May 10, 2016

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410-0500


To Whom It May Concern:

On behalf of our agency members—who manage over 970,000 units of Public Housing and 1.7 million Housing Choice Vouchers—and the more than 20,000 individual members that make up that National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice of proposed information collection (FR-5173-N-08) titled “Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas: Solicitation of Comment-60-Day Notice Under Paperwork Reduction Act of 1995” and published in the Federal Register on March 11, 2016. NAHRO would like to thank the United States Department of Housing and Urban Development (HUD or the Department) for the opportunity to comment on this proposed tool.

While NAHRO remains committed to the twin goals of the Fair Housing Act (FHA) to both fight intentional discrimination and to affirmatively further fair housing, NAHRO has serious concerns about this Assessment Tool for States and Insular areas, particularly as they relate to Qualified Public Housing Authorities (PHAs), should Qualified PHAs choose to complete their Affirmatively Furthering Fair Housing (AFFH) Assessment of Fair Housing (AFH) using this tool. The FHA’s mandate to affirmatively further fair housing can be done in a way that both makes a substantial on-the-ground impact, while still balancing the concerns of interested stakeholders. NAHRO hopes that the Department will consider the feedback provided in this comment letter.

1 All references to “States” should be read to include “Insular Areas.”

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This comment letter is divided into three major sections. The first section details some of NAHRO’s larger concerns with the implementation of this tool. The second section delves into specific issues with the State tool and addresses several HUD requested questions. The second section also notes issues that specifically relate to Qualified PHAs. The third section is a short, non-inclusive, list of recommendations that NAHRO proposes to improve the tool.

1) NAHRO’s Broad Concerns

NAHRO’s broad concerns reflect general points about the State tool that should be rethought. Many of these overarching comments will apply to the other tools too and would require a substantial rethinking of the tool to be implemented properly.

a) Inappropriately Prioritizing Planning Priorities

Since the tool does not take into account resource availability, it forces PHAs to prioritize fair housing activities. For all other affordable housing activities, PHAs must consider available resources (e.g., when deciding to make an investment in capital). The tool forces PHAs to set goals and take “meaningful actions” towards those goals irrespective of the other needs or priorities that the PHA may have. This centralized directive does not take into account a community’s local needs or priorities in how the PHA or community wants to allocate its scarce resources. The tool also ignores the real-world constraints under which entities operate. The question of how does a PHA balance its mandate to continue meeting local needs, while being forced into an isolated goal-setting process that ignores these priorities is one that every PHA will have to face.

b) Administrative Burden

As it has in the past, NAHRO would like to stress that the administrative burden imposed by this tool is excessive. Resources that could be put into housing related tasks are being funneled into completing the tool and its associated administrative tasks. The 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.” NAHRO does not believe that the information asked by the State tool and required by the AFFH rule is necessary to further the FHA’s mandate to affirmatively further fair housing.

Additionally, although HUD claims that this tool can be completed without the use of a consultant, in our discussions with our membership, we have found that most PHAs will be using a consultant. For many PHAs, the rule imposes a jurisdictional analysis that is too complex to be effectively completed by staff without specific statistical and mapping knowledge. As housing providers, most staff at PHAs have comparative advantages that lie in providing affordable housing services, but not providing complex statistical data analysis. Forcing PHA staff to do this analysis is an inefficient use of their scarce time.

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2 Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 12.
c) **Issues Outside the Scope of Authority and Expertise of PHAs**

NAHRO objects to those portions of the rule that require analysis outside the scope of authority for the entity that is filling out a section of the AFH. While the rationale provided by HUD in this analysis is that there are other entities that can help achieve the goals, it does not make sense to have the entity that does not have authority to achieve these goals conduct the analysis, both because that entity would not have specialized knowledge of the field and because equitable considerations would stress that the entity responsible for achieving the goals should be the one conducting the analysis.

