

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Room 10276  
Washington, DC 20410-0500  
Via regulations.gov [<http://www.regulations.gov/#!submitComment;D=HUD-2013-0066-0001>]

and

Shaun Donovan, Secretary  
Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410  
Via email at: [Secretary.Donovan@hud.gov](mailto:Secretary.Donovan@hud.gov)

September 17, 2013

Re: Re: Comments to [Docket No. FR-5173-P-01] RIN No.2501-AD33  
Proposed rule Affirmatively Furthering Fair Housing

Proposed Rule Should Effectively Incorporate Affirmatively Furthering  
Fair Housing Requirements Into Disaster Recovery Action Plans

Dear Secretary Donovan:

We, the below signed fair housing and affordable housing advocates, all work in communities and regions that have suffered natural disasters to which Congress and the Department of Housing Urban Development have responded with CDBG based disaster recovery funding. We struggle to assist and advocate for the most vulnerable residents of our communities and to engage CDBG-DR grantees in recovery and rebuilding efforts that provide post disaster housing and recovery for all of the pre-disaster members of those communities.

Our experiences have forged a common appreciation of the need for the increased HUD involvement in Affirmatively Furthering Fair Housing represented by the currently proposed AFFH rule.

We urge HUD to craft, in provisions of the proposed AFFH rule applicable to disaster recovery allocations, an active, attentive and robust oversight of statutory fair housing mandates.

CDBG-DR appropriations dwarf the usual annual CDBG appropriations. DR Action Plans have, therefore, the power to drive and constrain affordable housing preservation and development in ways which overwhelm the effects of annual allocations. Without clear and definitive action by HUD, recovery processes will continue, either through neglect or by design, to purge communities of low income residents and persons of color, fail to direct resources to the rebuilding of devastated low income communities, replace traditionally affordable housing with

housing which is beyond the reach of working class and fixed income residents and pile burden upon burden on the intended beneficiaries of community development programs, by forcing workers further from their jobs, the elderly further from their health care providers and families beyond the reach of their social support networks.

While such results may not be intended, they are inevitable unless CDBG-DR grantees are required to consider each and every recovery program and action in light of this potential and to imbed, in Action Plan criteria and oversight, consideration of whether each recovery program and action will mitigate or aggravate segregative and discriminatory housing circumstances. To do otherwise is to countermand the Congressional design to use DR funds to benefit low and moderate income families and to do injustice to the civil rights and community development laws which inform the expenditure of CDBG-DR funding.

Such provisions must require that CDBG-DR grantees include a section in their Action Plans that discusses how the demographic and spatial data they are already required to include impacts the barriers identified in their current AI and the proposed AFH and/or creates any new barriers, and how the Action Plan's programs address those barriers. Such a process would combine administrative efficiency by using data already required from all CDBG-DR grantees with a process to ensure timely response to new or changed fair housing barriers with the most significant resource available to address such barriers.

Experience has shown that, barring such requirements, the above described outcomes are all too predictable.

HUD's March 5, 2013 Superstorm Sandy Allocation Notice, for instance, did direct revisions of recipient jurisdictions' Analyses of Impediments. Its weakness was that it allowed grantees years to comply, requiring only that a "[g]rant update[ ] its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update" and that it update its Analysis of Impediments to Fair housing Choice in time for inclusion in that consolidated plan. (78 FR 14339).<sup>1</sup> These years are exactly the years during which obligated recovery allocations are to be expended (Pub.L. 213-2, tit IX, §904(c); 78 FR 14331). Under these constraints, the vast bulk of what could be done to respond to storm driven alterations and exacerbations of barriers to fair housing will not even be identified until there is no cash left with which to respond. And, indeed, despite the clear expectation of the Allocation Notice that grantees will pursue fair housing, the New Jersey CDBG-DR Action Plan fails to describe how any of its programs will address a single impediment or make a single improvement in fair housing in one of the most segregated states in the country. Not surprisingly, significant fair housing problems have quickly arisen ranging from the lack of accessibility of programs and the Action Plan to Spanish-speaking New Jersey residents, to programs being designed in a way that increases, rather than addresses, racial segregation by failing to rebuilding rental stock in high-opportunity communities, to inadequate programs to address people with disabilities impacted by the storm.

