



November 25, 2014

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

Re: Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment-60-Day Notice Under Paperwork Reduction Act of 1995 Docket No. FR-5173-N-02

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 rule, Affirmatively Further Fair Housing (AFFH) Assessment Tool.

COSCDA appreciates HUD's efforts to develop a template that will help CPD grantees to develop the proposed Assessment of Fair Housing (AFH). We also appreciate HUD's recognition of the need for a separate assessment Tool for state CPD grantees, given the differences in entitlement and state programs. However, we have several overall comments that HUD must consider in revising this template to make it reasonable and flexible for states to use.

General Comments

The scale is not appropriate for states. The scale of the analysis needs to be changed to make it appropriate for states. Indeed, HUD must already acknowledge this, since it has asked for recommendations from states on a revision to make it practical for states. The level of detail and amount of work required by the draft entitlement AFH Tool (template) may be achievable on an entitlement scale, but would create an unreasonable administrative burden for states. The data necessary to support the level of analysis required in the draft entitlement AFH Tool, especially neighborhood by neighborhood analysis, does not presently exist and could cost significant time and money to generate, certainly greater than the allowed administration amounts. This is particularly true in large western states, with multiple rural jurisdictions. Precious staff time and resources would need to be diverted to comply with this new rule. HUD's own information collection from the Federal Register estimated that it would take the equivalent of 5 weeks of staff time for grantees or housing agencies to comply with the AFH Tool alone. Overall, HUD estimates this will create 877,600 new hours of additional administrative work for grantees. In reviewing the Tool, we believe this grossly underestimates the work involved, especially at a State level.

Entitlement areas should not be required in a state Assessment Tool. COSCDA recommends that HUD not require states to include entitlement areas in a state Assessment Tool, since entitlement communities are required to complete their own AFH template. Inclusion of entitlement areas should be

optional for states, particularly for states that provide their state HOME program funds to local HOME PJs within their state.

HUD-provided tables and maps should include quality data. Regarding the HUD-provided tables and maps, they are not particularly useful for states. COSCDA is concerned about the quality of data in the tables and strongly desires that HUD provide only data that is statistically valid in regard to margin of error and coefficient of variation. Provision of less than quality data will lead to confusion, poor conclusions and wasted time. Dot density maps might have some value at a city and entitlement level, but are not at all useful on the scale of a state, especially a sparsely populated rural state. HUD needs to recognize that American Community Survey (ACS) data at a Census Tract level has high margins of error that actually exceeds the disparate impact standard set forth in regulation (10 percent more than the jurisdiction as a whole.) To go down further (such as Block Group for neighborhood information) would only exacerbate this problem and result in numerous “false positives” which are already occurring at the Census Tract level. Consequently, HUD also needs to re-define in regulation what a reasonable standard is (probably a 20 percent difference) assuming the standard is allowed to stand.

The Tool has numerous data errors that need to be corrected. For example, in many of the maps at both the jurisdiction and regional level, data categories are not presented in a mutually exclusive form. Maps 6, 7, and 8 have this problem and are not statistically valid, since the categories result in double counting. Other maps presented do not show the data that HUD is saying it will provide, such as the maps on persons with disabilities (maps 15 and 16). Still other maps refer back to discussions on national origin, but data on race is provided instead.

Some states have little authority over the community assets included in the Tool. HUD expects grantees to have control over some community assets that HUD identifies as indicators of disparity in access to community assets such as school proficiency, jobs proximity, labor-market engagement, transit proximity, and other issues tangential to fair housing. States do not have the resources to control these factors in addressing those problems. Some states have little authority over these areas. Aside from the massive undertaking this would be, and the enormous costs involved in such an analysis, especially on a state level (where HUD is again asking for all of this data at a neighborhood level), it appears that HUD is trying to make policy through the Tool far beyond the scope of the Fair Housing Act or other legislation without providing the resources to back it up or the statutory authority to do so.

HUD should not require states to provide PHA-level data. HUD asks for data on local PHA activity. Many states don't have authority to require this data from PHAs or require them to take steps to AFFH. Throughout the Tool there are requests for information about how housing choice vouchers are being used and the success tenants have using them in opportunity areas. States simply will not have that information or the authority to demand it from PHAs. Nor are "opportunity areas" defined, nor is there any statutory requirement regarding "opportunity areas" with HUD or other housing programs. Consequently, the discussion of PHAs should be removed, or at the very least optional, for a state grantee.

