

March 15, 2001

Honorable Mel Martinez
Secretary of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Key Civil Rights Issues in the New HUD Administration

Dear Secretary Martinez,

On behalf of the undersigned civil rights and housing advocacy organizations, we are writing to congratulate you on your confirmation and to request a meeting at which we can discuss important civil rights issues facing the agency.

As organizations which have fought to ensure fair housing in private and subsidized housing for decades, we write to you as the head of the federal agency which, under the Fair Housing Act, has been given the lead responsibility to combat housing discrimination and residential segregation in all federal housing and community development programs. This responsibility to "affirmatively further" fair housing in not only HUD programs but those of other federal agencies has not been consistently upheld. You arrive at HUD at a particularly critical time given the fundamental changes in the way public and subsidized housing will be provided and the manner in which HUD itself is structured to process fair housing complaints and ensure that its programs are run in a non-discriminatory manner.

Our comments deal primarily with the need to strengthen HUD's fair housing enforcement responsibilities, and to ensure fair housing compliance throughout HUD and other agencies' housing and community development programs. We are also concerned with discriminatory practices that particularly face women, non-English speaking minorities, and persons with disabilities. This list of issues is not intended to be exhaustive. Rather, we wish to highlight the most important civil rights issues facing HUD, where we feel important progress can be made in the next few years.

• **Reaffirming Civil Rights Enforcement priorities**

One critical element of the new Administration's civil rights agenda should be ensuring appropriate resources and policies at the federal civil rights agencies. Among these agencies, the ones with responsibility over fair housing issues include: HUD's Office of Fair Housing and Equal Opportunity; the Department of Agriculture's Office of Civil Rights (particularly as it relates to the Rural Housing Service); and the Department of Justice's Civil Rights Division, particularly the Housing and Civil Enforcement Section.

As reflected in a recent report from the U.S. Commission of Civil Rights, the staffing levels in most federal civil rights agencies have decreased in real terms over the past six years. At HUD's Office of Fair Housing and Equal Opportunity (FHEO), for example, staff levels have decreased by 22% between FY 94 and FY 2000 and appropriations have fallen by 14.4%, despite a 15% increase in its Title VIII complaint workload. To remedy this problem, the Administration should increase staffing levels to an appropriate level that, at a minimum, are equivalent to that of FY 94 and correspond to the complaint level at each agency. In addition, HUD's Office of Fair Housing and Equal Opportunity should have its own line item for staffing and support resources in the HUD budget so that the public can evaluate the level of resources provided in each budget. We also strongly urge the Administration to expand the fair lending and land use initiatives of the Justice Department's Housing and Civil Enforcement Section, as well as its more traditional focus on discrimination in rental housing. These efforts have significantly expanded access to homeownership and other quality housing opportunities for minorities and other groups protected under the Fair Housing Act.

• **Enhancing Regional Housing Mobility in the Section 8 Voucher Program**

Section 8 has been proven to be an effective program for helping low income minority families move to more integrated, lower-poverty neighborhoods, but results could be even better than they have been. The long term educational and employment benefits of mobility have been studied in the Chicago Gautreaux program and in HUD's Moving To Opportunity program. But enormous barriers to mobility continue to thwart Section 8 clients in their search for housing outside of high-poverty neighborhoods. HUD could undertake a number of enhancements to make Section 8 mobility a reality for more families. In HUD's fiscal year 1999 budget, Congress appropriated \$10 million for Regional Opportunity Counseling (ROC) funds that have never been expended. HUD also has authority to increase the administrative fees that Public Housing Agencies (PHAs) receive to help families move to areas of low poverty. HUD could also empower its grantees under the Fair Housing Initiatives Program to test for discrimination against Section 8 voucher holders. Opportunities for regional mobility also are enhanced by HUD's recent interim rule that increases fair market rents in metropolitan areas where voucher holders are overly concentrated in certain neighborhoods. Making that rule final, with certain improvements, should encourage and empower housing agencies to promote opportunities throughout their regions.

• **Incorporating Fair Housing Requirements into the Low Income Housing Tax Credit Program**

The Low Income Housing Tax Credit Program is now the major housing production program in the United States. Until recently, the program was operated with little fair housing oversight. HUD should work with the Treasury Department, pursuant to Executive Order 12892, to enhance fair housing guidelines in the program -- particularly with respect to affirmative marketing requirements, siting of new developments, and access to suburban LIHTC developments by Section 8 participants.

- **Enforcing Fair Housing Requirements in the Hope VI Program**

The HOPE VI Program generally provides for demolition of severely distressed public housing, and creation of higher income communities on the site of the former public housing development. Fair housing advocates have pointed out that Hope VI should be administered to encourage fair housing goals and to provide adequate safeguards for existing residents in the relocation process. We have proposed that a fair housing impact assessment be incorporated into the HOPE VI program selection process, and that the February 26, 2001 NOFA and all future NOFAs for Hope VI be amended to encourage creation of integrated housing opportunities for public housing residents.

- **Continuing To Prioritize Preservation of At-Risk 'Expiring Use' and Expiring Section 8 Contract Housing**

Developments with expiring use restrictions and/or expiring project-based Section 8 contracts are a critically important fair housing resource. These developments are often some of the best housing available to low and moderate-income families. They are generally relatively well-built and well-maintained multifamily developments in gentrifying urban or suburban areas, accessible to good schools and jobs, and frequently in communities with very little public housing or rental housing. Once gone, given the rising expense of new construction and rehabilitation and the shrinking availability of sites, most of these developments will likely never be replaced. We applaud HUD for recognizing the critical importance of preserving this housing in developing preservation tools such as the "Mark-Up-To-Market" program. We urge you to continue to make preservation one of HUD's highest priorities by requesting necessary capital and operating funds from Congress and by developing responsive administrative policies to maximize preservation of this crucial fair housing resource.

