



U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380

November 14, 2016

Mayor Muriel Bowser
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Mayor Muriel Bowser:

The purpose of this letter is to inform the District of Columbia (“District”), of concerns arising out of its most recent Consolidated Plan, which was submitted to the U.S. Department of Housing and Urban Development (“HUD”) Office of Fair Housing and Equal Opportunity (FHEO) on September 14, 2016. FHEO conducted a review of the Consolidated Plan and is concerned that the Consolidated Plan and Annual Action Plan (AAP) fail to fully address impediments previously identified by the District in its 2012 Analysis of Impediments to Fair Housing Choice (AI). As described in more detail below, the District’s duty to affirmatively further fair housing requires it to take appropriate actions to overcome the effects of impediments identified through its AI, and maintain records reflecting the analysis and actions in this regard.

The District’s 2012 Analysis of Impediments to Fair Housing Choice (AI) identifies thirteen (13) impediments and thirty-four (34) proposed actions the District should take to address those impediments. The District’s 2016-2020 Consolidated Plan and 2016 Annual Action Plan do not specifically address any of these previously identified impediments. Therefore, the District’s failure to identify in its most recent AI, activities that specifically address previously identified impediments to fair housing choice, brings into question the District’s certification to affirmatively further fair housing. As a result, FHEO recommends that the District amend its Consolidated Plan and AAP to specifically address these impediments, and provide assurances to HUD that specific actions will be adopted to address the impediments identified in the 2012 AI.

I. Background

The Fair Housing Act generally, and HUD regulations in particular, provide that communities that receive Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) funds must affirmatively further fair housing within their jurisdictions. To that end, they must determine what impediments to fair housing choice exist within their jurisdictions, undertake actions to ameliorate those impediments, and maintain adequate records of the analysis used to determine the impediments, as well as their efforts to overcome them. See 42 U.S.C. §3608(d) & (e)(5); 24 CFR §91.225(a)(1); 24 CFR §91.425(a). FHEO has also reviewed the plan for sufficiency as it relates to 24 CFR 1.4 (Title VI); Section

504 of the Rehabilitation Act of 1973, and Section 109 of the Housing and Community Development Act.

A CDBG program participant is required to submit numerous certifications to HUD along with its Consolidated Plan/AAP. Among others, a jurisdiction must certify that it is affirmatively furthering fair housing (AFFH certification), that its housing activities with HUD funds are consistent with the Consolidated Plan, that it will comply with Section 3 of the Housing and Urban Development Act of 1968, that it will allow citizen participation in the development of the Consolidated Plan, and that it is in compliance with all applicable laws.

The Fair Housing Act requires the Secretary of HUD to assure that HUD funds are used in such a way as to affirmatively further fair housing. Accordingly, each jurisdiction (24 CFR §91.225), each State (24 CFR §91.325), and each consortium (24 CFR §91.425) is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within that jurisdiction, State, or consortium, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis conducted and the actions taken.

Additionally, a HUD regulation found at 24 CFR §1.4(b)(2)(i) provides that “a recipient, in determining the types of housing, accommodations, facilities, services... which will be provided under any such program or activity... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.”

II. Overview of the Jurisdiction’s Fair Housing Planning

The thirteen (13) impediments identified in the District’s 2012 AI are as follows:

1. The entrenched dual housing market;
2. Racial steering;
3. Lending discrimination against Black and Latino borrowers;
4. High cost of housing leading to displacement of low to middle income residents;
5. Overuse of exemptions to the District’s inclusionary zoning ordinance;
6. Provisions in zoning ordinance that discourage accessory apartments;
7. Lack of clear goals and objectives to achieve stable, racially-integrated neighborhoods;
8. Lack of explicit segments in the District’s planning process addressing federal and District fair housing laws;
9. Severe concentrations and discrimination caused by the District’s zoning treatment of “community-based residential facilities.”
10. Inconsistent and incorrect information given by “311” operators with regard to filing fair housing complaints;
11. Incomplete and not readily-available record-keeping of fair housing complaints in the District;
12. Nonresponsive and obstructive District staff and information sharing policies, when faced with requests for information and data;

13. Lack of a cogent, pro-integrative policy for siting public housing and the use of Housing Choice Vouchers.

The District's 2016-2020 Consolidated Plan and 2016 Annual Action Plan do not specifically address any of these identified impediments. The 2012 AI provides detailed recommendations that the District can implement to address each of these identified impediments. The key impediments all largely relate to the first impediment, an entrenched dual housing market within and around the District, which is responsible for high levels of segregation and racial/ethnic concentrations of poverty (R/ECAPs). In addition, since 2000, the District has experienced a large influx of White residents and a boom to the economic base and the price of housing. The result is that neighborhoods that were once entirely or primarily Black are integrating and becoming mixed or predominately White. While the increasing integration is welcome, the lack of affordable housing and the resulting gentrification threatens the District with becoming re-segregated as predominately White. Further, because the median household income for the non-Hispanic White population is so much greater than that for Black and other minority populations within the District, the increasing economic segregation in the District is also falling along racial lines.

