May 23, 2016

Regulations Division
Office of General Counsel
Department of Housing and Urban Development (HUD)
451 7TH Street S.W., Room 10276
Washington, DC 20410-050


To Whom It May Concern:


Formed in 1933, NAHRO represents over 23,000 housing and community development individuals and agencies who manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers, and bring in over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to their communities. Many of NAHRO’s members, including those representing local governments, will soon be required to submit an Affirmatively Furthering Fair Housing (AFFH) Assessment of Fair Housing (AFH) to the Department of Housing and Urban Development (HUD). Therefore, we thank HUD for the opportunity to comment on the Local Government Assessment Tool (Assessment Tool).

While NAHRO 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 administrative burden the Assessment Tool will create. NAHRO has been encouraged by HUD’s intention to refine the
application of the AFFH Final Rule requirements for small entities\(^1\), but we continue to be disappointed by the Department’s unwillingness to provide the additional resources needed by all program participants in order to meet their AFH requirements.

NAHRO, along with our industry partners\(^2\), urge HUD to propose additional funding in its FY 2018 budget request, so that states, local jurisdictions, and public housing authorities (PHAs) may have the resources to develop, complete and begin to implement their AFH plans.

**NAHRO’s Broad Concerns**

This section details NAHRO’s concerns over the administrative burden felt by grantees as a result of the information collection required by the Assessment Tool.

1) **Administrative Burden of the Assessment Tool**

The current Notice asks “\[w\]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility” and solicits comment on “\[w\]ays to enhance the quality, utility, and clarity of the information to be collected.”\(^3\) Without additional funding required by local governments to complete the Assessment Tool, NAHRO believes that the Assessment Tool’s information collection is exponentially more burdensome than its associated utility. As detailed in our previous comment letters, NAHRO believes the Assessment Tool is well intentioned, but will require a tremendous expenditure of time and resources for grantees, due to the following reasons.

a) **Declining CDBG/HOME Funding**

Not only are no additional resources being made available to local governments, but resources to meaningfully enhance fair housing choice are already insufficient. Currently, the only CDBG and HOME funding that entitlement communities may use for the purpose of the AFH and Assessment Tool must come from their administration and planning set-aside. Since these funds are already significantly reduced as a result of overall Federal budget cuts, many communities will have to reduce the staff running the CDBG and HOME programs in order to carry out their AFH requirements.

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b) Need for Consultants

Since the Assessment Tool is in its early stages of implementation, it is unknown exactly how much staff time will be required to complete the tool. However, based on the tasks local jurisdictions must undertake, initial expectations from communities far exceed HUD’s estimation of 240 hours per AFH submission, particularly for each inaugural AFH submission. Due to limited staff availability and the complexity of the AFH process, NAHRO members predict hiring a consultant will be necessary to complete to the Assessment Tool in a timely manner, but grantees would be hard pressed to find the funds available to hire a consultant. There is also concern that current consultant price quotes may understate the true cost of completing an AFH, since consultants do not yet fully understand the requirements of the AFFH Final Rule and AFH process. Additionally, NAHRO is aware of a number of Request for Proposals (RFP) for AFH consultants that have been issued by HUD program participants. Some of these RFPs include partnerships between large entities, such as Los Angeles County and the Housing Authority of the County of Los Angeles. If such large entities are procuring consultants to fulfill their AFH plan, this speaks volumes to the level of staff effort required.

Even if a consultant is hired, local governments (and their joint and regional collaborators) will be unable to completely hand over the responsibilities of completing the Assessment Tool to the hired consultant, due to the tremendous amount of legal uncertainty that an AFH submission would place on entities. The staff of participating entities must stay consistently dedicated and deeply engaged with the AFH process from beginning to end, whether the local government is the lead entity or a secondary partner. While NAHRO believes this level of staff engagement is appropriate, it is also important for HUD to recognize that when communities redirect already reduced staff, this will have an impact on the ability of agencies to meet the needs of their communities in a timely manner, as they will be pulled away from running their programs, qualifying homeowners, and providing funding to nonprofits.

c) New Community Participation Requirements

The AFFH Rule requires local governments to amend their Citizen Participation Plan and mandates a new AFH community participation process. NAHRO members have found these new mandates to be disturbing, given the breadth of the new requirements and its duplication of work, since the new community participation process appears to be nearly identical to the citizen participation process that must be undertaken again later on, as part of the grantee’s Consolidated Plan. The one-size fits all nature of the AFH community participation requirements and the lack of any additional funding to pay for it will both have a chilling effect on the ability of local governments to complete the Assessment Tool in a timely and complete manner.

