obstacles. Jurisdictions must be given the utmost deference in establishing objectives to address obstacles to identified fair housing goals and the setting of metrics and milestones. Technical assistance and guidance from HUD would be helpful. Practices from other communities should be shared with grantees.

How should HUD evaluate the AFFH efforts of grantees? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable?

Does the grantee take actions on the policies that are within their control? Did they accomplish the goals they said they would accomplish? Could the goals reasonably be expected to be accomplished given the grantee's resources and capacity?

1. Community participation process that includes outreach and consultation with groups and individuals represented by the protected classes.
2. Collection of data that identifies impediments to fair housing choice, including Fair Housing Act violations.
3. Jurisdictions must be given the flexibility to develop goals, objectives, and actions to address the identified fair housing obstacles.
4. HUD can evaluate the efforts through examination of annual reporting provided by grantees in their annual action plans and CAPER.
5. Any efforts made towards the goals and benchmarks identified by the jurisdiction should be acceptable.

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?

Determine a less complicated and burdensome process for *all* grantees. As we have reiterated in past comments, small grantees should be exempted from having to do an AFH. Instead, these grantees that receive \$2 million or less in annual CDBG funding should be allowed to conduct a more streamlined process that uses the AI as the basis, not the current AFFH regulations and Tool. Moreover, the regulations need to be minimized to reduce burden for all grantees. Burden and expense on both grantees and HUD regional office staff must be minimized.

The regulations should recognize the importance of investing in low-income neighborhoods. Revitalization of low-income areas should be more valued and creating opportunities in low-income communities must be supported in the regulations.

HUD must continue to provide training and technical assistance to guide communities in their efforts to affirmatively further fair housing. The development of a guidebook on collecting and analyzing data and overcoming fair housing obstacles would be helpful.

Additional Request

We request that HUD do an assessment of their AFH review process to provide answers to the following questions:

1. Were the same review standards applied to all AFHs?
2. Were there any inconsistencies relative to an AFH being accepted versus an AFH not being accepted?

Thank you for the opportunity to provide comments. If you have any questions, please contact Vicki Watson, Executive Director, National Community Development Association, at vwatson@ncdaonline.org or at 540-656-9552.

Sincerely,

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