



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

Subject: Submission of Comments  
Docket No. FR-5173-N-08

**Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas: Solicitation of Comment—60-Day Notice Under Paperwork Reduction Act of 1995**

The Council of State Community Development Agencies (COSCDA) represents state housing and community development agencies responsible for administering the Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program and the McKinney-Vento Homeless Assistance Programs. On behalf of the members of COSCDA, I respectfully submit the following comments and questions regarding the proposed State Fair Housing Assessment (AFH) Tool.

General Comment:

COSCDA and its members recognize the importance of analyzing and addressing impediments to fair housing. Years of housing discrimination have led to many in our communities without true housing choice. Observing the Fair Housing Act and other authorities, state grantees of CPD funds take very seriously the requirement to fully incorporate fair housing considerations into their existing planning processes. States recognize this need and requirement and are willing to work to evaluate fair housing choice in their state and to identify barriers to fair housing choice, set fair housing goals to overcome those barriers, and ultimately take action to overcome these barriers.

For some time now, states have not fully understood the specifics regarding HUD's expectations for states to affirmatively further fair housing. We appreciate the attempt HUD has made to clarify the requirements to affirmatively further fair housing, and the provision of a separate state tool as a guide to developing a state AFH. However, the design of this proposed state Tool goes well beyond a reasonable analysis of fair housing issues. The amount of data requested is extraordinary and would take an enormous amount of time for states to complete. The scale of the Tool continues to be inappropriate for states to use. Although many states voiced their opposition to the first Tool that was presented in September, 2014 regarding HUD's requirement that states include entitlement areas in their AFHs, HUD continues to require this. The cost to complete the tool would be excessive. In addition, HUD's requirement to assess disparities in opportunity areas goes beyond what we feel is

necessary to affirmatively further fair housing. Although HUD provides data and charts, much of the information required in the State AFH would have to be accessed at the local level, which would only add to a state's burden. Collaboration with PHAs would be problematic. HUD's data is not adequate or useful in rural areas, where much of the state has responsibility. HUD writes in the March 11 Federal Register Notice- FR-5173-N-08 (Notice) that HUD is attempting to "design a tool that states would be able to use to prepare an AFH that HUD would accept without creating unnecessary burden". This document does the opposite. We ask that HUD re-evaluate its expectations and revise the tool to make it meaningful and feasible for states.

Detailed Comments:

### **Scale is Not Appropriate for States**

States are still required in this proposed Tool to bore down to the local level, which is very difficult for state agencies that administer state-level programs that generally do not require this type of local, neighborhood analysis. The Notice refers to states accessing relevant local data.....*the use of local data and knowledge to supplement data not provided by HUD.....program participants are required to use local data and local knowledge to inform their assessments.* Much of the area that states are responsible for in the administration of CPD programs is rural, sparsely populated, with practically no defined "neighborhoods". Accurate local data on many of the Tool's required elements in rural areas is hard to come by, and may not be statistically significant. In addition, it is difficult to get "local knowledge" in rural areas that have wide distances to travel that take time and costs to adequately cover.

**COSCD A recommends that the Tool for states should be restructured to eliminate the need for extensive, repetitive, local-level analysis.** The Assessment Tool for states should provide a structure for an appropriately scaled state-level analysis that offers states the flexibility to incorporate detailed, local-level analysis if necessary. A revision of this proposed tool will require more than just a minor modification of the local assessment tool. HUD needs to realize the substantial limitations of states and require an appropriate scale of analysis.

### **Contributing Factors Determination Requires Significant Local Analysis**

One obvious example of a request in the Tool that is inadequate for states to determine is "Contributing Factors" which are requested repeatedly throughout the tool. There are several areas in the explanation of the Tool that requests that the state discuss how specific areas like segregation and R/ECAPs have been created, perpetuated, or increased because of certain practices. Requiring a state agency to determine the factors that have contributed to an impediment to fair housing would necessitate a significant local level analysis that would be time-consuming and costly to assess – practically impossible. States do not have the resources. In addition, many state agencies do not feel comfortable making judgments on contributing factors that may seem subject to personal opinion. An entitlement jurisdiction, given its confined geography, can analyze discrete signs of fair housing issues and pull apart local factors that contribute to specific conditions. States, however, do not have the resources, local data, or local knowledge to critically evaluate specific, local occurrences of various fair housing issues to determine contributing factors.

