



WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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September 16, 2013

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

RE: DOCKET NO. FR-5173-P-01, AFFIRMATIVELY FURTHERING FAIR HOUSING

*Submitted electronically via [http://www.regulations.gov/#!
documentDetail;D=HUD-2013-0066-0001](http://www.regulations.gov/#!documentDetail;D=HUD-2013-0066-0001)*

Dear Madam/Sir:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, please accept these comments on HUD's proposed regulations to implement the Affirmatively Furthering Fair Housing (AFFH) provisions of the Fair Housing Act. The NAACP is particularly pleased to support this proposed regulation, as it was first announced by Secretary Donovan at our national convention on July 16, 2013, in Orlando, Florida.

By publishing this proposed regulation for comment, HUD has taken a very important step towards achieving Congress' vision about how the Fair Housing Act should be a tool for creating equal opportunity in our country. The Act requires that federal housing and community development programs be administered in ways that help overcome the problems associated with racial segregation and expand the housing choices available to families in America, regardless of race, color, religion, sex, national origin, familial status or disability. In the proposed rule, HUD clarifies that this also means expanding the access to important community assets and resources that have such an impact on the quality of life for residents. The NAACP commends HUD for taking this step, and urges HUD to move quickly to put a final AFFH regulation in place.

There are a number of provisions in the regulation that we think are particularly important to its success. These include:

- the clearer and more robust definition of what it means to affirmatively further fair housing;
- the requirement that participants submit their Assessment of Fair Housing (AFH) to HUD for review and acceptance in order to be eligible to receive HUD funds;
- the requirement for consultation with fair housing organizations and organizations that represent protected classes in the development of the AFH;
- the requirement that the AFH be conducted in advance of the Consolidated Plan (ConPlan) or Public Housing Agency (PHA) plan, and that there be a direct link between the priorities set out in the AFH and the spending proposals described in the participant's ConPlan or PHA plan;
- the requirement that participants update their AFHs if significant changes take place in their communities, such as natural disasters, major demographic changes, substantial policy changes or significant civil rights findings; and
- HUD's provision of data for participants to use in conducting their AFHs, and also HUD's encouragement for participants to include other relevant local data in their assessments.

Overall, we are pleased with the proposed rule, and with the steps which have been being taken by HUD under Secretary Donovan to support fair housing. However, there are also a few steps which we have identified in which some clarity to the rule can make it stronger and more effective. Our recommendations are detailed below.

1. Set stronger standards and higher expectations for performance by grantees and PHAs.

- a. The definition of "affirmatively furthering fair housing" set out in Sec. 5.152 of the proposed regulation is clear and comprehensive, and should help grantees and PHAs have a better understanding of what they must do to fulfill their fair housing obligations. The definition states that AFFH means, "taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act... [including] steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws."

However, the requirements for the Assessment of Fair Housing (AFH) outlined in the proposed rule do not ensure that grantees and PHAs will engage in the necessary steps to fulfill this AFFH definition. As described in Sec. 5.154 (d)(4) of the proposed rule, grantees and PHAs are only required to “set and prioritize one or more goals for mitigating or addressing” the determinants of fair housing problems in their communities. This language must be changed to reflect all of the components of AFFH described in the definition, and to require grantees and PHAs not just to “mitigate or address” problems, but to overcome them.

