



March 16, 2020

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

RE: FR-6123-P-02 Affirmatively Furthering Fair Housing Proposed Rule

The Council of State Community Development Agencies (COSCDA) represents state housing and community development agencies responsible for administering the U.S. Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), and McKinney-Vento Homeless Assistance. Administrators of state housing and community development programs acknowledge and appreciate policies to promote fair housing. Federal resources are essential to supporting at-risk and vulnerable populations; policies should be adopted to ensure equal access and participation in these critical programs. Thank you for the opportunity to submit comments on the Affirmatively Furthering Fair Housing (AFFH) proposed rule.

General Comments

In program implementation across HUD's block grant programs, it is important to recognize the clear differences between entitlement communities and state-administered programs which serve non-entitlement communities.

First, entitlement communities administer funding directly in coordination with local government oversight and management. The structure allows communities to identify needs including access and availability of housing, and determine actions to address priorities. Localities may also carry out actions under their control including updating housing-related ordinances and promoting fair housing through public housing agencies. States on the other hand have minimal ability to enact these actions which are granted to, and under the authority of, local jurisdictions.

Secondly, entitlement jurisdictions generally have more comprehensive data needed for HUD reporting requirements than states and their respective service area. Information such as demographics, housing occupancy, and poverty levels, is necessary to monitor progress on community development and housing goals. Accurate and timely data remains critical to determining impact of program implementation as well as further activities. Data used across levels of government consistently flow through few channels namely the U.S. Census Bureau and its annually-updated American Community Survey. While the agency provides quality

information overall, residents in rural and small localities are often harder to reach than their urban counterparts. Less available data or limited surveys could hinder efforts to regularly report on changes to community standings including the status of housing both statewide and based on locality. Minimum or inaccurate data impedes state programs in both data collection and reporting directed by HUD.

Lastly, resources are limited for states to monitor and report local activities of the service area. Non-entitlement communities are scattered across the state's geographic footprint. As a result, the number of communities, and therefore sub-grantees, vary by state. Oversight and reporting of these entities under the state's administrative function requires considerable resources. Without a significant expansion of administrative capacity, it will be difficult for states to track local policies on AFFH in addition to current administrative responsibilities. Entitlements though may be better positioned to respond due to the grantee's smaller scope of service area and have expanded administrative resources compared to states.

States have also never had an opportunity to fully participate in the 2015 AFFH rule since the AFFH assessment tool was never made available from HUD. A state tool was proposed in 2016 with COSCDA issuing a response on its impacts for the non-entitlement program, but the tool was never made available for state use. Without further examination and adoption of the tool in state program administration, states cannot adequately respond to AFFH benchmarks.

Specific Responses

Responses have been developed to the following questions in the notice. Specific questions were responded to based upon relevance to state program administration.

Question for Comment 1: Is three the appropriate number of goals a jurisdiction should submit? If not, what would be a more suitable number? Would a higher number more appropriately hold jurisdictions accountable to AFFH without imposing an undue burden?

COSCDA recommends three goals as an appropriate number. The quality of the objectives should be the key focus and not necessarily the quantity. States can allocate resources around an established set of goals. Three goals allows jurisdictions to plan and respond accordingly.

Question for Comment 2: How should HUD balance requiring overly prescriptive standards with ensuring integrity for data sources that support such goals?

Standards should be based in large part on the jurisdiction's ability to respond. For states, data required to properly assess and report on community status may be severely limited or in some cases non-existent. It would be beneficial to state reporting if HUD allows a reasonable timeframe and resources to comply with established standards.

Question for Comment 3: What, if any, aspects of the proposed rule and other policies not in the proposed rule, would motivate jurisdictions to more meaningfully engage in the AFFH planning process and make progress on the goals of the local AFFH plan?

Both the 2015 and current proposed rule fails to recognize distinct differences between grantees. As mentioned, local and state grantees administer programs responsive to varying needs of service areas and populations. The ability of administrators to accommodate changes also varies between jurisdictions. Additionally, differences exist between jurisdictions at the same governmental level. States operate under different laws and policies, and the same applies to local governments. In other words, no locality or state is created equal. Moving forward, HUD should recognize distinct issues faced by grantees and provide further guidance on how effective and efficient participation in AFFH can be better facilitated based on each grantee's respective set of circumstances.

Question for Comment 6: What process should HUD undertake for updating the list in regulations, and how frequently should these updates occur?

COSCDAs recommends sufficient time to introduce and revise regulations based on access and availability of essential data. For states, data is not readily available or regularly updated in service areas compared to entitlement communities which serve larger populations in more urban-based areas. Annual data for instance may not be available or accurate in small and rural service areas. A longer period of time to gather and assess information affords a better opportunity for states to properly respond to regulatory changes.

Question for Comment 7: What are the appropriate economic and population size/growth/decline market conditions categories of local CDBG-receiving jurisdictions that submit consolidated plans? Should there be different categories of States, as well? How many categories should there be?

Similar to our response for Question 6, states are positioned to report on conditions linked to AFFH however additional time and proper resources need to be considered for appropriate response. Guidance specific to states would benefit AFFH implementation among non-entitlement communities. Categories assigned to states may improve outcomes however it is more important that states have the time and capacity necessary to act on AFFH and make adjustments as necessary.

Additional Comments:

In closing, states vary on position and ability to influence local policy and action. Depending on the local jurisdiction, AFFH's goals mean substantial changes to local ordinances and redirecting of resources. Entitlement communities have this ability and stance to accommodate these actions. States on the other hand have few to no paths in prompting local response. State and

local actions are designed by established laws which differ in each state. States cannot set requirements on local policy and influence local decision-making in many cases as outlined by AFFH. Involvement in stakeholder actions is limited as well with entities existing outside of localities and states. In some states, Public Housing Authorities (PHAs) for instance operate outside of the authority of states and in some localities, PHAs do not fall under the rule of the local governing body.

Another issue raised by states is the application of “sphere of influence” in AFFH. In Part 5 General HUD Program Requirement Waivers 2. Revise 5.150 (a) (1) and (2), HUD describes the obligation of HUD funding recipients to AFFH and cites the participant’s “sphere of influence” in providing fair housing choice. COSCDA is concerned with this phrase as it is subject to interpretation by each jurisdiction. To avoid issues which may stem from a grantee overprescribing or misusing oversight, COSCDA recommends that HUD provide practical metrics to ensure a level of fairness and expectation of response from all funding recipients.

Finally, states would benefit greatly from HUD’s technical assistance in state AFFH implementation. As revisions to the policy occur, COSCDA asks that HUD provide training and related support directed to state programs. Assistance designed for state programs would aid their efforts to navigate their specific set of challenges in complying with the new rule.

Again, thank you for the opportunity to provide comments on the proposed update to AFFH. If you have any further questions or need additional input from COSCDA or its membership, please reach out.

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