

November 23, 2011

**ELECTRONIC SUBMISSION to [EJStrategy@hud.gov](mailto:EJStrategy@hud.gov)**

Ms. Shelley Poticha  
Director for Office of Sustainable Housing and Communities  
U.S. Department of Housing & Urban Development  
451 7<sup>th</sup> Street S.W.  
Washington, DC 20410

**Re: Comments on HUD's draft environmental justice strategy**

Dear Ms. Poticha:

We appreciate the opportunity to comment on the draft Environmental Justice (EJ) Strategy of the Department of Housing and Urban Development (HUD).

We commend HUD for aiming to “lay the foundation for healthy, inclusive, and more sustainable communities.” Achieving this important goal requires that HUD put forth an assertive and coordinated approach to civil rights accountability. An effective EJ strategy should be duly integrated with both HUD’s responsibility to enforce full Title VI compliance, and its duty to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. § 3608.

In addition, while we support many of the programs described in the draft, the EJ Strategy should go beyond identifying successful initiatives, and focus on new ones that extend EJ considerations so that they consistently and integrally inform the practices and priorities of HUD and its recipients.

Federal EJ requirements derive directly from Executive Order 12898, which requires HUD to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>1</sup> HUD should explicitly acknowledge, as U.S. DOT does,<sup>2</sup> that its fund recipients are responsible for facilitating the Department’s compliance with the Executive Order.

EJ requirements also derive from Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by recipients of federal financial assistance.

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<sup>1</sup> Executive Order 12898, §1-101.

<sup>2</sup> See U.S. DOT EJ Order, 62 Fed. Reg. 18377 (Apr. 15, 1997), App. § 1(h).

To make EJ work, each of HUD's recipients must fulfill its responsibilities under Title VI, and must also facilitate HUD's compliance with the EJ Executive Order. Beneficiaries of HUD's funding must know that they can seek administrative redress under Title VI and the EJ Executive Order against recipients, and that HUD will promptly and equitably investigate and resolve each such complaint that meets basic threshold requirements.

HUD already has an extensive apparatus to investigate and resolve complaints under the Fair Housing Act, which has many parallels to Title VI. However, it has not fully implemented Title VI and EJ to ensure that low-income and minority populations are not unfairly burdened by, and share equitably in the benefits of, HUD funded programs, projects and activities. With the release of the new EJ Strategy, this is the ideal time to do so.

To that end, we propose that HUD's EJ Strategy be revised in accordance with the following principles. We recommend that HUD:

1. Issue guidance to its recipients on the requirements of Title VI and EJ. This guidance can draw on an updated version of the Title VI Legal Manual of the Department of Justice, Civil Rights Division. This Title VI guidance should recognize the need for administrative vigilance in effectively investigating and enforcing claims of disparate impact discrimination. Further, it will complement the anticipated "affirmatively further fair housing" (AFFH) regulations, and can be incorporated into AFFH standards. In particular, the Analysis of Impediments should specify concrete actions to address barriers to fair housing and achieve EJ.
2. Ensure that beneficiaries of HUD-funded programs are aware of their rights under Title VI and EJ, including the right to file complaints with the recipient and with HUD, the process for resolving such a complaint, and the rights of the complainant in that process. Again, this guidance would complement and can be incorporated into AFFH standards.
3. Promptly and equitably investigate and resolve all Title VI and EJ complaints within its jurisdiction.
4. Make clear that civil rights and EJ responsibilities attach to all aspects of HUD programs, and in some cases may extend beyond the scope of the Fair Housing Act as required by other civil rights provisions such as Title VI and the EJ Executive Order. HUD should also state its intent to review and strengthen enforcement of existing regulations and guidance relevant to EJ, such as those barring the discriminatory provision of services, 24 C.F.R. § 1.4(b)(1)(iii), 24 C.F.R. § 100.70(d)(4); and should emphasize the recommendation of HUD's Fair Housing Planning Guide that Analyses of Impediments include analyses of the "[c]omparative quality and array of municipal and

State services across neighborhoods in local jurisdictions or among communities or regions across State jurisdictions (degree of equalization of services).”<sup>3</sup>

