



September 17, 2013

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

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

PolicyLink applauds the U.S. Department of Housing and Urban Development for taking this necessary step towards clarifying and strengthening the federal government's obligation to further fair housing. Housing choice – especially for low-income communities and communities of color -- is a critical component of equitable and economically prosperous regions.

As the nation becomes a majority people-of-color country, the face of many neighborhoods is changing in the process, but the persistence of deep and entrenched patterns of segregation continues. Where integrated neighborhoods exist, it is because of gentrification, the suburbanization of poverty, or because of intentional efforts to promote and maintain diversity. Some of these neighborhoods are very stable, but many of them are not. We commend HUD's advancement of fair housing as supporting the dual priorities of mobility for people of color, families, and people with disabilities – as well as investment in neighborhoods that have been left behind. The complicated and changing nature of the geography of opportunity is an indication that we need a 21st century imperative to fulfill the Fair Housing Act of 1968.

We need a comprehensive fair housing policy that acknowledges that expanding opportunity for all requires *alignment* across federal programs and investments, *enforcement* of guidance to ensure that policy translates as intended in local communities, and *innovation* in methods of assessing and developing fair housing goals and strategies that take into account the latest research. Below, we suggest some modifications to strengthen the proposed Affirmatively Furthering Fair Housing Rule:

Alignment: Towards an Integrated Federal Policy Framework for Opportunity

We applaud the clarification of fair housing as a broad aspiration towards access to opportunity for all – and the acknowledgement of the interrelated nature of housing, transportation, education, and other community investments in achieving this goal. The proposed modifications in the rule to align assessments of fair housing with other strategic plans for federal investments are a great step towards a more cohesive federal framework that can effectively support better local coordination of strategic resources for opportunity. We recommend a few modifications to the proposed rule to strengthen collaboration at the federal and regional level and to encourage HUD efficiency in aligning plans, programs, and policies:

Federal Interagency Collaboration:

- Make explicit the obligation of all federal agencies to address fair housing issues within their authorities.
- Convene the Partnership on Sustainable Communities along with other federal agencies and offices that are responsible for housing, fair housing, civil rights, or equal opportunity outcomes, to develop a strategic plan to address cross-agency action towards regional fair housing and civil rights goals that support both mobility and investment goals.
- Use the emerging Fair Housing and Equity Assessment process to inform each agency's actions to address segregation and advance opportunity.
- Another way of achieving federal interagency collaboration could be to re-convene the President's Council on Fair Housing, originally established under President Clinton's Executive Order 12892 to foster access to opportunity and integration strategies across federal agencies.
- Delineate responsibility for HUD to work with DOT staff to share AFH data on segregation, concentrated poverty, and access to opportunity trends – and identify ways that MPOs and transit agencies can align AFH with the DOT's equity and environmental justice analyses per their Title VI obligations. Offer guidance for regions and jurisdictions to align their AFH-Consolidated Plans-Public Housing Plans-and Regional Transportation Plan timelines and goals so that they can achieve integrated, coherent use of their HUD and DOT resources.
- Provide guidance for Treasury to provide incentives for states to grant regions a direct allocation of low-income housing tax credits if: 1) they have an approved regional AFH that is aligned with their Regional Transportation Plan; and, 2) their QAP will help implement goals of the AFH. Require direct allocations to have QAPs that align with the AFH plan.
- Include guidance to incorporate AFH data on segregation, concentrated poverty, and access to opportunity into regional Comprehensive Economic Development Strategies required for EDA grant recipients.
- Designate use of AFH regional opportunity data to inform HHS location of community health centers from the Affordable Care Act.
- Designate use of AFH regional opportunity data to inform Treasury allocation of New Markets Tax Credits.