One of our members reviewed all of the “contributing factors” listed in the Tool and the vast majority, 32 out of 41, were factors that required local knowledge to determine. Only nine of the provided contributing factors could be determined in a broader, statewide analysis:

- Lack of assistance for transitioning from institutional settings to integrated housing;
- Lack of State or local private fair housing outreach and enforcement;
- Lack of State or local public fair housing enforcement;
- Lack of public investment in specific areas within the State, including services or amenities;
- Lack of State, regional, or other inter-governmental cooperation;
- Lack of state or local fair housing laws;
- Siting selection policies, practices and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs;
- State or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes, and other integrated settings; and
- Unresolved violations of fair housing or civil rights law

The contributing factors are really the core of the Tool’s focus. An identification of contributing factors should lead to the development of goals, priorities and meaningful actions. If states are compelled to keep boring down to the local level to identify how the contributing factors vary from place to place within the state, it will be a huge undertaking.

**COSCDA recommends that the assessment Tool allow states to focus on appropriately-scaled state-level “contributing factors” and provide states the flexibility to incorporate detailed, local-level analysis if available.**

## **Inclusion of Entitlement Areas Is Very Problematic**

The Tool instructs state grantees to assess their entire jurisdiction, which we assume includes entitlement areas. This is very problematic for states. The state grantee’s primary programmatic responsibility is for the balance of the state. With the exception of occasional HOME funds, states do not fund entitlement communities. Entitlements are performing their own AFHs, drawing their own conclusions, establishing their own action steps, and taking responsibility to AFFH. Historically, in developing their own Analysis of Impediments, state have not usually included entitlement areas. States want to continue to make this decision, and want the inclusion of entitlement areas to be optional.

If states include entitlement areas in their AFHs, the entitlement communities and the state may come to different conclusions regarding impediments to fair housing and develop incompatible action steps. Who decides the appropriate response? What is the mechanism that obligates entitlement jurisdictions to cooperate in a statewide analysis? It will be difficult to compel entitlements who have already completed their AFHs to engage with the state in putting the state AFH together. States must be careful if they will “take ownership” of these conclusions and suggested efforts to overcome impediments. States should not simply accept the conclusions of an entitlement jurisdiction without independent analysis. Re-evaluation of the entitlement communities’ conclusions takes time and effort. Given the large number of entitlement jurisdictions in many states, the process of AI/AFH review and evaluation would constitute a massive and undue analytical burden.

Who will be responsible if the action steps to address impediments are not taken? There needs to be acknowledgement that state agencies responsible for administering HUD funds have limited ability to affect significant change relative to fair housing within either entitlement communities or non-entitlement communities. This needs to be clearly understood when reviewing proposed actions. States can make the effort to work with entitlements and cooperate with their goals, however, states cannot control what the entitlements spend. States can only control state spending and be held responsible for where states make their own investments. CDBG funds cannot be spent in entitlement areas. There would have to be an incredible amount of coordination between the state and entitlement areas which would add to the cost of the AFH.

The sample maps include entitlement areas, which can skew the data as presented in the map. How are states to break these out in order to analyze the non-entitlement areas? These maps as they are presented are not very useful for states. States would have to bore down into the counties to see what was explaining the numbers.

Ultimately, the AFH is designed to help inform the Con Plan regarding the state's method of distribution to non-entitlement communities. States cannot choose the non-entitlement communities that will apply for CDBG funds, and particularly cannot ensure that those non-entitlement communities that have the most serious impediments to fair housing will even apply for funding. Entitlement communities have a much more direct choice of where to use CPD funds to affect fair housing. States are much more limited.