The Tool should include fair housing analysis of lending for homeownership. The Tool does not contain any information on lending for homeownership, such as HMDA Data. We recognize that regulations have never been issued to more clearly determine discrimination in lending, but the homeownership omission is one of concern in regard to insuring fair housing practices are being followed.

For these reasons and others, we would like to work with HUD to develop a Tool that makes sense for states. COSCDA is available to speak with HUD staff in more detail about the development of a state assessment Tool. We also ask HUD to re-issue the Tool for comment after a proposed Tool is developed

for states. Our specific comments regarding sections of the entitlement Tool follow, and where appropriate, suggestions for and how sections can be changed for states.

Specific Comments

Structure of the Assessment Tool

I. Cover Sheet

HUD should clarify signature requirements. It is unclear whose signature is required on the renewal AFH. HUD needs to clarify. Who will sign the Certification of satisfaction of consultation requirements, as well as the Certification that the program participants prepared the AFH in accordance with 24 CFR 5.150-5, 164? How will they do this with an on-line Tool? Are there any legal implications, if any, to this signature/certification?

III. Community Participation Process

Determining “successful” public participation is vague, especially at the State level. The overall effort of getting local jurisdictions, PHAs and state entities to agree on the needs and combine necessary funding sources to address the needs is going to be an intricate and a slow process. State agencies already have many administrative program requirements. This coordination effort goes to a new level of political negotiations that states typically don't do. While states have relationships with local organizations, they are definitely more distant than the local grantee would be. Coordinating with Indian Reservations would be challenging also.

Many times organizations do not participate in planning efforts if there is no money in it for them. If a state/grantee makes a good faith effort to obtain input, and little or no input is received from other agencies, is that successful or unsuccessful? A better option might be to specifically require certain types of consultation and a public participation process which is similar to that required of the Consolidated Plan/Citizen Participation Plan.

IV. Analysis:

Section A: Demographic Summary :

Neighborhood level analysis is unrealistic for a state. HUD requests an analysis of demographic patterns and trends in the jurisdiction and region. For states to analyze each jurisdiction in non-entitlement areas and compare them to their region would be very arduous and time-consuming and certainly couldn't be accomplished within the estimated 200 hours. The analysis would require hiring a contractor, one of the outcomes the proposed rule seeks to avoid. Grantees are asked to compare neighborhoods to larger areas. This comparison is not useful for states where the number of neighborhoods are far too numerous to complete in a reasonable time and at an acceptable expense. In addition, neighborhood level census data does not exist in rural areas, where a single Census Tract can contain dozens of small neighborhoods. This comment applies to all comparisons of jurisdictions and regions and neighborhoods and areas throughout the template.

Regional analysis should not be required for states. The Tool also repeatedly requires grantees to carry out regional fair housing assessments, regardless of whether they are participating in a regional plan. HUD should allow the grantee to determine whether or not they will participate in regional analysis, (The Tool reads like HUD is trying to force regional fair housing planning when statute or regulation does not exist for that purpose.) In addition, if grantees decide that they do want to do analysis on a regional basis, they should be able to determine the region or regions, particularly on a state level.

The National Origin discussion questions need to be reconsidered. Also in this section, it is unclear what purpose providing the “National Origin” has other than as a data collection effort. We recognize of course that discrimination based on national origin is illegal, but nothing in the rest of the Tool cross references or utilizes data related to housing and national origin. This section discusses national origin, but the data supplied in the map (Map 3) is by race, not national origin. National Origin indicates a birthplace – Polish, Irish, German, Russian, Cambodian, French, Filipino, etc. Also, what about ethnic neighborhoods? Are these inherently bad and need to be ended – no more Little Italy’s or Chinatowns?

Indian Reservations should be included in the analysis. In some western states, this is their area of highest poverty.

Section B: Segregation/Integration and R/ECAPs:

Dissimilarity Index

The Dissimilarity section should not be included in the Tool for states. The Census does not do a Dissimilarity Index for rural areas, only for metropolitan areas. Since this data is only available for metropolitan areas, the Dissimilarity section should not be included in the Tool for states. This can be verified on the Census website.

For locals, the Dissimilarity Index also calls for a discussion of both the jurisdiction and the region. A regional analysis serves no purpose for grantees who are not preparing regional plans, which are not required under statute or regulation.

