

November 23, 2011

Ms. Shelley Poticha
Director for Office of Sustainable Housing and Communities
U.S. Department of Housing & Urban Development
451 7th Street S.W.
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Re: Fair housing comments on HUD's draft environmental justice strategy

Dear Ms. Poticha,

We are writing to provide comments, on behalf of the undersigned fair housing and civil rights organizations, on HUD's draft 2012-2015 Environmental Justice Strategy, dated September 30, 2011.

I. General comment – lack of goals, benchmarks, timetables, monitoring and enforcement

We appreciate the draft Strategy's emphasis on HUD's role in providing access to opportunity as a means of reducing health disparities, and its reference to the HUD Strategic Plan. We agree that the principle of "affirmatively furthering fair housing" is an important starting point for developing the Department's EJ strategy. Tools like the new regional Fair Housing and Equity Assessment (FHEA) in the Office of Sustainable Communities can help HUD and its grantees to address disparate exposure to detrimental social and environmental health factors, as well as unequal access to affordable housing, employment and educational opportunities, and we commend HUD for including environmental justice in future Sustainable Communities planning.

However, in spite of this positive direction, we were disappointed in the Strategy document's lack of goals, benchmarks, timetables, and monitoring and enforcement provisions. In this respect, the document did not appear to be a plan or strategy that could actually be implemented. Moreover, the Strategy document failed to discuss in any detail the four "Areas of Focus" that an Environmental Justice Strategy should contain as set forth in paragraph III D of the Memorandum of Understanding on Environmental Justice and Executive Order: (1) implementation of the National Environmental Policy Act; (2) implementation of Title VI of the Civil Rights Act of 1964, as amended; (3) impacts from climate change; and (4) impacts from commercial transportation and supporting infrastructure ("goods movement").

Because we believe that HUD's Environmental Justice Strategy presents a major opportunity for the agency to address longstanding racial and ethnic disparities in health, environmental, and housing outcomes for its clients and beneficiaries, we urge HUD to redraft the document as an actual strategic plan that explicitly addresses the four Focus Areas, with specific tasks and measurable goals that will be implemented over time. HUD can use the work already done in the current draft document, which describes the

relation of the agency's current work to the goals of the Executive Order, as a foundation, but this type of inventory should be only the first step in developing a true strategic plan.

In the process of setting agency goals, benchmarks, and timetables, we recommend that the agency adopt a set of principles that can be applied on a program by program basis, which can be used to develop performance based goals that are relevant to each program area. In the context of environmental justice, it would also be helpful to incorporate current knowledge of the environmental health disparities affecting HUD clients to guide policy (for example, using research on causes and prevalence of asthma to develop asthma related goals in the Section 8 program). Moreover, HUD should use its research and data collection resources to expand knowledge of environmental health disparities among residents of housing assisted by HUD.

Some common elements that should appear as part of any strategic plan include the identification of specific individuals by title and position who will be held responsible for the performance of the initiative; the development of a detailed action plan including dates, people assigned, quantity, quality, and resources necessary; and a procedure for periodic evaluation, to assess whether the goals have been achieved, to what extent, when, and what needs improvement or change.

II. Recommendations to address the four “Areas of Focus” set out in the interagency Memorandum of Understanding

A. Recommendations regarding the implementation of Title VI of the Civil Rights Act of 1964

Environmental justice in the federal government depends in large part upon Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance. HUD already has an extensive apparatus to investigate and resolve complaints under the Fair Housing Act, which has many parallels to Title VI. Under the EJ rubric, the time has come to reemphasize HUD's Title VI jurisdiction. As a first step, HUD should issue guidance to recipients on the principles of Title VI, especially as applied to EJ issues (the Department of Justice/Civil Rights Division has written good guidance, especially its Title VI Legal Manual). HUD should also ensure that beneficiaries of HUD-funded programs are aware of their rights under Title VI, including the right to file complaints with HUD. HUD also must ensure that recipients are collecting demographic data (e.g., race, poverty status, disability) on the actual and potential beneficiaries of its programs, to help evaluate the Title VI and environmental justice implications of various decisions.

