



# Building *One* America

A NATIONAL COALITION FOR REGIONAL OPPORTUNITY

July 19, 2010

TO: Building One America Members and Allied Fair Housing and Regional Opportunity Advocates

SUBJECT: Inclusion of BOA's recommendations in final Sustainable Communities Initiative (SCI) program guidelines

The final Notice of Funds Availability (NOFA) for the Sustainable Communities Regional Planning Grant Program (SCI) has been issued, and many of the primary concerns raised by Building One America and our coalition partners<sup>1</sup> are substantially included. Our two major concerns have been that

- regional equity goals must be at least co-equal with environmental sustainability goals; and
- the planning grant program must be genuinely regional in scope, addressed to whole metropolitan, micropolitan, or urbanized areas.

SCI is unambiguous on these two major issues. Of course, we cannot claim sole credit for this success. The SCI NOFA has been substantially shaped by the personal values and professional experiences of key HUD, DOT, and EPA staff under the leadership of HUD Deputy Secretary Ron Sims. Hundreds of organizations and individuals submitted recommendations.<sup>2</sup> Yet Building One America, working alongside several key partner organizations, has been a primary advocate – perhaps the most forceful and persistent champion – of racial and economic inclusion within a regional opportunity framework. We can take pride in our impact to date on this seminal federal initiative to build sustainable, *inclusive* communities.

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<sup>1</sup> Our position was initially summarized in a letter from Building One America to HUD on March 11, 2010, and co-signed by many state and national fair housing organizations. See [www.prrac.org/pdf/BOA-SCI-March-2010.pdf](http://www.prrac.org/pdf/BOA-SCI-March-2010.pdf)

<sup>2</sup> Undoubtedly, many such groups did *not* advocate regional equity requirements, seeking to have a “sustainable community” defined as just a city, or grouping of relatively homogeneous suburbs, or even neighborhoods or being exclusively concerned with “green” goals.

And yet ... in our letter of recommendations, we noted that “in terms of developing national models for achieving both greater social justice and enhanced environmental sustainability HUD, DOT, and EPA must set the bar very high for the pilot planning grant program.”

The NOFA falls short of requiring that, to be successful, applicants must clear a bar set at a very high level. In our view, there is too great a potential for lip service and half-measures regarding overcoming the toughest challenges of racial and economic inclusion. In particular, there is a failure to recognize explicitly disparities in the “geography of opportunity” and to mandate eliminating (in the memorable characterization of Ron Sims) “the tyranny of the Zip code.”

Therefore,

- \* in our regions, grassroots BOA coalitions must continue to interact with Metropolitan Planning Organizations and/or major local governments to emphasize effective regional equity policies and programs in their SCI proposals; and

- \* in Washington, BOA and its allies must encourage HUD, DOT, and EPA to emphasize regional equity policies and programs, particularly inclusionary housing development in high opportunity communities and regional housing mobility programs, in scoring actual applications for SCI grants.

Following is a detailed analysis of each of our recommendations and the NOFA’s treatment of each topic. Each section will be headed by our recommendation and will cite different sections of the NOFA or additional materials from the accompanying commentaries<sup>3</sup> that were submitted.

I had also prepared a 100-point score sheet to assess the NOFA’s response to our recommendations. The sub-categories were often based on very specific details contained in the commentaries. In many instances, the NOFA is not as specific (and certainly not as directive) as our proposals so I have graded the NOFA based on a general assessment of how responsive it is to each of our ten recommendations overall rather than on the sub-category details.

My final grade for the NOFA is 72 points, which translates into a B minus. In an era of grade inflation, that may sound like a poor grade, but I interpret it as “pretty good.” The NOFA probably could not have scored an A unless the task of drafting the NOFA had been turned over to Building One America.

The final NOFA, our commentaries, and score sheet are attached to this analysis for your review.

David Rusk

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<sup>3</sup> *Building Sustainable, Inclusive Communities: How America can pursue smart growth and reunite our metropolitan communities* by David Rusk (May 2010), jointly published by the Poverty and Race Research Action Council (PRRAC) and Building One America.

*Recommendation #1:  
An SCI Planning Grant must be genuinely regional in scope,  
covering the jurisdictions that comprise a metropolitan or micropolitan area,  
or, at least those jurisdictions forming the urbanized area of such,  
including the principal city or cities and first suburbs.*

The NOFA [pp. 15-16] states that

“For the purposes of this NOFA, **a region shall be defined as:**

- 1.** A geographic area that includes, but may be larger or greater than the entire area of:
  - a.** The jurisdiction of a single MPO, or the jurisdictions of two or more adjacent MPOs,
  - b.** A Metropolitan Statistical Area, or a Micropolitan Statistical Area,
  - c.** A Metropolitan Division *if* the region is within a Combined Statistical Area with a population exceeding 7,000,000.<sup>4</sup>
- 2. A non-defined area.** A non-defined area is *an area that is entirely outside the boundaries of any Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division* [emphasis added]. A consortium that represents a non-defined area may self-designate the boundaries of its region.”