The Tool (and the Index) also does not recognize that concentrations of minorities may not be due to housing related problems. Many institutional structures will inherently result in concentrations, such as HUD-funded Historically Black Colleges and Universities (HBCUs) or Indian Reservations. In addition, certain facilities, such as federal and state prisons, as well as military bases in rural areas (especially those with significant off-base housing) will result in concentrations (or Indices) that are not related to housing problems. The Tool does not recognize this and should.

Specific solicitation of comment: Does the Assessment Tool ask the right questions and provide the right list of determinants to provoke a meaningful assessment? (Pg. 57952.)

Determining Causes of Dissimilarity Would be Costly for states The notion of “determinants” implies a causal relationship. Ranking determinants by their effect *cannot be empirically determined* without significant original research for each R/ECAP. The research, which would be an overwhelming and costly task even for a local jurisdiction, would be magnified hundreds of times for states. Without data to substantiate the analysis, the relative importance of determinants could be misclassified, either

intentionally or unintentionally. Resources intended to address the determinants could then be misdirected and not achieve the desired change.

If HUD moves forward with the notion of using determinants in the analysis, it should permit jurisdictions to add other determinants that may not be included in the drop down list that the jurisdiction concludes are important. All the listed determinants are negative in nature and do not consider segregation resulting from positive housing choices.

Dissimilarity index inappropriately compares ethnicity with race -- ethnicity is not race. A person of Hispanic ethnicity may be White, Black, or some other race.

Geographic Analysis:

Neighborhood-level analysis is not reasonable for states. Maps are not reliable and easy to read for states. The required analysis presumes a level of understanding of neighborhoods that a state will not have; e.g., “describe the relevant characteristics that set it [R/ECAP neighborhood or area] apart from non-R/ECAPs, including patterns of financial investment...” (See 2.c.) As we commented earlier, when considering the number of cities within a state and the number of neighborhoods within each city, the knowledge base required to perform this analysis is nonexistent and the task overwhelming. It is not easy to identify the areas or read the HUD-provided maps, which should include landmarks, roads, and boundaries to make the area more recognizable. The geographies need to be made clear in the Tool. Dot density maps do not make sense for large areas such as states.

Limited-English Proficiency Data Request is not consistent with regulations. Limited English Proficiency (LEP) data as requested here is not a regulatory requirement. HUD is proposing to simply list the top ten languages for persons of LEP. However, this is inconsistent with both Executive Order 13166 and HUD’s own regulations FR-7878-N-02 which uses the “four-part analysis” to determine if translation of materials or other efforts need to be undertaken for persons of LEP. Many persons of LEP are not eligible for housing programs. For example, the LEP includes many minor children, but children are not eligible applicants for rental housing or mortgage loans.

There is no set baseline for R/ECAP and non-R/ECAP. Under item c., what is the baseline for relevant data that sets a R/ECAP apart from its neighbors? The items here – financial investment, basic services, health and safety conditions, and geographic isolation - are not defined, so it is unclear how a grantee would begin to discuss them. In addition, rural areas covered by states typically don’t have mass transit. If HUD does not provide this data, it needs to be omitted for states.

Census Tract boundaries often shift. Item d. assumes that data over time is available and that the census tract has not shifted, when in reality the boundaries of about 20 percent of Census Tracts change, shift, or split every census. This data would not be valid for a significant part of the country over a 10-year basis, and after 20 years would be extremely inaccurate.

Determinants of Segregation/RECAPS

It is very difficult and costly for states to determine causality of segregation. The comments below apply to all sections of the Analysis that request an analysis of determinants of segregation.

Grantees are asked to identify and rank in relative order the provided determinants effects on segregation. Similar to our comments above on determining causes of dissimilarity, HUD is assuming that there is a causal relationship between the determinant and the fair housing outcome and jurisdiction knowledge of the relative impact of each determinant. Ranking determinants by their effect on fair housing issues

cannot be empirically determined without significant original research for each determinant and R/ECAP. The research, which would be an overwhelming and costly task even for a local jurisdiction, would be magnified hundreds of times for states. Without data to substantiate conclusions about the relative importance of determinants, opportunities are created to either intentionally or unintentionally misclassify the relative importance of determinants, thereby misdirecting resources and not achieving the desired change.

Some of the determinants may be legitimate. For example, land use and zoning laws have always been considered legitimate powers of local governments to control orderly growth, preserve property values, and provide appropriate services to the types of properties in the area, but there is no way for a state to determine whether all its local jurisdictions are legitimately exercising their authority, or inappropriately using it to further segregation. States do not control land use or zoning, nor occupancy restrictions.

