

# COSCD A Federal HUD Programmatic Priorities Fiscal Year 2022

## CROSS-CUTTING PRIORITIES

- **Reintroduce and Update the 2015 Affirmatively Furthering Fair Housing Rule**

In September 2020, HUD revoked the 2015 Affirmatively Furthering Fair Housing Rule (AFFH). Asserting that the policy is ineffective and overreaches in local affairs, HUD published its notice to no longer implement the 2015 rule, declining further implementation. COSCDA recognizes the challenges involved with AFFH and has suggested changes to enhance impact of the policy and support administration at state and local levels. With modifications, the policy can be applied in a meaningful and effective manner; fair housing should be a priority in federal policy and more work is left to be done. The 2015 rule should be revived with targeted updates including the following:

- Establish a tool for state implementation of an Assessment of Fair Housing (AFH). Following the 2015 AFFH rule, HUD was expected to provide a tool for state use however the tool was never made available.
- Consolidate or streamline information required by the 2015 rule. State and local administrators are required to meet many program requirements involved with CDBG, HOME, among other programs. The state tool requests a multitude of information which staff capacity and resources cannot accommodate. Specifically, the addition of entitlement areas in reporting, and collaboration with Public Housing Authorities (PHAs), poses administrative challenges. Data shown in the tool is often not beneficial to states or inadequate to properly use in assessing state service areas which are primarily rural. States would be best served with additional flexibility to collect, analyze, and provide data from localities.

State administrators of HUD programs have serious concerns with the 2015 AFFH rule, the absence of a state-specific tool, and implications posed by the policy. An analysis of impediment should reveal barriers to AFFH implementation, and be best pursued as a joint venture between HUD and grantees, including state agencies. A policy responsive to the grantee should be prioritized in recognition of the state's ability to collect information and assist fair housing in their jurisdictions. A user-friendly tool would be welcomed which can be easily accessed and adopted in current reporting systems. Consistent application of the policy particularly across HUD regional offices is also critical to its success. States are committed to fair housing and request that state-led assessments are incorporated with further updates to AFFH.

**COSCD A encourages HUD to reissue the AFFH rule while providing tools to ensure meaningful and feasible inclusion of state grantees. COSCD A continues to be willing to assist HUD in the development of AFFH requirements at the state level.**

- **Implement Flexible Section 3 Requirements**

**COSCD A calls on HUD to revise the final Section 3 regulations to provide more flexibility and deference to states in administering the policy.** The proposed regulations that were released in 2019, and finalized in September 2020, are not effective in rural and small city settings. COSCD A provided comments to the proposed rules on May 30, 2019 suggesting

several improvements to the current policy. Overall, many states with sparsely populated rural areas have difficulty in meeting the requirements since funding for many CPD programs is provided to local governments that may only receive a one-time grant and are far from the state offices. Therefore, long-term Section 3 monitoring can be problematic. COSCDA urges HUD to strike the appropriate balance between the limitations of state and local agencies' administrative and financial resources and Section 3 goals.

COSCD A concurs with HUD's proposed threshold of \$200,000 for individual projects however the threshold should apply to sub-grantees instead of states. Furthermore, a threshold of \$750,000 would be more applicable to facilitate the hiring of low-income workers. The higher amount allows states to dedicate few staff and resources to meet Section 3 and pursue the hiring of low-income workers. Overall, regardless of threshold amount, a higher-cost project does not necessarily result in an employer hiring more workers.

In addition, HUD has released Section 3 reporting requirements, which are not clear. To effectively submit reports, states will need HUD to provide clarification about these reporting requirements.

COSCD A requests that Congress reduce the requirements of the Section 3 statute. Given the significant effort required to seek qualified candidates for employment and the small number of hires that have resulted from this program, **Congress should change the nature of the statute to encourage, but not require, the hiring of local workers.**

- **Continue to Include States in the Development of the HUD Environmental Review Online System**

HUD is continuing to develop its HUD Environmental Review Online System (HEROS). COSCD A has asked HUD to include state agencies in the development of HEROS, to highlight the practical differences in the Entitlement and State CDBG and HOME environmental review processes. Moving forward, COSCD A looks to partner with HUD Community Planning and Development's Office of Environment and Energy on HEROS.