NAHRO believes the AFH community participation requirements should be integrated into the consolidated planning process, the Continuum of Care process, and other existing community participation requirements, rather than adding in a new and separate requirement.
2) **Additional Issues Concerning the Assessment Tool**

Besides providing responses to the questions outlined in the Notice, we request that HUD act upon the following recommendations.

a) **Technical Assistance**

HUD has provided little technical assistance to communities affected by the AFH and Assessment Tool requirements. HUD should provide comprehensive technical assistance to grantees in order to expedite learning, and to enhance the quality, utility, and clarity of the information to be collected through the Assessment Tool. NAHRO recommends HUD provide specific guidance on the role of legal counsel in the AFH process, the expectations of HUD’s Office of Fair Housing and Equal Opportunity (FHEO) in reviewing AFH plans, clarification on the impact on a community if a plan is rejected and the community’s possible recourse, how FHEO expects communities to measure the impacts outlined in their AFH plans (e.g., what are appropriate and reasonable metrics, over what time period), best practices on joint and regional Assessment Tool collaborations, and how FHEO envisions these collaborations. In short, NAHRO understands that HUD will provide technical assistance and training for grantees in the future, but in addition to this, meaningful discussion on expectations and pragmatic suggestions for meeting their AFH requirements will be needed. Also, HUD should provide grantees with sample documents, such as RFP language for those seeking consultants and Memorandums of Agreement (MOAs) between collaborators.

b) **IDIS Integration**

NAHRO urges HUD to develop an interface in the Integrated Disbursement and Information System (IDIS) so that grantees may efficiently transfer its Assessment Tool data into their Consolidated Plan and Annual Action Plans. This is an important integration that should be developed immediately. Training will be needed on this new element in IDIS, and guidance will be needed for the role of IDIS in communities where multiple AFH plans are submitted (i.e., all required parties do not collaborate).

**Solicitation of Specific Comments on the Local Government Assessment Tool**

This section provides a few specific recommendations that NAHRO believes will improve the Local Government Assessment Tool.

**Q2. Should HUD provide additional data on homeownership and rental housing, including maps and tables (e.g., data on percent of owner and renter occupied housing by area, maps showing patterns of homeownership and renter occupied housing together with demographics of race/ethnicity, and homeownership/rental rates by protected class group)?**
Yes, HUD should provide additional homeownership and rental housing data, including maps and tables. The more housing data provided by HUD, the more comprehensive the fair housing analysis will be. NAHRO recommends that the data also be provided by income level to provide local jurisdictions with an understanding of low-income populations and areas of opportunity. Additionally, special runs that join race/ethnicity data, female head of household data, educational attainment data, unemployment data, welfare assistance data, healthcare data and crime data may be helpful.

Q5. Should HUD add Home Mortgage Disclosure Act (HMDA) data to inform a fair housing analysis of lending practices and trends? Which types of data would be most useful?

Yes, HUD should add HMDA data for a fair housing analysis of lending practices and trends. This type of data would also be helpful in informing communities on which neighborhoods are declining and which are experiencing revitalization. Current HMDA data is at a per loan level, it would be useful if HUD provided aggregated data at a tract level. Additional types of HMDA data that could be useful might include, loans originated, race/ethnicity of borrower, sex of borrower, loan amount, loans for renovation, loans for multifamily developments (in areas of opportunity), owner occupancy. Additionally, information on the following types of loans would be helpful: Adjustable Rate Mortgages (ARM) loans, conventional loans, Federal Housing Administration (FHA) loans and U.S. Department of Veterans Affairs (VA) loans.

To complement HMDA data and other available housing data, NAHRO recommends that HUD provide data on banking institutions’ Community Reinvestment Act (CRA) activity, since these institutions often seek to meet the credit and investment needs of low- to moderate-income neighborhoods in their communities. Additional CRA data could help provide a better sense of how fair housing is being affected by banking institutions a jurisdiction and region.

Q6. Should HUD distinguish between 9 percent and 4 percent tax credits in the LIHTC data being provided, including in maps of development locations?

Yes, the LIHTC data provided should distinguish between the 9 percent and 4 percent Housing Credits. Since the 9 percent Housing Credit is extremely competitive and the 4 percent Housing Credit is non-competitive and more readily available, it could be important for communities to distinguish between the two to better understand where and how each Housing Credit is being used. Distinguishing could also help determine the effect of a state’s QAP on the quality and location of LIHTC developments. HUD should also provide additional data on Private Activity Bond (PAB) allocations, since PAB-eligible projects are often also eligible to receive 4 percent Housing Credits, such information may help communities understand their landscape of available federal affordable housing financing tools.
Q7. Should HUD make any other changes to the Local Government Assessment Tool to facilitate joint or regional collaboration or facilitate a meaningful fair housing analysis and priority and goal setting?

At this stage of implementation, HUD should refrain from pushing grantees to collaborate without additional time to absorb the requirements of the Assessment Tool and without concrete HUD guidance that provides - in great detail - what an Assessment Tool collaboration will look like. The Assessment Tool requires all joint and regional collaborators to certify that each participant will take “meaningful actions” to further the goals identified in its AFH. This is a very hefty certification requirement that could leave each collaborating participants vulnerable to legal liability. At the very core of the concerns felt by local governments (as well as states and PHAs), there is anxiety over what the coordinating mechanism in a collaboration will look like, how to establish a partnership when a relationship did not previously exist, how to ensure that each collaborator’s investment of financial and staff resources is equitable, and how to ensure each collaborating partner will hold up their end of the AFH responsibilities.

As always, NAHRO is appreciative of the opportunity to comment on this important notice. We look forward to continuing our work together to find a reasonable and appropriate mechanism for furthering the goals of the Fair Housing Act. If I can provide any additional information or clarification regarding our suggestions, please do not hesitate to contact me at jhsu@nahro.org.

Sincerely,

Jenny Hsu
Community Development Policy Analyst