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Re: Docket No. FR-5173-P-01
Affirmatively Furthering Fair Housing Proposed Rule
Department of Housing and Urban Development

Dear Ms. Acevedo:

On behalf of the National Community Reinvestment Coalition and our 600 community-based member organizations, thank you for the opportunity to submit comments regarding the Department of Housing and Urban Development's proposed rulemaking on Affirmatively Furthering Fair Housing. For more than twenty years, NCRC and our member groups have been at the forefront of the struggle to ensure that this nation's civil rights laws are enforced in the financial services and housing sectors. Our aim has always been to guarantee that all people living in America, without regard to their race, color, religion, gender, national origin, disability, or familial status, have equal access to housing choices. Consequently, the Affirmatively Furthering Fair Housing mandate is a critical tool for the work that NCRC and our member organizations do to ensure that housing rights are protected.

For example, a core component of the mission and activities of NCRC's civil rights division, National Neighbors, involves partnering with private and public institutions to ensure states and localities that receive federal funds actually meet their obligation to affirmatively further fair housing. Over the years, National Neighbors has assisted hundreds of communities with identifying existing fair housing impediments and developing the steps that they can take to eliminate those impediments in the future. In addition to helping communities with fair housing planning and compliance services, National Neighbors also provides research, education, and training about fair housing rights. Finally, National Neighbors, like a number of NCRC's member organizations, assists with fair housing enforcement by serving as a private attorney general.

By deciding to re-examine the effectiveness of current Affirmatively Furthering Fair Housing regulations and issue the proposed rule, HUD has undertaken the critical task of actively engaging practitioners on how the objectives of the Fair Housing Act are best achieved. Accordingly, based upon our experience as a partner to HUD, states, localities, other civil rights groups and community-based organizations committed to fair housing, NCRC encourages the Department to incorporate the following recommendations into the final rule:

Recommendation 1: *HUD should actively review grantees' assessments over a 120-day window and, by the end of that window, make a formal decision about an assessment's compliance with Affirmatively Furthering Fair Housing requirements.*

Recommendation 2: *HUD should require grantees to consider information resources beyond the data sets that will be provided by HUD in the analysis section of the Assessment of Fair Housing. HUD should make clear to grantees that the data it provides represents a **floor, and not a ceiling.***

Recommendation 3: *HUD should require that grantees maximize citizen participation in every stage of the assessment process by: 1) creating an affirmative marketing plan for every event open to the public; 2) publishing all materials and reports in plain language, and in multiple languages; and 3) making all comments on the process available to the public.*

Recommendation 4: *HUD should require grantees to identify quantifiable and reasonable fair housing performance benchmarks as part of their assessments.*

Recommendation 5: *HUD must consider the resources that will be required to enforce each proposed requirement of the Affirmatively Fair Housing Rule and ensure that it has those necessary resources in place.*

Recommendation 6: *HUD must make clear that grantees can and should use independent outside consultants when preparing documents required by the Affirmatively Furthering Fair Housing rule.*

Recommendation 7: *HUD should continue to develop more robust and innovative tools that can be made available to help communities better identify fair housing issues.*

Each of these recommendations is discussed in greater detail on the pages that follow.

Recommendation 1: HUD should actively review grantees' assessments over a 120-day window and, by the end of that window, make a formal decision about an assessment's compliance with Affirmatively Furthering Fair Housing requirements.

As currently proposed, the rule requires all Assessments of Fair Housing (AFH) to be submitted to HUD for review, but only gives the department a 60-day window to review the assessment for compliance with affirmatively furthering fair housing requirements. If, at the end of that 60-day window, HUD has not rejected a grantee's assessment, then the assessment of fair housing is approved by default and HUD may release funds to grantees.

Strong and active regulatory review is one of the most critical components in ensuring grantee compliance. Accordingly, to truly achieve the objectives of the Fair Housing Act, there must be rigorous regulatory oversight and active approval of each Assessment of Fair Housing. NCRC believes that 60 days is an inadequate amount of time for HUD to complete a substantive review of assessments and, by allowing for approval by default, HUD may create a disincentive for grantees to undertake thorough studies of their communities' needs. That end result would undermine the very purpose of enacting more effective standards for the affirmatively furthering fair housing mandate and, therefore, should not remain in the final rule.

