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

Via regulations.gov [<http://www.regulations.gov/#!submitComment;D=HUD-2013-0066-0001>]

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

Dear colleagues,

As a community of scholars who have long studied the causes and consequences of residential segregation in the United States, we applaud HUD's continuing efforts to realize the long-stated but still unrealized goal of a decent home and a suitable living environment for all American families. The proposed Affirmatively Furthering Fair Housing rule contains several provisions that will advance efforts to ameliorate the ongoing segregation of the nation's housing markets. We would like to offer recommendations that will make the final rule an even more effective tool for achieving its objectives.

The continuing costs to the nation of ongoing patterns of segregation constitute one of the few areas where the mounting evidence has resulted in widespread consensus in the social sciences. Virtually all scholars acknowledge that the nation's history and ongoing reality of segregation have undermined the quality of life for protected classes under the nation's fair housing laws. They include denial of equal access to housing and all housing related services (e.g. home insurance, mortgage loans), employment, healthy and secure neighborhoods, education, recreational and cultural amenities (e.g. parks, shopping, theater, restaurants), financial services, and virtually everything that contributes to the quality of life in American communities. Fair housing enforcement and educational initiatives in recent years have led to reductions in levels of segregation. Still, segregation remains a central organizational feature of our nation's cities and metropolitan areas. HUD's affirmatively furthering rule will advance the progress that has been made in recent years, particularly if the final rule is strengthened in the ten critical areas noted below.

In modernizing the proposed rule, HUD has incorporated enhanced community engagement elements in the rule which will bring new groups to the table and force an open discussion in thousands of communities about issues of racial segregation, "racially concentrated areas of poverty," unequal conditions and resources in low income communities, and remedies to segregated housing patterns. The new rule will also be an exciting platform for community organizing around fair housing in areas where some capacity exists or can be developed. But we call on HUD to incorporate the following changes in the final rule:

1. To ensure effective community participation, there must be a mechanism in the final rule enabling advocates to comment on the Assessment of Fair Housing (AFH) required of jurisdictions receiving these funds. One model might be the opportunity provided by the

Community Reinvestment Act, which has led to significant reinvestment agreements in a number of states. HUD needs to create an explicit procedure for community organizations, advocates, and individual citizens to challenge the credibility of the Assessment of Fair Housing.

2. The final rule should require program participants to establish benchmarks in the Assessment of Fair Housing (AFH). For each goal, the AFH must require program participants to list specific actions that will be taken toward achieving the goal, a timetable for each action, metrics for measuring progress toward the goal, and the entity responsible for taking each action. This will enable the public and HUD to measure annual progress toward realizing fair housing goals, and to assess the extent to which ConPlan and PHA Plan Annual Action Plans comply with the obligation to affirmatively further fair housing choice.
3. The proposed rule does not require concrete steps toward racial and economic integration; the focus of the rule continues to be on process rather than results (“the proposed rule does not mandate specific outcomes for the planning process.”)(sic). HUD should require jurisdictions to identify specific goals and timelines for reduction of racial isolation in a community, and measurable goals for neighborhood improvements and access to community wide resources for residents of low-income communities.
4. The proposed rule’s emphasis on community reinvestment and revitalization is positive, but the final rule should be clear that the predominant purpose of the Affirmatively Furthering Fair Housing standard is reduction of segregation and poverty concentration. The proposed rule states:

“A program participant’s strategies and actions may include strategically enhancing neighborhood assets (for example, through targeted investment in neighborhood revitalization or stabilization) *or* promoting greater mobility and access to communities offering vital assets such as quality schools, employment, and transportation consistent with fair housing goals.”

In the final rule, the “or” must be an “and”. Jurisdictions cannot satisfy their mandate to promote fair housing choice and integration solely through placed based strategies.

5. The proposed rule suggests that HUD will review all Assessments of Fair Housing submitted by local jurisdictions within 60 days or the AFH will be “deemed accepted.” HUD does not have the capacity to undertake such reviews, and such a process is unlikely to be meaningful. The final rule should remove routine HUD review of the plans and substitute an audit-based and complaint-triggered review process more consistent with HUD capacity and practice. Just like the Internal Revenue Service audits a sample of tax returns, recipients of such HUD funding should know that they are subject to a detailed audit of their AFH. If HUD retains routine review of AFH plans in the final rule, HUD should eliminate the characterization of unreviewed plans as “deemed accepted,” and a careful independent evaluation of the results of the review process should be conducted after 1-2 years.
6. If the final rule includes routine HUD review of the AFH, in order to ensure effective community participation there must be a mechanism in the final rule enabling advocates to appeal to the HUD Headquarters Office of Fair Housing and Equal Opportunity a decision by

the local HUD office to accept an Assessment of Fair Housing or a certification that a program participant is affirmatively furthering fair housing choice. Also, substantial additional HUD funding will be required to staff the reviews in a timely fashion.

7. There are a number of positive provisions for community involvement in the planning process but no support for capacity building identified in the rule itself – effectiveness of community engagement will depend on community capacity which must be enhanced by additional support in the 2015 budget.
8. Transparency is also key to community participation. The proposed and final Assessment of Fair Housing, as well as related information used to create the AFH, should be posted on a readily available webpage of the program participant.
9. The final rule should be far more explicit that all of a program participant’s housing and community development resources, as well as its policies, practices, and procedures (such as zoning which inhibits development of permanent supportive housing or multifamily housing) must be included in the Assessment of Fair Housing and in any certification that the participant is affirmatively furthering fair housing. As written, the proposed rule could be misunderstood to only consider use of HUD funds.
10. In order to learn from the initial implementation period, and make improvements as necessary, the HUD Office of Policy Development and Research should conduct or commission a study to carefully evaluate the impact and effectiveness of the new rule after five years, and again after ten years.

We commend HUD for its perseverance in following through on its goal, announced early in the first term of the Obama Administration, to clarify the AFFH obligations of state and local jurisdictions. HUD has appropriately carried out a deliberate process in developing the proposed rule. The changes called for here will result in a final rule that will prove to be far more effective in achieving the agency’s objectives.

Sincerely,

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