Whatever the composition of the regional consortium and its lead applicant (see recommendation #2 below), it is clear that the required “comprehensive Regional Plan for Sustainable Development” (pp. 22-26) must cover an entire region as very precisely defined above.

The inclusion for SCI eligibility of a “non-defined area” whose boundaries are self-designated by the applicant might see to open up the possibility of sub-regional applications (e.g. by individual cities or even by groups of neighborhoods). However, the requirement that any “non-defined area” must be “entirely outside the boundaries of any Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division” eliminates that possibility.

We had noted that (*commentaries*: p. 7)

“[D]efining ‘What is a region?’ will be one of the more critical decisions HUD, DOT, and EPA face in shaping the new initiative. We urge the three Partners for Sustainable Communities to resist pressures to collapse the program into less than regional scale – that is, demand metropolitan, micropolitan, or urbanized area coverage with full inclusion of principal cities and first suburbs.”

HUD, DOT, and EPA did so fully and merit full credit on our rating scale.

**Potential points (8)**

**Actual points awarded (8)**

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<sup>4</sup> NOTE: Only Boston-Worcester-Manchester, MA-RI-NH; Chicago-Naperville-Michigan City, IL-IN-WI; Los Angeles-Long Beach-Riverside, CA; New York-Newark-Bridgeport, NY-NJ-CT-PA; San Jose-San Francisco-Oakland, CA; and Washington-Baltimore-Northern Virginia, DC-MD-VA-WV exceed a population of 7,000,000. Thus, the following regions *cannot* be sub-divided into smaller planning units: Dallas-Fort Worth-Arlington, TX; Detroit-Warren-Livonia, MI; Miami-Fort Lauderdale-Pompano Beach, FL; Philadelphia-Camden-Wilmington, PA-NJ-DE-MD; and Seattle-Tacoma-Bellevue, WA.

## *Recommendation #2*

*The recipient of an SCI Planning Grant must be a governmental unit (such as a county for single-county regions), or consortium of governmental units (such as a Metropolitan Planning Organization or Council of Governments) or, in the absence of interested local governments, a state agency – in short, public bodies that control development policy (land use, commercial and industrial development, housing, transportation and other infrastructure, etc.) within a region.*

The purpose of this recommendation was to assure that there was ultimate “ownership” of the comprehensive Regional Plan for Sustainable Development by the governmental bodies that control development policy. Too often “regional plans” are developed by non-profit organizations (e.g. the New York area’s Regional Plan Association) or, in “little boxes” states, by county government whose plans are deemed “purely advisory” by state laws that delegate land use planning and zoning authority solely to municipal governments (e.g. Pennsylvania). Indeed, with the sole exception of Portland Metro, MPOs’ regional land use plans (when they exist) are non-binding on municipal governments except as member governments voluntarily adopt them. MPOs’ regional land use plans have teeth only in so far as federal law assigns MPOs the power to allocate federal transportation funds.

Trying to assure that the Regional Plan for Sustainable Development has real impact on local land use actions is the reason that BOA argued against consortium arrangements proposed in HUD’s request for comments on the preliminary SCI program design.

The final NOFA continues the consortium approach, as follows [pp. 18-19]:

**III. A. Eligible Applicants.** In this program, an eligible applicant is a multi-jurisdictional and multi-sector partnership consisting of a consortium of government entities and non-profit partners.

**1.** A consortium representing a region that includes the jurisdiction of a MPO or MPOs; a Metropolitan Statistical Area, a Micropolitan Statistical Area, or a Metropolitan Division, must, at a minimum, include the following:

**a.** The traditional principal city (or cities if more than one) located within the boundaries of the region if the region is within a Metropolitan Statistical Area;

**b.** The city, county, or any other unit of general local government with the largest population located within the region, if different from (a.) or if in a Micropolitan Statistical Area;

**c.** Additional cities, counties, or units of general local government and Indian Tribes that will ensure that the consortium represents no less than 50 percent of the population residing within the region;

**d.** The MPO, or the regional planning agency that facilitates planning and associated management activities for the geography represented by the applicant, or if the region has multiple MPOs, all MPOs that have jurisdiction within the designated region; and,

**e.** A nonprofit organization, foundation, or educational institution within the region that has the capacity to engage a diverse representation of the general population, and the ability to work in partnership with the units of general local government and the MPO or MPOs comprising a consortium to advance the program objectives of the Sustainable Communities Planning Grant Program...”