**COSCDA recommends allowing states to have the option to include entitlement communities, but not to require the inclusion in the AFH.**

## **Costs Would be Very High to Complete the Tool**

The cost to complete a state AFH could be extremely high. It is most likely that states will have to hire consultants to assist with the completion of the Tool. It is our belief that the level of coordination, research, and analysis needed to perform an adequate assessment will require far more than 1,500 hours. Some states have spent over \$100,000 on their Analysis of Impediments. Some have spent as high as \$400,000. Although HUD has provided data and maps with this Tool which they propose will negate the need for states to hire consultants to complete the AFH, HUD also requires use of local data and local knowledge which, particularly at a state level, is very costly and time-consuming to ascertain.

Will extra funding be provided to complete the Tool? CDBG and HOME administrative funding will be the primary resources to pay for AFH activities, regardless of whether these are completed in-house or outsourced to a third-party vendor. As HUD is aware, both of these funding sources have experienced significant reductions in funding since FY2010. Funding of the CDBG program has been reduced by approximately 25 percent and the HOME program is down around 50 percent. The declines have impacted staffing levels across these HUD programs and specifically the availability of resources to leverage toward an AFH. The cost to complete a state AFH will most likely have to come out of the CPD funds used for training and technical as well as the administrative allowance. This expense has the potential to cripple the state's ability to continue to successfully administer the very programs that are meant to promote and ensure that low-income households have the opportunity for safe, decent, communities and affordable housing.

**COSCDAs recommends that HUD significantly reduce the scale of the Tool so that states can reasonably complete the Tool without excessive costs.**

### **“Disparities in Access to Opportunity Areas” Remains a Major Issue**

It will be unbelievably difficult for line state agencies with the mission to do housing and community development to complete the type of analysis that would be required regarding the “Disparities in Access to Opportunity Areas” (disparities in access). HUD is asking for an incredible amount of information to be researched, analyzed and provided.

Many states consider that the requirement to analyze disparities in access is overstepping the requirements of the Fair Housing Act and is not necessary to reasonably determine impediments to fair housing. Is an analysis of disparities in access to prisoner re-entry opportunities really important in determining placements of CPD-funded housing units? HUD should stick to the basics and re-visit the Fair Housing Act and review HUD’s interpretation of what constitutes an “opportunity area” for fair housing analysis purposes.

Each question on the disparity in opportunity areas necessitates a significant response. How extensive should the analyses of these disparities in access be? Although HUD provides data, the main policy questions are left for states to answer that require significant work to complete.

The disparities in access analysis would require state housing and community development agencies to coordinate with about 10 different state agencies to get their input, if those agencies are willing to provide it (Emergency Management, Pub Health, Finance Agency, Department of Health, Department of Transportation, etc). This would require an unprecedented amount of inter-agency coordination and data analysis. Although we recognize the importance of breaking down barriers and silos in the state and improvement in coordination among state agencies, this would be a massive undertaking. These agencies are probably not aware of HUD/CPD funding, and there is little incentive for other state agencies to commit the resources needed to compile and analyze the data expected in this analysis. In addition, any findings of this analysis will most likely not result in additional federal resources being made available to assist in addressing any identified challenges.

Also, many state agencies that would be involved in the coordination above collect information in different formats. Some collect data by districts, some by townships, and some by boroughs. This adds to the confusion in comparison and analysis. States have a number of different geographic areas, economies, and population patterns. The analysis of disparities in access becomes ever more voluminous if the state’s goal is a meaningful analysis that considers different geographic areas, economies, and population patterns within the state.

In smaller and more rural states, meaningful indicators for determining disparities in access to opportunity are going to be difficult to come by. For example, access to transportation and employment opportunity is difficult to access in rural areas. Larger metropolitan areas can usually offer reliable, standard amenities such as public transportation, access to employment, etc., whereas in a small rural state public transportation is minimally available and ownership of an automobile is mandatory for most people in order to commute a distance to work, buy groceries, and access needed services. Many lower income households choose to live in cities in order to access what they need if they don’t own an automobile, since public transportation is hard to find in some rural areas. Some states are attempting

to provide basic human needs to rural areas, such as clean drinking water. Amenities such as good transportation and access to employment opportunities are, unfortunately, secondary goals.

