September 22, 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 receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in 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 concerned about 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, but we are disappointed by HUD’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, 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.

Through the 30-day notice, HUD is specifically soliciting comment from members of the public and affected program participants regarding the following:

(6) Whether the inclusion of the “inserts” for Qualified PHAs (QPHAs) and small program participants will facilitate collaboration between local governments and these program participants and whether these entities anticipate collaborating to conduct and submit a joint or regional AFH. Please note any changes to these inserts that (a) would better facilitate collaboration; (b) provide for a more robust and meaningful fair housing analysis; and (c) encourage collaboration among these program participants that do not anticipate collaborating at this time. The following section provides a few specific recommendations that NAHRO believes will improve the Local Government Assessment Tool.

1) Small Program Participant Insert A (QPHA Insert)

a) Modify the Qualification Threshold

NAHRO believes that the QPHA insert in the Assessment Tool should have a qualification threshold of (at least) 2,000 total units of public housing and Section 8, instead of 550 units. HUD estimates that the PHA Assessment Tool will take an average PHA 240 hours, or about 7 weeks, of administrative time to complete. Based on observations from NAHRO members, it is inconceivable that a housing authority with less than 2,000 units will have the staff capacity or financial means to conduct and submit its AFH through the PHA Assessment Tool. By increasing the qualifying threshold to (at least) 2,000 total units or less, many additional PHAs would be afforded the opportunity conduct an assessment of fair housing that is less administratively burdensome (compared to the PHA Assessment Tool). Additionally, this change would be beneficial to HUD staff due to the reduction in the overall number of separate AFH submissions that the Department must regularly review.

b) Streamline and Clarify Questions

The Department could better facilitate and encourage collaborations (especially among program participants that do not anticipate collaborating) by further streamlining and clarifying, to the greatest extent possible, the questions asked in the QPHA inserts. This would incentivize program participants with limited capacity to collaborate with a local government, instead of relying on consultants.


i) Data in Rural Areas

NAHRO has concerns about the availability of meaningful data in rural areas and the ability for QPHAs to gather local knowledge and data, particularly when completing the “Disparities in Access to Opportunity” section of the QPHA insert. The HUD AFFH guidebook stresses that program participants should rely on local knowledge and data in rural areas where HUD-provided data is limited. This imposes an unrealistic burden on QPHAs when they are unable to attain reliable and meaningful local data and knowledge. NAHRO suggests that HUD include explicit instructions when the following conditions occur:

1. There is no HUD-provided data or no meaningful HUD-provided data; and
2. The information gathered from community participation, including from the Resident Advisory Board, is not particularly useful in addressing the questions posed by the AFH tool.

ii) R/ECAPs in Rural Areas

NAHRO is concerned about how to appropriately define R/ECAPs in rural areas. HUD guidance states that “generally, in rural areas, poverty is more dispersed and segregation patterns often include fewer people of color. Due to these demographic differences, some rural areas may want to explore how to define R/ECAPs in their areas.” NAHRO believes that HUD should provide suggestions for what QPHAs should define R/ECAPs in rural areas. These suggestions can be articulated in the instructions for the tool or in additional guidance that HUD may promulgate.

c) Public Supported housing – Disparities in Access to Opportunity

NAHRO recommends for the “Disparities in Access to Opportunities” subsection of the “Publicly Supported Housing” section of the QPHA insert should be optional to complete for those areas without good HUD-provided data, recognizing that QPHAs have scarce staff capacity and those staff that they do have do not have the appropriate skillsets to meaningfully analyze transportation or education policies. Many QPHA only a few individuals on staff, often times they are part-time employees or they do not have the expertise for completing an AFH. Asking these severely time-constrained staff to analyze infrastructure patterns, transportation policies, and school enrollment policies will not lead to a meaningful analysis. Staff will either have to spend time conducting research or contacting other organizations to request information. Typically, there are no pre-existing relationships, so ensuring that another entity responds in a timely manner will be a challenge, if they respond at all. This type of analysis will likely fall outside the scope of any of the day-to-day activities of the typical employee at a QPHA and will require more time, effort and a higher level of competence compared to their normal and typical daily activities related to providing affordable housing services.

In the instructions to the AFH, HUD states the following:

Describe the extent to which assisted households of the QPHA have access to the opportunity assets discussed above. Identify any disparities in access to each opportunity by protected class group in the service area (and region, if applicable).