The consortium must designate a “lead applicant,” as described [pp.19-20]:

“A lead applicant may be any one of the required component entities forming the consortium, as described above. The lead applicant shall have responsibility for submitting the application to HUD, and, if the consortium is selected for funding, shall execute the cooperative agreement with HUD and assume fiscal responsibility for the grant on behalf of the consortium in compliance with all HUD and program requirements.”

If a consortium’s “lead applicant” is the MPO (for a multi-county region) or county government or a dominant, “elastic” principal city (for a single-county region), then BOA’s goal will be substantially achieved. It is likely that such a lead applicant will take real “ownership” of the plan.

If, on the other hand, the lead applicant is a nonprofit organization, foundation, or educational institution – however prestigious – the SCI regional plan is likely to continue the tradition of such plans being “more honoured in the breach than the observance” by local governments that actually control land use planning and zoning.

Another feature of the NOFA that is responsive to BOA’s concerns is the mandatory inclusion as active consortium partners of the principal city’s government and sufficient suburban governments to total at least 50 percent of the region’s population. BOA documented instances where “regional plans” had been developed by outer-suburban coalitions to the detriment of principal cities and first suburbs (*commentaries*: p. 8).

By contrast, we are disappointed with the NOFA’s provisions regarding a role for state government. The NOFA does not include state government within the list of mandatory partners listed above [Section III. A. (1) a-e] but consigns state government to a section on “additional partners,” [pp. 20-21] as follows:

**C. Additional Partners.** A consortium may also include *a state government or an entity established by a state government* [emphasis added], a Council of Governments, a rural planning organization, or more local or regional transportation agencies, special districts (e.g. a utility district), unified school districts, one or more Indian Tribes, or a multi-tribal organization that has been delegated authority by member Indian Tribes to conduct planning and associated management activities on behalf of the member tribes, additional nonprofit organizations, foundations, and educational institutions, or any other public authorities, districts, business leadership groups, or regional governmental organizations. Private and for-profit entities may be participants in the consortium.

This second-class status suggests that a state agency cannot serve as lead applicant for a consortium. It also seriously undervalues the importance of state government *as the only level of government with sovereign authority over land use planning and zoning*. In effect, state government writes “the rules of the game.” Reforming state land use laws is essential if multi-jurisdictional regional plans of regional public bodies like MPOs, Councils of Government, or county government (in “little boxes” states) are to cease being merely “advisory.”

Thus, assuming that, in most circumstances, an MPO or major local government will be a regional consortium’s lead applicant, but deducting points for the NOFA’s treatment of state government, our rating for this section is

**Potential points (7)**

**Actual points awarded (4)**

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*Recommendation #3*

*There must be proportional representation on an SCI Planning Grant recipient's governing body of the residents of principal cities and first suburbs (where minorities and low-income households are typically concentrated); or, failing that test, an SCI grant recipient must establish a decision-making substructure that achieves proportional representation.*

BOA's recommendations assumed that MPOs would be presumptive grantees for multi-county regions. However, we also noted that most MPOs needed to be reformed to meet three basic standards (*commentaries*: p. 13):

- proportional representation of the people to be served;
- democratic accountability; and
- sufficient power to not only develop but to enforce implementation of integrated regional transportation, housing and community development, and environmental protection plans.

The NOFA does state [p. 20] that

*“While the lead applicant holds fiscal and administrative responsibility for regular interaction with HUD, this does not restrict the consortium from developing a governance structure that reflects the diversity of its partners and allows for maximum participation in strategy development and decision-making [emphasis added].”*

As noted above, MPOs are merely one member of multi-jurisdictional, multi-sectoral consortia. The NOFA vaguely encourages consortia to develop governance structures that might achieve temporarily some of the goals of permanent MPO reform falling short of BOA's back-up position (establishing “*a decision-making substructure that achieves proportional representation*” within the MPO framework).

In effect, HUD, DOT, and EPA have punted on the issue of MPO reform. BOA recognized that (*commentaries*: p. 13)

*“Reforming the nation's 384 MPOs will be primarily the task of the Surface Transportation Reauthorization Act. However, as a joint pilot program of HUD, DOT, and EPA, the federal partnership should maximize SCI's inducements with the goal of nurturing the evolution of broadly-empowered institutions of effective regional governance.”*

We are disappointed that the federal partners passed up this opportunity when an MPO is the lead applicant. On the other hand, for medium size and smaller regions, the NOFA recognizes that a county government (which, by constitutional requirement, must be proportionally representative) can serve as lead applicant. Accordingly, we will split the difference in scoring the NOFA.