The Notice adds some additional “opportunity” areas to assess, particularly emergency preparedness, prisoner re-entry opportunities, public health, public safety, housing and financial opportunities. States strongly object to HUD including the additional opportunity areas as required areas to be covered. Including these areas would be equivalent to expecting states to produce a “state of the state” document that covers all possible factors that can affect a household’s overall well-being. This type of comprehensive document could be quite telling and useful in analyzing fair housing impediments, but is far beyond the ability of one state agency that has as its main purpose the provision of housing and community development to create.

HUD needs to reexamine the opportunity areas that are possible for states to analyze and assess. **COSCD A recommends that HUD either provide its own complete data on disparities in opportunities areas to states that can be used in the development of the AFH, significantly change its expectations on the extent of analysis of the basic opportunity areas, or delete this requirement.**

## **HUD-Provided Maps and Data Charts Are Still Not Very Useful For States**

### Maps

COSCD A appreciates HUD providing sample maps and data charts to assist in the development of the State AFH, however the quality of the maps is still insufficient to provide an accurate assessment of fair housing condition throughout a state. Since the final maps to be used by states are not available for review at the time of the submission of these comments, we cannot provide full comments on the usefulness of the maps. We ask that, when these maps are released, HUD provide ample opportunity to provide additional comments.

The dot-matrix maps which were presented with the original Tool in September 2015 continue to be of limited use to the states. Widely scattered dots randomly located within census tracts in rural areas do not capture the neighborhood qualities the data are intended to convey. On the county-level maps provided as samples, there is also no differentiation between entitlement and non-entitlement areas. The inclusion of entitlement areas skews the data that states need to analyze non-entitlement areas. Currently, HUD proposes to provide county-level data for the Assessment Tool for states. Since counties encompass various types of smaller jurisdictions, such as cities, villages, and unincorporated rural areas, it will be difficult to evaluate how different sets of sub-county data influence the overall county data value. The characteristics of a single small city can strongly influence the data value for a county, and thereby misrepresent the non-urban portion of the county. Given that some states have a large number of counties, states should have complete flexibility to determine when a more detailed local analysis would be appropriate and meaningful.

### Data Charts

One significant deficiency in the HUD-provided data is the lack of a margin-of-error included with each dataset. The provision of data sets lacking margin-of-error can mislead grantees into assuming that HUD-provided data is statistically valid, which is frequently not the case, especially in areas of states with smaller populations. There are also significant margin-of-error problems in American Community Survey (ACS) data and the lack of alternative sources.

The Instructions for the state AFH Tool dictate that “all program participants must use the HUD-provided data, to complete the AFH”. States must be able to use their own data if they feel it better represents their state, even if it is different from the HUD data. Using HUD data must always be optional. The Notice also instructs that if the HUD-provided data is not accurate then states have to gather information to verify that it is not accurate. HUD provides little definition on what metrics, statistics and other quantifiable information would be subject to a determination of statistical validity by HUD. These need to be well defined. Much time is involved in getting correct statistically-valid data to compare it to HUD’s data. FHEO staff will need a huge amount of training to judge whether or not something is statistically valid. The establishment and adoption of uniform and structured processes must be prioritized by HUD in order to assure that approval standards do not deviate from regional office to regional office.

In the Notice, HUD requires that local data and knowledge be used. In many cases, it is very difficult to get local data and knowledge. Unlike entitlement areas that may have a general understanding of data available on a neighborhood basis, states do not know this at that level, particularly for rural areas. They may know on a regional basis, but not on a county basis. It takes money and time to gather this data. States should have the flexibility to determine when the inclusion of fine-scale local data is appropriate. Where there is some local data available, it is most likely not consistently available across all applicable localities and in the case of a source such as the ACS, the data has very high margins of error, making it difficult to draw any real conclusions. Also, the state grantee does not necessarily have agreements or ongoing arrangements with most of the likely sources for the local data. For large states, this collection of local data would be collecting “mega-data”. Even large states don’t have the capacity to collect, analyze, store, and report it. They don’t have the resources.

