

March 24, 2009

Nelson Bregon, General Deputy Assistant Secretary,
HUD Office of Community Planning and Development
U.S. Department of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Fair housing issues in the implementation of the Neighborhood Stabilization Program

Dear Mr. Bregon:

The undersigned organizations are writing to raise important fair housing concerns regarding HUD's continued implementation of the Neighborhood Stabilization Program (NSP), specifically, the pending disbursement of the \$2 billion in additional funds allocated to the NSP through the American Recovery and Reinvestment Act of 2009 (ARRA). We write to ask HUD to:

- **Define areas eligible for NSP funding as including high-opportunity areas with "REO" properties;**
- **Set aside at least one-half of total NSP funding (from both appropriations) targeted to very low income families to be used to build and/or acquire low income rental housing units in high opportunity, low poverty areas;**
- **Permit use of a reasonable portion of other NSP funds to allow moderate income homebuyers from hard hit neighborhoods to acquire homes in higher opportunity neighborhoods;**
- **Implement strong affirmative marketing requirements for all NSP funding to ensure that those populations hardest hit by the foreclosure crisis have an opportunity to move into the units created or renovated;**
- **Establish clear civil rights-related site and neighborhood standards to assure that NSP low income rental projects do not increase residential segregation.**

As we have previously advised (letter to Secretary Donovan dated February 6, 2009), the current NSP program administered pursuant to the Housing and Economic Recovery Act of 2008 (HERA) has a serious, though unintended, fair housing flaw. As you know, NSP funds are treated as Community Development Block Grant (CDBG) funds with the exception of statutory modifications mandated by HERA and ARRA. While previous HUD guidance devoted considerable attention to the relationship of CDBG national objectives to NSP, HUD so far has failed to note the most significant CDBG national objective that balances fair housing considerations with neighborhood stabilization:

The reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods. 42 U.S.C. §5301(c)(6).

NSP program activities are targeted to the areas hardest hit by the foreclosure crisis. At the same time, 25% of NSP funds are targeted to households earning below 50% of area median income. Based on our knowledge of NSP plans currently being implemented in entitlement jurisdictions around the country, this generally means development of low income rental properties, often through the acquisition of existing foreclosed properties. The required or encouraged placement of the lowest income (and predominantly Black and Latino, and in some areas, Southeast Asian and Pacific Islander) families in the hardest hit, often moderate to high poverty and segregated neighborhoods is contrary to Fair Housing Act requirements. As detailed below, we believe that the discretion afforded the Secretary under the NSP-related ARRA provisions, along with HUD's fair housing requirements (which under ARRA may not be waived), require HUD to counterbalance and/or mitigate this fair housing flaw and to ensure that the additional NSP funds coming through ARRA are allocated in a manner consistent with HUD's obligation to affirmatively further fair housing.

We are aware that in contrast to the prior NSP allocation system under HERA which was formula-driven, the additional \$2 billion in ARRA will be awarded in a competitive process through which States, local governments and non-profit housing providers are able to apply. Specifically, ARRA provides that "in selecting [NSP] grantees, the Secretary. . .shall ensure that the grantees are in areas with the greatest number and percentage of foreclosures and can expend funding within the [prescribed] period" and that "additional award criteria for such competitions shall include demonstrated grantee capacity to execute projects, leveraging potential, concentration of investment to achieve neighborhood stabilization, and *any additional factors determined by the Secretary*[".]” American Recovery and Reinvestment Act, Pub. L. No. 111-5, Div. A, Title XII, 123 Stat. 115, 217-18 (emphasis added.) These additional factors should include the CDBG national objective that favors spatial deconcentration of low income housing. Furthermore, ARRA specifically provides that federal fair housing law and the nondiscrimination requirements of the CDBG program apply to the NSP program and may not be waived by the Secretary. *Id.*, at 218. As reflected in previous NSP implementation notices, these authorities include HUD's ongoing obligation to affirmatively further fair housing. We thus urge the Secretary and HUD to develop revised NSP guidance and grantee selection criteria that help create affordable housing for low-income families in areas of opportunity and that avoid negative impacts on racial and ethnic groups, including policies, guidelines or criteria that exacerbate and/or further racial and economic segregation.

Specifically, we recommend that the new NSP guidance and grantee selection criteria include, at a minimum, the following provisions:

- **A definition of “areas with the greatest number and percentage of foreclosures” that includes areas of higher opportunity, i.e. with relatively low poverty, low crime rates and high quality schools:** There are significant numbers of REO properties in higher opportunity neighborhoods in metro areas across the country.¹

¹ While we do not yet have national level data, our information from several metropolitan areas (including Montgomery County, Maryland; parts of Connecticut, Massachusetts, New Jersey, and Cleveland, Ohio, and the North Natomas area of Sacramento), show a significant pattern of foreclosures in high opportunity

Selection criteria and incentives should allow non-profits, public housing authorities and other affordable housing providers seeking to develop affordable housing in these areas to use NSP funds to acquire vacant homes, make necessary repairs, and lease them to families with incomes below 50% of area median income. Families in the hardest hit areas may still be given the highest priority for assistance, but could be offered rental and some homeownership housing choices outside of low opportunity neighborhoods.

- **Set aside at least one-half of total NSP funding targeted to very low income families to acquire low income rental housing units in high opportunity, low poverty areas:** In addition to generally making foreclosures in high opportunity neighborhoods eligible for NSP funding, HUD should specifically set aside a significant portion – at least half of the total funds dedicated to benefit very low income families in NSP I and NSP II – for use in higher-opportunity neighborhoods. Without such set-asides, affordable housing providers will not have an incentive to develop applications in higher-opportunity neighborhoods, as acquisition costs are higher in those neighborhoods, community development infrastructure is often less developed, and there is more competing demand for REO property on the private market. Alternatively, HUD could develop a scoring system similar to the system in place in some states’ Low Income Housing Tax Credit “Qualified Allocation Plans” (e.g. New Jersey) which prioritizes and gives the most points to development in high opportunity areas for the entire competition. HUD’s October 2008 NSP implementation notice “encouraged” metropolitan and regional solutions to neighborhood stabilization, but there is evidence that HUD staff disapprove of these approaches in their review of NSP plans, and permit activities limited primarily to distressed and deteriorated locations.² With the shift in program emphasis to

areas. In Maryland, for example, the state’s analysis found that 12% of all foreclosures in the state occurred in areas of “above average economic vitality.” Outside of Baltimore City and Prince George’s County, fully 20% of all foreclosures were in these higher opportunity areas. In Massachusetts, nearly half of foreclosures are taking place outside areas of low and very low opportunity, and almost 30% of foreclosures are occurring in high opportunity areas. Similarly, in New Jersey, Toms River has 106 REO properties — only 25% fewer REO properties than Camden, according to RealtyTrac — and other high-opportunity communities such as Brick, Cherry Hill, and Hamilton all have between 25 and 80 REO properties. The availability of REO properties in higher opportunity communities presents a unique opportunity to increase affordable rental housing for low income families through acquisition.

² For example, in Maryland, the Baltimore Regional Housing Campaign proposed that the state NSP plan “should set aside \$2 million for direct activities involving acquisition of vacant, foreclosed homes in higher opportunity areas for use as affordable housing for very low income households,” but the state agency responded that HUD had ruled out this approach. The Maryland Department of Housing and Community Development wrote: “In regard to opportunity areas, while DHCD agrees that this type of activity would be useful, a review of the draft NSP Plan Amendment by the HUD field office, as well as further policy directives by HUD’s central office in Washington D.C. has emphasized and re-emphasized the need to target NSP funds to the areas with the highest rates of foreclosures, vacancies, and subprime loans. While the first draft Plan included some use of NSP funds in the “opportunity” areas (and we would have liked to do more), guidance from HUD on the draft informed us that our draft NSP Plan allowed too much activity in the “opportunity areas” and we were informed that the NSP Plan would be turned down if we provided assistance in those areas. In addition, they also informed us that our needs data in the draft Plan, as well as our rating and ranking in the draft Plan, needed to give more priority to areas with higher foreclosures, vacancies, and subprime mortgages rather than opportunity areas. Consequently, we have been required to

competitive grants, HUD's proposal selection criteria should prioritize regional approaches that include a focus on expanding housing choice for lower income families in higher opportunity areas

- **Permit use of a reasonable portion of NSP funds targeted to moderate income homebuyers to allow homebuyers from hard hit neighborhoods to acquire homes in higher opportunity neighborhoods:** We understand that a key goal of the NSP neighborhood revitalization and homeowner assistance effort is to rescue neighborhoods hardest hit by the foreclosure crisis. But at the same time, to the extent that the NSP program assists low and moderate income families in purchasing homes, the program should not limit their choices *only* to higher poverty and racially segregated areas.
- **Strong affirmative marketing strategies as a requirement for funding:** Under the current NSP program, jurisdictions are doing little to nothing to ensure that families in the areas disproportionately affected by the crisis will be able to move into the NSP-created homes, particularly with respect to the homeownership units. At the same time, there are myriad community organizations with homeownership development programs designed precisely to place such families in single-family units. The guidance should require grantees to set forth a concrete plan that ensures families in the hardest hit areas are placed in the rehabilitated units in significant numbers, and, where applicable, require grantees to work collaboratively with community groups dedicated to increasing homeownership opportunities for such families. This requirement should apply to all rental and homeownership units developed with NSP funds in all areas, especially high opportunity areas.
- **Appropriate site and neighborhood standards:** While CDBG regulations and NSP guidance make general references to compliance with Title VI of the 1964 Civil Rights Act, the Fair Housing Act, and grantee responsibility to affirmatively further fair housing, the program lacks civil rights-related site and neighborhood standards for housing assisted with program funds. Unlike the CDBG program, NSP is exclusively a housing program. Moreover, NSP funds may be used for new construction, in contrast to the CDBG program where new construction is an eligible use only in very limited situations. These important differences between CDBG and NSP require different approaches to civil rights-related site and neighborhood standards, differences that should be addressed in NSP guidance in the same way the October 2008 NSP guidelines addressed other differences between the two programs. In addition to promoting housing development in high opportunity areas, HUD's responsibility to further fair housing means that it must forbid the use of NSP funds to reinforce existing patterns of racial segregation in assisted rental housing. HOME program site and neighborhood standards could be used for this purpose.

move in a different direction with more emphasis on the areas with the greatest problems rather than taking advantage of opportunities in less impacted areas.”

Thank you for the opportunity to present these comments. We are cognizant of the Secretary's 75-day deadline to publish the grantee selection criteria and we would welcome the opportunity to meet with you soon to further discuss our comments. Meanwhile, please let us know if additional information or analysis would be helpful.

Sincerely,

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