**Potential points (7)**

**Actual points awarded (4)**

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*Recommendation #4*  
*An SCI Planning Grant applicant must set forth a plan  
for meaningful citizen involvement in the planning process,  
including the involvement of regional opportunity advocacy organizations.*

The NOFA is infused with requirements that consortia provide for meaningful citizen involvement, particularly of “traditionally marginalized communities.” There are at least a dozen points where the NOFA sets such requirements. However, there is nothing in the NOFA that demands involvement by regional equity, civil rights and fair housing organizations (which are most likely to be pressing for the kinds of regional housing opportunity that BOA has recommended). The lack of any standards in this section will permit local applicants to cherry-pick the most malleable local groups to work with, and avoid groups that are pressing for real fair housing reform. In order for this section of the NOFA to be meaningful, HUD will need to be clearer in its interpretation during the scoring process, and look for inclusion of civil rights and fair housing voices (not just “underrepresented groups”) as partners in the process.

Examples of the community-inclusive language used by HUD in the NOFA includes the following [p. 51]:

“(c) Detail the formal structure of the consortium, including its decision-making mechanisms and specific strategies to ensure that the perspectives of diverse and traditionally underrepresented populations directly influence the development and implementation of the Regional Plan for Sustainable Development. *HUD will reserve five of the rating points for Governance and Management for this item [emphasis added].*”

In short, five percent of the overall points by which SCI applications will be evaluated will depend on how well a consortium meets this requirement.

Other notable expressions of this requirement include

“Facilitate strong alliances of residents and regional interest groups that are able to maintain a long-term vision for a region over time and simultaneously support progress through incremental sustainable development practices [p. 7].”

“Ensure public decision-making and meaningful resident participation throughout the visioning, development, and implementation of the RPSD, including, but not limited to, public hearings, meetings, websites, forums, charrettes, and other communication that will provide all aspects of the policy and development plans and alternative options to residents in sufficient time for them to review, react, and make informed decisions on how proposed plans and policies will impact their daily lives. Activities should prioritize ways to engage communities traditionally marginalized from planning processes, such as low-income individuals and families, limited English speakers, persons with disabilities, and the elderly [p. 27].”

“Describe how the consortium plans to engage a broad cross section of your local communities, including low-income, minority, and economically disadvantaged communities, and what efforts will be made to ensure that such communities will have an effective role in the planning process, and participate in a sustained manner throughout implementation[P. 49].”

BOA members and allies are already working with prospective lead applicants to be active partners in SCI applications. We had suggested further (*commentaries*: p. 17) that HUD provide

independent but parallel funding for regional grassroots groups to act as “watchbirds” over the activities of SCI coalitions. Such funding is not provided for in the NOFA, but it is not precluded either. We commend the idea again to HUD for funding from the \$10 million reserved for SCI research and evaluation.

**Potential points (8)**

**Actual points awarded (5)**

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*Recommendation #5*

*A primary goal of an SCI Planning Grant must be the reduction of racial and economic residential segregation and school segregation and concentrations of poverty on a regional basis with aggressively affirmatively furthering fair housing as a fundamental policy; a method must be specified to document progress in achieving greater racial and economic integration.*

From the initial statement of SCI’s overall mission (p. 1)

“The Sustainable Communities Regional Planning Grant Program will support metropolitan and multijurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments in a manner that empowers jurisdictions to consider the interdependent challenges of: (1) economic competitiveness and revitalization; (2) *social equity, inclusion, and access to opportunity*; [emphasis added] (3) energy use and climate change; and (4) public health and environmental impact.

through its section on definitions (for example, on p. 11)

“**Equitable land use planning.** The term “equitable land use planning” means zoning, land use regulation, master planning, and other land use planning that, at a minimum, furthers the purposes of Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act and are intended to achieve additional objectives for expanding housing choice – *for example, inclusionary zoning for housing designed for underserved populations on the basis of race, ethnicity, or socioeconomic group.* Incorporation of environmental justice concerns into planning decisions/outcomes; prohibition on the creation or maintenance of racial or ethnic enclaves (unincorporated areas surrounded by incorporated areas, often without access to public services or utilities); *affirmative efforts to overcome the effects of segregationist laws and covenants; and coordination of housing development and public transportation to provide access to educational and employment opportunities*[emphases added].”

through its discussion of statistical measures of regional problems (e.g. pp. 40-41)

**d. Socioeconomic Inequity.** Applicants are required to provide the following: (1) Measures of segregation and school poverty by participating community and by region (2009).

through its mandating elements of the SCI plan (for example, on pp. 22-23)



At a minimum, the RPSD should explain how the consortium will:

**a. Adopt a housing plan** that ensures that the full range of existing and projected housing need by type and tenure that is affordable to all ranges of family income is identified throughout the region .... Such plans shall be developed in consultation with the PHAs in the region. Plans shall identify existing locations of public, assisted, low- and moderate-income housing and the relationship between that housing and current and future employment and transportation infrastructure investments. Activities may include: (a) developing local housing plans that conform to the Livability Principles, and which together form a regional housing plan including plans for permanent affordability, (b) making necessary conforming changes to local growth and development plans and codes to address accessibility requirements for persons with disabilities which incorporate results of the regional housing plan, (c) developing a viable financing plan to implement the housing plan, and (d) *implementing strategies to eliminate the effects of discriminatory housing patterns and to further the goals of the Fair Housing Act* [emphasis added].”

