

September 17, 2013

Ms. Camille Acevedo
Associate General Counsel for Legislation and Regulations
Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

**RE: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing Proposed Rule
via www.regulations.gov**

Dear Ms. Acevedo:

CAFHA is a consortium of private fair housing organizations, governmental bodies, and other concerned groups in the Chicago metropolitan area. CAFHA's purposes are to develop and support programs that further fair housing rights and opportunities, develop strategies to support long-term racial diversity, and to take steps to combat discrimination and harassment on the basis of all protected classes. In this capacity, we provide the following comments on the proposed rule to affirmatively further fair housing.

It is clear that in order to achieve the goal of diverse, integrated communities at the heart of the Fair Housing Act, HUD, its program participants, and the fair housing community must engage in proactive strategies to foster and sustain integration commonly understood as the affirmative furthering of fair housing. Thus, CAFHA has been anticipating HUD's proposed rules regarding the affirmative furthering of fair housing largely because of the persistence of segregation.

HUD's proposed rule offers a chance to shift to a proactive approach that will deal with the structural nature of racial segregation, concentrations of poverty, and access to opportunity. This strategy will improve equal opportunity for all and create an aspirational fair housing model that can be directly linked to prosperity and sustainability. The ability to promote structural change is primarily within the realm of government jurisdictions

CAFHA is pleased with the proposed rule's greater focus on integration as central to the duty to affirmatively further fair housing. The emphasis is appreciated and necessary. Specifically, we appreciate that the rule immediately states that the Fair Housing Act, "directs HUD's program participants to take steps proactively to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all."

We also appreciate subsequent references to this goal.

In the Summary:

"Through these improvements, the rule seeks to make program participants more empowered to foster the diversity and strength of communities and regions by improving integrated living patterns and overcoming historic patterns of segregation,

reducing racial and ethnic concentrations of poverty, and responding to identified disproportionate housing needs of persons protected by the Fair Housing Act.” (43711)

In the Background:

“In examining the legislative history of the Fair Housing Act and related statutes, courts have found that the purpose of the AFFH mandate is to ensure that recipients of federal housing and urban redevelopment funds do more than simply not discriminate: it obligates them to take proactive steps to address segregation and related barriers for those protected by the Act, particularly as reflected in racially and ethnically concentrated areas of poverty.”

“3608(d) requires that “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation in ghettos, of racial groups whose lack of opportunity the Act was designed to combat.” (53712)

And, in the Framework:

“HUD begins with goals long associated with this mandate: addressing patterns of segregation while supporting integrated and integrating communities, as well as seeking to reduce disproportionate housing needs among protected class members.” (43714)

This focus on promoting integration, reducing segregation, and enacting proactive measures that foster structural change is necessary for HUD and its program participants to improve the effectiveness of fair housing specifically and housing and community development generally in the 21st Century.

Improving Rule Clarity and Definitions

CAFHA recommends that HUD further clarify its goals in this rule by defining “inclusive communities” by emphasizing that inclusion pertains to the protected classes of the Fair Housing Act. CAFHA suggests the following:

Inclusive Communities – Communities that 1) reflect the diversity of their metropolitan region, including approximating the population shares of protected classes in the region, 2) provide an adequate supply of accessible housing and housing for families with children, and 3) engage in strategies to sustain or improve diversity and accessibility.

In addition, we recommend the following additions to defined terms:

Affirmative Move – a move that sustains or improves the integration of a defined area such as a census tract, neighborhood, block, or building.

We also recommend that HUD identify between 3 and 5 consistent required steps for participants’ obligations. The three steps defined for AIs (1. Conduct an analysis to identify impediments to fair housing choice within the jurisdiction; 2. Take appropriate actions to overcome the effects of any impediments identified through the analysis; 3. Maintain records reflecting the analysis and actions taken in this regard.) have been helpful in providing consistency when evaluating participants.

Currently, HUD is unclear on reference points for participants. At least two versions of reference points are provided in the proposed rule. It states that:

“Participants will evaluate their present environment and assess fair housing issues, identify the primary determinants that account for those issues, set forth fair housing priorities and goals.” (43710)

Later on the same page HUD states:

“The process proposed by this rule assists these program participants to assess fair housing determinants, prioritize fair housing issues for response, and take meaningful actions to affirmatively further fair housing.” (43710)

Of the two, CAFHA prefers the latter but suggests an alternate set of reference points.

Participants must:

1. Evaluate historical patterns of segregation and current housing and community development patterns.
2. Identify fair housing issues and barriers for protected classes and an inclusive community.
3. Propose policies and programs to address the findings in items 1 and 2.
4. Measure the progress of these policies and programs.
5. Publicly report on the outcomes of identified policies and programs.

This outline clearly states the intention of the AFH, the actions required of participants, and the requirement to report and demonstrate progress.

CAFHA recommends that HUD revise the sentence on page 43714, which states: “The importance of overcoming patterns of segregation and supporting means to advance integration are equally important as applied to persons with disabilities” to include “and families with children” at the end of that sentence. A lack of housing with 3 or more bedrooms in many communities of opportunity is a common barrier for families with children just as a lack of accessible units is a barrier for persons with disabilities. Both protected classes should be included.