5. Require each recipient to conduct a social equity impact assessment when planning for decisions of significant impact. FTA has successfully required such an “equity analysis” for many years. That equity analysis should be required early enough in the planning process so as to meaningfully affect the decision making process, including the selection among alternatives. We support HUD’s efforts to incorporate equity and EJ into regional planning, particularly through the Regional Fair Housing and Equity Assessment required of the Sustainable Communities Planning Grant recipients. The EJ Strategy, however, should specify clear goals for expanding and strengthening such practices, particularly in the context of prioritizing and siting investments. This requirement could, in many cases, be combined with the requirement to conduct an Analysis of Impediments to Fair Housing Choice.<sup>4</sup>

6. Implement and enforce the Executive Order on Limited English Proficiency (LEP) and the Department of Justice guidance on it. Many of the groups covered by the EJ Executive Order and Interagency MOU are LEP or have major components who are LEP. There is a great deal of overlap between LEP and EJ communities. For instance, a major problem for HUD beneficiaries and clients of recipients is their inability to understand the housing documents provided to them; another is inclusion in service provision and planning processes, including the development of the Analysis of Impediments.

7. Implement robust public involvement and participation programs, and require its recipients to do so. Public participation is a major factor in EJ. It entails not just outreach, but a meaningful focus on the needs and priorities of EJ populations, and meaningful efforts to respond to and incorporate their comments early in the planning and decision making process. The AFFH and Consolidated Planning requirements should incorporate these requirements and place sufficient emphasis on public participation. Further, HUD should provide guidance to grantees on best practices in meaningful public participation and emphasize the need to work closely with low-income communities and communities of color in the development of both the Analysis of Impediments and Consolidated Plan and other planning processes.

8. Institute a Title VI and EJ compliance review and auditing program to ensure that all recipients will receive due attention, including those currently not sufficiently covered by HUD’s fair housing enforcement efforts and, in particular, those

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<sup>3</sup> Fair Housing Planning Guide, 5-5.

<sup>4</sup> See, e.g., recommendations for an equity assessment process in “Reforming HUD’s Regulations to Affirmatively Further Fair Housing,” The Opportunity Agenda (2009), available at: [http://opportunityagenda.org/files/field\\_file/2010.03ReformingHUDRegulations.pdf](http://opportunityagenda.org/files/field_file/2010.03ReformingHUDRegulations.pdf).

against whom complaints have been filed. In addition, we recommend giving enforcement and compliance efforts high priority in terms of allocating its resources and efforts.

9. Examine and respond to the evolving needs of EJ communities, including immigrant populations. For example, as Hispanics tend to have larger and younger families than many other demographic groups, special issues may arise around the need for larger housing units and potentially discriminatory occupancy limits.

10. Promote accountability by identifying specific individuals in HUD by title and position who will be held responsible for the performance of specific operationalized initiatives and a plan for how those officials will coordinate with the relevant program offices, particularly those that oversee grantees and those that implement other equity requirements. HUD should further state clear objectives for policy change, and identify responsible actors, a timeline, the necessary resources, and benchmarks for results.

11. Assess how it can most effectively promote EJ now and into the future, including by expanding its existing policy tools, incentivizing equity while strengthening accountability, and facilitating collaboration with other agencies.

12. Include a comprehensive evaluative apparatus, so that HUD will know if its EJ goals have been achieved, to what extent, when, and what needs improvement or change. Where goals have not been achieved, this evaluation process should require identifying concrete steps toward meaningful, timely improvement in EJ performance. Where the plan already requires that HUD evaluate specific programs for their effectiveness, as with the administration of environmental policies under 24 C.F.R. 51 (at p.18), it should also require that the evaluation process entail recommending concrete steps to improve EJ performance as needed.

Thank for you for the opportunity to comment on the HUD Strategy and for your commitment to advancing Environmental Justice and civil rights.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Marcantonio".

**Public Advocates**

Richard Marcantonio, Managing Attorney

**Society Justice Consultancy**

Marc Brenman, Principal

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**The Opportunity Agenda**

Alan Jenkins, Executive Director

**Poverty & Race Research Action Council (PRRAC)**

Philip Tegeler, President/Executive Director

**Center on Race, Poverty & the Environment**

Laura Baker and Camille Pannu, Staff Attorneys

**California Rural Legal Assistance, Inc.**

Ilene J. Jacobs, Director of Litigation, Advocacy & Training

**National Housing Law Project**

Marcia Rosen, Executive Director