How would the availability of municipal or state services be viewed as contributing to segregation? Households of color are generally poorer than white households. A rational response is for poor households to locate near services and amenities, such as transit, and other amenities within walking distance. Location decisions made by households that are based on their financial capacity and needs should not be second-guessed.

Jurisdictions are allowed to state that the local knowledge needed to reply to these questions is not available, but that assertion may be challenged by anyone who thinks that they know the determinants and their relative importance in segregation. It is extraordinarily important that determinants be objectively measured if the requirement to describe determinants in this section and elsewhere is included in the final Tool.

Publicly-Supported Housing Patterns:

HUD should not require states to provide PHA-level data. HUD asks for data on local PHA activity. Many states don't have authority to require this data from PHAs or require them to take steps to AFFH. Throughout the Tool there are requests for information about how housing choice vouchers are being used and the success tenants have using them in opportunity areas. States simply will not have that information or the authority to demand it from PHAs. The Quality Housing and Workforce Responsibility Act (QWHRA) requires states to assist "troubled" PHAs, which are troubled for financial problems or distressed physical units, but does not give them any authority regarding their housing practices (including fair housing practices), Voucher usage, etc. Consequently, the discussion of PHAs should be removed, or at the very least optional, for a state grantee.

6.a.(iii) asks for a description of patterns of occupancy by several different variables, including national origin, family status, and religion. This should be stricken from the Tool, since it is illegal for an owner to ask for that information.

6.b.(i) asks for descriptions of "differences in siting patterns for housing that serves families, elderly, or families with disabilities." The verb "siting" implies an affirmative action to locate a property in a R/ECAP, as opposed to a R/ECAP developing around a building. We suggest that "siting" be replaced with "location." This change to the first sentences would make those sentences consistent with the final sentence of (i).

Publicly-Supported Housing Location and Occupancy

Publicly-Supported Housing in R/ECAPs may be a result of HUD policies or neighborhood change. For these questions, HUD asks if there is disproportionate siting of projects in R/ECAPs for elderly versus family units (as well as persons with disabilities). Effectively, given the demographics of the projects, family projects will probably consistently be in areas of higher poverty. This is because a 150 unit elderly project where most households are single persons will have basically 150 persons living in poverty (less than 30 percent of income), and a 150 unit family project with an average family size of three will have 450 people living in poverty (less than 30 percent of income). Given that many housing projects, especially PHA developments and project-based Section 8 projects routinely have more than 150 units, they are consistently going to show up in ECAPs more often than other projects based on the population served.

HUD needs to recognize that it may, in fact, be HUD-funded projects that are causing the concentrations, especially given the deep income targeting HUD (and the Federal government) require for their housing assistance programs, and not any action taken by a state or local government that is causing the concentration.

In regard to RCAPs, the analysis assumes projects that are located in RCAPs (the discussion in the Tool on project siting), are the results of local or state government measures rather than changing demographics. In many states, many suburban jurisdictions that were majority white when projects were built are now majority minority due to minority households moving into suburban areas, while white flight from cities resulted in projects being located in RCAPs that were not when constructed. The Tool states that users of the Tool should talk about the problems with project siting, when it is the neighborhood that changed around it over the 20, 30 or more year life of the development. Therefore, in the case of RCAPs, the Tool should be altered to note that it may be that the demographics of the community that changed, not an issue of project siting.

A more sensible approach, especially for states, would be to ask for a discussion from grantees regarding what they are doing to ensure new projects are not being developed in R/ECAPs when those projects are not part of a designated revitalization strategy and/or are the result of statutorily mandated requirements such as the LIHTC preference for QCTs.

Project-level analysis and comparison to a neighborhood or area should not be required of states. Doing this on a project-by-project basis for every project in the state would be incredibly burdensome and time consuming, and would provide little useful information given the scale of the geographies involved and the huge numbers of projects financed through various federal programs. In addition, it assumes that states (or in some cases local governments) have a say in the location of these projects either currently or in the past. This is not true in the case of most HUD assisted projects, such as project-based Section 8 projects, nor most Public Housing projects (especially true at the state level) or the vast majority of USDA multifamily projects. It also assumes grantees, such as states, have a say in the lease up of these units, which is also not true, particularly in the case of PHA units.