**We appreciate HUD carefully considering our comments on the system and realizing that state implementation should be optional at this point; a requirement for use should be delayed until these crucial revisions for states are made. HEROS is not compatible with state programs and should not be required by HUD.** When the necessary modifications are made, COSCD A will continue to work with HUD to ensure that the HEROS system is appropriate for state environmental review processes before it is required of states.

- **Standardize Environmental Review Across Federal Agencies for Overlapping Programs - Disaster Recovery and Housing Trust Fund**

State program administrators are faced with regulatory hurdles in adhering to environmental review of HUD and additional federal agencies despite addressing similar goals within each program. For instance, CDBG – Disaster Recovery (DR) maintains individual regulations while the National Housing Trust Fund (NHTF) operates according to separate environmental procedures. Funding from separate programs may further goals in one project, but state and local administrators must adhere to different review policies of each program. As a result, state and local administrators process separate reviews unnecessarily. **HUD and other agencies should commit to ensuring administrative functions are efficient and effective without being**

**duplicate and burdensome. Guidance should be issued responsive to standard oversight and process throughout federal programs.**

**A thorough review of 24 CFR Parts 50 and 58 may provide options on aligning environmental reviews with other federal programs and ultimately, improving administrative processes. Given that states administering CPD programs are generally not selecting project activity sites themselves, we urge HUD to reconsider how certain ‘choice limiting’ activities are defined under the environmental review requirements. For example, there often is time sensitivity with regard to executing site control documents on private real estate parcels/properties, but a state that administers CPD funding is not in control of the site and does not have any authority with regard to directing an alternative site use. Where a project/activity may be funded by more than one federal source, it seems reasonable that a site reaches HUD clearance by one HUD source, this approval to proceed should apply to any other HUD sources.**

COSCD A submitted proposals in June 2019 for consideration by HUD recommending updated review standards to better align with other federal agencies. The Office of Environment and Energy is exploring the issue further and COSCD A has offered additional information and response.

## **COMMUNITY DEVELOPMENT PRIORITIES**

### **▪ Include CDBG in Any New Infrastructure Initiative**

Our nation is beset with crumbling and aging infrastructure. Every community needs reliable infrastructure to support quality of life and economic activity. CDBG is an infrastructure program. It is an effective conduit to funnel resources to help rebuild and invest in our nation’s communities. States and local governments use CDBG for a variety of traditional infrastructure activities, including roads and bridges, drinking water systems, sanitary sewer systems, safe streets and sidewalks (curb, gutter, and street pavement), installation of utilities, improved drainage systems to prevent flooding and installation or reconstruction of public improvements to support affordable housing developments. **HUD should include the CDBG program in any new initiative to provide infrastructure improvements to our nation’s communities.**

### **▪ Ask Congress To Grant Flexibility for State Administrative Fees**

To administer the CDBG program properly, states need a flexible administrative fee structure sufficient to meet the current program requirements. **COSCD A requests that the proportion of the annual allocation available to states for administrative and technical assistance expenses should be adjusted from two percent to five percent, at the discretion of the state. In addition, we request that the amount of administrative funding not subject to a match requirement be adjusted from \$100,000 to \$500,000.** We do not request that the match requirement be removed completely, since many states rely on the match to meet their expenses. It should be noted that this action will not increase the current administrative limits, since the overall administrative cap would remain the same.