Setting fair housing goals is another area where this concern occurs. Public Housing Authorities must set fair housing goals for activities that are outside of their scope of control. Since goals may be in topic areas that are outside their day-to-day experience, a PHA may misjudge the extent to which achieving those goals is feasible (e.g., a housing authority may not know how difficult or easy it is to change local transportation policy because it lacks expertise in policy matters and transportation matters).

d) **Lack of Additional Resources**

The AFH does not recognize the zero-sum nature of a participating entity’s resource allocation. By allocating resources to complete this process, participating entities are not allocating resources somewhere else. Those resources could be used to provide additional housing assistance. While NAHRO is aware that the Department does not control the federal budget, which is within the purvey of Congress, NAHRO notes that the FY 2017 President’s budget proposal did request additional money for PHAs and other participating entities to complete their AFH tools.

e) **Inaccessibility of HUD Data**

While HUD is providing some data to assist with the completion of the tool, this data is unwieldy and hard to understand. In some cases, it relies on complex social science indices (e.g., dissimilarity index) whose meaning is largely unintelligible to most users and the general public.\(^4\) The level of sophistication required to understand this information is at odds with the emphasis on public participation.

NAHRO believes that the Department should remember that for most employees that work at PHAs, especially those that work at Qualified PHAs, the work that an AFH requires them to do will lie outside the scope of their normal activities in providing affordable housing services. It will require them to stretch their work related skillset in a new way. NAHRO encourages the

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\(^4\) While NAHRO commends HUD on the clear table on the dissimilarity index on page 61 of its AFFH Guidebook, this table does not sufficiently reduce the complexity of understanding what the index means for a given area. As HUD states “context is important in interpreting the dissimilarity index.”
Department to remember this as they continue designing the tool and they think about the most user friendly way to present complex demographic patterns.

2) Specific Concerns about the State Assessment of Fair Housing Tool

While NAHRO applauds HUD’s efforts to streamline the AFH process for Qualified PHAs, we still have some specific concerns about how this tool is structured and implemented.

 a) Collaboration

In its notice, HUD notes that it “strongly encourages collaboration by program participants because HUD expects that program participants working together will be better positioned to affirmatively further fair housing, and may be able to reduce burdens and costs by sharing resources.”\(^5\) While NAHRO appreciates the sentiment expressed in this sentence, there are some practical problems that our membership has raised.

 i) Will Qualified PHAs Collaborate with States?

After discussing this with our various members, NAHRO does not believe that many Qualified PHAs will collaborate with States. Many Qualified PHAs will collaborate with their local governments because they have stronger relationships with those entities. Our members also expressed concerns about collaborating with States.

First, for most of the Qualified PHAs within our membership, there has been no history of joint collaboration between the PHA and the State. Many of our members have expressed concern about how to go about establishing this relationship, especially given the limited resources and harsh time constraints that staff at most Qualified PHAs face. Given that they have no prior relationships, it is likely that they will not choose to use this tool, despite being able to use the State’s regional analysis as their own.

Second, there is a concern about the extent to which States will want to collaborate with Qualified PHAs. Even if the State is officially collaborating with the PHA, there is a worry that if a State is collaborating because it is being forced to by HUD, that collaboration will not be effective. There have already been comments submitted about the hesitation that States have to collaborate with PHAs.\(^6\) States note that they do not have funding relationships with PHAs and in many cases, there may not be any relationships with PHAs.

Third, there is a concern about the coordinating mechanism between a State and the Qualified PHAs. For those States that do not have a funding relationship with their Qualified PHAs, there is no way to guarantee the appropriate level of consultation in the AFH process with which

States feel comfortable. There is also a concern about the complexity of coordinating with multiple PHAs.

Fourth, there is a concern about the State’s capacity ability to complete an AFH. The level of detail required by the State AFH and the multiple sources that States have to go to complete their AFH makes it difficult for most States to be able to complete their AFHs in a timely manner. To complete the analysis in a meaningful way, States will have to have an unprecedented level of communication and sharing of data between State agencies. It is unclear how various States and their agencies will handle these processes. NAHRO believes that HUD has underestimated the complexity of the process.

