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

The Council of State Community Development Agencies (COSCDA) welcomes the opportunity to provide comments regarding U.S. Department of Housing and Urban Development (HUD)'s proposed rule on Affirmatively Furthering Fair Housing (AFFH). COSCDA is a national association representing state agencies engaged in community development, housing, homelessness, and disaster recovery. COSCDA works on behalf of agencies which administer HUD-CPD programs; these include the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), and CDBG-Disaster Recovery (CDBG-DR).

COSCDA agrees with the importance of advancing housing access across race, gender, ethnicity, geography, social and economic status, and all protected classes. Significant barriers continue to exist today preventing many households from securing safe, decent, and quality housing. AFFH's intent is valid and remains a key part of federal involvement in housing issues nationwide.

Throughout the existence of HUD formula grant programs - nearly fifty years ago with the establishment of CDBG in 1974 – the agency's fair housing initiatives have proven challenging to plan, implement, and ultimately apply alongside delivery of HUD CPD resources. The difficulty stems from a combination of factors; however, they can largely be grouped into three overlying issues. The first is the lack of proper definition of fair housing. Over the years, HUD stakeholders including practitioners, clients, and beneficiaries have been given varying guidance with differing sets of directives and supportive information. HUD's engagement has shifted over time and with it understanding has been lost on fair housing, what it means, and how it relates across HUD programs. Second, fair housing implementation has faltered due to the federal policy's inconsistency with state, regional, and local structures to carry out related activities. Responsiveness to federal directives can only go as far as supporting mechanisms allow on the ground. Lastly, how fair housing activities are supported by states remains elusive. Per program guidelines, states are unable to act directly in use of CDBG funds for planning purposes; states would therefore be unable to use their CDBG funds to conduct the proposed Equity Plan under AFFH. Further, without the availability of funds to draw from their respective federal grants, other resources will need to be identified and may be unavailable for some time for the state to access and use for this purpose.

Ultimately, due to the conditions specific to states in carrying out the proposed rule, COSCDA recommends HUD direct an alternative method for states to comply with AFFH. One potential path to streamline development of Equity Plans would involve alignment with the consolidated planning process as the plans

capture HUD-CPD activities over the upcoming three to five years. Alignment also allows states to identify and act on fair housing activities consistent with the jurisdictions they respectively serve. Additionally, HUD should establish a clearinghouse of interested parties to accept input on public participation, assess AFFH implementation strategies, and provide ongoing guidance to inform state and local fair housing actions.

We submit the following response to the latest AFFH rule based on collective experience and engagement from state administrators of HUD-CPD programs.

GENERAL COMMENTS

HUD submits the propose AFFH rule by summarizing it in the following way: *“This rule proposes to retain much of the 2015 AFFH Rule’s core planning process, with certain improvements such as a more robust community engagement requirement, a streamlined required analysis, greater transparency, and an increased emphasis on goal setting and measuring progress.”* COSCDA is grateful overall for changes to regulations which better align with HUD-CPD programs than the 2015 rule. In this case, both streamlined analysis as well as goal setting and measuring progress are more practical in carrying out any state and local action on fair housing. We also agree with efforts to enhance community engagement and improve transparency though in some cases capacity issues and other limitations restrict programs from engaging as effectively as desired.

Key issues to note specific to state-administered HUD-CPD programs:

1) States are prohibited from using CDBG resources for planning or other activities in entitlement communities; state-directed HUD-CPD funds primarily benefit populations in small and rural communities

In accommodating the new Equity Plans, the proposed rule directs states to carry out fair housing assessments and activities in coordination with local governments, Public Housing Authorities, and the general public among other relevant parties. Ahead of a final rule, it is important to recognize boundaries and structures in place for state recipients of HUD-CPD resources. State use of CDBG, HOME, HTF, ESG, and HOPWA funds is primarily applied to activities in areas outside of localities which receive direct receipt of HUD formula grants. For CDBG, the largest annual program among these listed, states are required to only support activities in non-entitlement areas (localities not receiving a direct allocation from HUD). Considering that CDBG is the largest block grant provided by HUD to states and restrictions exist for use of funds in entitlement cities and counties, states cannot use program funds to facilitate AFFH implementation statewide covering both entitlement and non-entitlement communities.