Since the inception of the state program 38 years ago, states have administered the CDBG program for their non-urban areas; however the funding available to cover the costs of running the program has never been adjusted. During this time, there has been a significant increase in the number of CDBG program requirements, as well as sharply increased costs associated with

doing business such as staffing, service delivery and monitoring, particularly due to increased expenses associated with administering a program over a large geographic area. Additionally, administrative dollars have decreased at the same rate as the decrease in CDBG funding. Personnel costs have increased and states are being asked to do “more with less” in an austere fiscal environment. The completion of the State Assessment of Fair Housing required by HUD’s Affirmatively Furthering Fair Housing regulations will be very costly and, for most states, additional administrative funds would be crucial to complete this Assessment. Possible changes in the threshold for CDBG entitlements could increase the number of applicants for states’ funds as well as the administrative burden on states. Pressure has mounted on state agencies to improve their CDBG expenditure rate as well, which could be addressed by additional resources made possible by a state administrative fee change.

It should be noted that state governments do contribute state resources to cover the costs of administering the CDBG program. In the current economic and state fiscal climate, a majority of states are having difficulty covering the required match. The HUD Inspector General has recently agreed and acknowledged that states have limited resources to complete the monitoring of expenditures required by federal laws and regulations. Revenue loss is expected to hit states further due to COVID-19 resulting in significant budget cuts. Allowing this flexibility would not require additional appropriations, nor would it take money away from projects for local communities, since the overall administrative cap would not be affected. It would simply allow an increased proportion of administrative funding to be available to those states that need additional resources to operate the state CDBG program most effectively. **COSFDA asks that HUD work with Congress to provide this administrative flexibility to states.**

- **Update Guidance on Environmental Review Standards to Include Non-Coastal High Risk Areas**

24 CFR Part 55 provides HUD guidance on environmental decision-making with regards to floodplain management with the intent of reducing developments in hazardous areas. The guidance spells out definitions and criteria for project review and approval. Overall, development and reconstruction in high risk areas are not allowed however some exceptions do exist. Part 55 includes exemptions for coastal high hazard areas, but similar exceptions are not afforded to floodways. High hazard areas include both floodways and coastal high hazard areas. While Part 55 provides exceptions for coastal high hazard areas, those same exceptions do not exist for floodways, which in mountainous regions generally follow river systems. The exemptions allow for redevelopment in coastal high hazard areas as long as standard policies apply to a given project. Inland floodways however are not covered by this exemption therefore projects in mountainous areas do not qualify for federal assistance.

**COSFDA encourages HUD to modify 24 CFR Part 55 to apply the same standards to floodways and coastal high hazard areas.** Since high hazard areas by definition include floodways and coastal high hazard areas, simply removing §55.1(c)(1), eliminating the word “coastal” from the exceptions listed in §55.1(c), and modifying Table 1 in §55.11 would suffice. The Federal Emergency Management Agency (FEMA) has adopted a reasonable standard which HUD could consider applying in its own regulatory guidance.

- **Review Impact and Effectiveness of Davis Bacon Requirements**

The Davis-Bacon Act of 1931 established the requirement for determining, paying, and certifying that the local prevailing wages are provided to all workers on most federally-funded projects in

excess of \$2,000. **COSCDAs ask HUD to seek further research on the effectiveness and implication of Davis Bacon requirements when CDBG is used for 1) Disaster Recovery efforts and 2) in conjunction with USDA and EPA revolving loan fund programs that are exempt from Davis Bacon requirements.** In the case of Disaster Recovery, rebuilding impacted communities is of the highest priority. Often small local businesses are hampered by compliance with emergency supplemental legislation (e.g., required weekly payments) and delaying funding, as local wage rates are determined and certified, negatively impacts recovery efforts. Congress exempted USDA programs from Davis Bacon due in part to the difficulty of even determining prevailing wage rates in rural areas. In order to increase efficiency and effectiveness of operating programs when multiple funding sources are combined to fund rural projects, we would like the USDA or EPA standards to prevail if they are the lead funding source. In addition, exempting Davis Bacon requirements requested above addresses the administration's goal of identifying and eliminating existing regulations that are outdated, ineffective, or excessively burdensome.

