

October 29, 2010

Shaun Donovan, Secretary of Housing & Urban Development  
U.S. Department of Housing & Urban Development  
451 7th Street SW  
Washington, DC 20410

Re: final thoughts on a new Affirmatively Furthering Fair Housing rule

Dear Secretary Donovan:

The undersigned include a wide range of fair housing, civil rights, and equal opportunity groups, and other representatives of civil society. We write to thank you for your decision to reinforce the Department of Housing and Urban Development's duty affirmatively to further fair housing, and to indicate key principles that should be emphasized in any revised rule, regulation, guidance or practice. Many of us have already provided detailed input and advice on the possible elements of a new rule, but we are writing again now to emphasize three core principles should be at the forefront of a modernized and improved AFFH mandate:

Promoting racial integration: The central purpose of the Fair Housing Act's "affirmatively furthering fair housing" mandate is to promote residential integration based on race and ethnicity, and to prevent the perpetuation of segregation. The primacy of this goal is reflected in the Act's legislative history, and in several decades of case law implementing the requirement (up to and including last year's decision in the Westchester case). Research and experience make clear, moreover, that the vast majority of people affected by HUD programs desire integrated communities, and that residential integration confers a range of benefits to individuals, communities, schools, and our nation. Any real or perceived move away from integration as a fair housing goal would send a troubling and harmful message to the nation about our values and our future. Communities in which Americans live, work, learn and play together across lines of difference are crucial to the future of our country, and to our success in an increasingly global economy.

We recognize that expanding access to the infrastructure of opportunity – quality schools, employment, health care services, transportation, and environmental protections – is also an important ongoing mission of HUD, which we strongly support. But equitable community development is not the same thing as "affirmatively furthering fair housing," just as affordable housing is not the same thing as "affirmatively furthering fair housing." Today's HUD should not simply repeat old patterns of promoting reinvestment without an equally robust strategy for expanding housing opportunities for racial and ethnic minorities in non-minority and non-poor areas, and in otherwise addressing exclusion and entrenched racial and economic segregation in communities, neighborhoods, and schools. Mere "access to opportunity" should not be the guiding principle of a new AFFH regulation.

At the same time, we recognize that application of the affirmatively furthering fair housing principle is dependent on local context, and may be implemented differently in urban, rural, and suburban settings. As the National Commission on Fair Housing and Equal Opportunity noted in its 2008 report (referring to metropolitan areas): “inclusive and diverse communities can be formed in different ways. They may include predominantly White suburban towns that are becoming more economically and racially diverse; or integrated older inner-ring suburbs facing high rates of foreclosure, which may need infrastructure and marketing support to maintain a stable, diverse population over time; or lower income urban neighborhoods experiencing gentrification and the accompanying influx of new money and community services that brings both benefits and threats to existing residents...” Each of these contexts would require local jurisdictions to adopt different strategies in fulfillment of their respective obligations to affirmatively further fair housing.

Freedom from all forms of discrimination: Crucial to furthering fair housing is prevention, elimination, and remediation of all covered forms of discrimination and bias, which continue to hamper housing choices and options for some members of our communities. This includes intentional discrimination as well as policies and practices with discriminatory effects, and it recognizes that modern day discrimination is frequently covert or institutionalized, all of which violate fair housing laws and principles.

Accountability and enforcement: In order to be effective, any fair housing provision must be accompanied by more rigorous and better resourced accountability and enforcement measures. That should include explicit provision for unannounced documentary audits and site visits, more routine and frequent evaluation of fair housing plans and progress, an announced process for receiving and investigating complaints that the duty to affirmatively further fair housing is not being met, and stepped up enforcement, as well as review. This expanded function should also be reflected in Department budgeting going forward. It should be remembered that jurisdictions are not obligated to seek HUD or other federal funds. But, in deciding to do so, they must become accountable to HUD and to the public for the affirmative obligations set out by statutes, regulations, and the Constitution. HUD should consider that accountability in deciding among applicants for funding, as well as in evaluating the compliance of existing awardees, and should assure that the data, Analysis of Impediments to Fair Housing Choice, and any other appropriate information are made public.

We believe that an effective AFFH regime can and must uphold each of these principles, and that doing so is fully compatible with a pragmatic approach that fulfills HUD’s other goals and improves the lives of communities and our nation. Each of our organizations is willing and able to assist the Department as needed in implementing this vision for the 21st Century.

Thank you for your leadership, and for the hard work and commitment of HUD’s other leadership and staff. We look forward to transformative regulations on affirmatively furthering fair housing, and stand ready to help make them a reality.

Sincerely,

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