Re: Comments on Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, EPA-HQ-OA-2013-0031

To Whom It May Concern:

The undersigned civil rights organizations are pleased to submit our comments with regard to EPA’s proposed rulemaking on nondiscrimination in programs or activities receiving federal assistance. Our comments specifically address the potential for this regulatory amendment to build an important bridge between the requirements of Title VI and those of the Fair Housing Act (FHA), 42 U.S.C. §§3600-3620. As sister legislation to Title VI’s requirement that EPA ensure nondiscrimination by its recipients (and promote environmental justice, as per Executive Order 12898), the FHA both bars discrimination and requires that federal agencies and recipients take affirmative measures to remedy residential segregation and its harms, including adverse environmental health effects.¹ Yet EPA’s current nondiscrimination regulations fail to reach across agencies or sources of law, instead focusing narrowly on siloed Title VI reviews by EPA. This limitation squanders EPA’s full authority to provide for nondiscrimination and does not reflect real-world connections between housing and environmental policy.

We urge EPA to amend its nondiscrimination regulations to provide for coordination with HUD, establishing procedures that sync the existing requirements of Title VI and Title VIII. Such coordination is not only good policy, but it is also required by Executive Order 12892 (January 17, 1994). Specifically, we recommend that EPA:

1) Require its recipients to participate in HUD’s AFFH process by providing Title VI and environmental justice data and analyses to relevant HUD program participants engaged in Analyses of Fair Housing (AFHs) required by HUD’s AFFH regulation (see 24 C.F.R. § 5.154);

2) Establish procedures through which EPA will identify and notify HUD of instances in which any HUD program participant may be engaging in actions, within the sphere of environmental

¹ 42 U.S.C. § 3608, providing: “All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary [of Housing and Urban Development] to further such purposes.”
health, that are materially inconsistent with its AFFH obligation, and therefore violates its AFFH certification;

3) Establish procedures through which the AFHs are systematically reviewed by EPA pursuant to its Title VI regulations and any action that may be required as a result of that review; and

4) Proactively coordinate with HUD during its Title VI enforcement process to ensure that HUD may assist in addressing any housing issues that arise during the Title VI review process.

The time for such coordination is doubly ripe. While EPA strives to roll out a “model program” of civil rights enforcement, HUD recently issued a new AFFH regulation requiring recipients of federal housing assistance to document fair housing problems and goals for addressing them—including an assessment of environmental factors. See 24 C.F.R. § 5.154(d). Amending the Title VI regulations as we recommend would better implement the shared legislative aims of the civil rights protections of Title VI and the Fair Housing Act, the sound policy imperatives of interagency cooperation, and the extensive record connecting fair housing and environmental health. While the finer details of both these policies may be appropriately developed through guidance, we recommend their inclusion at the regulatory level. This would ensure that the new requirements are expediently and consistently institutionalized, and are fully subject to EPA’s oversight and enforcement schemes.

In addition to coordinating with HUD in the AFFH process, EPA should also coordinate with other agencies in the AFFH process. Moreover, we strongly urge EPA to develop a comprehensive environmental justice framework beyond the Title VI reviews included in these regulations. In keeping with our recommendations in this letter, robust E.J. oversight and enforcement should include procedures for active coordination with HUD and other agencies with an interest in the review.

Fair Housing and the Connection to Environmental Health

Our nation’s interest in environmental health and equity has long been intertwined with fair housing, and were primary concerns of Congress in passing the FHA. Today’s social science is equally grave and compelling. The finding, reached just prior to the 1988 amendments to the Act, “that race was consistently a more prominent factor in the location of commercial hazardous waste facilities than any other factor examined” has been repeatedly confirmed since that time. Hazardous materials disposal sites, municipal waste facilities, power plants, and other sources of pollution are all disproportionately located in racially and ethnically identifiable communities of color, in a way that neither housing preferences nor wealth gaps adequately explain. Residents

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of segregated communities are significantly more likely to experience high-volume releases of toxic chemicals, to breathe high concentrations of harmful air pollutants, and to live in chronically substandard housing with multiple asthma triggers as well as lead hazards in paint, dust, and soil. Minority communities are also less likely to benefit from the reliable municipal infrastructure or access to green spaces that mitigate other environmental burdens.

The “Affirmatively Furthering” Regulation and Opportunities for Coordination

Recognizing the connection between environmental and housing civil rights concerns, HUD has specifically provided for an analysis of environmental health factors to comply with its new AFFH regulation. The regulation requires that program participants complete an Assessment of Fair Housing (AFH) that assesses fair housing issues and contributing factors, including an examination of environmental health, drawing from a variety of recommended data sources. The participant
must identify fair housing goals, which are to be incorporated into its planning processes (for example, the Consolidated Plans required by HUD), and must certify to HUD that it will take meaningful actions towards those goals.\(^8\)

As part of the AFH process, HUD is to provide program participants with an Environmental Health Index, drawing upon Environmental Protection Agency estimates of air quality carcinogenic, respiratory, and neurological toxins by neighborhood. Program participants evaluate the index with the residency patterns depicted in the maps, and supplement this with local data and knowledge, for example regarding the siting of highways, industrial plans, or waste sites. However, while HUD is developing guidance with regard to public engagement and the analysis of local data and knowledge, much of this process will remain at the participant’s discretion.\(^9\)

We therefore recommend that EPA’s regulations require its recipients to develop plans for coordination and engagement with the AFH process. Such plans should entail: the designation of staff and procedures to supply relevant data and knowledge that may inform environmental health analyses (including, but not limited to, information regarding Title VI complaints and their resolution); coordination in designating fair housing goals and metrics; and oversight with regard to meaningful actions taken toward those goals.

We also strongly recommend that EPA leverage the AFH process as a platform for its own EJ and antidiscrimination fact-finding. The environmental health assessments (and potentially other components of the AFH) required by HUD present an opportunity for EPA to more effectively target its enforcement resources. EPA should implement systematic procedures for reviewing such information and rigorously pursuing potential Title VI violations.

Thank you for your consideration of these recommendations.

\(^8\) See generally 24 C.F.R §§5.150-5.168; see also 78 Fed. Reg. 43710 (July 16, 2015).

\(^9\) Moreover, every HUD assisted project must be examined to ensure that it does not negatively impact surrounding environment and that the site will not have an adverse environmental or health effect on end-users. See 24 C.F.R. §58.5. For more general information, see [www.hudexchange.info/programs/environmental-review](http://www.hudexchange.info/programs/environmental-review).
Sincerely,

Megan Haberle
Philip Tegeler
Poverty & Race Research Action Council
Email: mhaberle@prrac.org
Phone: 718-614-9804

Joe Rich
Lawyers’ Committee for Civil Rights Under Law
Email: jrich@lawyerscommittee.org

IDARE LLC

Fair Housing Justice Center

Fair Share Housing Center

GASP

LatinoJustice PRLDEF

Massachusetts Law Reform Institute

NAACP

National Disability Rights Network

National Fair Housing Alliance

The Public Interest Law Project

Texas Low Income Housing Information Service

Vernice Miller-Travis
(For identification only: Vice Chair Maryland Comm on EJ and Sustainable Communities)