There is nothing a jurisdiction can do to modify the tenant profile of a building to be more reflective of the neighborhood, since it likely does not own or operate the development; and owners cannot deny occupancy to someone because their race is over- or under-represented in the project.

It is also unclear how or what purpose **item viii** in this section serves. With the passage of HERA, LIHTC properties were required to automatically accept Section 8 Vouchers. Even prior to HERA, many if not most landlords of LIHTC properties actually prefer to take Vouchers, as Voucher rent (FMR) are

often higher than tax credit rents. LIHTC properties are also already subject to annual monitoring, so it is unclear what this analysis serves rather than as a data exercise.

Publicly-Supported Housing and Mobility Policies

States do not know admission policies of privately owned housing. a.(i) asks for a discussion of how admission preferences in each type of publicly-supported housing affects residency patterns of housing residents. This discussion would require knowledge of the admission preferences of each publicly-supported housing development. With the exception of public housing, almost all publicly-supported housing is privately owned and uses its own admission preferences; therefore, this discussion would require detailed fact gathering on an enormous scale for either local or state jurisdictions.

HUD should not require mobility counseling. The numerous references to mobility counseling in this section indicate HUD is essentially trying to use the Tool to make policy. While we agree that mobility counseling may be an effective Tool in promoting choice, the Tool needs to be altered to use counseling as a strategy to overcome impediments if appropriate for the grantee.

Specific solicitation of comment: Does the Assessment Tool ask the right questions and provide the right list of determinates to provide a meaningful assessment?

No. Too much of the Tool is vague, too much of the data is poor, a number of the determinates are housing problems but not necessarily fair housing-related problems, and too many of the issues raised are out of the control of the recipients of HUD funds to result in programmatic changes even if they are needed from a fair housing (or broader community development) perspective.

Specific solicitation of comment: Which types of program participants should be required to include project level data in tabular format for the various categories of Publicly-Supported housing? Should the tables be formatted differently <snip> what are the most effective ways of providing for assessment of project level data in an Assessment Tool used by States (for example, in connection with a State housing finance agency's administration of LIHTCs)?

Project level data should not be required of states, Voucher only PHAs, or small PHAs or communities which may only have a single housing project. At the state level, the issues of both scale and geography, where projects could quite literally be hundreds of miles apart, has no use. In addition, there would be so many projects the task would become overwhelming, and no clear results could be determined. In addition, information on affirmative marketing efforts through programs such as HOME is already available through the CAPER and monitoring of individual projects. Consequently, regurgitating data that HUD already has also is a wasted effort since it doesn't tell HUD anything it doesn't already know. Ultimately, it is unclear what HUD is trying to accomplish with this data.

In regard to the LIHTC question, we don't believe this data should be used, in part because statutory requirements of the LIHTC program require preference be given for projects located in areas of high poverty (QCTs), which tend to have higher minority concentrations and thus more minority tenants. It is unclear how the Tool would avoid "false positives" of potential discrimination if the demographic make-up was different for projects located in cities compared to projects located in rural areas. In addition, as noted above on the project discussion in general, the sheer scale of doing this, when even a medium-sized state would have multiple hundreds of projects with tens of thousands of units, would be a massive undertaking that would provide little information of use.

Section C: Disproportionate Housing Needs:

Disproportionate Housing Needs do not always indicate unfair housing practices. This section of the Tool illustrates why HUD needs to make the necessary changes to the Tool and put it out for another round of comment. HUD notes that in many cases the data here is not/was not available when the Tool was put out for comment in the Federal Register. That makes it difficult to respond to the items HUD has listed.

In addition, a lot of this data is redundant with the E-Con Planning Suite, and it confuses housing problems with discrimination in housing. The fact that some households may be cost burdened or over crowded or lack incomplete kitchens or plumbing is a housing problem, but is not a fair housing problem per se. For example, low-income households are more likely to be cost burdened, but that is not evidence of discrimination. It means they lack adequate income to pay the rent, regardless of where they are physically located. If there was a difference in *access* to housing programs, such as Vouchers being denied to minority households, or that minority households were provided assistance disproportionate to their share of need, that would indicate fair housing problems. HUD needs to re-think this entire section of the Tool to focus on actual discrimination, not repeat data already in the E-Con Planning Suite that don't deal with fair housing issues.