A Qualified PHA must rely on the State for the regional analysis and the extent that it uses the State analysis as its regional analysis. If the State is unable to satisfactorily or meaningfully complete its statewide analysis, then this would have serious implications for the ability of Qualified PHAs to complete their analyses.

ii) Other Program Participants

At this time, NAHRO does not believe that many other program participants will collaborate with States, but will be more likely to either complete the PHA tool by themselves or to collaborate with local entities. The reasons for this are similar to those outlined above with the fact that many PHAs are more likely to have had prior relationships with local entities, which makes a lower barrier to entry to working with those entities again.

iii) Facilitating Collaboration

The Department could better facilitate collaboration by streamlining the questions asked of States so that they have additional capacity to complete their AFHs in a timely manner, while still providing useful analysis. Streamlining the questions asked of States would also afford States with the available capacity to collaborate with other entities. It is important to remember that States have a finite capacity to be able to complete this AFH, while still performing their current day-to-day operations. Streamlining questions to both States and Qualified PHAs would make it much easier for both groups of entities to finish their respective sections of the AFH tool and work together. Additionally, HUD should require that States provide all due assistance to Qualified PHAs that may need it to complete their AFHs.

b) Data in Rural Areas

NAHRO has serious concerns about data availability or meaningfulness in rural areas. In HUD’s AFFH guidebook, it stresses to rely on local knowledge and local data in these situations, but NAHRO believes that this imposes an unrealistic burden on Qualified PHAs that will be unable to realistically rely on local data and may not receive any meaningful local knowledge for these regions.
NAHRO is particularly concerned about completing the “Disparities in Access to Opportunity” section.\(^7\) In those instances where there is no high quality data available for qualified PHAs, NAHRO is concerned about the ability to gather local knowledge and data. NAHRO suggests instructions here are very explicit about what to do when the following scenario with 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.

c) **R/ECAPs in Rural Areas**

While the concept of R/ECAPs makes sense in dense, urban cores, NAHRO is concerned about how to appropriately define R/ECAPs in rural areas. The Department’s guidance states that “[g]enerally, 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.”\(^8\) NAHRO believes that HUD should provide suggestions for what Qualified PHAs, and other program participants, should do in these scenarios. These suggestions can be articulated in the instructions for the tool or in additional guidance that HUD may promulgate.

d) **Publicly Supported Housing - Disparities in Access to Opportunity**

NAHRO is particularly concerned about the “Disparities in Access to Opportunity” subsection of the Publicly Supported Housing section of the Qualified PHA questions.\(^9\) In the instructions to the AFH, HUD states the following:

*Note that while the location of housing may be relevant to analysis, it is not the only factor in analyzing disparities in access to opportunity. “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.*\(^10\)

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.”\(^11\)

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\(^7\) Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 13.

\(^8\) Affirmatively Furthering Fair Housing Guidebook, the U.S. Department of Housing and Urban Development, Version 1, December 31, 2015, p. 42.

\(^9\) Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 14.

\(^10\) Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 39.

\(^11\) Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 40.
NAHRO is concerned about the ability of Qualified PHAs 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. There are several reasons why this may be an unrealistic level of analysis for Qualified PHAs. First, many Qualified PHAs will be in rural areas or other areas where there is no HUD-provided data or meaningful HUD provided data. Those PHAs may be forced to rely on local data and local knowledge. There may be no meaningful local data for the same reasons that HUD was not able to provide meaningful data—it does not exist.

Second, in many rural areas, the community participation process is unlikely to yield useful local data or local knowledge. This may be because the service area is large, but sparsely populated or because it is hard to collect data for other reasons. The end result is that the lack of local data or local knowledge will hamper meaningful analysis.

Third, there may be severe capacity constraints on qualified PHAs. Many of them have a staff of only a few people and some of those people may be part-time employees or may do jobs that do not lend themselves toward completing an AFH. Asking these severely time-constrained people to analyze infrastructure patterns will not lead to a meaningful analysis. Similarly, asking these severely time-constrained people to analyze policies on transportation, school enrollment policies, program eligibility criteria, or local labor laws will be an extremely time-consuming process. They will either have to spend time researching the policies themselves or they will have to contact other organizations and request the information from them (e.g., contact schools and ask them for their enrollment policies or asking a university for research on transportation patterns). Usually, there are no pre-existing relationships, so making sure that the other entity responds in a timely manner will be a challenge. Additionally, there is no requirement that any other entity does respond to this request for information.