- b. Once grantees and PHAs have analyzed fair housing issues and their determinants, the regulations require them to set “one or more” goals to overcome those issues. One goal, or even two, will usually not be sufficient to ensure progress toward ending segregation and increasing access to community assets. We urge HUD to set a higher standard of performance, and to require grantees to set goals and identify specific milestones, timetables, and outcomes to address all of the issues they have identified as priorities.
 - c. The NAACP urges HUD to amend the proposed regulation to require grantees and PHAs to consider the housing needs and barriers faced by lesbian, gay, bisexual and transgender (LGBT) individuals and families. This would make it consistent with HUD’s March, 2012 regulations prohibiting discrimination against LGBT individuals and families in HUD-funded or Federal Housing Administration-insured housing. Because the AFFH regulation addresses steps HUD grantees and others should be taking to ensure fair housing for all, LGBT individuals and families should be included along with the seven protected classes under the federal Fair Housing Act.
2. **Ensure effective review of the AFHs submitted by grantees and PHAs.**
- a. The NAACP is concerned about the provision in the regulation stating that AFHs will be deemed “accepted” if HUD does not take action to reject them within 60 days after they are submitted. Given limited staff resources and the likelihood that there will be times when HUD will receive many AFHs at once, we are concerned that it will be difficult for HUD to give all of the AFHs the thorough and critical review that is needed. As a result, some AFHs may be deemed accepted based on an incomplete review. Therefore, we recommend that the regulation provide a process through which community stakeholders can request that HUD review an AFH that has been accepted, in cases where

evidence suggests that the acceptance should not have been granted.

- b. In addition to the standard review process, and to ensure in-depth evaluation of AFHs, we recommend that the rule provide for periodic audits by HUD of selected AFHs.
- c. In addition, we recommend that HUD adopt a phase-in plan for the regulation that will allow HUD to deploy its staff resources most effectively to provide the highest possible level of review for all AFHs. This phase-in plan should result in AFH submission dates that are spread out more evenly over the course of the year, and more evenly over a number of years. At the same time, the plan should ensure that most AFHs will come up for review within two years after the effective date of the AFFH regulation.
- d. Further, we recommend that the rule clarify how the AFH review will be conducted, including which divisions within HUD will play a role and what those roles will be. It is critical that staff of HUD's Office of Fair Housing and Equal Opportunity play a lead role in AFH reviews, and that this office receive additional staff resources to carry out this important new responsibility.

3. Ensure that grantees and PHAs make timely and concrete progress toward achieving their fair housing goals.

- a. The rule should require grantees and PHAs to establish milestones, timetables and outcomes in their AFHs by which to measure their progress toward achieving their fair housing goals. Without such elements, it will be difficult to hold grantees and PHAs accountable, and to determine whether the strategies they have adopted are effective.
- b. The rule should spell out what information grantees and PHAs must report on an annual basis, as part of their ConPlan or PHA reporting, about the progress they have made toward meeting their fair housing goals. These reports should address both the grantees' and PHAs' use of their full range of financial resources for housing and community development (i.e., CDBG, HOME, ESG, HOPWA and other federal, state and local resources), and any actions they have taken with respect to their policies, practices and non-financial resources (these might include their zoning, planning and permitting policies and practices, among others).

- c. The rule should specify what standards HUD will use to determine whether grantees and PHAs are making sufficient progress toward meeting their fair housing goals to justify continued funding under CDBG, HOME, HOPWA and ESG and, for PHAs, public housing funding.
4. **Create a process for challenging AFHs after HUD has accepted them.**

Given the large number of AFHs that must be reviewed, the limited time period for conducting those reviews, and the resource constraints under which HUD is operating now and for the foreseeable future, it is important to build into the rule a backstop to prevent acceptance of inadequate AFHs. To accomplish this, the rule should provide a process by which interested members of the public can file a challenge with HUD in cases where they believe that a participant has failed to meet the requirements of the regulation or failed to meet its obligation to affirmatively further fair housing. Such a challenge should trigger HUD's reconsideration of the AFH that was submitted, in light of the information provided by the party bringing the challenge.
5. **Ensure that participating jurisdictions and PHAs adopt strategies both to invest in Racially and Ethnically Concentrated Areas of Poverty (RCAPs and ECAPs) and to increase residential mobility and access to community assets.**

The purpose section of the proposed regulation (Sec. 5.150) notes that, "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 areas offering vital assets such as quality schools, employment, and transportation..." (Emphasis added.) The rule must not suggest that participants are expected to choose one or the other of these approaches. Instead, it must clarify that grantees and PHAs are expected to employ **BOTH** strategies to stabilize and revitalize neighborhoods that constitute racially/ethnically concentrated areas of poverty **AND** strategies to enhance mobility and expand access to existing community assets. In addition, it would be very helpful to include examples of a variety of strategies that might be appropriate for different circumstances that participants may encounter.
6. **Encourage and facilitate public participation in the AFH process.**
 - a. HUD should require grantees and PHAs to make their draft AFHs, their final AFHs, and all related documents available to the public

in a timely manner on an accessible (Sec. 508-compliant) website.