We also recommend the adoption of an environmental justice monitoring and review process consistent with Title VI and existing HUD regulations at 24 CFR Part 50, as follows:

“To ensure meaningful incorporation of Title VI and environmental justice in decision-making, including decision-making at the project level, HUD's policy and practice will be not only to reject proposals that have significant adverse

environmental impacts, as currently set forth in 24 CFR Part 50, but also to reject proposals that fail to comply with the letter and spirit of Title VI, Executive Order 12898, and this guidance. In the environmental justice context, HUD’s policy and practice will also be to require the modification of projects in order to enhance environmental quality and minimize environmental harm in order to ensure that low income and minority communities are not disproportionately burdened by adverse environmental effects.”

The Department of Transportation’s Order to Address Environmental Justice in Minority Populations and Low-Income Populations provides an excellent model for agency monitoring and review of the environmental justice impacts of agency funded activities.¹ We also refer the Department to the statement of environmental justice principles included in the comment letter submitted by Public Advocates and other groups on November 23, 2011.²

B. Recommendations regarding the National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. Federal agencies must consider environmental justice in their activities under NEPA. As the federal government’s lead agency on housing and community development, HUD must consider the environmental justice implications of major federal actions in which the agency is involved. However, HUD has never issued any guidance on how HUD will consider environmental justice during the agency’s environmental review process. The absence of guidance has resulted in HUD’s failure to consider the environmental justice implications of key decisions made by the agency, including:

- Decisions on applications to demolish or otherwise dispose of public housing developments;
- Decisions on development proposals (particularly development proposals along public transit lines) and the potential of those proposals to displace low income and non-white residents from their current neighborhoods;
- Decisions regarding the siting of housing for low income and minority population in proximity to sources of pollution such as factories, contaminated sites, highways and power plants.

HUD’s EJ Strategy should commit the agency to issuing guidance on how HUD will consider Environmental Justice impacts of major federal actions affecting the environment, such as the examples provided above. HUD’s “affirmatively furthering fair housing” assessment standards could operate in tandem with the NEPA review obligation.

¹ See U.S. Department of Transportation (USDOT). 1997. Order 5610.2, USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. Federal Register, Vol. 62, No. 72, Tuesday, April 15, 1997, 18377-18381.

http://www.fhwa.dot.gov/environment/environmental_justice/facts/dot_ord.cfm.

² See www.prrac.org/pdf/HUD_EJ_Title_VI_Comments_11-23-11.pdf

C. Recommendations related to climate change

The accumulation of greenhouse gases in the atmosphere has resulted in an increase in extreme weather events such as hurricanes, major rain storms and prolonged heat spells. Hurricane Katrina revealed that HUD's assisted housing stock is particularly vulnerable to being closed with little or no notice to the residents of that stock; and that HUD has no institutionalized way to address the sudden loss of assisted housing developments due to natural disasters related to climate change. In the Environmental Justice Community there is considerable concern that the federal government will abandon assisted housing developments (e.g., public housing, project based section 8, FHA insured developments, etc.) damaged by extreme weather events instead of repairing or replacing them. As part of its EJ Strategy, HUD should explicitly state that assisted housing developments damaged by extreme weather events will be repaired and reopened, or rebuilt in areas less prone to damage by extreme weather events. The EJ Strategy should also state that HUD will provide timely and sufficient emergency housing assistance to enable residents of assisted housing developments closed down as a result of natural disasters to find stable housing accommodations until they are able to return to their closed apartments or to rebuilt apartments.

A related concern is that HUD should be identifying assisted housing developments that are especially vulnerable to damage from natural disasters related to climate change, such as developments located in or adjacent to flood plains, downstream from older dams, or in areas prone to fires. Once those developments are identified, HUD should assist the owners of those developments develop plans to reduce the probability of damage due to extreme weather events, including plans that insure adequate property insurance coverage for those developments.

D. Recommendations related to "Goods Movement"

The infrastructure used to move commercial goods has created multiple adverse health and environmental impacts on low income communities and communities of color. While HUD may not play a direct financial role in the development and maintenance of that infrastructure, that infrastructure has affected patterns of racial segregation and isolation throughout our nation. Specifically, the concentration of that infrastructure (such as port facilities, rail yards, truck and storage depots) has depressed adjacent property values, such that the neighborhoods surrounding that infrastructure are disproportionately populated by low income households and families of color. In its EJ Strategy, HUD should explicitly state that its Fair Housing/Equal Opportunity Division will provide technical assistance to other federal agencies to help the responsible agencies understand the segregative effects of further development and maintenance of the infrastructure used to move commercial goods.