Regarding the determinants, a number of the determinants listed are either items over which the state has no control (and should not be in the state version of the Tool) or would be almost impossible for any grantee to determine or verify. As noted above, states have no power over zoning. Also, what are the standards or how would a user of the Tool determine "housing stock deterioration?" Also, how would grantees determine private investment, and how would they determine if the investment was "exclusively luxury housing"? And how is HUD defining that?

Section D. Disparities in Access to Community Assets and Exposure to Adverse Community Factors

Some states have little authority over these community assets. HUD expects grantees to have control over some community assets that HUD identifies as indicators of disparity in access to community assets such as school proficiency, jobs proximity, labor-market engagement, transit proximity, and other issues tangential to fair housing. States do not have the resources to control these factors in addressing those problems. Some states have little authority over these areas. Aside from the massive undertaking this would be, and the enormous costs involved in such an analysis, especially on a state level (where HUD is again asking for all of this data at a neighborhood level), it appears once again that HUD is trying to make policy through the Tool far beyond the scope of the Fair Housing Act or other legislation without providing the resources to back it up or the statutory authority to do so.

The Tool needs to be significantly altered to focus on fair housing issues rather than Sustainable Communities efforts. The Tool requests significant data that appears to be more part of HUD's Sustainable Communities Initiatives – information on transportation, schools, community assets and investments, etc. – than are fair housing related, including discussions of protected classes which, except for race, there is little, especially in regard to sex, marital status, age, etc. While the Sustainable Communities initiative has laudable goals, the vast majority of users of the proposed Tool are not participants in the Sustainable Communities Initiative and did not receive the hundreds of millions of dollars in planning resources necessary to carry out planning on the vast scale HUD is proposing.

This entire section of the Tool needs to be removed unless HUD can provide some statutory authority for it and either the data or the billions of dollars in funding needed nationwide for grantees to collect it.

Section E. Disability and Access

Information is not available on “sufficient” housing for disabled. HUD is asking for a discussion of the various housing needs of different groups of persons with disabilities, and said it will provide the maps and data. However, the maps and data HUD provided in the sample Tool don’t match the discussion areas in terms of various populations (vision impairments, cognitive impairments, etc.)

Where does HUD expect grantees to find out if there is – by size of unit - “sufficient” affordable housing for persons who use wheelchairs, who are deaf or hard of hearing, and individuals who are blind or have low-vision? Given that there is a huge gap in the need of affordable housing and the availability of affordable housing for virtually all lower-income groups, what is “sufficient”? Or does HUD expect grantees to answer “no, there is not sufficient housing for these groups any more than any other low-income group”. And then what purpose does that serve? And where is the specific data, unit by unit, available for grantees to collect?

Information on religion is not available. This section also asks the same type of questions in regard to access based on religion, color, and other factors. The Census does not ask questions about religion in any form, so it is unclear how anyone would obtain this data. The same holds true with color. It asks about race, ethnicity and national origin, but not about color.

It is also unclear where state grantees would find information on items such as the accessibility of sidewalks or pedestrian signs across the entire state. Building accessibility would also be difficult to determine, especially on a state level. A more useful discussion in this regard might be that grantees (state and local) discuss their policies in regard to accessibility when sidewalks are upgraded or replaced using HUD or other funding, or the status of building codes in regard to providing accessibility and enforcement of the latter.

Specific solicitation of comment: HUD specifically seeks comment on whether the Assessment Tool, by addressing Disability and Access Issues separately, has inadvertently failed to consider any key fair housing issues that relate to individuals with disabilities.

While there is some overlap between disability and access, each of these issues – and the needs of persons with different types of disability - needs to be examined separately. It has also been our experience that different disabled populations have different needs depending on which groups you are working with. For example, persons with mental illness may need to be de-institutionalized, or, if they are living independently already, may need access to their doctors or family. On the other hand, the frail elderly may need changes made to their existing housing if they wish to age in place, or if they have self-care limitations. Persons with physical disabilities have a different set of challenges, which can include both in-unit mobility, reasonable accommodation, and transportation. Persons with alcohol and drug addictions present a separate challenge, and in many cases cannot be assisted in subsidized housing due to criminal histories.

Section F. Fair Housing Compliance and Infrastructure

Fair housing lawsuits and allegations are often without merit. This section of the Tool asks that grantees discuss legal cases regarding fair housing that have not been resolved. This includes not only determinations or lawsuits, but even allegations of discrimination. This is of great concern for several reasons. First, allegations and lawsuits are not the same as guilt. However, the Tool seems to view the filing of lawsuits or allegations as the same as guilt, regardless of the merits of the allegation or suit.