CAFHA recommends further guidance regarding how “affordable housing and community development priorities and objectives will affirmatively further fair housing.” (page 43715) There has been historic confusion about how affordable housing and fair housing intersect. Too often, this has led to affordable housing development that perpetuates segregation and concentrations of poverty. HUD should clarify the need for more affordable housing development in higher opportunity communities and greater economic development in lower opportunity communities to overcome patterns of segregation and inequality.

Similarly, HUD should emphasize a need for greater balance between neighborhood revitalization and greater mobility (page 43716). This should include developing more affordable and accessible housing in higher opportunity areas as well as promoting economic development in lower opportunity areas.

We find the definition of Regional AFHs on page 43718 troublesome. As the rule is proposed, any two jurisdictions across the nation could join to form a Regional AFH. This allows for illogical and counterproductive collaborations. While the former may be unlikely, the latter is of serious concern. For instance, a partnership of all-white communities could submit a Regional AFH that could mask the fair housing issues in their jurisdictions. This risk is intensified given that the proposed rule does not require specific outcomes and allows AFHs to identify only one issue.

CAFHA recommends that HUD restrict Regional AFH collaborations to:

1. MPOs or Regional Councils
2. CDBG or HOME Consortia
3. Contiguous jurisdictions with a demonstrated interest in promoting integration
4. Multiple PHAs demonstrating an interest in promoting mobility and portability
5. Any combination of the above 4

These criteria provide a large pool of flexible partnerships without the risk of counterproductive collaborations.

We are pleased with the definitions for “affirmative furthering of fair housing” and “fair housing choice.” The former importantly includes actions as part of the definition. The latter importantly notes actual choice, protected choice, and enabled choice. We believe that in both cases, these definitions strengthen AFFH.

Metrics and Accountability

We are disappointed that this rule reduces measurability and accountability. Despite HUD’s clear intention to improve AFFH, this lack is likely to reduce the effectiveness of the affirmative furthering of fair housing if approved as proposed.

Specifically, the proposed rule makes problematic references, such as the following in the Executive Summary.

“The proposed rule does not mandate specific outcomes for the planning process. Instead, recognizing the importance of local decision-making, it establishes basic parameters and helps guide public sector housing and community development planning and investment decisions to fulfill their obligation to affirmatively further fair housing.” (43711)

While we agree that providing flexibility for local decision-making is necessary, common metrics and goals are equally necessary to ensure that this rule goes beyond plans and intentions to actions and improvements. This should include improving on measurements that demonstrate the outcomes of jurisdictions’ efforts, such as reduction in the percentage of Racial and Ethnically Concentrated Areas of Poverty (RCAPs), improvement in regional dissimilarity index scores, and greater access to opportunity for protected classes. HUD must also require jurisdictions to show progress over time and improve upon certain metrics. Otherwise, a jurisdiction’s intention will constitute compliance.

Measurements Should be Appropriate for Scale of Jurisdiction

For a regional scale, the use of dissimilarity and isolation indices makes sense. However, measurement of a race and income index should also be included for smaller jurisdictions and for subareas within regions (i.e. counties, townships, municipalities, etc.). That measurement is:

Let: i = the category of race/ethnicity
 j = household income category
 k = unit identifying a specific place (municipality, census tract, etc.)

The expected number of households of category I to live in place k is

$$E_{ik} = \sum_{j=1}^n P_{ijk} * N_{jk} \text{ where } P_{ijk} = \frac{n_{ij}}{n_j}$$

Where: The summation $j=1, n$ s over all income categories in n (household income)
 N_{jk} = Number of all households of income j in place k
 N_{ij} = number of all households of group i and income j for the entire area in which place k is located (e.g. metropolitan area)
 N_j = number of total households (all groups) for the entire area in which place k is located

Reward Participants that Show Progress

HUD states that goals long associated with AFFH include supporting integrated or integrating communities. We suggest that HUD reward participants that can demonstrate integration within their jurisdiction or substantial efforts to promote integration within their jurisdiction. This could include bonus points on applications, additional or set aside funds, and/or reduced regulatory burdens for such participants.

HUD's Geospatial Tool

The introduction of a geospatial analysis tool that is available to all is a significant improvement in both public access to data and consistency of measurement. However, the tool should be improved by correcting and double checking data in the tool, providing additional data sets, and enhancing the ability to capture data analysis.

In our initial review of the tool, we found that the data for Racial and Ethnically Concentrated Areas of Poverty (RCAPs) was incorrect. Since we conducted this same analysis for the Chicago region for a HUD Sustainable Communities Initiative Planning Grant, we know that some RCAPs for the region are not displayed in the tool. We suspect that this is likely the result of using a blanket 40% poverty level threshold for the entire nation. However, the RCAP definition adjusts for regional poverty levels and is much lower for the Chicago region.

