

September 17, 2013

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

Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing

Submitted electronically via <http://www.regulations.gov/#!documentDetail;D=HUD-2013-0066-0001>

Dear Madam/Sir:

The 41 undersigned national civil rights, fair housing, women's, disability, LBGT, and consumer organizations, and labor unions submit these comments on HUD's proposed regulations to implement the Affirmatively Furthering Fair Housing (AFFH) provisions of the Fair Housing Act.

The publication of these proposed regulations by HUD represents a very important step toward achieving Congress' vision of the Fair Housing Act as a means to create equal opportunity in our country. The Act requires that federal housing and community development programs be administered in ways that help overcome the problems associated with racial segregation and expand the housing choices available to families in America, regardless of race, color, religion, sex, national origin, familial status or disability. In the proposed rule, HUD clarifies that expanding the access to important community assets and resources is a critical component of any effort to promote equal opportunity.

The proposed rule reflects something that we in the civil rights community have long understood: where a person lives has a big impact on the trajectory of his or her life. Residential location determines access to schools, jobs, transportation, recreation, healthy food, a healthy environment, and much more. The legacy of the long-standing residential segregation in America is that too often, neighborhoods where these assets and amenities are strong and plentiful have been barred to people of color, families with children, people with disabilities, and other members of protected classes. This runs counter to the value we all hold that what you look like, where you come from, whether you have a disability, what language you speak or whether you have children should not determine where you can live.

The detrimental effects of residential segregation are clear.

- **Segregation has long-term generational effects on our nation's future.** Discrimination in one generation negatively affects health, economic opportunities, and wealth accumulation and diminishes opportunities for future generations.¹
- **Segregated communities experience slower economic growth.** Racially segregated communities have lower economic growth, fewer jobs per capita, and slower job growth than diverse communities.²
- **Concentrated poverty, racial segregation and persistent income disparities impede income growth.**³

As a nation, our diversity is a source of strength. This is especially true as the global economy becomes ever more inter-connected. And as the diversity of our population increases, the importance of ensuring that each and every one of us has access to the opportunities we need to succeed also increases. We must topple barriers to opportunity, and ensure that entities that accept federal funding for housing and community development fulfill their obligation to protect fair housing and expand opportunity for all. By establishing a framework that holds recipients of federal funding accountable, this rule will promote thriving, diverse communities that can meet the challenges of the 21st century. Our organizations commend HUD for taking this step, and urge you to move quickly to put a final AFFH regulation in place.

There are a number of provisions in the regulation that we think are particularly important to its success. These include:

- the definition of affirmatively furthering fair housing, which is clearer, more robust, and makes the linkage between where people live and their access to opportunity;
- the requirement that participants (recipients of Community Development Block Grant and other specified program funds and Public Housing Authorities), as part of their assessment of fair housing issues in their jurisdictions, spell out how they will use not just their HUD funding, but all of their housing and community

¹ National Research Council, *Measuring Racial Discrimination*, Washington, DC: The National Academic Press, pp. 223-246, 2004.

² Eberts, Randall, et al., *Dashboard Indicators for the Northeast Ohio Economy*, Federal Reserve Bank of Cleveland, Working Paper 06-05, April, 2006.

³ Treuhaft, Sarah, et al., *America's Tomorrow: Equity is the Superior Growth Model*, PolicyLink, 2011.

development resources, regardless of the source and including their zoning, planning, permitting and other powers and authorities;

- the requirement that participants submit their Assessments of Fair Housing (AFHs) to HUD for review and acceptance in order to be eligible to receive HUD funds;
- the requirement for consultation with fair housing organizations and organizations that represent protected classes in the development of the AFH;
- the requirement that the AFH be conducted in advance of the Consolidated Plan (ConPlan) or Public Housing Authority (PHA) plan, and that there be a direct link between the priorities set out in the AFH and the spending proposals described in the participant's ConPlan or PHA plan;
- the requirement that participants update their AFHs if significant changes take place in their communities, such as natural disasters, major demographic changes, substantial policy changes or significant civil rights findings; and
- HUD's provision of data for participants to use in conducting their AFHs, and HUD's encouragement of participants to include other relevant local data in their assessments.