While the Notice clearly indicates that state grantees would not be required to collect primary data, it is unclear how local data, beyond the administrative (secondary) data, would be acquired otherwise. It is assumed that surveys, input sessions, consultation and other methods – all essentially primary qualitative data collection would be required in order to have any kind of insight into actual and notably perceived fair housing issues, barriers, and contributing factors. This primary data gathering can be very expensive to conduct.

#### Low-Income Housing Tax Credits (LIHTCs) Data

We found the Low Income Housing Tax Credits section of the Publicly Supported Housing Analysis to be confusing. As written, the instructions for providing information regarding LIHTC projects would lead states to research not only their Qualified Allocation Plan but also to research all local land use laws in the State, which could be hundreds, and then explain town by town how each of the sets of local land use laws influence the location of LIHTC units, which would take a huge amount of work as a town by town search.

**COSCDAs recommends that HUD-provided maps include at least county-level data or smaller, that data include margin-of-error, and that states have the flexibility to determine when the inclusion of fine-scale local data is appropriate.**

### **Collaboration with PHAs Will Be Problematic**

The Notice strongly encourages states to collaborate with QPHAs to develop a joint AFH. There are instructions in the Tool for QPHAs to follow regarding submission of information to be included in the

state AFH. Is this information required in all state AFHs, regardless of whether the state and the QPHA are collaborating on a joint AFH? This is not clear from the Notice.

The state should NOT be responsible for collecting and analyzing information from QPHAs even if there is collaboration on a joint submission. Many states have minimal contact with PHAs in their state. The administrative burden of the state AFH is already extreme, easily in excess of the 1,500 man hour estimate. Requiring that states complete the information included in the Tool regarding QPHAs or oversee the collection of the QPHA information will add work and complication to an already unwieldy process. If QPHAs that collaborate with the state provide most of the required QPHA information to states, states will need to verify the accuracy of the information which can be difficult and costly.

The local QPHA data requested by HUD is likely to be administrative data such as public housing units, vouchers, and related geographic and demographic data associated with the units/vouchers. The state grantee does not currently have access to this data. If states and QPHAs collaborate on a joint AFH, it will be particularly hard to get data out of small PHAs that don't have the capacity in staff. Significant state resources including staff, technical assistance, and time would be required to facilitate these collaborations. Often, these PHAs are not responsive to questions from state agencies. It is difficult to get them to submit their certification with the Consolidated Plan.

The QPHA region is defined as the state, according to the Instructions. Does this mean that states should include all the PHAs in large entitlement jurisdictions? Many of the large PHAs have many times the number of units than all of the non-entitlement areas in the state, making the analysis of data that much more burdensome.

**COSCDA recommends that HUD clearly state that the inclusion of QPHAs in the State AFH is optional, and that HUD should not require states to collect and analyze fair housing information regarding QPHAs in the state. When states choose to collaborate with QPHAs, states should not be the responsible entity for collecting and analyzing information from the QPHAs.**

## **States Need Clarity Regarding the Regional Analysis to Be Completed By States**

The Tool instructs states to be responsible for analyzing their "jurisdictions and regions". The Notice also states that the HUD-provided data includes data for the program participants' jurisdiction and region, and that this data must be used. How is HUD defining "jurisdiction and region" for states? Is the region for a state an area larger than the state, perhaps beyond the states boundaries? What areas are states ultimately responsible for assessing? The Tool does include: "*Consulting the AIs or AFHs of neighboring States and other jurisdictions may be source of information for the State to consider.*" p 18. Is HUD asking that states complete the AFH by also reviewing those of surrounding states and bordering localities as well, and conducting a comparison? We see in the Instructions that individual questions will indicate when a regional analysis is required and will clarify the scope of the regional analysis required. But again, for all of the challenges noted above, it is unlikely that states can access and meaningfully analyze data beyond the state's boundaries.