Further, while restrictions exist for CDBG funds, state-run HUD CPD programs are typically dedicated to projects and services in small and rural communities. Formula grants through the states are designed to serve populations in non-metro areas. The intent is to have an intermediary serve localities usually without the capacity and technical experience required to administer federal funds on their own. State programs interface with these communities as their respective service areas and are more familiar with these areas compared to urban and suburban communities which receive direct allocations from HUD.

If HUD requires states to engage on fair housing activities statewide including areas not served by their programs, states will implement AFFH under the following conditions:

- States will need to support a HUD-directed activity without use of their respective CDBG funding, the largest annual block grant provided by HUD to states.

- States will carry out AFFH in areas which their respective HUD-supported programs are not being provided.
- Localities which receive a direct allocation of CDBG or other CPD formula funds will follow at minimum two applications of AFFH (one local, one state).

With the above circumstances presented, states will need to identify other sources of funds to accommodate fair housing activities in jurisdictions which they do not serve. Further, states will need to act in locations outside of their programs' service areas. The situation poses burdens on the state to identify stakeholders, host engagement opportunities, and most important, coordinate AFFH activities with projects and services in their programs which will likely not take place in the entitlement or metropolitan locations (either restricted by program rules or not a part of the state's service area). Lastly, AFFH carried out by states in localities which receive a direct allocation of HUD formula funds will need to abide by multiple fair housing policies and practices. At minimum, the scenario poses challenges for the jurisdictions to apply their respective AFFH process as each will have its own standards and procedures. It also means duplicative actions will be taken to meet the same fair housing goals in the shared location. The situation will result in jurisdictions abiding by two or more sets of plans with individual goals and actions, proving burdensome, confusing, and overall ineffective for stakeholders to carry out AFFH activities.

2) Caps exist for CDBG recipients to direct fair housing activities; fair housing can only be accommodated as a public service activity in which no more than 15% of grant funds can be used. Fair housing activities may also be carried out as an administrative activity, however for states this is even more limiting as only 3% of funds are permitted for administration.

As mentioned, CDBG is the largest and most far-reaching HUD formula grant for most states and localities. As such, it will likely be a primary source for jurisdictions representing most of the U.S. population to support AFFH implementation.

Caps exist in CDBG for eligible activity categories which involve fair housing. Public services fund an array of service activities including those related to fair housing. Activities under this category are capped at 15% of a grantee's annual funding. Further, fair housing activities may be accommodated under the administration category as well. Per annual appropriations directive, 20% of annual funds may be used for administration, including fair housing activities. However, states must abide by a stricter standard as the statute directs only 3% to states for administration.

Falling under these respective categories, use of CDBG for fair housing means other activities are inevitably cut or delayed. States are especially restricted in accommodating fair housing through CDBG as grantees may only access up to 3% of funds for administrative purposes including fair housing activities. If fair housing is instead supported under public services, it will likely be the only activity completed by states under the category. States typically do not direct funds to public services; for instance, only 3% of state CDBG funds facilitated public services in FY22. Further, any changes to future programs to enhance fair housing – whether state or local – will involve altered plans and resources already assigned to other community development causes. Fair housing activities through the state CDBG program will only be directed through individual sub-grantees per program requirements. Based on the level of HUD-CPD resources annually available to states, few communities can be supported through this process in a meaningful way.

3) It is important to recognize that populations served by states through HUD-CPD programs are primarily small & rural communities; as such, challenges are posed to states in accommodating public outreach and participation

Like with urban and suburban communities, rural jurisdictions cannot be generalized as each maintains their own distinct socio-economic makeup. However, rural communities generally lack the capacity and resources to facilitate new policy initiatives. The dynamic presents a significant dilemma for states to accompany any type of public engagement. Cities and counties served by HUD-supported state programs have less ability to partner on projects, services, or other federally funded initiatives. Local public employees vary here but they are usually without designated housing and community development personnel as hosted by larger jurisdictions. Other groups integral to community engagement such as churches, business, and non-profits have limited means to host planning or engagement sessions too.

Third party support is commonplace with state-run CDBG, HOME, or other HUD-supported grant activities. This works well for project development to a specific community since areas of work are largely intact and set to one individual activity. However, for the depth of Equity Plans and actions outlined in the rule for each community, a third-party provider will either be unable to accommodate such a hefty activity or be ineffective in doing so.

Rural areas overall have much fewer resources and less capacity to promote fair housing activities than their urban and suburban counterparts.