Instead, the National Community Reinvestment Coalition recommends that the review window be increased to 120 days and that the rule include language requiring HUD to make a formal determination about the assessment's compliance with the rule. Under our proposal, it would not be possible for HUD's determination to simply be a statement that the assessment has been completed. Instead, if HUD makes a determination at the end of 120 days that the assessment is non-compliant, it should notify the grantee and then allow the grantee to resubmit. Extending the review window is critical to ensuring that each assessment is reviewed for actual substance and compliance with the requirements of the rule and the Fair Housing Act. Creating and preserving fair housing in our communities is too important to risk grantees submitting less-than-adequate assessments because there is a chance it may be approved by default.

Recommendation 2: HUD should require grantees to consider information resources beyond the data sets that will be provided by HUD in the analysis section of the AFH. HUD should make clear to grantees that the data it provides represents a **floor, and not a ceiling**.

The proposed rule states that HUD will provide grantees with data that must be used in the analysis section of their assessments. This data will include national, regional, and local data on: 1) patterns of integration and segregation; 2) racially and ethnically concentrated areas of poverty; 3) access to community assets in the areas of: education, employment, low-poverty, transportation, and environmental health; 4) disproportionate housing needs; 5) individuals with disabilities, and 6) families with children.

The proposed data sets are a good start and we applaud the Department of Housing and Urban Development for including them in the proposal. Still, it is important that HUD explicitly state that there are many other resources, external to those provided exclusively by HUD, that grantees can and should consider as they seek to generate the most accurate assessment of the fair housing needs in their communities. Allowing HUD's proposed data sets to establish a floor of available information resources, rather than a ceiling, allows for the inclusion of information that may prove more probative of fair housing needs that has yet to be specifically identified and also will encourage grantees to seek a much fuller and, therefore, more valuable picture of the fair housing needs in their communities. External data sets may be both quantitative and qualitative and examples could include:

- Home Mortgage Disclosure Act data;
- loan modification information;
- reverse mortgage data,
- foreclosure locations, locations of accessible housing, location of housing by size,
- insurance rates/redlining data,
- number and resolution of HUD and Fair Housing Assistance Program complaints,
- zoning and land use policies,
- fair housing investigation and testing results,
- results of Fair Housing Incentive Program grants,
- patterns of occupancy recommendations, surveys, and
- citizen narratives.

It is not necessary that HUD actually provide access to any and all additional resources, but it should make grantees aware of other available resources and suggest where they might be accessed.

The data sets HUD intends to provide are a good start but they are unlikely to capture the nuances of fair housing needs in individual communities. A real commitment to affirmatively furthering fair housing and the objectives of the Fair Housing Act require the grantee to identify specific problems at the most local level. This will require information beyond the department's proposed data sets.

Recommendation 3: HUD should require that grantees maximize citizen participation in every stage of the assessment process by: 1) creating an affirmative marketing plan for every event open to the public; 2) publishing all materials and reports in plain language, and in multiple languages; and 3) making all comments on the process available to the public.

The proposed rule requires a citizen participation plan to be incorporated into the generation of all assessments and plans. The proposed citizen participation plan requires grantees to engage in a consultation phase with public and private agencies to gain an understanding of their

community's housing needs. The National Community Reinvestment Coalition applauds HUD for including this component, but there are additional ways to make citizen participation even more central to the affirmatively furthering fair housing process.

NCRC recommends that grantees be required to maximize citizen participation in every stage of the assessment process by: 1) creating an affirmative marketing plan for every event open to the public; 2) publishing all materials and reports in plain language, and in multiple languages; and 3) making all comments on the process available to the public.

First, during the consultation phase, grantees should engage in and develop an affirmative marketing plan for activities related to the public participation process that includes an assessment and identification of possible stakeholders. This plan should be submitted to HUD as evidence of the planning and action steps the grantee undertook to ensure that maximum community participation among stakeholders occurred.

Second, all of the marketing materials and other materials associated with affirmatively furthering fair housing compliance should be published in plain language so that they can be understood even by those with no expertise in fair housing. In addition using plain language, these same materials should be translated and published in languages that are most relevant to the grantee's community.

Third, all comments should be recorded and made available to the public for review.

Understanding fair housing needs must go beyond data analysis and involve input from those individuals who have first-hand knowledge of the existing hurdles and barriers in their communities. An aggressive outreach campaign is necessary to ensure that those individuals with concerns are heard. No one should be prevented from participating in the process and from providing valuable insight into the fair housing barriers in a community because of a comprehension or language barrier.