through its giving added emphasis to existing civil rights obligations (p. 31-32)

**“Affirmatively Furthering Fair Housing.** Section 808(e)(5) of the Fair Housing Act imposes a duty on HUD to affirmatively further the purposes of the Fair Housing Act in its housing and urban development programs. Accordingly, HUD requires recipients of HUD funds, including those awarded and announced under HUD’s FY 2010 funding notices, to take affirmative steps to further fair housing. Your application must include a discussion of how the proposed plan will affirmatively further fair housing. *Applications that include specific activities and outcomes that address this requirement will be rated higher under Rating sub-factor 3(a)(1)* [emphasis added].”

through its statement of mandated outcomes (p. 57-58),

“HUD has identified eight outcomes, listed below, *that it expects all regions to incorporate as central to achieving sustainability...*  
(4) Reduced social and economic disparities for the low-income, minority communities, and other disadvantaged populations within the target region [emphasis added].”

and citation of other recommended outcomes (pp. 58-59)

“Additional potential outcomes from establishing a Regional Plan for Sustainable Development include, but are not limited to:  
(3) *Decreased number of neighborhoods with high concentrations of poverty and minority segregation* [emphasis added].”

and many other provisions (not cited), the NOFA gives full weight to achieving BOA’s goal of “*the reduction of racial and economic residential segregation and school segregation and concentrations of poverty on a regional basis.*” Its shortcoming is the absence of a clear strategy for achieving these goals (as will be discussed in the next three sections.

**Potential points (12)**

**Actual points awarded (12)**

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### Recommendation #6

*Using one of several methodologies provided by the Office of Sustainable Housing and Communities, an SCI Planning Grant recipient must conduct a regional opportunity assessment that measures relative opportunity (jobs, schools, local services, safety) by municipality or census tract.*

The NOFA encourages use of statistical information to identify regional equity issues, establish performance goals, track progress, and measure ultimate outcomes. In fact, (p. 39)

“To help HUD develop a deeper understanding of the conditions that will be targeted through implementation of the grant, the applicant *must use* Rating Factor 2 Office of Sustainable Housing and Communities (OSHC) Form (the form can be found at [www.hud.gov/sustainability](http://www.hud.gov/sustainability)) to provide quantitative and qualitative data for the 10 specified, readily collectible data points to submit with this proposal [emphasis added].”

This requirement sounds as though it fulfills BOA’s recommendation #6 to the letter, but it does not because most of the ten indicators are detached from regional opportunity mapping by municipality or neighborhood/census tract. Of the ten required assessment factors, seven<sup>5</sup> characterize region-wide conditions. Only three factors – measures of segregation and school poverty by *participating community* and by region (2009), availability of subsidized housing within 2 miles of the region’s five largest employment centers, and proximity of full-service grocery stores for low-income and auto-dependent households – might lend themselves to mapping the “geography of opportunity.”

Regional opportunity mapping by municipality (for “little boxes” regions) or by census tract (for “Big Box” regions) is not an academic exercise. Regional opportunity mapping charts the road map for specific policies and programs to overcome the spatial “segregation of opportunity.” For example, the New Jersey Municipal Opportunity Index, assessing all 566 municipalities by four key social, economic, and fiscal factors within the state’s six regions, sets the conceptual foundation for the reforms in “fair share” housing policy, state municipal and school financial aid, commercial development incentives, and regional tax base sharing being proposed in the One New Jersey Act that is currently under consideration by the leadership of the New Jersey legislature.

Because HUD, DOT, and EPA do deserve credit for requiring that SCI applicants identify significant social and environmental trends in a quantifiable way, we will not grade the NOFA on this point as rigorously as we might.

However, the point of BOA recommendation #6 was not to encourage use of meaning statistical data; it was to reveal the gaping community-by-community disparities in economic, social, and fiscal opportunity through regional opportunity mapping as the blueprint for the comprehensive Regional Plan for Sustainable Development’s policies and programs\ to overcome these disparities.

**Potential points (9)**

**Actual points awarded (5)**

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<sup>5</sup> These are “1) median regional housing cost relative to regional household income, 2) proportion of the regional population paying more than 45 percent in housing and transportation costs, 3) change in urbanized land per capita by decade (1990-2000), 4) total miles of distribution of water infrastructure per population served by decade (1990-2010), 5) per capita vehicle miles traveled in the region, 6) share of regional trips performed by automobile, transit, walking, and bicycling, 7) and prevalence of preventable disease by ethnicity and income groupings for each county participating in the consortium.”

