



September 16, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, D.C. 20410-0500

Via regulations.gov [<http://www.regulations.gov/#!submitComment;D=HUD-2013-0066-0001>]

Re: Docket No. FR-5173-P-01, Affirmatively Furthering Fair Housing

The Massachusetts Association of Community Development Corporations (MACDC) strongly supports HUD's effort to strengthen the implementation of the Fair Housing Act so that it more effectively advances the Act's goal of providing all Americans with a fair opportunity to obtain the housing they desire in the community where they wish to live. We further support steps to ensure that local, regional and state jurisdictions affirmatively further fair housing in a meaningful way that gets results. We believe the proposed rule includes many important improvements over current practice, but we also have some concerns the proposed rule, as implemented, may unwittingly undermine the goals of creating more diverse and inclusive communities and greater choice for families and individuals.

MACDC is an association of mission-driven community development organizations dedicated to working together and with others to create places of opportunity where people of diverse incomes and backgrounds access housing that is affordable, benefit from economic opportunities, and fully participate in the civic life of their community. We achieve this by building and supporting a high performing and adaptive community development sector that is supported by private and public investment and sound public policies. Founded in 1982, MACDC currently has 88 members, including 60 CDC members and 28 associate members.

MACDC offers the following comments on the proposed rule:

1. We commend HUD for undertaking a multi-year effort to obtain the views of a wide range of stakeholders, through vigorous public participation requirements. The proposed rule changes are an important step forward toward the goal of equal opportunity.
2. MACDC applauds the proposed regulatory improvements, such as replacing the ambiguous Analysis of Impediments (AI) with an Assessment of Fair Housing (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. 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.
3. We strongly support the enhanced public participation procedures included in the rule.

4. We urge HUD to clarify a part of the final rule that, if not properly addressed, risks isolating and alienating poor neighborhoods and undermining fair housing goals the rule is intended to support. The proposed rule frequently refers to reducing racial and ethnic concentrations of poverty, as well as reducing disparities in access to community assets. Although the opening statement of purpose in the proposed rule indicates that use of resources in concentrated areas of poverty is permissible, it is far from adequate. The statement reads:

“A program participant’s strategies and actions may include strategically enhancing neighborhood assets (for example, through targeted investment in neighborhood revitalization or stabilization) *or* promoting greater mobility and access to communities offering vital assets such as quality schools, employment, and transportation consistent with fair housing goals.”

In the final rule, changing the “or” to an “and” would strengthen HUD’s stated intention to encourage ‘both/and’ strategies in alleviating concentrated poverty. Residents of Racially or Ethnically Concentrated Areas of Poverty (RCAPs or ECAPs) will be best served by a strategy that provides for targeted investment in these communities and increased access to housing in other communities.

Furthermore, the final rule must clearly reinforce the acceptability of the first option throughout the *entire* text of the final rule, including in the definition of “affirmatively furthering fair housing”, the definition of “fair housing choice”, and in the opening subsection pertaining to the Assessment of Fair Housing.

The final rule must clearly indicate throughout that affirmatively furthering fair housing may involve investing resources to improve areas of concentrated racial and ethnic poverty by funding activities and implementing policies that foster mixed-race/mixed-income occupancy, and that augment access to essential community assets for protected class residents who wish to remain in their communities – while protecting them from the forces of displacement. Failing to make this change will undermine the types of comprehensive investments that HUD is currently championing in a variety of forms including the Choice Neighborhoods Initiative and the Rental Assistance Demonstration program. More importantly, leaving the Rule intact could lead to one of two bad outcomes in many RCAP and ECAP neighborhoods:

- a. In some regions with weaker housing markets, we could see RCAP and ECAP neighborhoods deteriorate even further and become even more racially and economically concentrated. Without public investment there will be little to no private investment. Without investment, it will be difficult, if not impossible, to attract white and middle income people to those neighborhoods, thereby ensuring long term racial and economic isolation. We have seen this before when the Federal Government and the banking industry “redlined” poor neighborhoods and discouraged investment. We don’t think that the new Fair Housing Regulation should repeat that mistake. (We note that HUD’s data mapping tool marks RCAPs and ECAPs in red, literally redlining these neighborhoods on the HUD map).
- b. In regions with stronger real estate markets, a failure to build affordable housing in RCAP and ECAP neighborhoods could leave them vulnerable to gentrification and displacement. Many Boston neighborhoods are deeply concerned about this risk. For example, in

Chinatown the construction of hundreds of luxury units the past decade has certainly reduced racial and economic concentration, but it has also resulted in displacement and disruption to a closely knit community that provides critical support to immigrant families.

5. We support HUD's efforts to make our fair housing efforts more data driven. The new HUD data set and website should be very helpful to local jurisdictions. However, any national data set runs the risk of missing important local context. For example, in Boston families get to choose from a wide number of schools – not just those in close proximity to their homes. In fact, families can choose from over 30 high schools across the City. Many of our Charter Schools enroll students from across a wide geography and our Metco Program enables Boston and Springfield residents to access more school opportunities. We also question HUD's ability to accurately evaluate the quality of every public school in America in a way that accurately reflects the opportunities available to neighborhood families. Moreover, while many assets can be mapped nationally, many others cannot. Proximity to cultural opportunities, religious institutions, parks, and family all drive housing choices yet cannot be consistently mapped across the nation. Therefore, it is important that HUD enable local jurisdictions to use their own local data to fine tune their analysis and understanding of these dynamics. Regional planning agencies can play a critical role in this process, as can the public participation processes included in the proposed rule.
6. To truly advance the Rule's twin goals of creating more diverse and inclusive communities and expanded opportunity and choice for families, HUD must work with other Federal Agencies to ensure that the Affirmatively Furthering Fair Housing goal is applied to policies in transportation, education, economic development and other Federal Agencies. This is not just a housing issue.
7. HUD needs to recognize that the vast majority of low-income families, including low-income families of color, do not live in publicly-subsidized housing. When a jurisdiction develops its AFH, it should articulate how its strategy might incentivize and enable more people of color to move to currently "white" neighborhoods and vice versa. We believe this means creating a more diverse housing stock in upper income communities and marketing those to people of color while also making lower income communities more attractive to moderate and middle income households. Public investment needs to catalyze private investment and the private market.
8. MACDC supports the development of affordable housing in Suburban Communities and other neighborhoods that currently lack affordable housing. However, for such housing developments to help "move the diversity needle" they must attract people of color to live in them. Developers/owners should be required to implement effective marketing strategies and get real results. We know that today's patterns of racial segregation are not entirely explained by income so the mere creation of affordable housing will not automatically increase racial diversity. In fact, a shift in housing resources from RCAP and ECAP neighborhoods to "white" neighborhoods could also result in a significant shift in housing subsidies from families of color to white families. It would be disappointing if an attempt to create greater diversity and inclusion resulted in merely reallocating limited housing subsidies from families of color to white families. Indeed, jurisdictions could be caught in a Catch-22 whereby the failure to allocate housing to "white" neighborhoods would violate the Affirmatively Furthering Fair Housing requirement, and the allocation of housing subsidies to

“white” neighborhoods violates the Disparate Impact rule by shifting subsidies from families of color to “white” families. (Even if the jurisdiction does not intend to harm families of color, if the impact of their decision does so it may violate the Disparate Impact rule.) Therefore, HUD will need to collect data about the residents to determine if housing developments in upper income communities are attracting people of color.

MACDC commends HUD for its aggressive efforts to promote fair housing across the United States. We offer these comments in the spirit of making these efforts more impactful, effective, and equitable. Please contact me at 617-379-5922 or at joek@macdc.org, if you have any questions about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Kriesberg".

Joe Kriesberg
President and CEO