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<sup>1</sup> By contrast, and emblematic of experience gained over the past decade, is the lack of any mention of analyses of impediments in the initial allocation notice related to Hurricanes Katrina, Rita and Wilma other than the requirement that the Action Plan contain the certification of AFFH.. (71 FR 7666, Feb. 13, 2006)

HUD's addition of explicit fair housing requirements to its Sandy Allocation Notice reflected the Agency's experience with CDBG-DR grantees for the 2005 and 2008 disasters.

In Louisiana, what was then called D-CDBG funded rebuilding programs throughout the state excluded renters and contributed to their prolonged and sometimes permanent displacement. In New Orleans, the failure to dedicate D-CDBG funds to rental housing, which was the majority of New Orleans' pre-Katrina housing stock, contributed to the permanent displacement of people and disproportionately of African-Americans. The 2010 census finally revealed the full impact of these decisions, and established a net loss of nearly 10% of African-Americans in New Orleans. Members of other protected classes, such as those protected on the basis of their disability status or national origin, were no better off as D-CDBG funded programs were designed to meet the needs of the least, rather than the most, vulnerable. Similarly, litigation against the State of Louisiana's Road Home program may have been avoided if the program had considered how its design would affirmatively further fair housing choice.

In Texas, Hurricanes Ike and Dolly devastated many low-income and historically disinvested minority communities on the Gulf Coast and in the Rio Grande Valley. Both Texas' initial expenditure of CDBG-DR dollars and proposed allocation of additional funds presented a number of fair housing issues, including the failure of governmental entities to consider how their funding decisions would affirmatively further fair housing, the lack of awareness of fair housing obligations, the State's failure to have an updated Analysis of Impediments to Fair Housing, and the State's failure to give disaster victims the ability to rebuild in higher opportunity areas. Resolving these issues required a Fair Housing Complaint and an exhaustively negotiated Conciliation Agreement. Many of the fair housing issues raised by natural disasters in Texas were longstanding issues - the lack of effective public drainage infrastructure in minority communities, for example - that should have been identified in any compliant Analysis of Impediments. While a significant disaster may alter conditions or raise new fair housing and civil rights issues, the experience of states on the Gulf Coast following the 2005 and 2008 disasters was that the real impact of natural disasters is to highlight and exacerbate existing inequalities. Requiring jurisdictions to have meaningful and up-to-date assessments and action plans and ensuring that this information is incorporated into disaster recovery planning will help prevent the need to fix programs midstream or after the fact.

In coastal Mississippi after Hurricane Katrina, the absence of an updated Analysis of Impediments to Fair Housing helped to mask the discriminatory effects of the State's waiver of the low and moderate income national objective for the largest and most generous homeowner grant program; exclusion of wind-damaged homeowners from assistance; and diversion of \$600 million from an unfinished housing recovery to one infrastructure project. The State treated the collection of demographic data as optional, and for years withheld spatially coded data that ultimately showed a disparate effect upon racial minorities of excluding wind-damaged homeowners from grants. Five years later, HUD and the State of Mississippi put into place a final housing repair program after advocates brought a lawsuit against HUD over the diversion of housing funds to infrastructure and presented HUD with data showing clusters of unmet need in majority African American communities. Local governments resisted the expansion of multifamily apartments outside of the pre-Katrina segregated footprint, even as they helped themselves to HUD and FEMA disaster dollars to rebuild their public structures. The fair

housing issues raised by these actions and omission would have been more successfully and quickly curtailed with a compliant Analysis of Impediments.

Proposed rule §5.164 laudably requires updating of AFHs after a disaster and other significant events, which appropriately responds to the experience after Hurricanes Katrina, Ike, and Sandy of severe changes in housing availability that have had a significant impact on protected classes. In order to be effective, however, the update process must include specific criteria and time limits within which the AFH revisions must be made so that AFFH is a primary driver of Action Plan programs rather than an afterthought, or worse, simply one of the numerous certifications accompanying Plan submissions. And HUD must ensure, through the exercise of its authority to partially or wholly disapprove Action Plans submitted by potential grantees, that Action Plans must incorporate such criteria and timing.

Finally, in some cases it could be many years until an AFH is required of some jurisdictions under the proposed rules. Given the near certainty that disasters warranting federal intervention will occur during those years, similar requirements should apply based on the existing AI system.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD to ensure an effective rule to guide this important rule.

Very truly yours,

Adam Gordon, Fair Share Housing Center;

Maddie Sloan, Texas Appleseed;

James Perry, Greater New Orleans Fair Housing Action Center;

Reilly Morse, Mississippi Center for Justice;

Staci Berger, Housing and Community Development Network of New Jersey

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