



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Fair Housing and Equal Opportunity
Midwest Regional Office, Region V
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard – Room 2101
Chicago, Illinois 60604-3507

Received In

07/22/2014

AUG 01 2014

Ken Zika, Board Chair
Peoria Housing Authority
100 South Richard Pryor Place
Peoria, Illinois 61605-3905

Executive Offices

Re: Affirmatively Furthering Fair Housing and Taft Home Redevelopment

Dear Mr. Zika:

The Peoria Housing Authority (“PHA”) requested the U.S. Department of Housing and Urban Development (“HUD”) to respond to several questions it presented regarding its obligations, as a receipt of Federal funds, to affirmatively further fair housing (“AFFH”) under Title VIII of the Civil Rights Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §3601, *et seq.* (the “Act”).

Local governments and States that receive Community Development Block Grants (“CDBG”), HOME Investment Partnerships (“HOME”), Emergency Solutions Grants (“ESG”), and Housing Opportunities for Persons With AIDS (“HOPWA”), as well as public housing agencies (“PHAs”) are required to affirmatively further the purposes of the Act. Courts have interpreted the requirement as a mandate not only to avoid making decisions that have the effect of creating segregation patterns, but as a mandate to reverse those patterns. In other words, there is an affirmative duty not only to refrain from discriminating or aiding discrimination, but “action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat.”¹

On July 19, 2013, the Department published a proposed rule in the Federal Register entitled Affirmatively Furthering Fair Housing (the “Rule”).² The Rule has not yet been finalized, and at this point, HUD cannot provide additional information regarding when the Rule will go into effect. Once it does, however, it will provide an improved structure and process by which recipients can meet their obligations. Nevertheless, the Department would like to emphasize that the obligation to AFFH does not commence with the publishing of the final Rule; rather, it has been in effect since the enactment of the Act.

¹ *Otero v. N.Y. City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).

² 24 C.F.R. Parts 5, 91, 92.

As part of fulfilling the fair housing requirements of the Consolidated Plan and the CDBG regulations, recipients conduct an Analysis of Impediments (“AI”) and undertake activities to correct the identified impediments. The City of Peoria (the “City”) submitted its 2014-2018 Consolidated Plan to HUD, and the plan has been approved. Also, the City is currently in the process of finalizing a Regional AI with the City of Pekin.

When considering building or rebuilding public housing, PHAs should review the Consolidated Plan and the AI submitted by their jurisdiction. All redevelopment activities must be consistent with the aforementioned documents. Furthermore, PHAs should review the Fair Housing Planning Guide.³ PHAs are tasked with building housing with the goal of improving integrated living patterns and overcoming historic patterns of segregation; reducing racial and ethnic concentrations of poverty; reducing disparities by race, color, religion, sex, familial status, national origin, or disability in access to community assets such as education, transit access, and employment; and responding to disproportionate housing needs by protected class.

The City’s Regional AI states that the PHA is “examining the possible redevelopment of Taft Homes” and that “the possible deconcentration effort could result in increased access to opportunity for residents of the units.”⁴ The AI also indicates that “while no final decisions have been made, it is possible that the current housing could be split up among several different sites and that additional housing units can be added.”⁵

Placement of new or rehabilitated housing for lower-income persons is a crucial issue. If fair housing objectives are to be achieved, the goal must be avoiding high concentrations of low-income housing and providing access to opportunity. The goal of AFFH governs these decisions. Potential issues that jurisdictions should review when making development and redevelopment decisions, include, but are not limited to: (1) whether there are concentrations of low- and moderate-income housing in one or more localities or neighborhoods within the jurisdictions’ geographic area; and (2) whether the jurisdictions adopted policies and procedures that promote the placement of new or rehabilitated housing for lower-income households in a wide spectrum of neighborhoods.