---

3 Assessment of Fair Housing Tool for Local Governments, p. 12.
4 Affirmatively Furthering Fair Housing Guidebook, the U.S. Department of Housing and Urban Development, Version 1, December 31, 2015, p. 42
5 Assessment of Fair Housing Tool for Local Governments, p. 13.
“Access” in this context encompasses consideration of infrastructure or policies related to where a person lives that impact an individual’s ability to benefit from an opportunity, such as available transportation to a job, school enrollment policies, program eligibility criteria, or local labor laws. The Department also notes that “local data and local knowledge, including information obtained during the community participation process, may be particularly useful in answering these questions.”

NAHRO is concerned about the ability of QPHAs to consider infrastructure or policies related to where a person lived that impact an individual’s ability to benefit from an opportunity, such as available transportation to a job, school enrollment policies, program eligibility criteria, or local labor laws. QPHA located in rural areas or other areas with no HUD-provided data may be forced to rely on local data and knowledge. However, there may be no meaningful local data for the same reasons that HUD was not able to provide data—it does not exist. In many rural areas, the community participation process is unlikely to yield useful local data or knowledge because the service area is large, but sparsely populated or because it is hard to collect data for other reasons, this will hamper meaningful analysis.

2) Small Program Participant Insert B (Small Grantee Insert)

   a) Modify the Qualification Threshold

NAHRO requests that the qualifying threshold for the small grantee insert be increased to local governments that are receiving a CDBG grant of $1,000,000 or less in the most recent fiscal year (FY) prior to the due date for the joint or regional AFH. The proposed insert currently requires a CDBG grant of $500,000 or less. The CDBG program limits administration and planning to 20 percent of the grant per fiscal year. NAHRO has heard from local governments that $1,000,000 in CDBG funds translates to $200,000 in administration and planning funds that are already being spent on existing CDBG administrative requirements.

CDBG administration activities (24 CFR § 570.206) include:
   ● General management, oversight and coordination
     ○ Providing local officials and citizens with information about the CDBG program;
     ○ Preparing budgets and schedules;
     ○ Preparing reports and other HUD-required documents;
     ○ Monitoring program activities;
   ● Fair Housing activities;
   ● Indirect costs; and
   ● Submission of applications for Federal programs.

CDBG planning activities (24 CFR § 570.205) include:
   ● Comprehensive plans;
   ● Community development plans (including the Consolidated Plan);
   ● Functional plans (for housing; land use and urban environmental design; economic development; open space and recreation; energy use and conservation; floodplain and wetlands management; transportation; utilities; historic preservation; etc.);
   ● Other plans and studies (e.g., small area and neighborhood plans; capital improvements program plans; individual project plans; general environmental; urban environmental design; historic preservation studies; etc.); and

---

6 Assessment of Fair Housing Tool for Local Governments, p. 19.
- Policy planning, management and capacity building activities.

The CDBG program budget has remained stagnant and small to mid-sized grantees do not have the additional funds to take on a full AFH. HUD estimates that across all local government program participants, the Local Government Assessment Tool would take an average of 240 hours, or about 7 weeks, of administrative time to complete. Based on observations from our members, it is highly unlikely that a local government receiving less than $1,000,000 in CDBG dollars would have the staff capacity or financial means to conduct and submit its AFH using the Local Government Assessment Tool. To take an additional seven weeks of work on the AFH would result in little to no funds left to run the CDBG program.

Using HUD’s FY 2015 CDBG allocations, NAHRO estimates that by increasing the qualifying threshold for the small grantee insert will allow approximately 370 additional entitlement grantees the opportunity to conduct their assessment of fair housing with a tool that is less administratively burdensome compared to the Local Government Assessment Tool. Additionally, this change would benefit HUD and its staff due to the reduction in the overall number of separate AFH submissions that the Department must review.

**b) Provide Additional 60-day Comment Period**

The Department could better facilitate collaboration, provide for a more robust and meaningful fair housing analysis, and encourage collaboration among program participants that do not plan to collaborate by providing an additional 60 days for grantees to fully review and comment on the small grantee insert. Since the proposed small grantee insert was not introduced until the 30-day notice for the Assessment Tool, communities receiving CDBG entitlement funds have not had time to fully digest the contents of the insert. Most grantees have been busy preparing their annual CAPER report these past few weeks.

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