Recommendation 4: HUD should require grantees to identify quantifiable and reasonable fair housing performance benchmarks as part of their assessments.

The proposed rule requires grantees to identify long-term fair housing goals, but it does not require them to establish more specific action steps or benchmarks in the interim to gauge success.

NCRC recommends that HUD requires grantees to identify quantifiable and reasonable performance benchmarks. It is critical that these benchmarks be attainable. Though demographic shifts are unlikely to occur in the span of a few years, there are action steps grantees can take that will demonstrate a real commitment in the short term. For example, grantees could repeal discriminatory ordinances, engage in fair housing testing, or monitor the community's financial institutions for discriminatory practices.

Fair housing barriers are too important to be evaluated and considered only every few years. Benchmarks will force communities to identify and combat housing discrimination in the short term and the long term.

Recommendation 5: HUD must consider the resources that will be required to enforce each proposed requirement of the Affirmatively Fair Housing Rule and ensure that it has those necessary resources in place.

The proposed rule requires that all Affirmatively Furthering Fair Housing documents must be submitted to HUD for review. In its Regulatory Impact Analysis of the rule, HUD acknowledges that the “proposed rule will place an additional burden on HUD staff.”

While the requirements of the new rule are necessary to realize the goals of the Fair Housing Act, they place an additional up-front burden on an already understaffed agency. NCRC is concerned that, without additional resources during the implementation of the proposed rule, HUD will be overwhelmed and may not be able to provide the technical assistance, enforcement, or review necessary to meet the new standards it set out.

NCRC recommends that HUD ensure that it will have all necessary resources in place so that HUD’s staff is not overwhelmed by the requirements of the Affirmatively Furthering Fair Housing rule. Any rule that holds communities accountable for ensuring that fair housing needs are met must be enforced rigorously and that enforcement requires adequate resources.

Recommendation 6: HUD must make clear that grantees may, and should, use independent outside consultants when preparing documents required by the Affirmatively Furthering Fair Housing rule.

Many stakeholders have approached NCRC with the question of how consultants may be used, if at all, under the new rule. The proposed rule does not explicitly bar grantees from engaging outside consultants to help them develop their assessments and other documents, including the Consolidated Plan and the Public Housing Agency Plan, but it does not make clear that grantees may, and in some cases should, engage consultants to develop these materials.

It is critical that grantees engage independent outside consultants for two reasons. First, a self-assessment involves an inherent conflict of interest. The purpose of the assessment is to identify impediments to fair housing and even violations of the Fair Housing Act. Employees may fear consequences of calling out practices that do not affirmatively further fair housing, or that reflect poorly on the local government or the community generally. An independent assessment of a community’s fair housing barriers is necessary to generate a report that is accurate and disinterested.

Second, engaging independent outside consultants is critical because not every grantee will have the in-house resources or knowledge to complete a sufficiently detailed. Consultants have specialized knowledge and other resources that allow them to make more detailed and helpful assessments of fair housing needs and impediments in communities. This is particularly true of data analysis, which takes some training to understand the patterns that indicate discrimination. This is especially important when discrimination takes on more subtle, but equally harmful, forms.

Of course, an independent entity is only as valuable as it is actually independent. The value of using outside consultants is increased if they are selected through an open and competitive bidding process. HUD could take the lead in this by establishing a portal through its website that would host grantee RFPs and consultant profiles.

NCRC recommends that HUD provide additional clarity on this issue by stating in clear language within the proposed rule that grantees may, and should, make use of outside consultants in developing the grantees' assessments and other documents required by the proposed rule.

***Recommendation 7:** HUD should continue to develop more robust and innovative tools that will be available to help communities better identify fair housing issues.*

Finally, under the proposed rule, HUD is providing a geospatial tool that will allow grantees and the public to map patterns of discrimination in specific geographic areas. NCRC applauds HUD for developing this technology and encourages the department to continue building out the technology to provide for even more detailed mapping capabilities. With HUD's continued focus, improved technology will provide grantees with a more complete picture of the factors that lead to housing discrimination.

Conclusion

NCRC and our more than 600 member organizations appreciate the opportunity to share our views on the proposed Affirmatively Furthering Fair Housing rule. If you have any questions or need additional information regarding our comment, please do not hesitate to contact me or David Berenbaum, NCRC's Chief Program Officer, at (202) 464-2731.

Sincerely,



John Taylor
President and CEO
National Community Reinvestment Coalition