



To: John D. Trasviña
From: Kathleen K. Clark, President
Chicago Area Fair Housing Alliance
Re: Affirmatively Furthering Fair Housing

The Chicago Area Fair Housing Alliance (CAFHA) is pleased that HUD conducted a listening session to obtain suggestions on the Department's process for ensuring that recipients of HUD funding administer their programs in a manner that affirmatively furthers fair housing. We especially appreciated and enjoyed meeting you at the Chicago reception last week.

CAFHA has long advocated for affirmative policies and programs at all levels of government, in the housing industry, and through individual action. Thus, we present these comments for HUD's consideration in order to produce a comprehensive and effective policy on performance standards for affirmatively furthering fair housing. For far too long, HUD has relegated this issue as a low priority. As we begin the 42nd year since the passage of the Fair Housing Act, CAFHA members believe that lasting and meaningful progress on fair housing can best occur if the federal government ensures that its housing policy promotes and encourages a more integrated and inclusive society. We are encouraged and excited by your attention to the full implementation of the Fair Housing Act.

Since the passage of the Fair Housing Act in 1968 (the Act), Congress and the judicial branch have clearly stated that the affirmative furthering of fair housing is a means to achieve an integrated housing market, and consequently an integrated society. Indeed, the stated goals of the Act were recorded in the legislative history to include extinguishing ghettos and promoting integration.¹ These records have been repeatedly confirmed by the Act's principal authors, Senators Brooke and Mondale, in various speeches and writings. The courts have also confirmed, in numerous cases, that affirmative furthering involves policies, programs, and practices that promote and lead to integration and/or desegregation.² Thus, CAFHA is hopeful that the executive branch is considering the means to effectively execute affirmative furthering of fair housing in federal housing programs.

General Recommendations

All housing programs, include tax credit programs, should be required to report data similar to the requirements for Section 202 or Section 236 developments, meaning race/national origin, gender, income and disability. Such data is critical in order to allow grantees, and HUD, to measure progress on integration.

Public notices that recipients of HUD funds must comply with the Fair Housing Act should clearly state that this includes affirmative furthering of fair housing. Unfortunately, many recipients of HUD funds believe that compliance only requires the avoidance of discrimination. HUD could clarify this by simply adding wording such as “including the duty to affirmatively further fair housing.”

Program Recommendations

Community Development Block Grants and Related Housing Entitlement Programs

Entitlement jurisdictions and their sub-recipients (Jurisdictions) that receive entitlements, including CDBG, do little to affirmatively further fair housing as required.¹³ Actions to promote integration or even an increase in the diversity of a community are rare. Moreover, the communities that take these actions almost always have a significant African American population. Communities with predominantly white-non Latino populations typically do little or nothing to encourage increased diversity, promote welcoming perceptions, or attempt to foster inclusive community structures.

This failure has resulted in huge missed opportunities to address the structural forces that perpetuate segregation. HUD should require county- and local-level Jurisdictions to determine which protected groups are under-represented in their Jurisdictions compared to the region as a whole. Jurisdictions should then identify actions they will take to affirmatively market their communities. In addition, Jurisdictions should explain how they will attempt to encourage an integrated demand for housing within their boundaries. In rare cases where the diversity of a Jurisdiction approximates the diversity of the region, the community should still be required to identify a strategy to improve or sustain integration.

HUD should incentivize this process by requiring a certain percentage of resources to be expended in working toward the desired outcome of integration. HUD should require that a higher percentage of resources be expended by Jurisdictions that are not very diverse or are very segregated, compared to their region, and especially those communities with histories of policies and practices restricting housing choice (i.e., "sundown towns").

State Jurisdictions should be required to analyze regional patterns of segregation and inequality. Their analyses should be used to inform local and county efforts to promote integration. States should also prioritize community development dollars to low-

opportunity areas where disinvestment has left few employment options and eroded tax bases.

Regarding persons with disabilities, HUD should require all Jurisdictions to include accessible design features in their building codes. This will further the goals from the 1988 Amendments to the Act.

Low Income Housing Tax Credit (LIHTC) Program

HUD's Moving to Opportunity program found that 25% of low-income public housing residents would volunteer to use vouchers to move from public housing to higher opportunity communities if given the chance.⁴ In the Chicago region, this concurs with the experiences of Gautreaux program participants. Through the initial Gautreaux program, 7,100 families made affirmative moves from public housing to communities with lower concentrations of poverty. Most of the participants reported satisfaction with their moves because of the improved opportunities in their new communities.⁵

However, the production of affordable family housing is almost exclusively in low-income and minority communities.⁶ Research has analyzed the lack of affirmative furthering of fair housing in the LIHTC program.⁷ Through tax credits to for-profit and non-profit developers of affordable housing, the LIHTC program now provides the largest source for low-income housing units in the nation.