Regional Collaboration:

- Designate regional planning and regional collaboration activities for advancing fair housing goals as an expressly allowable use of CDBG funds.
- Designate regional housing choice voucher initiatives as a recognized activity for fair housing opportunity.
- Designate incentives to support greater collaboration across jurisdictions in CDBG allocation. Award bonus competitive grant points to places that regionalize CDBG or other HUD dollars towards strategic fair housing goals; or to projects in municipalities who have aligned their formula funds with regional goals.
- Work with DOT to identify ways to align consolidated plans with long-range regional transportation plans – through alignment of timing, capacity building exercises, more explicit guidance about how future transportation investments should take into account demographics, land use, housing, and jobs patterns. Use the AFH to identify equity connections between regional and local transportation and housing plans – such as how the location of new highways

may discourage investment in high-poverty communities by exacerbating urban sprawl, or how the location of new light rail stations may encourage residential displacement without committed dollars to preserving and constructing affordable housing in the area. (see above in 'Interagency Collaboration')

- Provide priority scoring on competitive grants for projects and activities that implement stated goals in adopted Assessments of Fair Housing (similar to Preferred Sustainability Status adopted by some Partnership for Sustainable Communities agencies, but with inclusion of additional agencies that have authority over issues related to fair housing, including Treasury, DOJ, EDA, USDA.

Finding Efficiencies within HUD:

- Assign periodic internal equity assessments within HUD to identify current HUD barriers and conflicting guidance to addressing dual goals of mobility and investment in high-poverty communities. Clear, consistent guidance from HUD—that is shared across all departments—on grantees' obligation to advance opportunity is critical to realize local success.

Evaluation and Enforcement: Strengthening the Capacity of Federal Agencies to be Accountable Partners

Accountability and enforcement are critical to realizing the promise of the Fair Housing Act of 1968. In the past 45 years, many innovative efforts to advance opportunity have been stifled by lack of clarity from HUD or the absence of federal leadership to uphold the obligation of jurisdictions to affirmatively further fair housing. We support the proposed clarifications to the AFH process to define HUD expectations from its grantees; however, we propose the following modifications to the rule:

Complaint Processes:

- The rule needs clarity on an articulated process for how local organizations can engage with HUD in a formal complaint process related to: the findings of the AFH; if jurisdictions are not fulfilling their obligation to further fair housing; or if there are deviations from plan to actual resource allocation. The articulated process should clarify how HUD will address complaints, including the responsible department/s and role/s for deciding how complaints and subsequent funding will be addressed. We recommend that FHEO take the lead on this, but share complaints and address issues in coordination across agencies to ensure that CPD, Public Housing, OSHC, and FHEO are moving in the same direction and speaking with one voice.
- If there is not agreement between HUD and local officials on the approval of an AFH, HUD should engage third parties (either local community organizations, capacity building providers, or a national 'Fair Housing Review Council'—see below) to work with local jurisdictions on an action plan to resolve deficiencies in the AFH process.
- While it is the responsibility of the direct recipient of federal funds to monitor its subcontractors' compliance with AFFH and Title VI obligations, the final rule should also provide - as U.S. DOT guidance does - that subcontractors are directly accountable to HUD for their failures to comply with their obligations. HUD, in fact, in the exercise of its authority under 42 U.S.C. §3535(d) and 24 C.F.R. §570.307, has explicitly instructed urban counties that each and every "cooperating unit of general local government" has an obligation to "affirmatively further fair housing within its own jurisdiction." Yet, when a local government fails to take actions

necessary to address factors that contribute to, e.g., the exclusion of protected class members from residing in its jurisdiction, HUD has made insufficient use of its power and obligation to ensure compliance. While the direct recipient should, of course, be responsible in the first instance for making all efforts within its power to do so, it is often the case that those powers are not sufficient to the task, as has been demonstrated in both Westchester County and Marin County.

Assessments of Fair Housing:

- Participants preparing an AFH should be required to set more than one goal for advancing fair housing, as the proposed rule currently suggests.
- The final rule should include language that suggests that AFH contain strategies that both advance mobility for protected classes *and* invest in high-poverty communities in a way that will enhance access to opportunity.
- It should be explicitly stated that housing preservation and other opportunity investments that increase housing opportunity are consistent with Fair Housing goals. This latter goal will require more comprehensive investment strategies that include non-housing resources, which should be identified in the AFH.
- Displacement is an especially important fair housing impact of new development. Without proper safeguards, development can result in the loss of affordable unsubsidized housing and the economic displacement of low-income and minority communities. While the proposed rule requires PHAs to analyze the impacts of the demolition and disposition of public housing, it does not impose a parallel requirement on non-PHA program participants. The rule should require program participants to analyze the fair housing implications of the displacement of historically minority communities within their jurisdictions, and to explore, adopt and implement actions to mitigate displacement.
- HUD should release evaluation criteria for AFH and regularly update it in a process open for public comment. Evaluation criteria should be viewed as iterative and measured against local progress on fair housing goals – and should include specific measures that ensure jurisdictions are adopting policies to advance fair housing, such as increasing land zoned for multi-family housing in high-opportunity areas or adopting an inclusionary housing ordinance. See additional feedback on performance measurement later in this document for specific evaluation criteria.
- HUD staff should seek and require local support letters of AFH to ensure quality control and commitment to implementation of fair housing goals.
- Public comment periods on the AFH should be 45 days at a minimum.
- AFHs should document how community engagement activities were targeted to protected classes and how input from engagement specifically informed fair housing goals and strategies. If comments raised from community engagement regarding barriers to fair housing cannot be addressed in the AFH, explanations should be included as to why they were not.
- Evaluation of AFH's quality and acceptance should be conducted by HUD staff in collaboration with 'Fair Housing Review Councils', established to review and approve AFHs, review complaints and recommend remedies to HUD for action. This council could extend agency capacity, and bring diverse expertise and field experience to the review and guidance offered to entitlement jurisdictions and regions. This 'council' could be comprised of candidates who apply, with qualifying credentials to include demonstrated experience in housing law, policy, and/or finance; affordable housing development; asset-building, transportation equity, housing, community and economic development; civil rights, fair housing, educational equity, youth

development; urban planning, public health/health equity, environmental justice, criminal justice reform with a representative mix from philanthropy, public sector, NGO/CBO, and the private sector. AA cross-departmental and -agency team should structure the guidance and consistency for the panel's review. This model can be built upon the OSHC/SCI guidance and experience that includes HUD's OSHC, CPD, FHEO, PIH; DOT's FTWA; EPA's EJ and Sustainable Communities offices that jointly reviewed applications, alongside of experts from the field.

- HUD should require active approval of the AFH – rather than allowing for automatic approval after 60 days.
- The implementation of the AFH should be staggered so that HUD can pay deep attention to review and feedback by avoiding a flood of AFHs in a short time period. The phasing should begin with those furthest from their last consolidated plan or Analysis of Impediments, followed by those needing to renew their consolidated plan in the coming two years, followed by those with recently completed RAIs, FHEAs or AIs and Consolidated plans. Waivers and alignment with Regional Sustainability Plans or Regional Transportation Plans should be made whenever possible.

Innovation: Modeling Best Practices in Effective Social Change for Equity

Effective fair housing planning and investments require the right data, consistent and clear expectations, and strong local capacity to understand and implement programs that address acute challenges. We recommend the following modifications to the proposed AFFH rule to strengthen HUD as an innovative leader in advancing solutions that work:

Data:

- HUD should encourage agencies to supplement with local data on demographics and community infrastructure whenever possible and/or available.
- Data should be provided at the smallest geographic scale possible to ensure useful and relevant assessments.
- AFH guidance should strongly encourage grantees to supplement quantitative data supplied by HUD with qualitative data through interviews, community surveys, and other methods to 'groundtruth' the findings.

Capacity Building:

- HUD should allocate funding to provide internal capacity building for HUD HQ and regional staff to effectively and consistently articulate fair housing goals of agency and provide support for grantees to meet their goals.
- HUD should allocate funds to provide capacity building for local jurisdictions and organizations to strategically align investments with fair housing goals.

Performance Evaluation:

- HUD should identify long-term indicators and short-term performance measures for grantees to meet fair housing goals. Performance measures could include metrics related to the number of jurisdictions in high-opportunity areas that revise zoning codes to reduce fair housing barriers; strategic investments made in high-poverty communities that expand multiple aspects of

opportunity (besides affordability); number of affordable housing units for families with children that are located near schools with high educational opportunity. Long-term indicators could be borrowed from segregation, concentrated poverty, and opportunity data that HUD provides, in addition to some of the housing choice indicators that the Partnership for Sustainable Communities have identified for their grantees – but disaggregated to evaluate housing choice for protected classes.

We would again like to reiterate our strong support of HUD in undertaking the development of the Affirmatively Furthering Fair Housing Rule. Please contact me at jbelle@policylink.org or Kalima Rose at krose@policylink.org if you would like to speak with us in more detail about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Bell". The signature is fluid and cursive, with the first name "Judith" written in a larger, more prominent script than the last name "Bell".

Judith Bell, President
PolicyLink