COSCDAs will also ask Congress for further consideration of Section 110 of the Housing and Community Development (HCD) Act given that 90 years have passed since the passage of the Davis Bacon Act in 1931 and the threshold remains at \$2,000. In 1931, a \$2,000 threshold was reasonable. There are administrative cost burdens associated with reviewing contractor payrolls for compliance. In addition, the method for determining the local prevailing wage is flawed and results in wage rate decisions that are exceedingly high especially in rural areas. That artificially raises the ultimate cost of the project which forces the reduction in the scope of work or stopping the project altogether. **Congress should direct further research on the requirement for CDBG projects to meet Davis Bacon requirements. Short of eliminating this requirement, Congress should at least raise the threshold to an amount that makes sense for 2022 such as \$1,000,000,** alleviating cumbersome administrative and financial burdens on smaller rural projects.

Many states maintain state-specific prevailing wages with several eclipsing federal wage standards. In this case, Davis-Bacon provides no support to ensuring worker compensation instead duplicating laws in place at the state and local levels. Ultimately, Davis Bacon has not been sufficiently vetted to ensure its effectiveness in ensuring fair wages. Additional study should be prioritized moving forward which would reveal outcomes vs. goals, and implications for federally-funded activities in compliance with the policy.

## **HOUSING PROGRAM PRIORITIES**

- **Include HOME and Housing Trust Fund Programs in Any New Infrastructure Initiative**

Policymakers from both sides of the aisle agree that a significant investment in infrastructure should be a top priority. Housing is a critical component of our nation's infrastructure. Affordable housing must be a key element of any infrastructure package, not only because housing informs other infrastructure needs, but because it provides an enduring investment in economic growth. Likewise, economic growth further informs the urgency of the need for additional housing. The HOME Program provides flexible funds allowing states and localities to allocate resources addressing community housing needs based on their respective state and local priorities. Various uses of funds for affordable housing include new single-family and multi-family developments, as well as rehabilitation. Similarly, the National Housing Trust Fund (NHTF) provides resources to develop affordable housing units for extremely and very low-

income families and individuals. Investing in affordable housing infrastructure – through construction and preservation – will bolster productivity and economic growth, provide long-term assets that connects workers to communities of opportunity, and support local job creation and increased incomes. Many recent infrastructure program proposals from the administration and Congress highlight private sector involvement in the financing of infrastructure projects, and both HOME and NHTF are prime examples of leveraging public-private partnerships. **We ask HUD and Congress to ensure that HOME and NHTF are included in any new infrastructure initiative, and include waivers to facilitate efficient and expedient disbursement of funds.**

- **Modify the Set-aside Requirement for Community Housing Development Organizations in the HOME Program Statute**

The HOME statute requires not less than 15 percent of each participating jurisdiction's (PJs) grant to be reserved for projects owned, developed, or sponsored by Community Housing Development Organizations (CHDOs), within 24 months of receipt of its grant. Over the 28 years of the HOME Program, many CHDOs have successfully developed decent, safe, and affordable housing units in their communities. However, other CHDOs have had difficulty in carrying out this task or in being able to sustain all the CHDO requirements in uncertain economic times. Since there have been significant reductions in HOME program appropriations in the last ten years and smaller allocations to PJs, it is difficult for some PJs to spend only 15 percent of their grant for CHDO activities, and often have to either spend a much larger percentage than 15 percent.

HUD requested the elimination of the CHDO set-aside in the FY2017 Administration Budget. In an effort to increase opportunities for available housing organizations to access funds, **COSCSA requests the 15% set-aside be updated to include all non-profits.** We ask HUD to pursue this statutory change with Congress.

**COSCSA also seeks more flexibility to address affordable housing through development-oriented non-profits.** The HOME program should continue to encourage capacity-building, tie operating grants to production of units, and allow PJs to provide forgivable pre-development loans to CHDOs/nonprofits.