*Recommendation #7*

*A mandatory element of an SCI Planning Grant must be policies and programs **that result in low-income residents of low opportunity communities having realistic options of moving to high opportunity communities** as well as policies and programs to upgrade the quality of life in low opportunity communities.*

The NOFA is certainly not totally silent on the contrasts between low opportunity communities and high opportunity communities. From the outset (p. 5), it states that “[a] top priority of the Administration is to build economically competitive, healthy, environmentally sustainable, and *opportunity-rich communities* [emphasis added].”

However, the NOFA tilts more towards trying to upgrade opportunities in low opportunity inner-city and inner-suburban neighborhoods (the traditional “inside game”) than on opening up opportunities for core community residents in high opportunity suburbs (the “outside game”). And even in terms of creating access for low-income households to high opportunity communities the emphasis is more on creating better transportation linkages between workers’ homes in low opportunity communities and jobs in high opportunity communities.

Thus, in terms of “inside game” strategies, the NOFA calls for

*“Support Existing Communities.* Target federal funding toward existing communities—through strategies like transit-oriented, mixed-use development, and land recycling—to increase community revitalization and the efficiency of public works investments and safeguard rural landscapes [pp. 7-8].”

**“Increase the share of residential and commercial construction on underutilized infill development sites that encourage revitalization, while minimizing displacement in neighborhoods with significant disadvantaged populations [pp. 10 and 57].”**

**“Transform isolated, opportunity-poor, highly segregated areas into diverse neighborhoods that are open and accessible to good jobs, good schools and good environments [p. 58].”**

**“Increase the proportion of low and very low-income households within a 30-minute transit commute of major employment centers in urban, suburban, and rural settings [pp. 10 and 58]” and “the supply of affordable housing (including both rental and home-ownership units) within 1/2 mile of high capacity transit service [p. 42]” and “[the] proportion of homes and rental units affordable to a full range of household incomes close to high-quality transit service in urban areas or within traditional town centers in small towns and rural areas [p. 59].”**

Opening up high opportunity suburbs through on-site workforce housing development receives more indirect attention through statements like

**“[Analyze] availability of subsidized housing within 2 miles of the region’s five largest employment centers [p. 41].”**

**“[S]upport stakeholder-driven visioning and scenario planning exercises that**

are intended to address and harmonize critical land uses and investment decisions, such as those for *the location and the distribution of affordable housing, schools, and employment centers throughout the region* [emphasis added] [pp. 14-15]

“Describe how the consortium will assess existing conditions and projected trends in the region with respect to the location of transportation, water, and other infrastructure investments, regional employment centers, and housing choices, including affordable and accessible housing choices [p. 47].”

Finally, perhaps the most detailed statement suggesting “outside game” strategies is found in the reaffirmation of HUD’s requirement for grant recipients to conduct a regional analysis of impediments to fair housing choice.

*“Incorporate equity and fair housing analysis into regional planning through the development of a regional analysis of impediments to fair housing choice. To be eligible for meeting HUD’s requirement for application submittals, a regional analysis of impediments must encompass the geographic area covered by the Regional Planning Grant and address the ability of residents to take advantage of housing opportunities throughout the area without discrimination because of race, color, national origin, sex, religion, disability, or familial status.... The analysis should assess impediments to fair housing choice and link transportation, employment, and housing resources in order to promote fair housing and affordable housing in high opportunity areas, and adhere to and promote fair housing law as described in the General Section, including ensuring maximum choice in housing without discrimination because of race, color, religion, sex, national origin, familial status, and disability. Areas of high opportunity are those that provide employment, educational, recreational, and service opportunities in the area or that are accessible via public transportation systems* [emphasis added] [pp. 23-24].

“Jim Crow by income is replacing Jim Crow by race.” Exclusionary housing policies practiced by many high opportunity communities still cannot be challenged legally under civil rights laws because discrimination by economic class has not been outlawed as have discrimination because of race, color, religion, sex, national origin, familial status, and disability.

We have urged that (*commentaries*: p. 25)

“Through its requirements for an SCI planning grant program and subsequent conforming grants-in-aid (see recommendation #9), the federal Partnership for Sustainable Communities (HUD, DOT, and EPA) must be “the Devil to make them do it.”

This is particularly true with regard to creating racially *and economically* integrated communities. The color-coded nature of the “geography of opportunity” in metropolitan America is no accident. In the post-Civil Rights Revolution era, racial segregation slowly but steadily declined everywhere, but economic segregation increased in most regions. *Exclusionary zoning* became almost synonymous with new suburban development. Large lot zoning, costly additional requirements for (or even an outright ban on) apartments, and high impact fees gave the appearance of being race neutral but the result was not. Space, not race, has become the new way of creating the “segregation of opportunity” (John Powell). Jim Crow by income replaces Jim Crow by race.”