4) State programs operate separate from local counterparts and contend with factors which differ considerably. State programs also act under different structures and conditions than local recipients of HUD-CPD funding.

For the CDBG program, states direct resources to local governments in non-entitlement areas. The relationship is distinct to the state program and exceptions are only provided for supplemental funds (ie disaster recovery, CARES Act). States set procedures therein to oversee program funds including methods of distribution. Multiple jurisdictions are eligible to receive state CDBG funds as sub-grantees. The number of eligible program participants - cities and counties (sub-grantees) - may total several dozen to upwards of 1,000 individual units of general local government (UGLG). Grants are awarded to individual communities each year according to a state's action plan. In most cases, recipients differ in each funding cycle since the number of eligible sub-grantees far outweighs available funding. Even as most jurisdictions in a given state will not receive funding each year, states are responsible for ensuring funding is accessible to a multitude of local jurisdictions. The structure means the state must try to establish their program practices which positions CDBG to 1) adequately support stated activities and 2) reach sub-grantees in a fair manner and 3) prove effective.

States also maintain staff in a way to carry out various facets of program planning and implementation with local governments. State CDBG programs are set up and operate to support activity development in coordination with local governments. Staffing is established therefore to support but not directly carry out project and service development; this is facilitated by the local recipient of program funds. As mentioned, states may only access up to 3% of CDBG funds for administrative purposes as well. Due to these circumstances, states maintain less administrative capacity than entitlement jurisdictions and only to the extent that activities can be supported in coordination with localities served.

Like CDBG, similar factors exist for other HUD formula-based state programs. Service areas for state-led HUD formula programs align with state CDBG programs involving multiple jurisdictions as well as governmental

and non-governmental partners eligible to receive funds. Resources are typically directed between the state and sub-recipients, either governmental or non-profit. HOME, HTF, HOPWA, and ESG also maintain caps on administration which restrict how much funding can be dedicated to planning and program management activities; planning related to fair housing would fall under this category.

Responses to specific questions posed in the notice are as follows:

1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?

COSCSA appreciates that the guidelines under the new AFFH rule are designed to offer more flexibility to HUD funding recipients in a manner more responsive to their own circumstances than directed in the previous rule. However, as stated above, it is unclear how states will be able to accommodate AFFH through HUD funds due to the restrictions and conditions under HUD-CPD programs. It is recommended that HUD detail how states may fund their respective fair housing activities to meet the goals of the new rule. If states are expected to use their respective resources for this purpose, a statement to this effect is needed for state HUD-CPD programs to elevate internally moving forward.

Further, more direction is needed for states to better assess and follow the new AFFH rule. Specifically, starting with both annual and multi-year planning efforts, states will need to determine how best to incorporate the proposed Equity Plan in these existing activities. One major consideration is how the equity plan may be implemented in the same effort or timeline as action and consolidated planning engagements. Also, once the Equity Plan is completed, further descriptions will benefit states to monitor and communicate their status on facilitating fair housing activities. Lastly, in cases of state compliance not meeting HUD's requirements on fair housing, additional guidance is suggested to how states should revise practices accordingly.

2. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?

COSCSA agrees with removal of the requirement to identify and prioritize contributing factors. Goals associated with AFFH implementation can still be attained through other measures.

3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH-T, which is available at <https://egis.hud.gov/affht/>, while exploring possible improvements to the existing AFFH-T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants' data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

a. This notice of proposed rulemaking describes potential HUD-provided data, data and mapping tools, guidance, and technical assistance that may highlight some of the key takeaways from the HUD-provided data and help program participants identify likely fair housing issues. Should HUD also provide static data

packages that include some of the data included in the AFFH-T and a narrative description of those data? If so, what data would be most helpful to include in these data packages and narrative descriptions? For which program participants would data packages and narrative descriptions be most useful?

States would benefit from the data proposed above. COSCDA recommends coordinating with stakeholders on the data packages and identifying necessary information needed to inform fair housing issues. Engagement with HUD CPD program personnel as well as state and local grantees should be prioritized in this process.

b. What additional data and tools could HUD provide to facilitate a regional analysis?

For the 2015 AFFH rule, HUD expressed plans to provide states with a fair housing assessment tool. The tool, however, never materialized. We urge HUD to introduce a tool specific to state implementation of AFFH.

5. In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of? HUD specifically seeks feedback on the following:

States will require significant guidance, resources, and tools to carry out the new AFFH rule. Considering how expansive populations and geographies are statewide, assistance will be needed by HUD and likely a third party as well to accompany fair housing engagement.

HUD should deploy personnel dedicated to guiding HUD-CPD program administrators, including states, on fair housing. The designated staff can provide direction and support to state development of outreach strategies.

Guidance should also be established and made available specifically to HUD-CPD funding recipients. Comprehensive guidance is necessary in this effort to ensure states and localities can position themselves to adequately respond to fair housing goals set forth by HUD. COSCDA encourages coordination with CPD program officials and grantees in the development of these resources.

a. Should HUD require that a minimum number of meetings be held at various times of day and various accessible locations to ensure that all members of a community have an opportunity to be heard? Should HUD require that at least one meeting be held virtually?

A set number of meetings directed by HUD is not a sufficient way to determine effective public participation. Instead, HUD should partner with states to assess individual strategies, provide support to enhance outreach if needed, and ultimately trust jurisdictions to engage with the public based on a reasonable best effort.

b. Should HUD provide different requirements for community engagement based on the type of geographic area the program participant serves (e.g., rural, urban, suburban, statewide, etc.) and if so, why should requirements differ based on type of geography?

Yes, HUD should provide different requirements for community engagement; this is essential to ensuring program participants can accommodate public participation to a reasonable degree based on their respective geographies, populations, and capacity among other key factors. As outlined above, states maintain varying abilities to serve multiple populations and jurisdictions in their service areas. State-directed HUD programs primarily serve rural communities. Small, rural jurisdictions generally do not have the capacity to lead public participation – collect and report public feedback - especially regarding specific topics like fair housing. State staff likewise is typically limited to providing this support directly.

c. Should HUD require program participants to utilize different technology to conduct outreach and engagement? If so, which technologies have proven to be successful tools for community engagement? Are these technologies usable by individuals with disabilities, including those who utilize assistive technology or require reasonable accommodations such as real-time captioning or sign-language interpreters?

Specific to states, technologies which have proven effective to public engagement in rural settings may be recommended but not required by HUD. Technologies require different processes and therefore instruction is required for use. If technology is suggested by HUD for use in rural settings, resources and guidance is welcomed to assist community engagement facilitators.

d. Has HUD sufficiently distinguished the differences between community engagement and citizen participation or resident participation such that program participants understand that HUD expects a more robust engagement process for purposes of the development of the Equity Plan than has previously been required for purposes of programmatic planning? How can HUD ensure that these important conversations are fully had within communities while not significantly increasing the burden on program participants and the communities themselves? Are there ways in which HUD can reduce any unnecessary burden resulting from separate requirements to conduct community engagement and citizen participation (for consolidated plan program participants) or resident participation (for PHAs)?

For AFFH renewal, HUD's increased emphasis on community engagement can prove more meaningful to supporting fair housing if coordination is achieved with states and localities. It is important for the agency to consistently communicate its intent and expectations with HUD-CPD recipients for the level of participation sufficient to meet the agency's engagement standards. HUD should rely extensively on states for feedback regarding individual capabilities to accommodate citizen participation as this will inform their respective community engagement.

f. Should HUD require the community engagement process to afford a minimum amount of time for different types of engagement activities (e.g., public comments on proposed Equity Plans, notice before public meetings)? If so, what should the minimum amount of time be in order to afford members of the community an equal and fair opportunity to participate in the development of the Equity Plan?

Like a threshold for number of public meetings, a minimum amount of time for different types of engagement is not an effective way to receive robust response from the public. With other types of comment periods currently, the time involved regularly proves to be too long. HUD should rely on the program participants to determine their respective time lengths for engagement.

7. HUD has provided a new definition of "geographic area of analysis," which is intended to provide program participants and the public a clear understanding of the types and levels of analysis that are needed by different types of program participants. Does this definition clearly articulate the geographic areas of analysis for each type of program participant and are the levels of analyses for the types of program participants appropriate to ensure Equity Plans are developed and implemented in a manner that advances equity?

COSFDA suggests redefining the coverage area for states specific to statewide analysis. The geographic area of analysis should only extend to the boundaries covered by the recipient's largest HUD-CPD program; for states and territories, this is typically the CDBG program. HUD should only expect state engagement to extend to the service area of their respective programs.

Jurisdictional overlap in Equity Plans would create issues for participating jurisdictions, HUD program administrators, HUD clientele and related stakeholders. Overlapping plans will involve several sets of guidelines for applied states and localities. Additionally, the creation and implementation of multiple plans corresponding to one jurisdiction proves cumbersome, duplicative, and ultimately meaningless to fair housing advancements since each plan would likely contain separate goals and directives. As a result, jurisdictions will be ineffective in this engagement by addressing varying fair housing plans and actions. To avoid duplication and complicating AFFH implementation with other recipients of HUD resources, geographic boundaries should be delineated so that one fair housing plan and process can be supported for each community.

8. HUD requests commenters provide feedback on new § 5.154, which sets out the content of the Equity Plan. HUD specifically requests comment on the following:

h. Are there different or additional questions that HUD should pose to rural areas to assist such areas in meeting their obligations to affirmatively further fair housing? If so, how should the analysis for rural areas differ from the required analysis in proposed § 5.154?

Fewer requirements are needed for rural areas to properly accommodate program participants and AFFH stakeholders including low-to-moderate income populations. Due to the larger geographic coverage and smaller population bases for community within the area, public engagement in these areas proves more challenging than urban and suburban jurisdictions. States operate with few staff and resources unable to lead intensive reviews and actions on fair housing. A revision of questions dedicated to meeting AFFH obligations is therefore critical to successful analysis responsive to engagement with service areas and populations.

9. In order to reduce burden on program participants, and based on the lessons learned from the implementation of the 2015 AFFH Rule, HUD requests comments on how Equity Plans should be submitted to the Department (e.g., through a secure portal, via email, through a web page that allows uploads, etc.) and whether HUD should mandate the file format the Equity Plan is submitted in (e.g., MS Word, PDF, etc.).

States welcome a process aligned with submission of their action and consolidated plans.

29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (e.g., urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.

HUD can best support states in implementing AFFH by establishing directives, guidance, and tools in coordination with HUD-CPD program officials, state programs, and sub-grantees and sub-recipients of HUD funding.

While considerable funding is distributed to states for use by local jurisdictions and related entities in local settings, resources are directed widely across individual communities. Large sums of funding are not generally directed to one or a few communities; instead, resources follow the states method of distribution and are provided to reach as many communities as possible to maximize impact of federal funding.

a. How can States encourage broader fair housing strategies at the State level and in localities, and what changes, if any, are needed to the proposed rule that could improve its effectiveness as a tool for States to further fair housing goals?

In formulating their respective plans and activities using HUD-CPD resources, states rely extensively on the communities and populations served by HUD funding. Similarly, states can best promote fair housing through input and partnership with communities and beneficiaries of their programs. HUD should grant considerable latitude to states in developing respective strategies with a priority placed on practical means to promoting fair housing across an expansive geographic area and multiple jurisdictions.

Additional items for consideration include:

- Available guidance from HUD on effective strategies for fair housing engagement by states and accompanying jurisdictions in the state service areas: states, cities, counties, and unincorporated towns/villages.
- Streamlined planning and activities specific to states responsive to capacity, resources, and ability to carry out fair housing activities effectively.

c. Is there additional information HUD could provide to States, such as, for example, identifying regional issues where metropolitan areas cross State borders?

On regional issues with metropolitan areas crossing state borders, HUD can share details on AFFH planning and approaches of individual jurisdictions. Practices and approaches involving cross-state boundaries with metro areas can be incorporated in state-specific guidance and technical assistance.

e. Given the unique role that States play, does the analysis and content required in the Equity Plan provide States with sufficient opportunities to coordinate both within the State (e.g., across various departments, offices, or agencies as well as with local jurisdictions) and, as appropriate, with neighboring States?

The analysis and content required by the Equity Plan does not provide sufficient opportunities to coordinate within the state and neighboring states. Due to capacity and additional responsibilities involved in state HUD-CPD programs, the benchmarks provided in the Equity Plan do not align with capabilities of individual state HUD-CPD programs. Currently, it is immensely difficult for states to accommodate existing program planning and engagement with various stakeholders in the program service area. Partnering with other groups outside of the state poses additional responsibilities and work. Many state programs will be unable to effectively manage fair housing activities in alignment with other states.

COSCD A urges HUD to engage with HUD CPD program officials and states in developing analysis and content responsive to state programs.

Thank you for your consideration of COSCD A's comments. We look forward to future coordination with HUD on fair housing and other policy priorities.

Sincerely,



Dianne E. Taylor
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