Established 18 years after the Fair Housing Act required HUD to affirmatively further fair housing in all federal housing programs, the affordable housing produced by the LIHTC program has been predominantly located in poor communities with high minority populations. Those units located in higher-opportunity areas are mostly senior housing developments that largely exclude opportunities for low-income and minority families.

Because the LIHTC credits are an important part of low-opportunity community development efforts, it may be harmful to use them solely in high-opportunity communities. However, the MTO and Gautreaux experiences suggest that 50-75% of new LIHTC units should be developed in higher-opportunity communities until 25% of all LIHTC units are located in high-opportunity areas.

Thus, developments built under the LIHTC program should be required to affirmatively further fair housing, and to report sufficient data (as done for Section 202 and 236 programs) so that progress can be measured.

Mobility for Housing Choice Voucher Holders

The Gautreaux Program has clearly shown that when voucher holders have the choice to move to opportunity many will opt for high-opportunity communities. It has also proven to be effective in breaking the cycle of inter-generational poverty. Moreover, subsequent mobility projects such as those established as remedies in the Walker and Thompson cases, have proven to have a positive impact on the lives of voucher holders

and improve integration. Unfortunately, these sorts of programs have, to date, required a lawsuit to initiate.

HUD should mandate mobility counseling for all housing voucher programs. Furthermore, voucher programs should be coordinated in a regional fashion to remove arbitrary barriers to opportunity created by multiple housing authorities and portability aggravations. Indeed, it may well be that the most effective way to further fair housing would be to add source of income as a protected class so that voucher holders would have greater access to housing choices in high-opportunity areas. This policy would include the additional benefit of improved protection for people of color and families with children who often face discrimination by proxy of source of income.

Housing Choice Vouchers for Persons with Disabilities

Although disability occurs among all ages, racial, ethnic and economic groups, it is more predominant among the elderly and minorities. For example, 36.8% of people over age 64 have a disability that limits their ability to care for themselves, compared with 9.7% aged 16-64. Notably, 26.4% of African-Americans and 24% of Latinos have a disability, compared with 16.8% of whites, a significant disparity.⁸ In Cook County, over 300,000 African-Americans – one in four – have a disability, as do 17% of Latinos.⁹

Available census data also shows that the residential segregation of people with disabilities in Cook County parallels that of African-Americans and Latinos. Census tracts show that the greatest percentages of the disabled are concentrated almost entirely to the south and west of downtown Chicago, in neighborhoods that are over 80% African-American, as well as northwest and southwest of downtown, in neighborhoods that are over 72% Latino.¹⁰

Although housing discrimination is devastating to all protected classes, it hits with additional force against people with disabilities because their housing options are so limited. Three entrenched factors combine to choke their housing opportunities: (a) discrimination; (b) the dearth of affordable housing; and (c) the lack of accessible housing. This three-tiered punch presents a daunting challenge to persons with disabilities who seek housing.

In that HUD is increasingly relying on housing choice vouchers, and since the use of these vouchers by persons with disabilities presents special challenges due to the lack of affordable and accessible housing units in the private market, HUD should establish a well-funded national modification fund to pay for reasonable modifications that are necessary to make private units accessible (or if not fully accessible, at least usable by people with disabilities).

In accord with the Supreme Court's Olmstead decision:¹¹

HUD should require public housing authorities to set local preferences for public housing units and designate vouchers for people with disabilities who are leaving institutions;

HUD should issue a policy requiring that a portion of HOME funds be designated as rental assistance for use by people with disabilities who are leaving institutions; and

Over the next several years, HUD should dramatically increase the number of vouchers it issues for the exclusive use of persons with disabilities and a portion of such vouchers should be designated for those leaving institutions.

Because HUD does not effectively monitor the provision of housing choice vouchers to people with disabilities, HUD must ensure that vouchers that are supposed to be used by people with disabilities are, in fact, only used by people with disabilities, and that when such vouchers turn over, the new user is a person with a disability.