The NOFA does not “make them do it” nor does the NOFA require SCI applicants to report on the status of a long list of state and local policies that create more opportunity-based housing in high opportunity communities, such as (*commentaries*: p. 29):

- Inclusionary zoning;
- State or local legislation banning source of income discrimination;<sup>6</sup>
- State policies allocating Low Income Housing Tax Credits to family projects in high opportunity communities;
- State policies setting minimum requirements for affordable housing for all local jurisdictions and establishing a state mechanism for overriding local disapproval of affordable housing developments;<sup>7</sup>
- State and local policies providing subsidies for low-income housing as components of mixed-income, predominately market-rate developments, including direct purchase of IZ units by public housing authorities; and
- State and local policies that provide funds for purchasing foreclosed homes in high opportunity communities for placement of low-, very low-, and extremely low-income families as either owners or renters.

Such policies should be part of the assessment of applications for SCI planning or implementation grants. They are not, however, explicitly a part of the point system for grading SCI applications.)

One of the most important provisions HUD could have imposed to promote fair housing would have been inclusion of fair housing enforcement and testing as a permissible (or required) activity under the SCI grants – but as far as we can tell, such support is not clearly spelled out in the NOFA.

Finally, in our reading, the NOFA makes no mention of HUD-sponsored housing mobility programs despite the fact that they were highlighted in our comments on the preliminary NOFA and that we recommended very directly that “a regional housing mobility program should be a required element of any SCI planning or implementation grant [*commentaries*: p. 46].”

Rather than indicating faint-heartedness (much less bad faith) from an Administration with the courage to forge the Westchester County “fair share” housing settlement, the NOFA’s failure to require unambiguously regional opportunity-based housing buttressed by regional housing mobility programs exemplifies how old habits of federal housing policy die hard.

But it is no surprise that “old habits” would re-assert themselves over the challenge of economically integrating high opportunity, exclusionary suburbs.

Our rating recognizes that sought BOA a balance between “inside game” strategies (which are well supported by the NOFA) and “outside game” strategies (which receive short shrift).

**Potential points (14)**

**Actual points awarded (10)**

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<sup>6</sup> Source of income discrimination is currently banned by state law in California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Wisconsin and the District of Columbia and by local ordinance in 37 cities and counties (see <http://www.prrac.org/pdf/AppendixB-Feb2010.pdf> for the latest PRRAC-updated list).

<sup>7</sup> Examples would be the Connecticut Affordable Housing Land Use Appeals Act, the Massachusetts 40(B) program (the “Anti-Snob Zoning Act”), the Illinois Affordable Housing Planning and Appeal Act, and New Jersey’s post-*Mt Laurel* ruling Fair Housing Act.

*Recommendation #8*

*To the maximum extent, an SCI Planning Grant must result in new housing development and redevelopment providing affordable shelter for low-, very low-, and extremely-low income families within mixed income, market rate developments in higher opportunity communities.*

As foreshadowed by the previous section’s evaluation, the NOFA did not explicitly require that a Regional Plan for Sustainable Development must “provide affordable shelter for low-, very low-, and extremely-low income families within mixed income, market rate developments in higher opportunity communities.”

By our reading, however, the term “mixed-income housing” never appears in the NOFA and only one citation is made to “inclusionary zoning” [p. 11].

Instead, economic integration (possibly) is addressed in more generic, plain vanilla statements, such as

“Promote equitable, affordable housing. Expand location- and energy-efficient housing choices *for people of all ages, incomes, races, and ethnicities* to increase mobility and lower the combined cost of housing and transportation [p. 7].”

“Greater transit supportive development (incorporating, to the degree possible, *the full range of housing affordable to all ranges of family income*) [p. 24].”

“More equitable distribution of housing that is *affordable to all income levels* throughout the target region [p. 59].”

“Increased proportion of homes and rental units *affordable to a full range of household incomes* close to high-quality transit service in urban areas or within traditional town centers in small towns and rural areas [p. 59].”

If the highlighted phrases are consciously crafted code words for mixed-income housing developments in the eyes of the NOFA drafters, unfortunately, BOA’s experience suggests that most local governments of high opportunity communities will choose to see the issue differently: as an invitation to locate more affordable housing “on the affordable housing side of town” (or on the affordable housing side of the region).

Our rating on the NOFA’s response to this recommendation is based more on faith than on fact.

