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Re: Protecting HUD civil rights standards in the Rental Assistance Demonstration (RAD)

Dear colleagues,

We are writing to follow up on our comments at the RAD “listening session” on January 5, concerning civil rights compliance in the RAD program.

I. Site & neighborhood standards

First and foremost, it is important that the Department reject any efforts to water down long-standing civil rights siting standards. HUD should also summarize these standards again in a formal civil rights notice for the RAD program so that HUD standards are fully transparent. Finally, we urge HUD to assign additional staff to FHEO so that civil rights reviews can be expedited to meet the concerns of many at the listening session about the length of time some of these reviews may be taking.

A. Why site & neighborhood standards are important

Avoiding the perpetuation of segregation and poverty concentration in HUD-assisted housing is a central principle of our fair housing and civil rights laws and is necessary to avoid repeating and reinforcing the intentional sins of the past. It is also crucially important for the health and development of young children, and for the future of our country. In a recent landmark study, Harvard professor Raj Chetty and his colleagues found substantial increases in the adult income levels and long-term educational attainment of children who move to and grow up in low-poverty communities – especially

when children stay in these neighborhoods for a substantial period of time. This research is reinforced by findings from the MTO demonstration of substantial improvements in the mental *and* physical health of women and girls who move to low-poverty neighborhoods, and decades of education research demonstrating significant achievement gains among low-income children who attend racially and economically integrated schools.

B. Maintaining the integrity of the site & neighborhood standards

Site and neighborhood standards are designed to avoid increasing or perpetuating segregation in the location of public and assisted housing. Regulations for such standards have been in place since the early 1970s, prompted by litigation against HUD to enforce the Fair Housing Act (e.g., *Shannon v. HUD*). Current site and neighborhood standards are set out at 24 CFR §941.202 (public housing), 24 CFR §983.57 (Project Based Vouchers), etc. These rules have provided consistency and transparency for years, and it would make no sense to modify them for the RAD program. This is particularly true now, only months after the publication of the Department’s Final Rule on Affirmatively Furthering Fair Housing and its emphasis on promoting residential integration.

HUD’s administration of these standards has also been consistent. The Department’s definition of an “area of minority concentration” has used the MSA minority population average plus 20% for many years (see, e.g., FHEO Notice 97-2). Furthermore, the use of the MSA census frame to analyze areas of minority concentration is a sensible approach because it ensures that a consistent standard be used in all analyses and it is closest to the actual service area of most PHAs. The factors considered for allowable exceptions to siting public and assisted housing in areas of minority concentration have also been consistent over a long period of time. In order to properly evaluate whether these exceptions are applicable to a specific project, evidence of an equivalent number of “sufficient, comparable housing opportunities” outside of minority-concentrated areas, or evidence that that the project is necessary to meet “overriding housing needs,” must be provided to HUD. Detailed instructions for the interpretation and documentation of these standards are provided in the regulations to assist in evaluating whether either exception is applicable. The burden is squarely on the developer/PHA to submit adequate documentation to HUD for it to evaluate fully and adequately whether to grant the exception consistent with the guidelines of the rule. If a particular developer fails to satisfy HUD that either exception is warranted under the standard, there is an adequate process for an administrative appeal. The failure of a particular PHA or developer to supply the required documentation or meet the HUD standard is not a reason to water down long-standing, underlying civil rights rules.

C. The site selection standards set out in Appendix III for RAD PBRA conversions need to be strengthened

The site and neighborhood standards for RAD PBRA conversions involving new construction would ideally track the original siting requirements for Section 8 New Construction, if those regulations were still in effect. In any event, the language currently set out in Appendix III should at a minimum be strengthened by adding back the following standards that are included for Project Based Vouchers, but omitted from Appendix III:

- Factors affecting child health and development
- Factors assessing rates of violent crime
- Factors assessing elementary school poverty rates (% qualifying for free and reduced-price lunch)

See 24 CFR §891.125(c) (4).

D. The need for meaningful site & neighborhood standards for “transfers of assistance”

We are concerned about the lack of meaningful siting standards for transfers of assistance in the RAD program. Without such standards, it is conceivable that public housing residents could be relocated from their current apartment to a unit in a less desirable neighborhood. The economic temptations to undertake such transfers of assistance are magnified in strong-market cities, where public housing may occupy valuable real estate in the path of private development.

E. Ensure centralized FHEO oversight of site & neighborhood decisions made in regional and field offices, and ensure sufficient FHEO staff to process their review in a timely fashion

The lack of timely site and neighborhood reviews was a consistent complaint at the January 5 listening session. To address this concern, HUD must develop procedures to permit timely reviews, including involving FHEO at the beginning of any review of RAD applications and providing increased staff to process such reviews.