**COSCDA recommends that the inclusion of a regional analysis (beyond the states' borders) be optional for states.** States should have the flexibility to selectively include regional perspectives on specific topics or fair housing issues only where appropriate and relevant. States should be able to determine when a broader, regional analysis will enhance the AFH. Alternatively, the AFFH regulation provides for voluntary collaboration among program participants in the submission of joint and regional AFHs (per 24 CFR 5.156). In this way, a state and one or more entitlement jurisdictions could formally coordinate data, analysis, and goals in a collaborative effort, if they so choose.



## **The Rural Nature of State Subgrantees Makes Accurate Data Collection a Challenge**

State CPD grantees have many rural areas, which should be states' main focus as these are the areas states work in the most and actually have the ability to hold accountable on fair housing issues. For states with large rural areas, data quality and availability is a severe impediment to accurate analysis. Rural areas lack uniform data sources, and the most prominent data set, the ACS, contains margins-of-error that increase conversely with sample size, making it difficult if not impossible to rely on data pertaining to most localities in states with disbursed populations in rural areas. Some rural residents may be a mile apart from each other.

The AFFH Guidebook notes that HUD-provided data is "a good starting point" for analysis of rural areas, but acknowledges that local data and local knowledge are especially critical in the evaluation of less populated regions. Evaluation of potential fair housing issues reflected in HUD-provided county-level data in rural areas would require a staggering amount of supplemental local data. For states with large rural areas, the acquisition of local data would be prohibitively burdensome.

**COSCD A recommends that the Assessment Tool explicitly incorporate flexibility for states to determine the appropriate scale for addressing their unique rural areas.**

## **Overall Magnitude of Work Involved in the Completion of the State Tool is Extensive**

Most of our members agree that the amount of data requested from states in this tool is extraordinary and would take an enormous amount of time for states to complete. State staff that administer the CPD programs are limited to a few people, depending on the size of the state, and they are consumed with simply administering their CPD programs. The AFH would need to be completed every 5 years, and to enable the state staff to continue to administer their programs, consultants would most likely need to be hired during the period before the AFH is due to HUD. Even with the assistance of a consultant, state agency staff would need to be involved and contribute a significant amount of hours. Many of our members feel that HUD's expectations are too high on this document, and that it will not work for either HUD or states.

HUD has provided videos designed to help grantees to understand the design and purpose of the AFH. One video presents an example of a fictional town and how it might analyze impediments to fair housing and set goals to overcome them. The town in the video is small, and therefore it is quite possible to develop an AFH. Most states are many, many times larger than this fictional town, and for all of the reasons cited above, would require many, many times the effort to complete the state AFH.

### Conclusion

In conclusion, the completion of the state AFH using this proposed Tool would be a massive undertaking. What will be an "acceptable" AFH to HUD? We are especially concerned that the state AFH Tool does not address the criteria that FHEO and CPD will use to determine if a state's AFH and particularly its Fair Housing Goals and Priorities, are acceptable or not. Staff at regional FHEO offices are going to need

extensive training in order to fulfill their new role as judge of the adequacy of state AFHs and the appropriateness of the action steps proposed, and CPD staff must be involved in this process as well. The establishment and adoption of uniform and structured processes must be prioritized by HUD in order to assure that approval standards do not deviate from regional office to regional office.

We hope that HUD will review these comments and propose a fair housing Tool that is reasonable, useful and achievable for states. We all realize that we are in an era of limited CPD resources. CDBG funds have been cut by 25 percent since FY2010, and HOME funds have been cut by 50 percent. States are not filling needed staff vacancies due to reduced administrative funds. HUD must be realistic about what states can and cannot do with these reduced funds. Ultimately, HUD must understand that, regardless of whatever extensive fair housing analysis is performed, states will always be very limited in how they can actually use CPD funds to effectively further fair housing. CPD funds are but a small part of what is needed at a state level to successfully address all impediments to fair housing.

As always, COSCDA is willing to provide any assistance to HUD in the development of the final state AFH Tool. Please do not hesitate to contact me at 202-293-5820 if you need more information on any of our comments or recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dianne E. Taylor".

Dianne E. Taylor  
Executive Director