**Potential points (7)**

**Actual points awarded (3)**

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*Recommendation #9*

*Upon review and certification of the compliance of a regional comprehensive plan with the goal of promoting more sustainable and inclusive regional communities, HUD, DOT, and EPA (and such other federal agencies as the President or Congress may designate) must make all applicable grants-in-aid in accordance with the provisions of the plan.*

This recommendation is intended to be more a test of the commitment of the three Partners for Sustainable Communities to conform all their grants-in-aid to federally-accepted Regional Plans for Sustainable Development. We noted that (*commentaries*: p. 36)

Even \$100 million would be dwarfed by the cumulative total of federal grants from HUD, DOT, EPA, Education, Labor, Commerce, and other domestic federal agencies.<sup>8</sup> Thus, the real impact of the Sustainable Communities Initiative would come from requiring that on-going federal grants-in-aid must be made by the different federal agencies in conformance with the regional comprehensive plan. (Indeed, the executive director of the Capitol Region Council of Governments, the Hartford region's MPO, has likened such an SCI as "an A-95 with teeth")

Instead, the NOFA almost turns the issue around: how well will the SCI applicant conform their regional comprehensive plan to utilize federal agency programs as we now operate them, as follows?

"Show how the proposed plan will establish consistency with HUD, DOT, and Environmental Protection Agency (EPA) programs, and policies, such as Consolidated Plans, Analysis of Impediments to Fair Housing Choice, Long Range Transportation Plans, and Asset Management Plans, including strategies to modify existing plans, where appropriate [p. 4].

On the other hand, elsewhere the NOFA may suggest more flexibility on the federal side of the ledger.

"[Show how well the regional plan] aligns *federal planning and investment resources that mirror the local and regional strategies* for achieving sustainable communities. [emphasis added] [pp. 9 & 58]

**D. Preferred Sustainability Status.** HUD will recognize the commitment of regions to advance the Livability Principles. All applicants achieving a specified threshold score in their submission for the 2010 round of the Sustainable Communities Regional Planning Grant Program will qualify for Preferred Sustainability Status, which signifies that the region is ready to advance planning that prioritizes sustainability and inclusion as core outcomes of community development. *Applicants that meet this criterion will qualify for a broad spectrum of benefits, including access to capacity building resources, and secure potential points in a number of funding opportunities managed by other federal agencies such as HUD, DOT, and EPA...*[emphasis added] [p. 9]

Our rating is based on the recognition, constantly reiterated by the three federal partners, that the

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<sup>8</sup> For FY 2010, grants-in-aid from HUD, DOT, and EPA will total \$147 billion (not including tens of billions of dollars more from the American Recovery and Reinvestment Act).

isolation of federal grants-in-aid within their own “silos” on both an inter-agency and intra-agency basis must be ended and that SCI will be a prototype for such “de-silo-ization.”

**Potential points (8)**

**Actual points awarded (6)**

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*Recommendation #10*

*The recipients of all infrastructure grants-in-aid made in compliance with a regional comprehensive plan must implement policies and programs to increase the training and employment of women and minorities on such infrastructure projects.*

Like the previous recommendation, this is really a test of the federal partners’ commitment. In the *Commentaries* (pp. 38-39), BOA presented four recommendations championed by the Transportation Equity Network that we support. We commented that

“Building One America supports inclusion of these provisions in the pending Surface Transportation Authorization Act. Regardless of the status of that legislation, *the Partnership for Sustainable Communities should adopt these policies as requirements for SCI planning and implementation grants, obligations of state and local grant recipients, and conditions for all subsequent grants-in-aid for construction projects made in the future by HUD, DOT, and EPA in conformance with regional comprehensive plans* [emphasis added] [p. 39].”

Aside from a few general comments like “training to support the full range of workforce and worker needs in the region [p. 26]” and “Increase proportion of the local population adequately prepared to participate in the core economic growth sectors of the region [p. 59],” the largely HUD-drafted NOFA ignored this issue. As a federal partner, DOT should have taken a more active role. It is an opportunity lost.

**Potential points (5)**

**Actual points awarded (1)**

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## OVERALL ASSESSMENT

Up to the point of the issuance of this NOFA, public discussion of the Sustainable Communities Initiative has been strongly skewed towards environmental goals. One crude (but insightful) way of assessing the balance is to color-code key documents: green for environmental issues, red for social equity issues.

- HUD Secretary Shaun Donovan’s testimony to the Senate Banking Committee on the just announced Partnership for Sustainable Communities was nine parts green to one part red (9:1).
- Senator Chris Dodd’s S 1619, the Livable Communities Act of 2009, the legislative expression of SCI, was two parts green to one part red (2:1).
- By welcome contrast, the NOFA splits almost exactly 50/50.

Thus, on BOA’s concern that “regional equity goals must be at least co-equal with environmental sustainability goals,” we grade the NOFA a perfect 10.

**Potential points (10)**

**Actual points awarded (10)**

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Our other overriding concern is that the NOFA “encourage major changes in the ‘geography of opportunity’ and discourage ‘projectitis.’” Failure to require regional opportunity mapping and embrace a forthright strategy for regional opportunity-based housing and mobility programs prevents assigning a perfect score. However, based on this Administration’s record to date, we grade a hopeful

**Potential points (5)**

**Actual points awarded (4)**

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**Total potential points (100)**

**Total points awarded (72)**