III. Recommendations to advance environmental justice in specific HUD program areas

In addition to our general comments set out above, we were concerned that the draft Strategy document overlooks specific areas that are highly relevant to HUD's environmental justice and fair housing mission. We will address each of these briefly below, and we would be willing to submit additional information to the agency upon request.

A. The continuing disparate impacts of lead poisoning

HUD has made significant progress since 1992 in reducing childhood lead poisoning, but lead poisoning is still a national epidemic that disproportionately harms low income children of color. This problem is focused in older *non-assisted, privately owned* housing, and it is critical that HUD prioritize plans to upgrade this housing or move children out of harm's way. For a detailed discussion of policy tools and enforcement options currently available to HUD, we support the excellent comment letter submitted by the Empire Justice Center, dated November 22, 2011.³

B. Identifying and rectifying health disparities beyond lead poisoning in HUD-assisted housing

While the Draft EJ Strategy goes at length to describe HUD's efforts around lead poisoning, it is silent on other health disparities affecting low income and non-white households that are related to housing conditions. These disparities include asthma and other respiratory illnesses, mental health, obesity, cancer and malnutrition. There are some localized data that suggest that public housing tenants suffer from asthma at higher rates than the general population.⁴ As part of its research and data collection responsibilities under Executive Order 12898, HUD should survey residents of HUD assisted housing about the incidence of these illnesses / health conditions to determine whether there are widespread disparities in health among residents of HUD assisted housing. The survey could be done in a manner similar to the resident satisfaction survey HUD administers in public housing.

Additionally, HUD should expand its Healthy Housing initiatives in public and assisted housing that address health problems associated with housing conditions such as asthma, obesity, cancer and malnutrition. These could include:

- Expanded use of integrated pest management techniques in public and assisted housing;

³ www.prrac.org/pdf/HUD_EJ_Policy_Lead_Comments_11-22-11.pdf.

⁴ See, e.g., Northridge et al., The Role of Housing Type and Housing Quality in Urban Children with Asthma, 87 J Urban Health. 211 (2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2845835/>; Levy et al., Lung function, asthma symptoms, and quality of life for children in public housing in Boston: a case-series analysis, 3 Env't'l Health J. 13 (2004), available at <http://www.ehjournal.net/content/3/1/13>.

- Expanding the number of smoke-free public and assisted housing units, along with increased access to smoking cessation classes and other supports for residents who do smoke;
- Increasing recreational space in or near public and assisted housing developments;
- Using community development funds to expand access to healthy food stores among residents of public and assisted housing.

C. Housing mobility and environmental justice

Recent research from the Moving to Opportunity demonstration showed significant improvements in obesity, diabetes, and mental health for women and children moving from high poverty to low poverty neighborhoods. HUD’s EJ Strategy should embrace these results and work to expand housing mobility both through direct funding of mobility programs and Section 8 regulatory reform – including streamlining of the portability rule, incentivizing mobility in the administrative fee structure, adoption of “small area FMRs” and more routine processing of exception rent requests, and revision of the SEMAP regulation to require stronger deconcentration efforts.

D. Health impacts of the foreclosure crisis, and the role of the FHA

HUD needs to squarely face the health implications of over six million foreclosures and the fact that those foreclosures are disproportionately concentrated in neighborhoods of color. These properties are a potential threat to child health, both in terms of internal environmental hazards (primarily lead and mold) and their impact on the health of neighborhoods and communities.⁵

HUD’s ability to identify and ameliorate these threats is severely limited, particularly in the area of lead paint remediation. The “Disclosure Rule,” which requires sellers and landlords to disclose known lead paint hazards, is not working. In the absence of systemic housing inspections of private housing for lead-paint hazards the federal disclosure rule is simply ineffective. Owners have no “known” hazards to disclose. Even when there is a history of a known lead hazard, the rule is more honored in the breach than the observance. The rule has been further undermined by an exemption for properties transferred in foreclosure. The strategic plan must commit to identifying inter-departmental and inter-agency authority to assure that banks transferring foreclosed properties in high risk areas do not contain lead-paint hazards and for requiring that banks ascertain and disclose lead hazards that have been previously documented in health and building department records. Similarly, the strategic plan must commit to evaluating the potential for requiring assurances from communities that receive HUD funds that they will establish proactive inspection programs for lead paint hazards in high risk areas.