As of this writing, HUD includes the different indices it suggests to determine opportunity but it does not include the input variables listed as data sets to map. We urge HUD to include each factor as a distinct data set that can be mapped to help pinpoint specific issues. The tools should also include a variety of other data sets by census tract including but not limited to Home Mortgage Disclosure Act data, fair housing complaints, housing tenure, accessible units, transportation infrastructure and routes, accessible transit stations, vacant land, environmental hazards, and median home prices to provide a full picture of the fair housing landscape.

The tool would be much more valuable if it included functions to print maps and save maps as pictures to allow mapped data to be included in reports and other documents.

CAFHA recommends that all data be from open sources to allow for accountability. This will also ensure that similar analysis can be conducted in the future if HUD ends support of the tool.

The tool should state dates when data was most recently provided or updated.

HUD Oversight

Finally, we strongly recommend that HUD's Office of Fair Housing and Equal Opportunity (FHEO) have authority over this rule and determinations on AFHs. FHEO is the natural home for these functions and the only office at HUD with a demonstrated commitment and expertise to assess fair housing compliance.

We also recommend that HUD revise the AFH review period to 90 days. If HUD fails to review a plan within this period, we urge HUD to designate the AFH as “unreviewed” rather than “approved.”

Response to Questions (page 43724)

Question 1: CAFHA recommends that HUD include data on fiscal capacity of municipal units of government. These disparities in tax burdens and assessed values provide valuable insight on both the ability of municipal participants and the necessary priorities of county and state participants. For instance, two municipalities in the Chicago region have segregated populations where one race makes up 90% of the population. In Winnetka, IL the population is 90% white-non Latino. In Riverdale, IL the population is 90% black non-Latino. However, the fiscal capacity to address the segregation of the community is over 15 times greater in Winnetka. In essence, Winnetka has a capacity to deal with its segregation while Riverdale is financially stressed and would benefit from investment and assistance from county and state government. This fiscal disparity also correlates closely with levels of opportunity and including it improves opportunity mapping.

CAFHA recommends that HUD include data on the accessibility of the (a) public and private housing stock, (b) transportations systems (e.g., rail, bus, and paratransit), and (c) educational entities (e.g., public schools). We also recommend that HUD include data on the concentrations of people with disabilities in segregated and congregate settings (e.g., institutions), as well as concentrations of people with disabilities in certain areas of the community (e.g., due to zoning/land use rules).

Relatedly, we recommend HUD add a “Disability Index” to the data mix that addresses barriers people with disabilities confront relating to retaining and maintaining affordable, accessible, and integrated housing.

Question 2: Unfortunately, the rule’s guidance on outcomes is too vague to determine if the goals and priorities of the AFH will have significant influence. If a participant acts in good faith within the spirit of the affirmative furthering of fair housing, these goals and priorities should improve local regulations, siting decisions, infrastructure investments, and policies. CAFHA envisions that this will result in more local affirmative marketing to under-represented protected classes, more affordable housing options in higher opportunity areas, prioritization of economic development in lower opportunity areas, and increases in accessible and visitable housing.

Question 6: CAFHA recommends that plans including one or more PHAs focus on the development of units in higher opportunity areas and improved mobility and portability within and between PHA jurisdictions.

Question 8: Several other sets of plans and programs should be coordinated with the fair housing planning effort contemplated by the proposed rule. Certainly, the Low Income Housing Tax Credit (LIHTC) program implemented by the Treasury should coordinate with this rule. In particular, the Qualified Allocation Plan (QAP) should be included in an AFH analysis. QAP’s should include incentives and/or bonuses for proposals that will affirmatively further fair housing.

The Rehabilitation Act of 1973 Transition plan and the ADA transition plan should be coordinated with the AFH, and incentives to coordinate state and local housing and education planning should be incorporated into the rule.

In addition to the cross-agency coordination discussed above, the final rule should clarify that all programs within HUD (including HUD's multifamily programs) have the duty to affirmatively further fair housing and that non-inclusion in the rule's planning requirements at this time does not exempt those programs from the AFFH obligation.

Question 9: CAFHA believes this analysis belongs in both the AFH and consolidated plans. If HUD determines it should reside with one or the other, CAFHA recommends that it should be in the AFH.

Question 10: The indicators of effectiveness should be measurable and show progress of improved integration over time. Regionally and in jurisdictions with over 50,000 residents this should be reflected in a decrease in the dissimilarity indexes and isolation indexes to scores under 30. For municipalities and smaller participants, the race and income index should show reductions in the difference between the actual population shares and predicted populations shares. PHAs should demonstrate fewer units and vouchers located in low opportunity areas.

Question 11: To the extent possible, technical assistance from programs that have demonstrated a history of promoting integration should be provided to participants as best practices. HUD should consider grants to organizations or jurisdictions that have successful programs to enable them to provide technical assistance nationally.

Again, the Chicago Area Fair Housing Alliance commends HUD for issuing its proposed Affirmatively Furthering Fair Housing rule, and looks forward to an improved final rule, which will improve equal opportunity for all.

Sincerely,

Rob Breymaier
President