



October 15, 2018

Office of General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, Room 10276  
Washington, DC 20410-0001

Re: Affirmatively Furthering Fair Housing: Streamlining and Enhancements, Docket No. FR-6123-A-01

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates this opportunity to provide comments on HUD's Affirmatively Furthering Fair Housing (AFFH) regulations as the Department considers a new approach towards ensuring its program participants meet their statutory obligation to affirmatively further fair housing under the 1968 Fair Housing Act. NCSHA and our Housing Finance Agency (HFA) members are committed to providing quality affordable housing opportunities to low- and moderate-income households free from discrimination, including by removing obstacles that impede those we serve from accessing the affordable housing of their choice.

NCSHA represents the nation's state HFAs.<sup>1</sup> HFAs administer a wide range of affordable housing and community development programs, including the HOME Investment Partnerships program, the Housing Trust Fund, Section 8 rental assistance, the Emergency Solutions Grant, the Community Development Block Grant, and Housing Opportunities for Persons with AIDS. HFAs also administer down payment assistance, homebuyer education, loan servicing, state housing trust funds, and the Low Income Housing Tax Credit (Housing Credit) and issue tax-exempt private activity Housing Bonds to finance affordable housing for renters and home buyers.

NCSHA and our HFA members strongly support the obligation to affirmatively further fair housing and HUD's efforts over the years to develop a meaningful, data-driven process to assist program participants in meeting this obligation. While we greatly appreciate HUD's

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<sup>1</sup> NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

interest in streamlining the rule and making it less burdensome for program participants, we urge the department to continue to emphasize data-based planning and support grantees' compliance efforts so that we may achieve the ideals Congress sought when it passed the Fair Housing Act.

NCSHA has engaged with HUD throughout the process of establishing the AFFH final rule, as well as in its efforts to implement the regulation through the development of a Fair Housing Assessment Tool (Tool) for state-level program participants. While HUD has not yet finalized the state Tool, it made significant strides in its most recent draft of the Tool to address some of the concerns NCSHA raised in our previous comments to HUD. However, there is still more to be done. NCSHA believes that HUD can establish a system that achieves the desired results, while at the same time being mindful of program participants' capacity, available resources, and jurisdictional authority.

As HUD considers modifications to the AFFH regulations, and presumably the implementation of those regulations through revised Assessment Tools for its program participants, we urge the Department to keep in mind the following key points:

Continue to recognize the distinctions between state and local program participants. NCSHA greatly appreciates HUD's efforts to date to establish an implementation system for state program participants distinct from the implementation system designed for local program participants. HUD's initial Assessment Tool for state program participants too closely resembled its Tool for local entities, requiring granular analysis at the area and neighborhood level. This would have been impossible for most states to undertake, especially large states, given their vast and diverse geographic scope. HUD took important steps in its second version of the state Assessment Tool to refine the questions asked and expected answers to better fit state-level entities. As HUD works to further streamline the implementation of AFFH, we urge it to continue to differentiate between state and local program participants.

Housing choice requires investments in opportunity areas *and* distressed communities. We believe that providing housing choice is central to the obligation to affirmatively furthering fair housing, and that states and other program participants must be able to determine how to best balance the use of resources so as to provide affordable housing in neighborhoods with low poverty rates and access to employment, transportation, and quality schools, while at the same time continuing to invest in historically underserved communities and promote revitalization of those neighborhoods. We urge HUD to continue to be mindful of these dual objectives and to ensure that AFFH regulations do not penalize program participants for efforts to preserve existing affordable housing in underserved communities or investments in areas undergoing revitalization

Ensure that AFFH planning requirements are not unreasonably costly for grantees. HUD's intent in establishing its AFFH rule has always been to provide guidance and data to program participants so that they may meaningfully further fair housing consistent with their statutory obligations without placing significant cost burdens upon them or requiring them to commission

costly outside expertise to collect or analyze data and/or develop their Assessment of Fair Housing (AFH). While modifications HUD made to the state Tool certainly improved upon the initial draft in this respect, many of NCSHA's HFA members reported to us that they still would likely need to collect new data beyond that provided by HUD or available locally and either hire additional staff or retain outside expertise in order to adequately answer the questions posed in the state Assessment Tool. We urge HUD to ensure that the AFH it eventually requires not be unreasonably burdensome on program participants to the point where a grantee would need to undertake original research, hire additional staff, or retain costly outside expertise.

