October 28, 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 the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice of information collection (FR-5173-N-08-B) titled “Affirmatively Furthering Fair Housing: Assessment Tool for States and Insular Area – Information Collection: Solicitation of Comment First 30-Day Notice under Paperwork Reduction Act of 1995” published in the Federal Register on September 28, 2016.

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 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 or the Department). Therefore, we thank HUD for the opportunity to comment on the State and Insular Area Assessment Tool (State Tool).

While NAHRO remains firmly committed to the goals of the Fair Housing Act and our mandate to affirmatively further fair housing, we continue to experience concerns over the administrative burden that the AFFH tools will create for program participants. We have been encouraged by HUD’s intention to refine the application of the AFFH Final Rule requirements for small entities, and we are pleased that HUD has made certain changes to the proposed Public Housing Agency Assessment Tool (PHA Tool) and included a Qualified PHA (QPHA) insert with the most recent iteration of the PHA Tool. NAHRO is also pleased to see HUD’s commitment to drafting a separate, streamlined AFH tool for use by QPHAs.
only. We also applaud the inclusion of the Small Program Participant Insert in both this proposed State Tool and the recently revised Local Government Assessment Tool (Local Government Tool) proposed by HUD. However, NAHRO is disappointed by HUD’s unwillingness to provide the additional resources needed by all program participants in order to meet their AFH requirements.

NAHRO urges 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.

1) Qualified PHA (QPHA) Service Area Questions

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

(6) How can the QPHA insert be improved to provide for the QPHA to conduct a robust fair housing analysis and set meaningful fair housing goals when collaborating with a State?

(16) How can the QPHA insert, which covers the QPHA’s service area, (including HUD provided maps and data) be improved to facilitate a meaningful fair housing analysis for QPHAs, including those that are in rural areas. What additional guidance can HUD provide to QPHAs to better assist them in establishing meaningful fair housing goals, including how those goals are implemented through actions and strategies, such as, for example through preservation or mobility strategies designed to address the fair housing issues identified by the analysis undertaken.

The following section provides a few specific recommendations that NAHRO believes will improve the QPHA Inserts proposed in the State Assessment Tool.

a) Further Streamline the QPHA Section 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 insert and removing portions of the tool that require analysis outside the scope of authority for QPHAs. This would incentivize program participants with limited capacity to collaborate with the State, 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. 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 there is no meaningful HUD-provided data and maps; and 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 racial and ethnic concentrated areas of poverty (R/ECAPs) in rural areas. HUD 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.”¹ 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.

iii) Public Supported Housing – Disparities in Access to Opportunity

NAHRO recommends for the “Disparities in Access to Opportunities”² subsection of the “Publicly Supported Housing” section of the QPHA insert be optional to complete for those without reliable 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 have 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. 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 different level of competence compared to their normal and typical daily activities related to providing affordable housing services.

In the instructions to the State Tool, 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.”³ “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. 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.

b) Modify the Qualification Threshold

NAHRO believes that the QPHA section 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 6 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 to 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.

¹ Affirmatively Furthering Fair Housing Guidebook, the U.S. Department of Housing and Urban Development, Version 1, December 31, 2015, p. 42.
² Assessment of Fair Housing Tool for States and Insular Areas, p. 13.
³ Assessment of Fair Housing Tool for States and Insular Areas, p. 15.
2) Small Program Participant Insert

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

(7) Whether the Small Program Participant insert will facilitate collaboration among States and smaller local governments (those that receive $500,000 or less in CDBG and HOME consortia whose members receive $500,000 or less in CDBG funding or no CDBG funding, both in the most recent year before the collaborative AFH is due), and whether the insert will provide for these small program participant to conduct a robust fair housing analysis and set meaningful fair housing goals?

The following section provides a few specific recommendations that NAHRO believes will improve the Small Grantee Insert proposed in the State Assessment Tool.

a) Further Streamline the Small Program Participants Insert 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 Small Program Participant Insert. This would incentivize small program participants with limited capacity to collaborate other entities, instead of relying on consultants. Additionally, since the availability of uniform and meaningful HUD data in rural areas is limited, HUD should modify the Small Program Participant Insert’s corresponding instructions to allow small grantees to answer the questions posed in the insert with local data and local knowledge, derived from the community participation process, first. If HUD-provided data and maps are available for the participant’s jurisdictional analysis, and the participant deems such information to be adequate, HUD’s data and maps would supplement the grantee’s local data and local knowledge.

b) Modify the Qualification Threshold

NAHRO requests that the qualifying threshold for the Small Program Participants 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
- 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 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.

c) Provide Additional 60-day Comment Period

NAHRO applauds the Department’s recent decision to extend the initial AFH due date for small program participants to 270 days before the program year which a new 3-5 year Consolidated Plan is due, starting on or after January 1, 2019. Along the same vein, HUD should provide an additional 60 days for grantees to fully review and comment on the State Assessment Tool’s Small Program Participant Insert. The Small Program Participant insert was not proposed to the public until the State Assessment Tool’s 30-day notice. Communities receiving CDBG entitlement funds have not had time to fully digest the contents of the insert and should be provided additional time to develop comprehensive comments on how HUD can 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.

3) Additional NAHRO Recommendations

a) Good Faith Safe Harbor

HUD should include a good faith safe harbor clause specifying that if a program participant makes a good faith effort to comply with this regulation and submits an AFH, then HUD will not only accept the AFH, but also approve it.

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4 “Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants That Receive a Community Development Block Grant of $500,000 or Less; Notice,” 81 Fed. Reg. 73129 (42 October 2016).
b) Simplify Guidance Document and Sample Completed AFHs

A simplified set of instructions that includes a broad overview of the AFH process as it applies to small program participants (QPHAs and small grantees) would go far in eliminating lingering confusion about the process. This simplified guidance document could provide a broad overview of the AFH process to PHAs and small program participants, illustrate their various options among the other tools, and do a quick walkthrough of the process of completing the tools. While NAHRO understands that there are instructions included in the AFH tools and there is a lengthy AFFH guidance book, NAHRO feels that a shorter pamphlet that explains the difference between the tools, provides an overview of filling out the AFH, and then provides links to all the other sources of information (guidance, regulations, etc.) would be a less intimidating document that busy officials would have time to read.

Another approach to clarifying what is required in particular AFHs is to create sample completed AFHs utilizing each of the tools. These AFHs should be completed for areas that are representative of the diversity of our nation (e.g., a large city, a medium-sized city, a small rural area, a large rural area where very little HUD provided data is available, etc.). These sample documents would be made available on HUD’s websites. They would show the level of analysis required by various entities as they attempt to complete their AFHs. The sample documents must address scenarios in rural areas where there are no racial and ethnic concentrated areas of poverty (R/ECAPS) and scenarios where there is no meaningful HUD provided data and the local community participation process has not yielded usable local data or local knowledge.

c) Ensure All Field Offices Are Knowledgeable About the AFH Process and Tools

Our membership remains concern that the HUD’s field offices are not sufficiently knowledgeable about the AFFH rule and the tools that HUD is providing to complete the AFH. NAHRO encourages HUD to make every effort to make sure that field offices are prepared to assist states, local governments and PHAs in preparing their AFHs.

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