PHAs also need to keep in mind that an important aspect of fair housing choice is neighborhood revitalization and services available to areas in which low- and moderate-income families live. Often, the quality or extent of public services and facilities varies dramatically among residential neighborhoods. Based on the Regional AI, this applies to the City of Peoria, as well.⁶ Public services and facilities include schools, recreational facilities and programs, social service programs, parks, roads, transportation, street lighting, trash collection, street cleaning, crime prevention, and police protection activities. Lower-income, densely populated residential areas often lack the level and array of services that are provided in more affluent neighborhoods. In Peoria, public housing units are disproportionately located in racially or ethnically concentrated areas of poverty (“CAPs”).⁷ Furthermore, “none of the CAP census tracts are fully located within

³ <http://www.hud.gov/offices/fneo/images/fhpg.pdf>.

⁴ Regional AI at 21.

⁵ Regional AI at 116.

⁶ The City’s AI indicates that in the City of Peoria “groups with higher incomes live in areas that provide greater opportunity” and that “groups with lower incomes live in areas that provide less opportunity.” Regional AI at 43.

⁷ Regional AI at 55.

one mile of grocery stores, pharmacy, and physician offices.”⁸ Jurisdictions, including Peoria, should strive to equalize services as part of meeting their obligations to AFFH.⁹

If HOME funds are used for development of housing, recipients must also comply with the HOME Site and Neighborhood Standards.¹⁰ These Site and Neighborhood Standards ensure that rental housing is not concentrated in neighborhoods that already sustain a high proportion of low-income and/or minority residents, unless such development is undertaken in the context of an overall neighborhood revitalization plan. These standards further require that newly constructed rental housing be located near or accessible to appropriate educational, social, commercial, and health services.

Furthermore, in case the redevelopment of public housing requires the demolition of existing housing, PHAs must also comply with 24 C.F.R. 970, which details the administrative steps required to perform demolition/disposition activity in accordance with Section 18 of the Housing Act of 1937.

Lastly, your inquiry to HUD also included questions about the intersection of the federal Low Income Tax Credit Program (LIHTC), administered by the Illinois Department of Housing Development Authority (IHDA), and the obligation to AFFH. In Illinois, the LIHTC allocation process is governed by selection criteria contained in IHDA’s Qualified Allocation Plan (“QAP”). IHDA provides either a 4% or 9% tax credit rate. The 9% credit is allocated each year to projects via a competitive application process governed by IHDA’s QAP. Projects which are located in qualified census tracts (“QCT”) and the development of which contribute to a concerted community revitalization plan are eligible for a basis boost. Generally, QCTs are census tracts with higher poverty rates. Nevertheless, IHDA’s QAP also awards additional points for developments that are near desirable amenities, such as social services, grocery stores, health services, and near job opportunities.¹¹ Furthermore, applicants for LIHTC must sign a certification of consistency with the Consolidated Plan for the jurisdiction in which the project is located before IHDA approves it.

IHDA, as well as all other state and local housing finance agencies that allocate tax credits, is subject to the “affirmatively furthering” requirement of the Act, and its QAP should be consistent with the requirement’s obligations. This duty requires IHDA to consider whether its housing and development decisions perpetuate or increase segregation.¹²

⁸ Regional AI at 61.

⁹ See http://portal.hud.gov/hudportal/documents/huddoc?id=14_vca_hud_aurora.pdf (example of one approach to AFFH in the context of redevelopment of public housing).

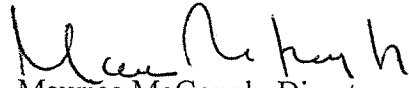
¹⁰ 24 C.F.R. Part 92.202.

¹¹ http://www.ihda.org/developer/documents/2013QAP_Final.pdf.

¹² See *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 749 F. Supp. 2d 486, 499-500 (N.D. Tex. 2010) (The court adopted a five-year remedial plan to reduce the discriminatory impact of future LIHTC allocations by amending the agency’s QAP scoring criteria to promote the siting of housing in a manner that would promote residential racial integration).

We appreciate your inquiries and look forward to working with the PHA in providing future guidance regarding its obligations to AFFH. If you have any additional questions, please do not hesitate to contact the Department.

Sincerely,



Maurice McGough, Director
Region V
Office of Fair Housing and Equal
Opportunity

CC: Mayor Jim Ardis
Brenda Coats