However, there are also a number of ways in which the rule should be made stronger and more effective. These recommendations are laid out in detail below.

Set stronger standards and higher expectations for performance by participants

- Participants must be required to set goals to address all of the fair housing problems that they identify in their AFHs, not simply "one or more" of these goals.
- Participants must be required not just to "mitigate or address" the fair housing problems they identify, as the proposed rule states, but to overcome those problems. This is the standard in the current regulation, and the new rule should not weaken it.
- The rule must require participants to set goals and identify specific milestones, timetables, and outcomes to address all of the issues they have identified as priorities.
- The rule should require participants to consider the housing needs and barriers faced by lesbian, gay, bisexual and transgender (LGBT) individuals and families. This would make it consistent with HUD's March, 2012 regulations prohibiting discrimination against LGBT individuals and families in HUD-funded or Federal Housing Administration-insured housing.
- We strongly support the statement that "[f]or individuals with disabilities, integration also means that such individuals are housed in the most integrated

setting appropriate. The most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.” (proposed rule, §5.512) As HUD stated in its guidance concerning the Supreme Court’s Olmstead decision, “[f]or communities that have historically relied heavily on institutional settings and housing built exclusively or primarily for individuals with disabilities, the need for additional integrated housing options scattered throughout the community becomes more acute.”

- The final rule should maintain the Proposed Rule’s definition of “segregation” as including, for persons with disabilities, “the failure to provide housing in the most integrated setting possible.”
- The final rule should include this statement from the HUD guidance on Olmstead: “Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.” Including these examples will help regulated entities better understand their obligations.

Ensure effective review of the AFHs submitted by participants

- The rule states that AFHs will be deemed “accepted” if HUD does not take action to reject them within 60 days after they are submitted. With limited staff resources and periods during which a great many AFHs will be submitted for review, there is a danger that some AFHs will be deemed accepted based on only cursory review. To avoid this situation, we recommend that HUD:
 1. Extend the review period to 90 days.
 2. Provide a process by which community stakeholders can request that HUD review an AFH that has been accepted, in cases where evidence suggests that the acceptance should not have been granted.
 3. Adopt a transition plan for the first round of AFH submissions that will spread out AFH submission dates more evenly over the course of the year, and more evenly over a number of years while also ensuring that the majority of AFHs are reviewed within the next two years.
- The rule should provide for periodic, in-depth audits of selected AFHs by HUD.

Ensure that participants make timely and concrete progress toward achieving their fair housing goals

- The rule should require participants to establish milestones, timetables and outcomes in their AFHs by which to measure their progress toward achieving their fair housing goals. Without these, it will be difficult to hold participants accountable, and to determine whether the strategies they have adopted are effective.
- The rule should spell out what information participants must report on an annual basis, as part of their ConPlan or PHA reporting, about the progress they have made toward meeting the fair housing goals identified in their AFHs. This reporting should address both how their housing and community development funds have been spent and changes made to zoning, planning, permitting and other relevant policies and practices.
- The rule should specify what standards HUD will use to determine whether participants are making sufficient progress toward meeting their fair housing goals to justify continued funding under CDBG, HOME, HOPWA and ESG and, for PHAs, public housing funding.

Ensure that participating jurisdictions and PHAs adopt strategies *both* to invest in Racially and Ethnically Concentrated Areas of Poverty (RCAPs and ECAPs) *and* to increase residential mobility and access to community assets

- The rule must clarify that participants are expected to employ **BOTH** strategies to stabilize and revitalize neighborhoods that constitute racially/ethnically concentrated areas of poverty **AND** strategies to enhance mobility and expand access to existing community assets, not one or the other. In addition, it would be very helpful to include examples of a variety of strategies that might be appropriate for different circumstances and different communities.

