

July 29, 2009

To: HUD Assistant Secretary John Trasviña and HUD staff

From: Philip Tegeler, PRRAC

Re: Further comments on HUD's July 22nd "listening session" on Affirmatively Furthering Fair Housing

I am writing on behalf of the Poverty & Race Research Action Council and the undersigned organizations and individuals to expand on oral comments made at the July 22nd Affirmatively Furthering Fair Housing "listening session" at HUD.

We are very pleased that HUD is setting out to create a stronger enforcement mechanism for the affirmatively furthering fair housing obligation contained in 42 USC §3608. While the substantive requirements of the "affirmatively furthering" requirement have been well defined by the courts and by HUD's Fair Housing Planning Guide, the consequences of non-compliance by grantees have not been as clearly defined, and new regulations will be helpful in increasing compliance on the local level. Some of the most important elements of this obligation include:

¶ Performance of HUD grantees should be judged on results, not merely filing the correct paperwork – HUD should require reporting of concrete progress in increasing racial and economic integration within and across jurisdictions in metropolitan regions. Key performance indicators should include siting of new assisted non-age restricted housing units (including LIHTC housing) outside areas of minority concentration, utilization of inclusionary zoning, creation of mixed income housing, operation of mobility counseling programs, and other similar tools to create assisted and non-assisted affordable housing opportunities in low poverty, non-racially concentrated areas; along with active and successful affirmative marketing for all assisted and affordable housing to attract residents least likely to apply; and use of tenant selection criteria that do not have a discriminatory effect (e.g., residency preferences should not be permitted).

¶ HUD should not shy away from strong race conscious approaches that encourage racial integration and avoid racially discriminatory and segregation-promoting actions. Such race conscious approaches are fully permissible under U.S. Supreme Court precedent and in light of HUD's past record, so long as tenants are not individually targeted for special treatment based on their race. At the same time, HUD's affirmatively furthering rule should also recognize the harsh racial impact of poverty concentration in neighborhoods and schools, and include reduction in poverty concentration as a key measure of the affirmatively furthering obligation.

¶ HUD review and investigation of grantee compliance should generally be triggered by a complaint or letter of inquiry requesting an investigation of the grantee. We would not recommend any process that involves routine review and approval of local fair housing plans. HUD should also institute targeted investigations of AFFH compliance by grantees, including investigations in the most segregated metropolitan areas in the U.S.

¶ HUD should encourage and support direct court enforcement of §3608 in federal civil rights actions by aggrieved individuals and organizations.

¶ The Office of Fair Housing and Equal Opportunity should be the lead division at HUD for investigating and enforcing the affirmatively furthering fair housing requirement. The funding divisions (Office of Community Planning and Development and Office of Public and Indian Housing) should not be put in the position of investigating their own grantees.

¶ For HUD programs that involve a competitive application process (such as those subject to the SuperNOFA) or that require HUD review and approval (such as in multifamily programs and public housing development), the program offices should adopt review and approval procedures that assure that HUD resources are not used to further segregation and are instead utilized to promote residential integration and deconcentration of poverty.

¶ In racially segregated regions, or regions where government-funded housing is geographically concentrated, jurisdictions should be required to work together with HUD to develop a strategy for desegregating housing across the region, and opening up opportunities for low income families in higher-opportunity areas. For an example of this approach, see Dr. Jill Khadduri's expert report in *Thompson v. HUD*, at www.prrac.org/projects/fair_housing_commission/atlanta/khadduri.pdf.

¶ In addition to clearer and stronger procedures and sanctions for non-compliance, HUD should develop incentives to reward jurisdictions that are doing an excellent job.

¶ Any administrative plans (including Analyses of Impediments and Action Plans) required by recipients of HUD funding to demonstrate affirmatively furthering activities, along with required documentation, should be posted by HUD to a public website within 30 days of completion.

¶ In addition to strengthening fair housing compliance among HUD grantees, HUD should undertake an internal review of all HUD programs to assess the extent to which programs are perpetuating, creating, or permitting racial segregation in metropolitan areas. Finally, HUD should adopt a desegregation metric that assesses the degree to which each HUD housing program is becoming more or less spatially segregated over time.

Thank you for the opportunity to submit these comments. We would be happy to assist your office by providing additional information or documentation on any of these points.

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