II. Additional civil-rights-related recommendations pertaining to the Rental Assistance Demonstration

A. RAD-assisted developments in high-poverty neighborhoods should be required to include a robust housing mobility counseling program

In order to increase and encourage access to housing in higher-opportunity areas, HUD should require applicants to establish a strong housing mobility counseling program when the proposed development is to be maintained or located in areas of concentrated poverty, racial and/or ethnic concentration, areas of high crime, environmental blight, failing schools, or other serious neighborhood quality problems.

B. Include robust community participation requirements, including advance notice of RAD proposals to community and fair housing/civil rights advocates

The new Affirmatively Furthering Fair Housing regulation places increased emphasis on community participation in fair housing planning. Similar emphasis for RAD is equally, if not more, important because such developments have a major impact on their communities. To increase such community participation, HUD should (1) post for public review RAD applications and subsequent filings and correspondence between applicants, HUD, and third parties; (2) require PHAs to provide specific notice and require consultation with local community fair housing and civil rights organizations at least 120 days before the RAD application is submitted to HUD; and (3) provide a process for local and national civil rights and fair housing organizations to file a notice of interest in the proposed project and submit comments.

C. Issue formal guidance on implementation of the RAD program’s choice-mobility component

The RAD mobility option offers a unique opportunity to help poor families move to low-poverty neighborhoods, for two reasons. First, RAD residents have stable, affordable housing for at least a year before they can move with a voucher. This gives them time to consider neighborhood options; strengthen their credit history; and save for moving costs, a security deposit, and unexpected post-move expenses. Second, mobility-related services can be delivered more efficiently to RAD residents, who live in a single development, than to tenant-based voucher holders or applicants, who are widely

scattered. HUD should issue guidance on how PHAs and private assisted owners can adopt policies to help families use this “choice/mobility” option to move with available tenant-based vouchers to areas that afford greater opportunities.

This guidance should list potential sources of funds to support mobility programs and describe recommended practices, including resident education and outreach (such as workshops, displays of printed materials, and presentations by tenants); provision of search assistance (including landlord outreach, quality search platforms, and logistical support); sources of financial support for residents (including adequate neighborhood payment standards and security deposit funds); elimination of administrative barriers (including adequate search times and the assurance that tenants may remain in their RAD units if they fail to use their tenant-based vouchers); and ongoing post-move support.

D. Clarify affirmative marketing requirements for the RAD program

Affirmative Fair Housing Marketing (AFHM) programs serve an important role in ensuring equal access to information, helping families overcome the legacies of exclusion, and promoting fair and open housing choice. AFHM is among the key tools through which HUD implements the statutory mandate to affirmatively further fair housing, by requiring program participants (including developers) to promote their properties and engage prospective occupants so as to actively advance fair housing goals.

Currently, information collected through AFHM Plans provides a framework for HUD to evaluate developers’ activities in this regard. We recommend that the content required by the AFHM Plan forms be enhanced and clarified in several respects. These changes are needed for AFHM Plans to fulfill their intended function of delivering clear expectations about marketing to developers while documenting marketing efforts. Many of these recommendations are consistent with (current) FHEO practice, but it is important that they be incorporated formally into HUD guidance for future continuity, and that they be communicated adequately to developers via changes to the forms and instructions of AFHM Plans, as well as in relevant training. These clarifications should include: performance standards that can be used to effectively target technical assistance resources (as well as compliance reviews); the requirement of region-wide outreach (rather than leaving the scope of the “market area” to the developer’s discretion); the requirement of enriched marketing content relevant to potential tenants; presumptions against the use of tenant selection procedures that tend to disadvantage minority group members and non-local applicants; and the institution of meaningful Plan evaluations.¹

Additionally, AFHM instructions and training should emphasize the use of accepted best practices in conducting demographic comparisons. Analyses conducted for AFHM purposes by RAD program participants should have the scope and accuracy consistent with that required by HUD elsewhere. Since RAD is a new program, this may require extra care and explicit guidance from HUD during the program’s rollout. For example, RAD program participants should be reminded to include Hispanics in the total minority count in order to ensure accurate and meaningful data for fair housing purposes. Additionally, AFHM designations and evaluations should be based on a comparison of resident demographics to that of the *income-eligible* population throughout the region (rather than to the general population). This is consistent with HUD’s policy for assessing the potential for discrimination (used to evaluate the use of residency preferences, for example).

¹ See a fuller discussion in our comment letter to HUD on the AFHM Plan (June 2013) at http://prrac.org/pdf/AFHM_Plan_Fed_Reg_comment_letter_6-3-13.pdf; and PRRAC’s report on affirmative marketing and tenant selection, “Assessing Opportunity” (Dec. 2012), available at http://prrac.org/full_text.php?text_id=1389&item_id=13706&newsletter_id=0&header=Search%20Results.

Thank you for the opportunity to present these comments, and please feel free to contact us for further discussion.

Sincerely,

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