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1903-1990

September 17, 2013

Ms. Camille Acevedo,  
Associate General Counsel for Legislation and Regulations  
Regulations Division, Room 10276  
Office of the General Counsel  
Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410-0500

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

Dear Ms. Acevedo:

Woodstock Institute and the undersigned organizations support the proposed improvements to regulations that carry out the Fair Housing Act's requirement to ensure that all federal agencies administer their programs relating to housing and community development in a manner that affirmatively furthers fair housing. We commend HUD for undertaking a multi-year effort to seek and obtain the views of a wide range of stakeholders. The proposed rule changes are an important step forward toward the goal of equal opportunity, but we believe that the final rule could be strengthened by:

1. Extending the review period and creating a mechanism to enable advocates to appeal HUD decisions to accept Assessments of Fair Housing (AFH).
2. Specifying that grantees are encouraged to use additional data sources in the analysis section of the AFH.
3. Requiring grantees to establish public benchmarks in the AFH that would be reviewed and updated on an annual basis.
4. Clarifying that fair housing efforts should limit concentrations of protected classes near community liabilities.
5. Requiring annual performance reports indicating actions carried to address goals in AFH.
6. Clarifying that all of a participants' housing and community development resources, not just HUD resources, must be assessed in an AFH.
7. Requiring that the AFH is posted clearly on a participant's website.
8. Requiring that participants consider regional housing needs in their AFH.

## About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance.

## Comments on proposed rule

Woodstock Institute and the undersigned organizations applaud the many proposed regulatory improvements. For example, HUD proposes replacing the ambiguous Analysis of Impediments (AI) with an AFH that will have defined elements and that will spell out specific fair housing “issues” that fund recipients must identify, prioritize, and take proactive steps to address. Rather than drafting an AI in a vacuum only to sit on a shelf, we welcome the proposed rule’s requirement to develop the AFH with input from the community and from stakeholder organizations for submission to HUD for review and acceptance prior to receipt of some HUD program funds. The obligation to affirmatively further fair housing will be strengthened by a clearer and more direct inclusion of affirmatively furthering fair housing considerations and the AFH in the Consolidated Plan and PHA Plan processes for establishing fund allocation priorities.

While there are a number of other features of the proposed rule that Woodstock Institute endorses, we take this opportunity to offer suggestions necessary to strengthen a final rule.

- 1. The review period should be extended and should provide a mechanism in the final rule enabling advocates to appeal to HUD Headquarters a decision by the local HUD office to accept an AFH.** As written, the proposed rule allows HUD only 60 days to review an AFH and, if HUD does not reject it within that review period, the AFH is approved by default. In its Regulatory Impact Analysis, HUD acknowledges that the “proposed rule will place an additional burden on HUD staff.” The rule, therefore, should provide sufficient time for review, at least 120 days, to allow HUD staff the opportunity to thoroughly review each AFH submitted, which will be in addition to the duties they already have. The rule should also require an affirmative decision by HUD staff that the AFH either complies with the rule or does not comply with the rule, rather than allowing for approval by default. The decision, whether accepting or rejecting the submission, should be specifically designated as the event that is the basis for advocates or the community to appeal the decision to HUD headquarters.
- 2. HUD should specify in the rule that grantees are encouraged to use additional data sources, beyond those provided by HUD, to assess housing needs and that failure to do so may affect the determination whether the AFH complies with the rule.** This modification would make clear that the data provided by HUD are only a base, and that grantees should include additional data in the AFH to present an accurate and comprehensive assessment of local conditions. Additional data that could illuminate fair housing needs include but are not limited to Home Mortgage Disclosure Act data, foreclosures and loan modifications, and fair housing investigation and testing results.
- 3. The final rule should require grantees to establish benchmarks in the AFH to enable the public and HUD to measure annual progress toward realizing fair housing goals.** In addition, the benchmarks need to be reviewed and updated as part of an annual evaluation of progress toward longer term fair housing goals specified in the AFH. The goals that a grantee establishes in its AFH reflect the conditions existing at the time of the assessment, but significant demographic shifts can occur within relatively short periods of time. An annual progress review will show whether the

grantees is making adequate progress toward attaining its long-term goals, and it will also provide an opportunity to review and adjust the goals to reflect changes in the community which may have occurred after the AFH was submitted and approved.

4. **The final rule should clarify that fair housing efforts should limit concentrations of protected classes near community liabilities.** The proposed rule refers to reducing racial and ethnic concentrations of poverty, as well as reducing disparities in access to community assets. First, the rule should make clear that fair housing includes not only access to community assets but also not being relegated to areas disproportionately proximate to community liabilities, such as landfills, sources of pollution, and other locally undesirable land uses. The rule should also state explicitly that, while devoting resources to improve areas of concentrated racial or ethnic poverty by funding activities and implementing policies to foster mixed race/mixed income occupancy is encouraged, the policies must include measures to mitigate the potential for involuntary displacement of existing residents.
5. **The final rule should require program participants to publish annual reports on the implementation of AFH goals.** The final rule does not modify the Consolidated Plan and Public Housing Authority Plan performance reporting regulations. The final rule should require annual performance reports indicating actions carried out to mitigate or address each of the goals in the AFH, describing the results of those actions and specifying which fair housing issues were impacted and how they were impacted.
6. **The final rule should be far more explicit that all of a program participant's housing and community development resources, as well as its policies, practices, and procedures must be assessed in the AFH and in any certification that it is affirmatively furthering fair housing.** As written, the proposed rule could be misunderstood to only consider use of HUD funds.
7. **The proposed and final AFH, as well as related information used to create the AFH, should be posted on a readily apparent webpage of the program participant.**
8. **The final rule should require participants to consider regional housing needs in their AFH.** The most crucial omission in the proposed rule is allowing municipalities the option of taking a regional approach to affirmatively furthering fair housing rather than mandating consideration of regional needs for increased housing opportunity for members of protected classes. This flaw allows affluent communities that have effectively excluded members of protected classes to continue excluding them because they have no existing concentrations of class members who are being denied fair housing. A program participant could argue, for example, that it has no need to allow the development of additional subsidized housing that might be affordable for protected class members because it had no existing residents who would be income-eligible. The AFH and certifications must also require participants to develop and track benchmarks to assess whether the program participant is furthering fair housing in the region, as well as within its own boundaries.

Sincerely,

Dory Rand  
President, Woodstock Institute

Coalition for Community Banking

Katelyn Johnson  
Executive Director, Action Now Institute

Rose Mary Meyer  
Director, Project IRENE

Cathy Palmer  
President, Global Network Community Development Corporation

Jay Readey  
Executive Director, Chicago Lawyers' Committee for Civil Rights

James Rudyk  
Executive Director, Northwest Side Housing Center

Lori R. Vallelunga  
President and CEO, Bethel New Life