

Regulations Division  
Office of General Counsel,  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street, S.W., Room 10276  
Washington, D.C. 20410-0001

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

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

The Housing Partnership Network (HPN) appreciates the opportunity to comment on the Department's proposed rule on affirmatively furthering fair housing.

HPN is a member-driven organization comprised of 100 entrepreneurial nonprofits that operate all across the country. The members are diversified social enterprises combining a mission focus with business acumen. The members' businesses include lending, real estate development, property management, and housing counseling. All of our members work to link the communities they serve to services – education, workforce development, and health care. Collectively, HPN members have developed or rehabilitated 340,000 affordable homes, provided \$10 billion in CDFI financing, and assisted 5 million people through housing, community facilities, and services.

HPN is best described as a business collaborative. The members' senior leadership comes together with their peers to exchange information, solve problems, and share best practices. Their collaborations have spawned member-owned businesses that improve member operations and advance innovations in the practice of affordable housing and community development. For example, when insurance costs spiked after 9/11, the members launched a captive property and casualty insurance company that today insures approximately 60,000 homes with \$7.0 billion of insurance-in-force. Other businesses that have emerged from these collaborations include a group buying service for building materials, a company that acquires and modifies distressed mortgage notes to help homeowners stay in their homes, a new web-based approach to homebuyer education, and a multifamily real estate investment trust.

The Housing Partnership Network's membership endorses HUD's intention to create a more effective process to administer localities' compliance with the Fair Housing Act's obligation to "affirmatively further fair housing." We also welcome HUD's efforts to provide local governments with new tools to improve the analysis of how to link housing to greater resident opportunities. HPN's high-performing nonprofit housing developer members share the view that it is important to offer low-income people a chance to live in decent, safe housing in neighborhoods with access to quality schools, transportation, and job opportunities. HPN members create communities of opportunity by redeveloping blighted housing and improving

the surrounding neighborhoods and by building affordable housing in high opportunity communities with good schools and access to jobs. Our members use both strategies, depending on the opportunities in their region. We have seen success with both approaches.

This is important because as the rule so eloquently explains, the conditions in distressed neighborhoods of concentrated poverty can blight the life outcomes for their residents. Improving state and local planning processes so that residents have more choices and opportunities to live in neighborhoods where they can reach their full potential is an important public good. At the same time, we need to do more work to improve the communities where people live and want to continue living. The proposed rule's clarification of what is expected of localities under the Fair Housing Act along with the availability of additional demographic data to aid the planning process are helpful and constructive steps. HPN supports the need to update and improve the AFFH process and applauds HUD for moving ahead in this area. Nevertheless, there are several areas where the proposed rule can be improved so it can better achieve its important goals:

#### Balance between community revitalization and mobility

Section 5.150 of the proposed rule states:

A program participant's strategies and actions may include strategically enhancing neighborhood assets (e.g., 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." (page 43716).

Why does the proposed rule pose this as a binary choice for local jurisdictions? HPN's members both redevelop distressed neighborhood and develop affordable housing in high opportunity communities. We would hope that most jurisdictions would pursue both neighborhood revitalization in distressed communities AND mobility strategies to help low-income residents who want to move to better neighborhoods a chance to do so. Some residents want to leave neighborhoods of concentrated poverty, others want to stay and see their communities improve. Either approach furthers the goal of meaningful housing choice and creating better life outcomes. The final rule should make it clear that jurisdictions can and should pursue all approaches that give residents good choices about where to live.

Other than this one mention of neighborhood revitalization in the opening section of the proposed rule, the rest of the rule emphasizes mobility strategies as what jurisdictions should be pursuing. By implication, this devalues neighborhood revitalization strategies as a legitimate approach to addressing the problem of concentrated poverty. The final rule needs to be more balanced about the need for well-executed public investment strategies to improve distressed neighborhoods. Otherwise, the AFFH process could give jurisdictions the incorrect notion that they should not be spending their resources in distressed communities. This would be a perverse and unintended consequence if a rule intended to improve choices for low income

people had the effect of causing disinvestment in low-income neighborhoods because jurisdictions feared HUD disapproval of their AFFH plans.

The final rule should make clear that affirmatively furthering fair housing may entail devoting resources to improve areas of concentrated racial and ethnic poverty. The Obama Administration has promoted thoughtful initiatives like Choice Neighborhoods and Promise Zones to revitalize distressed communities. The proposed rule at 91.225 requires certification by the jurisdiction that it is not engaging in activities that are “materially inconsistent” with the Rule. This catch all phrase could well be problematic for jurisdictions that are not clear on how their revitalization strategies fit within the proposed rule.

The final rule needs to make clear that affirmatively furthering fair housing includes devoting resources to preserve and improve housing located in areas of concentrated racial and ethnic poverty, as well as developing or preserving housing in high opportunity areas. Either approach furthers the goal of meaningful housing choice and creating better life outcomes. Without this clarification, jurisdictions may believe that the “safest” course is to simply pursue mobility strategies. We recommend that HUD:

- a. Modify the proposed purpose in Section 5.150 by changing the “or” to an “and,” to make clear that jurisdictions can pursue both community revitalization and housing mobility strategies; and
- b. Change the definition of *Affirmatively Furthering Fair Housing* in Section 5.152 to include the improvement and preservation of existing HUD subsidized housing and “place-based strategies” like Choice Neighborhoods, Promise Neighborhoods, and local initiatives to improve neighborhoods of concentrated poverty as activities that jurisdictions can pursue in order to meet their Fair Housing obligations.

#### Incentives for regional collaboration

Another area where the proposed rule could be improved is the lack of incentives for regional collaboration. Section 5.156 encourages jurisdictions to do regional assessments and fair housing planning by allowing them to submit a single Assessment of Fair Housing (AFH) that evaluates fair housing challenges, issues, and determinants from a regional perspective. This, of course, makes a great deal of sense because often communities of opportunity are in different political jurisdictions than communities of concentrated poverty. In many places, fair housing issues are best dealt with on a regional basis. The proposed rule is permissive and allows regional plans, but it does not give any incentives for jurisdictions to reach out across political boundaries to tackle these issues.

Incentives for regional AFFH planning would help distressed inner city communities work with to the surrounding suburbs with neighborhoods of high opportunity. Rather than merely allowing regional AFHs, the final rule should give incentives to jurisdictions that are willing to reach out and work together to improve housing choice. It may require more time and political

leadership from a jurisdiction to be part of a meaningful regional AFFH process, but it also could result in a more effective fair housing strategy. Regions often work together on transportation planning, so it would make sense to give incentives for regional fair housing planning as well.

The final rule should include incentives to reward jurisdictions that collaborate on approved regional AFFH plans. It is difficult to use block grant programs as an incentive, but perhaps HUD's competitive grant programs like Sustainable Communities or Choice Neighborhoods could award additional points to applications from jurisdictions that had regional AFFH plans approved by HUD. HUD also might be able to build in regulatory incentives for regional AFFH planning. A more ambitious approach might be to reach beyond HUD funding and award additional points in competitive federal grant programs from other federal departments that encourage localities to work together on a regional basis. For example, the New Starts/ Small Starts program from the Department of Transportation already prioritizes funding for localities with more affordable housing.

Many HPN members work on a regional or statewide basis precisely because affordable housing strategies have the greatest impact in a regional context. Strong incentives for regional AFHs would be a great improvement to the final rule.

#### Timelines for review

The requirement that program participants submit their initial AFHs 270 days before the start of the program year in which they are submitting a consolidated plan has the potential to overwhelm HUD resources during the 60-day AFH review process. Nearly 40% of HUD program participants are due to submit their consolidated plans during the program year beginning on July 1<sup>st</sup>, 2015. We are concerned that: a) the 60-day review period may be insufficient for HUD staff to review this large volume of AFH submissions, and b) possible delays in the review process could ultimately impact the delivery of HUD resources to communities and affordable housing developments.

We suggest that HUD consider options for spreading out AFH submission deadlines, such as a staggered phase-in of AFH reporting across program participants and ensure that the increased review process does not ultimately harm residents and communities by slowing up the delivery of resources

#### Scope of assessment

The final rule should be make it clear that the AFFH review and public consultation process deals with all of a program participant's housing and community development resources, as well as its policies, practices, and procedures that impact housing. For example, impact fees and building permits can have a real impact on the availability of affordable housing in a jurisdiction and where it is sited. Likewise, inclusionary or exclusionary zoning has a dramatic impact on housing choice in a region. As written, it appears in some parts of the proposed rule that it only applies to the use of HUD funds.

## Sanctions

Our closing comment is that HUD should consider sanctions other than withholding a jurisdiction's HUD funds if that jurisdiction is unwilling and unable to submit an acceptable AFH. HUD funds properly spent create housing opportunities and it is hard to see how withholding the resource necessary to create affordable housing improves the situation with a jurisdiction that is not willing to create affordable housing choices for its residents. Section 5.162 should be clarified further on the standards that HUD will use to accept AFHs and how jurisdictions can revise and resubmit AFHs that are not accepted. If local opposition to fair housing makes it difficult for local officials to submit an acceptable AFH, HUD should carefully consider remedies other than withholding HUD funds and thus rewarding those in community opposed to affordable housing.

Thank you for the opportunity to comment on this proposed rule. Please contact Kristin Siglin at [Siglin@housingpartnership.net](mailto:Siglin@housingpartnership.net) for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Weech". The signature is fluid and cursive, with a large initial "P" and "W".

Paul Weech  
Executive Vice President for Policy and External Affairs  
Housing Partnership Network