COSCSA supports regulatory guidance which reinstates local and state control of funds following an extended period of time such as 24 months, but **revising the CHDO set-aside to include non-profits and allowing this flexibility initially would be more effective in supporting a timely expenditure of HOME funds and in supporting community-based and mission-driven non-profit work.**

**COSCSA suggests that the HOME Program permit non-profit operating costs as an eligible expense and perhaps with relaxed organizational requirements.** In turn, the expectation is that HOME-eligible units will be underway within a two-year timeframe without the annual percentage of HOME allocations that must be dedicated to CHDO development projects. States should also still be able to provide grants to CHDOs and non-profits for capacity-building and support, with the amounts for these activities to remain capped and no minimum threshold to be awarded to CHDO projects each year. Non-profits are in a critical position to deliver affordable housing resources, including supportive services; however, many organizations have prohibitively stretched resources during the COVID-19 pandemic.

- **Set One Uniform Inspection Standard**

HUD direction on the 2013 HOME Final Rule cites a new standard for projects with HOME commitments made on or after January 24, 2015 and indicates that the property standards will be updated. The statute also requires that HOME-assisted rental properties be inspected by the PJ to applicable state and local codes; if these codes don't exist, the new rule allows the PJ to use Uniform Physical Condition Standards (UPCS). States with differing local building codes may face considerable time and technical burdens in ensuring ongoing inspection to *local* codes. To alleviate a potentially unduly burdensome requirement and to promote the streamlining of standards with other federal programs, **COSCDAs asks that HUD set one uniform, nationwide inspection standard that works for both rural and urban areas.**

- **Ask Congress to Remove the 24-month Commitment Deadline in the HOME and Housing Trust Fund Statutes**

The HOME and Housing Trust Fund statutes require that HOME funds be committed to projects within 24 months of HUD notifying the PJ of its obligation of the HOME grant and within 24 months of HUD notifying the state of its HTF allocation. In its FY2017 Budget, HUD asked Congress to eliminate the requirement in the HOME statute for HOME funds to be committed to projects within 24 months of HUD notifying the PJ of its obligation of the HOME grant. Congress agreed with HUD's request, and in the FY2018-20 appropriations acts, it suspended the 24-month commitment requirement for deadlines occurring from 2016 to 2022. HOME also recently implemented, through regulation, a four-year project completion deadline, which measures progress completing projects as opposed to committing funds to projects. The Department believes the project completion requirement will ensure HOME funds are used timely while not taking significant amounts of funds away from participating jurisdictions which- under the current Rule - would lose portions of the grant even if they have activities very close to meeting the commitment requirements. **COSCDAs urges HUD to continue to request the permanent elimination of this requirement in both the HOME and HTF Programs.**

- **Maintain the Integrity of the National Housing Trust Fund and the HOME Program**

**HUD should fully support the National Housing Trust Fund (NHTF) as a separate source of funds for housing extremely low-income persons.** The NHTF was passed as part of the Housing and Economic Recovery Act of 2008 with strong bipartisan support and signed by into law by President G.W. Bush. Although HOME and the NHTF both provide affordable housing, they serve different populations. HOME provides housing for a range of low-income households, while the NHTF seeks to expand the supply of housing for extremely low-income households. Both programs are needed to help meet the affordable housing needs of low-income residents throughout the country.

## **HOMELESSNESS PRIORITIES**

- **Increase the Funding Level for Emergency Solutions Grants**

The HEARTH Act authorizes HUD to allocate up to 20 percent of the annual appropriation for McKinney Vento programs to the Emergency Solutions Grants (ESG). However, since enactment of the HEARTH Act, HUD has not allocated the full 20 percent to ESG, notwithstanding recent increases in McKinney-Vento appropriations. **COSCDAs asks that HUD and Congress provide the full 20 percent of the McKinney/Vento program appropriation**

**for ESG.** The full percentage is needed to meet HUD's directive to use ESG funds for rapid rehousing and provide housing stability. A consistent amount of ESG is needed to continue to rapidly re-house individuals and families, and promote critical services to shelters and transitional facilities as determined by grantees. State grantees need a fairly constant formula grant amount for planning purposes. We ask that HUD consistently provide 20 percent for ESG and avoid further cuts to meet Continuum of Care (CoC) renewal demand.