Encourage and facilitate public participation in the AFH process

- HUD should require participants to make their draft AFHs, their final AFHs, and all related documents available to the public in a timely manner on an accessible (Sec. 508-compliant) website.
- The rule should require participants to provide for translation of such documents into appropriate languages for community residents with limited English proficiency (LEP). Similarly, HUD should require that outreach for any public hearings or other forms of public engagement be conducted in appropriate languages based on the needs of LEP members of the community, and that

interpretation services, including interpretation for American Sign Language, be provided for such events if necessary.

- In addition, we recommend that HUD establish a page on its website where members of the public can find information about the dates on which all participants must submit their AFHs and copies of all AFHs that have been submitted. This would greatly facilitate public participation in the AFH process.

Provide clarity for PHAs that are not required to submit annual plans

- Many PHAs are not required to submit an annual plan, and the Administration has proposed to eliminate this requirement for all PHAs.⁴ To avoid confusion about how PHAs should fulfill their AFH requirement, the rule should state that PHAs that are not required to submit an annual plan **must** collaborate with their state or a relevant jurisdiction on an AFH.

Strengthen the provisions for regional collaboration on AFHs

- The proposed rule's encouragement of regional collaboration in the development of AFHs is an important acknowledgement that segregation does not stop at a community's borders. However, there are many factors that make regional collaboration difficult, and if there are to be regional AFHs, HUD must provide incentives – financial or non-financial - for such efforts. Without these incentives, jurisdictions may be reluctant to take on the challenge of inter-jurisdictional collaboration.
- The regulation must all ensure that participants in regional AFHs identify priorities, set goals appropriate to the needs in their individual jurisdictions, adopt spending plans and other strategies to achieve these goals, and establish timetables, benchmarks and measurable outcomes for each goal identified.

Allow further input on the data, geospatial tool and assessment tool that HUD will provide participants

- The data and geospatial tool that HUD will provide participants are important components of the proposed AFH process, and while they are not a formal part of the rule itself, they will have significant impact on the way the rule is implemented at the local level. The version of the data/geospatial tool that has been made available for public review is preliminary only, and it is important for

⁴ See “FY 2014 Congressional Justifications: Public Housing Operating Fund at p.J-16 , Tenant-Based Rental Assistance Program at p. G-23 , and Public Housing Capital Fund at p. K-16 , available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/2014/main_toc.

the public to have the opportunity to see and comment on a more complete version of the tool that will be made available to participants before it is finalized.

- The regulation makes reference to an assessment tool that HUD will issue giving directions about how to use the data it provides and instructions for completing the AFH. This is also a critical adjunct to the regulation, and to ensure that it is as strong, clear and effective as possible, we urge HUD to make it available for public review and comment before it is finalized.

Thank you for the opportunity to comment on this important regulation. We urge HUD to move quickly to make these changes and publish the final AFFH regulation. In addition, we encourage HUD to use its authority under Sec. 3608 of the Fair Housing Act and Executive Order 12892 to work with other federal agencies that administer housing and community development programs and activities to ensure that those agencies' programs and activities also affirmatively further fair housing.

Sincerely,

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African Methodist Episcopal Church

American-Arab Anti-Discrimination Committee (ADC)

American Civil Liberties Union

American Federation of Government Employees

American Friends Service Committee

Asian Americans Advancing Justice (AAJC)

Bazon Center for Mental Health Law

Center for Responsible Lending

Center for Women Policy Studies

Community Action Partnership

Consumer Action

Disability Rights Legal Center

Family Equality Council

Hispanic Federation

Human Rights Campaign

International Association of Official Human Rights Agencies (IAOHRA)

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

Japanese American Citizens League

The Leadership Conference on Civil and Human Rights

Matthew Shepard Foundation
NAACP
National Association for Equal Opportunity in Higher Education (NAFEO)
National Association of Consumer Advocates
National Association of Human Rights Workers
National Capital Area Union Retirees
National Center for Lesbian Rights
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
The National Council on Independent Living
National Disability Rights Network
National Fair Housing Alliance
The National Gay & Lesbian Task Force
National Law Center on Homelessness and Poverty
National Urban League
National Women's Law Center
The Opportunity Agenda
PFLAG National
PolicyLink
Pride At Work, AFL-CIO
Workmen's Circle