Second, there are legal implications to even discussing the merits of lawsuits or complaints, including providing data, information, or other resources to the “prosecuting” agencies, organizations, or individuals which “defendants” do not have to do under the law. Disclosing information on allegations or complaints, and indicating data or other resources are available to dispute it puts that information into the discovery phase, rather than the “defense” phase of a case. It is unclear how the discussion the Tool would prevent “defendant” agencies from assisting prosecutors.

It isn't clear if HUD is asking about actions against the jurisdiction, or anyone in the jurisdiction. If the latter, HUD should be able to produce that information, at least for those cases it has enforcement responsibilities. HUD could provide information on agencies it funds. States will not necessarily know the names of all fair housing or civil rights agencies and organizations operating within the state.

Funding fair housing groups is not a requirement of grantees, nor should they be expected to do so. It is not for HUD grantees to fund these organizations, especially when they can receive funds from the federal government or units of general local government directly. In addition, funding these organizations for state grantees often would not make sense as most of them are located in entitlement jurisdictions, and the state's focus on rural areas. (In addition, for states, using funding like CDBG for these organizations operating in entitlement areas would be a violation of CDBG statute.)

Specific solicitation of comment: The Assessment Tool has been designed to address many, but not all, of the most common fair housing issues. In some instances, a program participant may have fair housing issues that the Assessment Tool does not address. In other instances, a program participant may have no relevant local data or local knowledge related to a particular inquiry. Therefore, HUD asks whether the Assessment Tool is sufficiently clear that a program participant may address additional fair housing issues that are relevant or may reply that a particular fair housing inquiry cannot be answered due to lack of HUD-provided data, available local data, and local knowledge responsive to the inquiry. What kinds of instructions would be helpful to address both of these concerns?

Yes, though given the sheer scale of the assessment HUD is already requesting, it is highly unlikely any participant would expand the Tool/data to make it even more burdensome.

V. Fair Housing Goals and Priorities

This section asks jurisdictions to identify one or more goals for addressing determinants, metrics for measuring success, and a time frame for achieving the goal.

Achieving memorable changes will require increased resources. We are concerned that achieving measurable changes in the five fair housing issues identified in the table in Part V will require more resources than are available to either state or local jurisdictions, and many of the so called “determinants”

will be beyond the influence of the jurisdiction to change. For example, siting decisions will be decided by developers when making a development proposal and city councils that approve the projects, not by a state that selects a development for funding. Those local entities will take into consideration factors such as public acceptance or possible opposition when planning the projects; so if public opposition is a determinant, it will be addressed at project conception, possibly by avoiding it, and the state will not know about public opposition. Furthermore, states are not in a position to influence siting decisions outside of their project selection processes and incentives.

Because the determinants that must be addressed to achieve measurable changes in fair housing issues are not usually within the authority of states, goals should be permitted to be described in terms of processes that are meant to address determinants and further fair housing choice. For example, lack of access to jobs could begin to be addressed by including preferences for developments located near jobs or public transit connected to jobs. There should also be an acknowledgment that as much as states do, their ability to move the needle on fair housing issues is limited by their legal authorities and lack of control over local matters, so measurable changes in conditions will be far into the future and, even then, may be offset or reversed by other forces in society and the economy.

Finally, even if a state is able to definitively identify the relative importance of determinants, different locales with different determinants will require different goals to address the determinants. A state cannot operate its programs based on a multitude of goals that are local in nature and need. Selection criteria for projects are defined by state priorities and goals as well as federal statutory requirements (such as a preference for QCTs for LIHTC). It is impractical for a state to have different selection criteria for each locality, each with its own set of goals established in Part V of the Assessment Tool.

Some of the actions to address impediments may take years and may take much more than CPD funds. What will be expected of states? The chart on page 13-14 asks for time frames for achieving goals, which may be difficult to provide.