The FHA’s inventory of Real-Estate-Owned (REO) properties is a good place to start the process of environmental remediation. One important step could include the re-use of *lead free* FHA units in higher opportunity communities as low income family rental units

⁵ For a brief overview, see “Foreclosures Are Killing Us,” by Craig Pollack and Julia Lynch (New York Times, October 2, 2011); www.nytimes.com/2011/10/03/opinion/foreclosures-are-killing-us.html

(see our letter, “Affirmatively furthering fair housing in the disposition of REO properties,” dated September 15, 2011).⁶

E. Environmental justice analysis of issues affecting persons with disabilities

HUD’s responsibility to affirmatively further fair housing for individuals with disabilities has particular meaning for HUD’s Environmental Justice Strategy. First, HUD’s leadership in enforcing the Fair Housing Act’s accessibility requirements meshes well with its environmental justice obligation to ensure that housing is safe and risk-free, along with the paths of travel inside the housing and to and from housing to public spaces. Yet tens of thousands of apartments continue to be designed and built that do not meet Fair Housing standards.⁷ In 2003, HUD issued, “Multifamily Building Compliance with the Fair Housing Accessibility Guidelines,” finding different rates of compliance with different accessibility requirements in different parts of the country.⁸ It behooves the Department to conduct a current survey and to incorporate its Fair Housing enforcement strategies with its Environmental Justice, as well as its Choice Neighborhoods and Sustainable Communities Initiatives.

Beyond the housing itself, individuals with disabilities must be able to travel safely to and from work, school, religious institutions, family, and recreation. The Fair Housing Act and the Americans with Disabilities Act both provide guidance and requirements for accessible paths of travel and public rights of way. To ensure that its Environmental Justice Strategy provides the most current guidance, it should reference the Federal Access Board’s guidance.⁹ An individual with disabilities living in an inaccessible environment is forced to live an isolated life, and improving paths of travel and the built environment have significant impact on the functional and emotional lives of residents.

F. Environmental justice analysis of issues affecting persons with limited English proficiency and immigrant populations

HUD should implement the Executive Order on Limited English proficiency (LEP) and the Department of Justice guidance on it. Many of the groups covered by the EJ Executive Order and the Interagency MOU are LEP or include individuals who are LEP. There is a great deal of overlap between LEP and EJ communities. A major problem for HUD beneficiaries and clients of recipients is their inability to understand the housing documents provided to them. Since possible deprivation of shelter, a human right, is threatened, this access meets the criterion for the most extensive provision of services as laid out in DOJ’s guidance on the subject.

G. Housing impacts of non-housing related actions by HUD grantees

The Strategy document does not address some issues that are core to historical EJ concerns, such as siting of dumps, bus barns, and sewer plants; and lack of water and

⁶ http://www.prrac.org/pdf/REO_civil_rights_comments_9-15-11.pdf.

⁷ See, eg., <http://www.reلمانlaw.com/civil-rights-litigation/cases/spanos.php> (12,300 apartments), http://www.equalrightscenter.org/site/PageServer?pagename=pr_08_11_07 (4500 apartments).

⁸ <http://www.fairhousing.com/include/media/pdf/multifamily.pdf>.

⁹ <http://www.access-board.gov/prowac/>.

sewer services. Recipients of HUD funds are often responsible for such locating and siting decisions (see also discussion of commercial transportation, above).

IV. Conclusion

The development of an Environmental Justice Strategy is an important opportunity for HUD to reduce housing program related health disparities, and to use the power of HUD programs to improve health outcomes for low income families and children. We urge the Department to take a more aggressive and definitive approach, and we are ready and willing to assist.

Sincerely,

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cc: HUD Assistant Secretary John Trasviña