

February 6, 2009

Shaun Donovan, Secretary of Housing & Urban Development
Ron Sims, Deputy Secretary-Designate
U.S. Department of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Donovan,

The undersigned organizations are writing to raise some important fair housing concerns regarding the housing program elements in the Economic Recovery bills currently pending in the House and Senate.¹ We realize that this legislation is moving rapidly, but we hope that HUD leadership can provide input on these issues before the bills become finalized.

Our concerns are focused on specific provisions of the stimulus legislation affecting the Public Housing Capital Fund, the HOME and CDBG programs, the Neighborhood Stabilization Program, and the Lead Hazard Abatement Program. We are particularly mindful of HUD's ongoing obligation to affirmatively further fair housing, which in this context includes utilizing federal housing funds to create affordable housing opportunities for low-income families in areas of opportunity, carefully assessing the racial impacts of policy choices on different racial and ethnic groups, and avoiding policies that will further racial and economic segregation.

With respect to the first of these responsibilities, the stimulus legislation and HUD's administration of the stimulus funds would be vastly improved by creating a spending priority within the public housing, HOME, CDBG, and NSP provisions for affordable rental housing serving low-income families with children – especially extremely low-income families of color – in areas characterized by low levels of poverty and racial segregation, high performing schools, job opportunities and low rates of crime.

Accountability for the civil rights impact of the use of stimulus funds is readily achievable within the structure of both the House and the Senate bills, which provide additional funding to the HUD Inspector General, and in the House bill which provides a separate appropriation for monitoring activities by the Government Accountability Office. However the duty is assigned, it should examine (i) the extent to which HUD funds are expended to create or preserve assisted housing in high poverty, racially segregated locations; (ii) the extent to which stimulus monies are used to create assisted housing in high opportunity areas; and (iii) the extent to which housing is made available to extremely low-income families with children of color in opportunity areas.

Public Housing Capital Fund: The House and Senate versions of the Act include \$5 billion in new funds for the Public Housing Capital Fund (with different amounts

¹ H.R. 1, the American Recovery and Reinvestment Act of 2009 and the Senate supplemental appropriations bill, S. 336.

allocated for competitive vs. formula grants). We have three major concerns with the bills as currently drafted. First, we appreciate the exemption of “fair housing” and “non-discrimination” requirements from the general authority granted to HUD to waive statutes and regulations associated with the use of Capital Funds,² but we seek confirmation from HUD that “fair housing” and “non-discrimination” requirements encompass limits on the concentration of on-site units and the siting of off-site units in the site and neighborhood standard provisions of the public housing development regulations. These rules were promulgated as the direct result of litigation to enforce HUD’s obligation to further fair housing under the Fair Housing Act, and we believe the stimulus legislation forbids their waiver. We are additionally concerned that both stimulus bills render inapplicable “any restriction of funding to replacement housing uses.” Because the stimulus legislation is directed at expenditures of Capital Funds under Section 9 of the U.S. Housing Act, it is our view that these provisions nullify only the prohibition on the increase of public housing units in 42 USC §1437g(g)(3), and they do not affect the limits on replacement housing reflected in the site and neighborhood standards. Finally, the emphasis on rehabilitation of vacant units in both bills may not in all cases be the best use of limited public funds. Rather, limited rehabilitation funds should be targeted to public housing located in neighborhoods where families affirmatively want to move.³

HOME and CDBG: We were pleased to see support for both of these important programs in the House bill (though the current draft of the Senate bill includes only HOME funds). Our concerns here are twofold: first, as noted above, HUD or Congress should make it very clear that the fair housing exception to the general regulatory waiver includes all site and neighborhood siting requirements, which were adopted in 24 CFR pursuant to the Fair Housing Act. Specifically, HUD has the obligation to consider relevant racial and socio-economic information when determining neighborhood siting. By selecting healthy, thriving, diverse neighborhoods for new developments, HUD will both be fulfilling its legal obligations, and offering the options to low income families that will allow them the greatest chance for success. Second, we urge HUD to consider the potentially harsh racial impact of waiving the “overall benefit requirement” of the CDBG and HOME programs. This has happened before, with devastating consequences. After Hurricane Katrina, HUD permitted waiver of the requirement that 70% of CDBG money go to lower income residents to 50% and further permitted the State to seek waivers from this already reduced requirement. As a result, Mississippi has asked for and received from HUD waivers of the 50% requirement for five of its recovery programs, and only three relief programs are targeted to the needs of lower income families, resulting in only 21% of the CDBG funds being allocated to programs that meet the 50%

² The House bill, for example provides for the following regulatory waiver: “The Secretary may waive statutory or regulatory provisions related to the obligation and expenditure of capital funds if necessary to facilitate the timely expenditure of funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment).”

³ For an excellent commentary on the importance of prioritizing public housing revitalization in better neighborhoods, see Margery Austin Turner, *Upgrade the Stock of Public Housing*, from “Biggest Bang for the Buck: Researchers Weigh Stimulus Proposals” (Urban Institute) at <http://www.urban.org/issues/recovery.cfm#turner>

requirement. Further, HUD approval of the Mississippi programs has contributed to almost no rental housing being rebuilt in Mississippi, leaving over 5,500 households, most of whom are low income and minority residents, in FEMA travel trailers, mobile homes and other transitional housing over three years after the storm.

Neighborhood Stabilization Program: The current NSP program has an important, unanticipated fair housing flaw that needs to be corrected in any subsequent program. As you know, program activities are generally targeted to the areas most hard-hit by the foreclosure crisis. At the same time, 25% of NSP funds are targeted to use by persons earning below 50% of area median income – which has generally meant plans for 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) families in the hardest hit, often moderate to high poverty and segregated neighborhoods is contrary to Fair Housing Act requirements and needs to be reversed in the planned extension of the program. We recommend that the geographic targeting of housing assistance for these families be revised so that low income families in the hardest hit areas be prioritized for assistance, but that the rental housing they are offered include a substantial choice of housing outside of high foreclosure neighborhoods – including acquisition of foreclosed properties in low poverty communities with high quality schools.

Lead Hazard Abatement: The House version of the stimulus legislation (pp. 229-230), allocates an additional \$100 million to the HUD Office of Healthy Homes Lead Hazard Control for lead hazard reduction programs. The legislation then directs that \$30 million of that amount “shall be made available on a competitive basis for areas with the highest lead abatement needs.” While this sub-allocation appears to have been well intended, it may actually have a negative effect on the predominantly minority areas most in need of lead hazard removal. That is, in light of the gross racial disparities in actual lead poisoning rates between the minority and non-minority populations, an impartial distribution of these funds to the neighborhoods most in need might actually require that an amount greater than 30% of the funds appropriated in the stimulus package be distributed to these areas. We urge you to insure that the stimulus language be revised, or at least that the legislative intent be made clear, so that this is interpreted to assure that a *minimum* of 30% of the funds be allocated to the highest risk neighborhoods once all key indicators have been taken into account. Additionally, we urge HUD to factor into its determinations that, in addition to age of housing and the poverty of the neighborhood, race has been clearly established as a key indicator in determining where housing most likely to contain lead hazards is actually located. Communities identified as the highest risk neighborhoods based upon actual health department data for recent incidences of poisoning should be given the very highest priority.

Thank you for the opportunity to present these comments. We would be happy to present further information and analysis if that would be helpful.

Sincerely,

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