Ending the Segregation of Persons with Disabilities

Despite Section 504's and the Fair Housing Act's proscription against disability-based discrimination, HUD's own programs segregate people with disabilities into congregate settings, which advocates characterize as "housing silos." For example, 811 properties are specifically and exclusively for persons with disabilities. By definition, these are segregated developments. Also, while some silos house a variety of disabled residents, others are specific to a particular kind of disability, such as a mobility disability, developmental disability, or psychiatric disability. In any way, shape or form, these congregate settings are segregated vestiges of the past.

Relatedly, some housing silos link mandatory services with residency. Residents are forced to eat meals on-site and at particular times, to use in-house personal attendants, attend certain counseling/training programs, and accept other forms of mandatory services. This linking reflects an archaic and patronizing attitude about people with disabilities and compromises their control and independence.

Entities that use HUD funds to create and manage housing silos segregate people with disabilities into disability "ghettos." These ghettos are adverse to the principle of integrated housing, compromise the entities' obligation to affirmatively further fair housing, and must be eliminated.

Analyses of Impediments to Fair Housing Choice (AIs)

AIs should provide an opportunity for HUD and Jurisdictions to take pro-active steps to promote diversity and integration. Unfortunately, AIs often have little substance and rarely result in the affirmative furthering of fair housing. This is partly due to the fact that AIs are heavily focused on process with little emphasis on outcomes. HUD should

revise AI guidelines to stress results, including increased diversity and improved integration. This can only happen if action plans based on the AIs are developed, followed, evaluated, and reported on.

Moreover, AIs also tend to focus on affordable housing rather than fair housing. While it is possible that affordable housing development could improve diversity and integration, it is unlikely this would occur without complementary affirmative marketing. HUD should require that any suggestions to provide affordable housing as a remedy to segregation will be linked to an affirmative strategy to increase diversity and/or improve integration in the region.

AIs should also require Jurisdictions to analyze zoning and occupancy codes to ensure that they do not restrict housing development, especially multi-family, affordable, or rental housing development.

Since the housing market is dynamic, Jurisdictions should be required to update their AIs every five years to account for changes in demographics, affordability, and supply and demand.

After 41 years of the Fair Housing Act, racial segregation still dominates America's metropolitan regions. CAFHA sincerely hopes that HUD will prioritize the affirmative furthering of fair housing and develop an enforceable outcome-oriented policy to promote integration. The result will be a more inclusive and competitive nation.

¹ 114 Congressional Record 3422 (1968)

² NAACP, Boston Chapter v. HUD, 817 F.2d 149 (1 Cir. 1987). Additional case law support includes Otero v. New York City Housing Authority, 484 F.2d 1122, 1134 (2d Cir. 1973); Shannon v. HUD, 436 F.2d 809, 816, 821-23 (3d Cir. 1970); Hills v. Gautreaux, 425 U.S. 284, 286-292, 296 (1976); Walker v. HUD, 734 F. Supp. 1231 (N.D. Tex. 1989); Thompson v. HUD, 220 F.2d 241, 245 (4th Cir. 2000); and Wallace v. Chicago Housing Authority No. 03 C 0491 (N.D. Ill. June 2, 2005)

³ Breymaier, Rob and Brian White. Empty Promises. This study showed that only a few of the scores of CDBG recipients and sub-recipients in the Chicago region had any active role in affirmatively furthering fair housing. This pattern is confirmed consistently in comments from fair housing organizations across the nation. (2005)

⁴ Goering, John and Judith Feins, eds. Choosing a Better Life? Evaluating the Moving to Opportunity Demonstration. Urban Institute. (2003)

⁵ Rubinowitz, Leonard and James Rosenbaum. Crossing Class and Color Lines: From Public Housing to White Suburbia. University of Chicago Press. (2000)

⁶ Reece, Jason. Low Income Family Housing and Poverty. Kirwan Center on Race and Ethnicity. (2006)

⁷ Tegler, Philip D. "Segregation in Housing Programs" in Briggs, Xavier ed. *The Geography of Opportunity*. Brookings Press (2005); Roisman, Florence. *Mandates Unsatisfied: The Low-Income Housing Tax Credit Program and Civil Rights Laws* *University of Miami Law Review* v52 p1011 (July 1998); Orfield, Myron. *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit* *Vanderbilt Law Review* v58 p1747 (2005).

⁸ U.S.Census Bureau, *Disability Status: 2002*, available at www.census.gov/prod/2006pubs/p70-107.pdf.

⁹ *Id.*

¹⁰ Compare U.S. Census Thematic Maps TM-P046, TM-P004H, & TM-P004B, available at: <http://factfinder.census.gov>.

¹¹ *Olmstead v. L.C.*, 527 U.S. 581 (1999).