Other comments:

In addition to the above items, we would note that the Tool contains numerous phrases and terms which are not defined. The following terms need to be defined and/or have data and measures provided by HUD:

- “Satisfactory” Consultation Requirement
- “Renewal” AFH
- What constitutes a “segregated neighborhood” found in the section on Geographic Analysis?
- R/ECAPs (both the terms and the thresholds). If this is the former “concentration”? If so, is this using the CPD definition (which are in regulation) or FHEO standards (which are not)?
- “Financial Investment” in an R/ECAP (found under “Geographic Analysis” assuming this is kept.) What does it include? What is HUD’s data source?
- “Basic Services” in an R/ECAP (found under Geographic Analysis assuming this is kept). What are these? What is HUD’s data source?
- “Health and Safety Conditions” in an R/ECAP (found under Geographic Analysis. Also assuming this is kept.) If this is retained, presumably “health” and “safety” would include two different definitions. What data will HUD provide for this to meet its definitions?
- “Geographic Isolation” in an R/ECAP (found under Geographic Analysis, assuming this is kept.) What is this? Is it different in a rural versus urban area? Is it caused by physical barriers, or other conditions?

- “Disproportional R/ECAP” (found under geographic Analysis). What is it? How is a R/ECAP “disproportional” to other R/ECAPs? What is the standard?
- “Vulnerable to becoming segregated” (found under Geographic Analysis). What does this mean? What are the “risk” factors that make one area “vulnerable” and another area not “vulnerable”?
- What are municipal or state “services” that can lead to an R/ECAP? Please list the services HUD is referencing and the data source(s) if this is kept
- What are municipal or State “government amenities” that can lead to an R/ECAP? Please define “amenities” and list them and the source of data for this.

Solicitation of Comment on the Assessment Tool Only

(1) Can program participants complete the Assessment Tool independently (i.e. without assistance from consulting firms or outside contractors.) It would depend on the size of the grantee and how many of the items in the Tool are retained before it goes live. Many grantees currently hire consultants to do the smaller Analysis of Impediments currently in place. Given the vastly larger scale of the Tool, the majority of grantees would probably hire consultants to complete the Tool. This would include almost any large grantee as they would need to hire consultants simply based on the sheer amount of information HUD is requesting. Based on what HUD is requesting, we believe even a medium sized Tool/document assessment would run several hundred pages for grantees, longer than many Consolidated Plans. (Simply printing out the maps and tables associated with the Tool runs about 40 pages.) Adding information on transportation, schools, and the numerous vague references about community investment, amenities, services, etc. will expand the document dramatically. Regional documents or statewide documents (as proposed in the Tool) could easily run 500 pages or more.

(2) What kinds of additional instructions would be helpful for program participants in completing the assessment Tool? Hands-on training (not webcasts or webinars) would help. In addition, the maps and data need to be modified so they work/show data at the proper geographies.

(3) What costs may be associated with collecting and analyzing the available local data and local knowledge necessary to complete the Tool? HUD is assuming the data is available at the local level, which is an incorrect assumption. Trying to find this data (assuming completing the Tool was not simply contracted out) would require weeks of work by most grantees assuming they felt they could even make the effort. Consequently, obtaining the local data would require additional payments to consultants for many grantees.

(4) Do program participants expect to use Federal funds to complete the Tool? Yes if funding is available for this purpose. However, given the continued cuts to HUD appropriations and the reduced amounts available to grantees, it is unclear whether sufficient funds would be available to charge off these costs. This is particularly true at the state level which receives a significantly smaller amount of administrative funding from programs such as CDBG to use for planning/staffing efforts. We would also like to note that reading through this Tool, it is almost as if HUD is acting like all participants/grantees received Sustainable Communities funding, which is clearly not the case. The coordination with transportation, schools, etc. seems to have come out of that area, without the funding behind it for grantees who did not receive this funding. It suggests that HUD is trying to use the Tool to make policy.

(5) What strategies can program participants use to reduce any burden associated with completing the AFH, including low-cost or no-cost strategies for obtaining available local data and local knowledge? There are no low-cost or no-cost strategies for doing this. The best way to reduce the

burden is to do the minimum that HUD requires and note that data is not easily available when it is not easily available – and HUD should accept that as a reasonable answer in the Tool.

(6) How do program participants envision joint participation in completing the template? We are not clear how this is even possible, not seeing a working model of the Tool. We have seen nothing that indicates the Tool can be shared by multiple users with different office or agencies filling out and responding to different parts.

Thank you for giving us the opportunity to comment on this proposed template for local grantees. COSCDA would be most willing to work with HUD as it develops a proposed template for states. Please contact me for further assistance or if you have questions regarding these comments at 202-293-5820.

Sincerely,

A handwritten signature in black ink, appearing to read "Dianne E. Taylor". The signature is written in a cursive, flowing style.

Dianne E. Taylor
Executive Director