- **Increase the Proportion of Emergency Solutions Grants for Existing Shelters**

Due to the persistent problem of homelessness, there is a continuing need for homeless persons to have access to emergency shelters throughout the country. Although the benefits of rapid rehousing are acknowledged and it is not HUD's current policy to fund new shelters, there remains a need to increase funding for existing shelters through the Emergency Solutions Grants (ESG) Program. The emergency shelter component of ESG has been at near level funding for many years since many states are capped at pre-2010 amounts for emergency shelter activities. During this time, operating costs at emergency shelters continue to increase with many shelters being forced to lay off staff, reduce services, and in some cases, close. The cap on the amount of funds for emergency shelter activities needs to either be removed or increased to recognize the increasing costs of operating emergency shelters.

Most costs of shelters are fixed costs; therefore, a 10% reduction in the number of persons served does not result in a 10% reduction in shelter costs. Even much of shelter staffing is fixed and staffing levels cannot fluctuate weekly or daily based on the shelter's census. With much greater emphasis on diversion and helping persons avoid entering the homeless system at the front end, emergency shelters are becoming much more difficult to serve populations. Many shelters have had to hire additional staff or staff with special training and licensure to more effectively aid persons with increasingly more challenging issues. Therefore, **COSCD A asks HUD to increase the proportion of ESG funds that can be used for existing shelters.**

- **Clearly Define Policy on Transitional Housing**

The interim ESG regulation restricts future funding of transitional housing providers. Many states are concerned about HUD's focus away from transitional housing, given its importance to specific homelessness groups, such as persons in early stages of recovery, domestic violence victims and homeless youth. **HUD should more clearly define its policy on transitional housing.** While HUD continues supports transitional housing through the CoC, the scoring structure clearly guides applicants away from transitional housing. COSCDA understands HUD's focus on rapid-rehousing and states acknowledge the importance of this practice. However, states and their sub-recipients also see the value in transitional housing for certain populations and are best positioned to know the needs of their communities and the types of shelters that will accommodate these needs.

- **Encourage PHAs to Cooperate with CoCs**

While HUD has encouraged PHAs to collaborate with local COCs within program rules to utilize resources to end homelessness, **COSCD A requests that HUD provide more incentives for PHAs to participate in the collaboration.** CoCs are mandated and evaluated on progress towards collaboration in each annual CoC Program NOFA competition, but for CoCs covering large geographic areas where multiple PHAs operate, the efforts are more often than not, one-sided. Operating with limited resources and long wait lists, many PHAs do not see the need to pursue homeless preferences or reduce barriers to program entry – both vital components to



homeless clients being able to access public housing or Housing Choice Vouchers. In fact, only 25 percent of PHAs are strongly engaged in addressing homelessness utilizing their various programs such as Project Based and Housing Choice Voucher programs. ([Study of PHAs' Efforts to Serve People Experiencing Homelessness, 2014](#)).

Without HUD giving specific direction or incentives, CoCs are very limited in effectively engaging and getting the needed support from PHAs. It's difficult to have multiple funding sources from HUD with different coordination requirements and uneven accountability of these agencies to comply.

Collaboration between PHAs and community stakeholders would benefit both and ultimately improve the lives of people who are experiencing abject poverty and homelessness. The above-mentioned report prepared for HUD by Abt Associates Inc in 2014 could be used as a guide for HUD to move this issue forward.

- **Guidance is Needed on Homelessness Data Integration**

HUD should provide guidance regarding data from the Violence Against Women Act (VAWA) as well as the Veterans Administration Supportive Housing program (VASH). Regarding VAWA, HUD should provide more guidance on how to incorporate domestic violence provider data systems (comparable databases) into the overall data reporting system. The new Domestic Violence Bonus funding was made available in recent CoC funding, therefore states need more direction on how to get consistent data from the comparable databases.

Regarding VASH, guidance is needed from HUD and the Veterans Administration regarding VASH data entry in the CoC's HMIS. It is important to have this data entered in order for CoCs to not incur penalties from excluding full bed coverage reported to HUD on the Housing Inventory Chart (HIC).