- **Enforcement of Section 3 Employment Requirements**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u, 24 C.F.R. Part 135) provides that training and work opportunities generated by federal housing and community development projects in low income neighborhoods go, to the maximum extent possible, to residents of these communities. The law covers public housing authorities, other HUD grantees, and their contractors. The training and hiring requirement is applicable to the construction, maintenance, and operation of public housing, as well as to construction in other community development programs.

Despite the far-reaching potential of this requirement, Section 3 remains underutilized. Through stronger monitoring and enforcement activities, HUD can use existing resources to improve the long term employment prospects of low income people and strengthen the economic vitality of low income communities. HUD can increase local compliance with Section 3 by transferring enforcement responsibility from the Office of Fair Housing and Equal Opportunity to the Offices of Public and Indian Housing or Community Planning and Development, and also by including Section 3 in regularly required rating systems that PHAs use to report to HUD.

- **Issuance of the Final Regulation on Affirmatively Furthering Fair Housing in the Community Development Block Grant Program**

The Fair Housing Act requires HUD to administer its programs in a manner to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). Current regulations require Community Development Block Grant recipients to certify that they will conduct an Analysis of Impediments to Fair Housing Choice and will take action to overcome the effects of any such impediments. The Analysis of Impediments is a review of public and private conditions affecting equal opportunity in housing in a particular community. It is a valuable tool for comprehensively examining and addressing the many institutional forces that continue to keep our cities and suburbs racially segregated as well as practices that affect the location, availability and accessibility of housing. In 1998, HUD proposed regulations which strengthened this requirement by including performance standards to measure a grantee's compliance. These regulations were generally supported by civil rights organizations and housing advocates. The regulation was never finalized.

- **Gender Discrimination in Housing**

HUD has issued proposed fair housing regulations on sexual harassment. We welcome this effort, as the case law has demonstrated the need for specific guidance from HUD to participants in the housing market and in civil rights enforcement proceedings. We hope that HUD will continue to support these regulations and that they will be issued soon. However, we also share the concerns expressed by some advocates that the new regulations should mirror current fair housing law, and not unnecessarily raise the burden of proof. In particular, some of the complex legal rules that have developed in employment cases do not necessarily need to be imported into the housing context. The unequal nature of the landlord-tenant relationship and the critical importance of the home as the center of family life also supports the need for strong unequivocal protections from sexual harassment in housing.

- **Expand Efforts to Combat Predatory lending**

“Predatory lending” refers to a set of unscrupulous practices that result in homeowners paying far more in fees and rates when they refinance or purchase a home, thereby stripping equity from their homes and wealth from their communities. As reflected in a number of recent studies, those who are victimized by these practices are disproportionately elderly and persons of color. HUD should continue to make combating predatory lending a priority by increasing enforcement activity against predatory and discriminatory lending, including use of the Fair Housing Act, RESPA, and GSE oversight authorities as appropriate. HUD can also expand reliable collection of information and data regarding lending institutions by promoting recent proposals regarding the Home Mortgage Disclosure Act (HMDA).

- **People with Limited English Proficiency**

Department of Justice regulations have long required recipients of federal financial assistance to make sure that federally funded programs are accessible to people with limited English-speaking proficiency (LEP). In recent months many federal agencies, including the Department of Health and Human Services, have adopted guidance that for the first time provides meaningful, practical, program-related direction for federal grantees. The guidance clarifies what steps an agency should take to make its programs and activities accessible to limited English-speaking proficient persons and to be in compliance with Title VI. HUD also prepared a LEP guidance that essentially mirrored the guidance issued by HHS; however, HUD's LEP guidance has not yet been issued. We request that HUD publish and implement the LEP guidance. This will clarify for HUD-funded entities what types of services are needed to make programs and activities accessible to persons with limited proficiency in English.

- **Disability Issues**

Millions of people with disabilities are living in inappropriate settings, including restrictive congregate facilities, substandard or overcrowded housing, homeless shelters, or at home with aging parents who do not know what will happen to their adult children when they can no longer provide housing for them. The 1999 Supreme Court decision in *L.C. v. Olmstead* calls upon state and local governments to help integrate these people into the American mainstream. To that end, the Department should review programmatic barriers to full participation of people with disabilities in all of its programs, and not focus on a handful of disability "boutique" programs that are underfunded and will never address the full need. The Department and all recipients of its funding must be held accountable for compliance with the Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act of 1973, including completion of the Department's own Section 504 self-evaluation. Further, the Department should adopt strong measures to ensure that people with disabilities are not being discriminated against when public housing agencies and private owners of assisted housing seek to restrict occupancy to households age 62 and older. Finally, more HUD leadership is needed to ensure the full compliance and enforcement of the accessibility provisions of the Fair Housing Act Amendments of 1988 in the private housing market.

Thank you for your consideration of our concerns. Perhaps more than any other agency, HUD is a bellwether of our nation's commitment to civil rights. We hope we can work with you to continue to improve HUD's civil rights record, and we look forward to meeting with you to discuss these issues. We will contact your office in the near future to request a meeting time.

Sincerely,



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