NCSHA's responses to specific questions posed by HUD in the ANPR follow:

*What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?*

The success of the AFFH regulation to a large part is dependent on a robust community participation process. NCSHA is concerned that with so many program participants, on differing AFH schedules with overlapping geographies, that the public may become fatigued and disinterested in participating. Therefore, we encourage HUD to provide flexibility so that state and local program participants may coordinate their community participation efforts, even if they do not plan to collaborate on a joint AFH and if their AFHs are due in different years. Moreover, some state agencies would like the flexibility to combine the community participation process for AFFH with the community participation process they already undertake as part of their consolidated plan. We urge HUD to provide this flexibility so long as the agency is able to show how it addresses AFFH issues during its consolidated plan community participation process.

*How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?*

NCSHA strongly urges HUD to continue a data-centric approach to AFFH, including providing program participants with relevant and timely uniform national data and a mapping system to help them in their fair housing planning efforts. Uniform data sets that provide a baseline for all program participants would help make comparisons across jurisdictions. However, using uniform data sets should not preclude the use of local data when available and applicable. Therefore, we urge HUD to allow the flexibility for program participants to use state and local data, in addition to or instead of the national data provided by HUD, should it be available to

them and should they determine that the state/local data is more useful than the national data provided by HUD. HUD could facilitate the use of local data by directing program participants to quality sources of local data. Conversely, HUD should not require program participants to answer questions or undertake planning that would necessitate collection of new data as part of their affirmatively furthering obligation. Lastly, we strongly encourage HUD to provide an opportunity for some program participants to beta test any mapping system HUD creates before it requires program participants to use it in their planning.

*How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and annual performance reports, or given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPER), or utilize an alternative structure?*

Program participants should provide at least a narrative with updates on their AFFH goals and strategies annually as part of the CAPER or annual action plan, with more detailed plans, including goals, objectives, and strategies, completed every five years in conjunction with the consolidated planning process.

*Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively further fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?*

One of the critical steps for AFFH implementation is the identification of impediments to fair housing and the establishment of strategies and goals for overcoming those impediments. NCSHA recognizes the federal government's responsibility to ensure that program participants address and mitigate the impediments to fair housing. However, HUD's expectations of program participants must not exceed what is reasonably achievable given their available resources and jurisdictional authority. Therefore, we encourage HUD to provide examples of impediments to guide program participants, but allow program participants some flexibility in regards to the number and types of obstacles they choose to address. This will allow program participants to focus on those impediments that they have the best opportunity to mitigate given their resources and authority. This flexibility should extend to the metrics and milestones used to measure progress towards addressing the goals set forth by the program participant.

State agencies should have the flexibility to collaborate with local program participants within their states. Collaboration, when possible, would minimize duplication of efforts, improve coordination of resources, and better represent regional housing trends. HUD should encourage such efforts amongst program participants. However, while collaboration may be optimal it will not always be possible, especially given the large number of program participants in each state. Thus, it is important that HUD clarify the course of action when a local program participant's findings related to fair housing impediments differ from the findings of the state agency. We further recommend that states have the option to rely on the analysis conducted by the local program participants, including the results of the locality's community participation process, but set their own fair housing goals that are consistent with state jurisdictional and resource considerations.

Lastly, we oppose requiring states to undertake analyses beyond their borders, including assessing fair housing issues in their neighboring states. NCSHA understands that fair housing issues extend beyond political boundaries, however, we contend that it is unreasonable to require states to conduct assessments of fair housing in neighboring states where the state conducting the assessment has no ability to affect change.

*How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon jurisdictions with unacceptable efforts? Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (i.e. "safe harbors") and if so, what should they be?*

One of the weaknesses of the Analysis of Impediments process that predated AFFH is the lack of HUD evaluation of grantees efforts, and we urge HUD to play an active role in evaluating grantee compliance with AFFH. We urge HUD to provide clear guidance about its expectations to grantees in advance so that grantees understand HUD's expectations. Safe harbors would provide grantees with clear guideposts.

Thank you for your consideration of our comments. Please contact me if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman  
Director, Housing Advocacy and Strategic Initiatives