- b. Further, the rule should require grantees and PHAs to provide for translation of such documents into appropriate languages for community residents with limited English proficiency. Similarly, HUD should require that outreach for any public hearings or other forms of public engagement be conducted in appropriate languages based on the needs of LEP members of the community, and that interpretation services be provided for such events if necessary.
- c. In addition, we recommend that HUD establish a page on its website where members of the public can find information about the dates on which all grantees and PHAs must submit their AFHs and copies of all AFHs have been submitted. This would greatly facilitate public participation in the AFH process.

7. Provide clarity for PHAs that are not required to submit annual plans.

Currently, PHAs that administer fewer than 550 units/vouchers are not required to submit an annual plan. The President's FY 2014 budget proposes to exempt all PHAs from the annual plan requirement (see the FY2014 Congressional Justifications, pages J-16 (Public Housing Operating Fund), G-23 (Tenant-Based Rental Assistance Program) and K-16 (Public and Indian Housing Capital Fund), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/2014/main_toc).

To avoid confusion about how PHAs should fulfill their AFH requirement the rule should state that PHAs that are not required to submit an annual plan **must** collaborate with their state or a relevant jurisdiction on an AFH.

8. Strengthen the provisions for regional collaboration on AFHs.

- a. The proposed regulation encourages regional collaboration in the development of AFHs. This is an important acknowledgement that segregation does not stop at a community's borders. However, there are many factors that make regional collaboration difficult, and if HUD wants to see regional AFHs, it should provide incentives – financial or non-financial - for such efforts. Without these incentives, jurisdictions may be reluctant to take on the challenge of inter-jurisdictional collaboration.

- b. The regulation must all ensure that all grantees and PHAs that do participate in regional AFHs identify priorities, set goals appropriate to the needs in their individual jurisdictions, adopt spending plans and other strategies to achieve these goals, and establish timetables, benchmarks and measurable outcomes for each goal identified.

9. Comments on the data, geospatial tool and assessment tool that HUD will provide participants.

- a. The data and geospatial tool that HUD will provide participants are important components of the proposed AFH process, and while they are not a formal part of the rule itself they will have significant impact on the way the rule is implemented at the local level. The version of the data/geospatial tool that has been made available for public review is preliminary only, and it is important for the public to have the opportunity to see and comment on a more complete version of the tool that will be made available to participants before it is finalized.
- b. HUD will be distributing to all participants data that is available nationwide, but recognizes that there may be other data available locally or regionally that is important to incorporate into the AFH. The rule encourages participants to use such data. However, it is also important for members of the public to have access to a version of the geospatial tool to which they can upload data that they believe is relevant, even if the grantees and PHAs in their area do not choose to utilize that data. Building this capacity into the geospatial tool will enhance the public's ability to assist in identifying important fair housing issues and determinants and developing goals and strategies to overcome them.
- c. The definitions of RCAPs and ECAPs, which are central to the proposed AFFH regulation, are set out in the data methodology document that accompanies the proposed rule, but are not incorporated into the rule itself. Because the data methodology document does not have the force of regulation, we recommend that these terms be defined in the actual regulation.
- d. The regulation makes reference to an assessment tool that HUD will issue giving directions about how to use the data it provides and instructions for the AFH. This is also a critical adjunct to the regulation, and to ensure that it is as strong, clear and effective as possible, we urge HUD to make it available for public review and comment before it is finalized.

Thank you for the opportunity to comment on this important regulation and for the tremendous strides HUD has taken in recent years to support Fair Housing. The NAACP looks forward to seeing the final regulation published soon, and to working with HUD and local grantees and PHAs to affirmatively further fair housing. Should you have any questions or comments, please do not hesitate to contact me at my office at (202) 463-2940.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hilary O. Shelton', written in a cursive style.

Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy