

March 9, 2006

The Honorable Secretary Alphonso Jackson
U. S. Department of Housing and Urban Development
451 Seventh Street SW, Suite 10000
Washington, DC 20410

RE: CDBG Low- and Moderate-Income Targeting Requirements and Fair Housing

Dear Secretary Jackson:

We appreciate your meeting with us on January 31, 2006, to discuss a range of issues related to HUD policies and programs addressing the aftermath of last year's hurricanes. Our colleagues have since met with Deputy Assistant Secretary Farias on February 14, 2006 to discuss similar concerns. We write to follow up on one of the central issues discussed at those meetings: the Community Development Block Grant ("CDBG") allocation included in the Department of Defense Appropriations Act passed at the end of 2005.

Louisiana and Mississippi are poised to release their plans for use of the CDBG funds. We write now to underscore several issues that HUD should consider – and, to the extent that it can, urge the states to consider – as these plans are evaluated and revised.

Fair Housing Obligations. While HUD's recent Notice, Docket No. FR-5051-N-01, 71 Fed. Reg. 7666, sets forth waivers of various requirements normally associated with the CDBG program, the Notice cannot and does not waive obligations under the Fair Housing Act. In addition to the provisions barring discrimination by intent or effect, HUD and state agencies utilizing the CDBG funds are also subject to 42 U.S.C. §§ 3608(d), (e), which requires that you administer all programs and activities related to housing "in a manner affirmatively to further" fair housing. This provision imposes "a substantive obligation to promote racial and economic integration" in federal housing programs. *Alschuler v. HUD*, 686 F.2d 472, 482 (7th Cir. 1982). An agency's affirmative duty is not merely to refrain from discrimination, but to use federal programs to actively promote the goals of the Fair Housing Act – including, of course, not intentionally or disproportionately excluding African-Americans or other minorities from participating in proposed programs, and not contributing to the displacement and exclusion of minorities from New Orleans, the southern Louisiana parishes and the Mississippi Gulf Coast.¹ At a minimum, this obligation to affirmatively further fair housing requires HUD and state agencies to consider the effects of housing policy decisions on racial segregation.²

¹ See, e.g., *NAACP, Boston Chapter v. Sec'y of HUD*, 817 F.2d 149, 154-55 (Breyer, J.) (1st Cir. 1987); *Anderson v. Alpharetta*, 737 F.2d 1530, 1535 (11th Cir. 1984); see also *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 72 (D. Mass. 2002).

² In the seminal *Shannon v. HUD*, 436 F.2d 809, 820 (3d Cir. 1970), the Third Circuit found an agency's failure to consider the effects of its housing policies on racial segregation "impermissible." The holding is clear: an agency cannot meet its affirmative obligations unless it gathers data and considers all relevant racial and socioeconomic factors related to its decision's effects. See *id.* at 822-23, 821. Numerous

Certainly, “[t]he absence of any record of fair housing considerations,” *Langlois*, 234 F. Supp. 2d at 78, runs afoul of the Section 3608 affirmative obligations.

We raise this, particularly, to ensure that the state agencies formulating plans for this significant amount of CDBG funding will follow sound practice – and the law – and evaluate the likely effects of their proposed programs. In particular, the agencies should evaluate (a) whether their plans will disproportionately – and unnecessarily – exclude African-Americans and other minorities; and (b) whether such plans permit families to otherwise be disproportionately displaced from the coast. As reports such as that recently released by the Mississippi Governor’s Commission make clear, the risk is all too real that large numbers of low- and moderate-income persons, who are disproportionately minority, will be displaced with the loss of housing stock in the storm – and by rent increases which have priced many out of the market since. Understanding the racial and socioeconomic impacts of the states’ proposed plans *before* they are submitted for approval by HUD is not only the law, it is also sound policy – and can significantly allay concerns that poorer or minority groups are being left behind by the recovery and reconstruction.

Waiver of the Low-/Moderate-Income Targeting Requirement. Hurricane damage to housing across the disaster areas has been significant, particularly for low- and moderate-income renters and homeowners. The evidence gathered by the Mississippi Governor’s Commission suggests that, because such persons are more likely to live in older or substandard housing, they are more likely than others to have lost their homes, or suffered severe damage.³ Low- and moderate-income renters also find themselves at significant risk of losing their homes, even if they survived the storm, due to increased rents in the disaster area markets further eliminating the supply of affordable private units. As Small Business Administration reports also confirm, low- and moderate-income homeowners are not benefiting from the low-interest home repair loan program nearly as much as higher-income homeowners.

Given this context, which leaves lower-income families with a disproportionate need for housing, we are seriously concerned that the targeting requirement that CDBG funds go to benefit low- and moderate-income persons has already been lowered from 70% to 50% and cannot imagine any basis for any future HUD finding of a “compelling need” to justify further waiver of this targeting requirement. Moreover, HUD also recognizes in its recent Notice that any such waiver would require a finding that “such a waiver would not be inconsistent with the overall purpose of the statute,” 71 Fed. Reg. 7666, a finding which, given the impact of the storm on low- and moderate-income persons, we believe cannot be supported.

precedents similarly require agencies to collect data and consider the racial impacts of their housing decisions. *See, e.g., Alschuler v. HUD*, 686 F.2d 472, 482 (7th Cir. 1982); *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 78 (D. Mass. 2002); *Project B.A.S.I.C. v. Kemp*, 776 F. Supp. 637, 642 (D.R.I. 1991); *Young v. Pierce*, 685 F. Supp. 975, 978 (E.D. Tex. 1988); *Business Ass’n of Univ. City v. Landrieu*, 660 F.2d 867, 869 (3d Cir. 1981); *Jones v. Tully*, 378 F. Supp. 286, 292 (E.D.N.Y. 1974); *Blackshear Residents Org. v. Housing Auth. of the City of Austin*, 347 F. Supp. 1138, 1147 (W.D. Tex. 1971).

³ *See, e.g.,* Mississippi Governor’s Commission Report at 54 (“about 65 percent of the housing units exposed to the surge and over 57 percent of the units exposed to flooding were occupied by households with incomes below the U.S. median household income level.”).

We also refer HUD to the requirement in its recent Notice that each state submit an Action Plan for Disaster Recovery that includes a statement of how it “will provide or encourage provision of adequate flood-resistant housing for all income groups that lived in the disaster impacted areas,” including how it will “prevent low-income individuals and families with children from becoming homeless.” 71 Fed. Reg. 7666, 7669. Plans which predominantly focus on retroactive flood insurance or other coverage for homeowners, by definition, do not serve the population of lower-income renters. Widespread media coverage demonstrates that low-income renters are unable to afford distorted, high rents in the disaster areas. This has been confirmed by HUD’s recent review of fair market rents in the area, and reported in such documents as the Governor’s Commission report. It is clear from this information that low-income renters are a critical group in need of “adequate flood-resistant housing.”

Furthermore, given that the currently available data suggest a significant need for low- and moderate-income renters and homeowners, HUD should be especially concerned to ensure that public comments on the states’ proposals are satisfactorily addressed in the state’s submission. Since such groups are traditionally marginalized from this review process, ensuring that the process provides adequate time and accurate information for consideration and comment is especially appropriate at this time.

We strongly urge HUD to review the state plans with these factors in mind – and encourage the states involved to also review their plans in this manner, prior to final approval. We also hope we can continue the earlier dialogues, and would be happy to meet again to discuss these concerns. Should you like to discuss these concerns and ways to address them, please contact Sheila Crowley, President of the National Low Income Housing Coalition, at 202-662-1530. We look forward to your prompt response.

Sincerely,

Greater New Orleans Fair Housing Action Council

Lawyers Committee for Civil Rights Under Law

Mississippi Chapter of NAACP

National Low Income Housing Coalition

Oxfam America

Poverty & Race Research Action Council

Turkey Creek Community Initiatives

cc: Deputy Assistant Secretary Anna Maria Farias, Office of Community Planning and Development