Fourth, this type of analysis will likely lie outside the scope of any of the day-to-day activities of the typical employee at a Qualified PHA. The employees at Qualified PHAs are most likely to have comparative advantages in providing affordable housing services. To complete the AFH, the employees will have to utilize skills that are completely different than the ones that they normally employ. This will mean that they will take more time to do this than they normally would typical activities related to providing affordable housing services and that their level of competence on these activities will not be the same as they would be for activities related to providing affordable housing services.

e) Organizational Structure of the Assessment Tool

NAHRO would like to compliment HUD on the organizational structure of the assessment tool as it relates to Qualified PHAs. NAHRO believes that the current structure where items that Qualified PHAs are responsible for completing are clearly delineated and kept separately from the rest of the tool is a clear and simple way of demarcating institutional responsibilities. NAHRO does not believe that HUD should insert questions “into the respective sections of the
proposed [State tool] to which they apply." This will decrease clarity from the perspective of the end user.

f) Use of Consultants

While many in our membership have stated that they will use consultants to complete the AFH process, many have also said that they are still looking into the cost of a consultant. Some Qualified PHAs have told NAHRO that they are not yet in a position to decide whether they will hire a consultant or not because they cannot accurately gauge the cost to complete an AFH because the AFH tools are themselves not complete, so it is difficult to decide which AFH the PHA will use and how much it will cost to complete it in-house. These Qualified PHAs have also stated that it is hard to know what the price of a consultant will be at this time. The AFH consultant market is still in its infancy, but all agree that given the complexity, the massive amount of time necessary to complete the AFH tool, and the sophisticated levels of analysis, there will be a large market of consultants. It is unclear whether the price of consultants will come down as the market for helping participating entities complete their AFHs develops. One member noted that current price quotes may understate the true cost of completing an AFH because many consultants do not understand the full complexity of completing an AFH. A final concern expressed by all PHAs is a worry that they will have a hard time choosing between consultants and figuring out which are able to provide good services.

3) Specific NAHRO Recommendations

This section details specific recommendations that NAHRO believes will improve the State tool. This list is not inclusive of all possible improvements to the tool. These recommendations reflect some of the concerns articulated in Section 2 of this comment letter. The concerns articulated in Section 1 of the comment letter will require a broader rethinking of the tool to implement correctly. Many of these recommendations apply only to Qualified PHAs.

NAHRO recommends the following:

1. Make sure the State tool appropriately addresses the capacity concerns of the States. Appropriately addressing State concerns will make it more likely for States to engage in meaningful collaboration with Qualified PHAs;
2. Incentivize States to closely collaborate with those Qualified PHAs, which are looking for close collaborations;
3. Clearly articulate what is required for AFH acceptance when there are gaps in HUD data, local data, and local knowledge. Remember that because of the size and population sparsity of certain areas, gathering local data and local knowledge can be a time-consuming process with no guarantees that it will be meaningful;
4. Give suggestions for defining R/ECAPs in rural areas;
5. Make the “Disparities in Access to Opportunities” subsection of the “Publicly Supported Housing” section optional to complete for those areas without good HUD-provided data.

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by recognizing that Qualified PHAs have scarce staff capacity and those staff they do
have do not have the appropriate skill set to meaningfully analyze transportation or
education policies;¹³

6. Clearly delineate questions that Qualified PHAs should answer in a separate section; and

7. Simplify to the greatest extent possible, so that Qualified PHAs will not have to rely on
consultants.

NAHRO thanks the Department for the opportunity to comment and hopes that HUD gives the
comments serious consideration as it moves forward in this rulemaking process.

Sincerely,

Tushar Gurjal
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¹³ Assessment of Fair Housing State Tool, the U.S. Department of Housing and Urban Development, p. 13.