While the Consolidated Plan and AAP mention some of these impediments, such as the segregation of Black residents and the rapid changes in neighborhoods due to gentrification (although the Consolidated Plan does not mention that term), there are no specific activities identified to address these issues. The Consolidated Plan implies an intention to address the entrenched dual market and reduce segregation when it states, "it is vital to create affordable housing that integrates neighborhoods racially, ethnically, and economically and diversifies the District's affordable housing supply." In its listing of priority needs, the District identifies the rehabilitation and development of affordable housing, both rental and homeowner housing. The District also indicates the allocation of tens of millions of dollars of CDBG and HOME funds for this purpose. However, because the District fails to identify the geographic areas where the funds will be directed, it is impossible to determine whether this effort will result in neighborhoods that are "racially, ethnically, and economically" integrated.

The Department recommends a balanced approach to investment that allows a community to provide funding for the revitalization of areas that have long been neglected (resulting in the proliferation of R/ECAPs), while at the same time investing in affordable housing in areas that are not impacted by high concentrations of race/ethnicity and poverty, i.e., areas of high opportunity. Failing to specifically identify the geographic areas of investment makes it impossible to determine whether the District is taking a balanced approach to preserving and developing affordable housing.

III. The District's Data

a. Population Concentration by Race/Ethnicity

The District's 2012 AI clearly indicated that a third of the District's neighborhood clusters were predominately Black (93% or higher). The maps provided by the District in the Consolidated Plan, as well as the maps and data provided by HUD demonstrate that there are currently eleven (11) highly segregated R/ECAPs. The data and maps demonstrate that the areas

of racial/ethnic concentration are primarily located in Wards 7 and 8. They further indicate that there is a lack of affordable housing in areas of low poverty, primarily located in the Northwest quadrant of the District and are predominately White neighborhoods. As the data indicate, because there is a severe income disparity in the District between non-Hispanic White residents and Black or other minority residents, the limited housing opportunity impacts Black and other minority residents to a much greater extent than White residents.

FHEO examined the Consolidated Plan and relevant census data for the jurisdiction with regard to concentrations of people by race and ethnicity. The data show one-third of the District's Black residents live in neighborhoods that are more than 85% Black. Three-quarters of neighborhoods with median annual incomes exceeding \$100,000 are majority White. In 2010, Black residents comprised 50.71% of all residents living in the District, which was a decrease from the 2000 rate of 60.01% of the total population being Black residents. In 2010, Asian/Pacific Islanders comprised 3.50% of the minority population, which is an increase from 2.6% in 2000. The Hispanic population, on the other hand, has grown from 7.86% of the total population in 2000 to 9.10% in 2010. The White population comprised 30.78% of the total City population in 2000, but by 2010 that percentage had increased to 38.47%.

b. Housing Cost Burden/Affordable Housing

The 2012 AI also indicated that the low and moderate income Black population is much more likely to be severely cost burdened, which is defined as spending 50% or more of income on housing. HUD data, as well as the AI, also indicate the Black population in the District has one or more 'other housing problems,' which are defined by the following attributes: 1) housing unit lacks complete kitchen facilities; 2) housing unit lacks complete plumbing facilities; 3) household is overcrowded; and 4) household is cost burdened. A household is said to have a housing problem if it has any 1 or more of these 4 problems. The HUD data indicate that 56,045 Black households (45.45% of Black households in the District) have one or more housing problems, including overcrowding and cost burden.

The Consolidated Plan indicates 124,356 households (88.80%) that are experiencing housing cost burden are Black households. HUD data indicate that 23.71% of Black households in the District suffer severe housing cost burden, whereas in comparison only 12.76% of non-Hispanic White households suffer severe housing cost burden. Among a total of 19,410 Hispanic households, 12,209 (49%) experience some housing cost burden with 4,295 (22.13%) experiencing severe cost burden.

In addition, the AI clearly indicated that much of the progress that has been made with regard to integration is related to the movement of non-Hispanic White families into black neighborhoods. This trend has resulted in gentrification of those neighborhoods, increasing rent costs, and the loss of affordable housing. The AI emphasized that one result of the gentrification was the displacement of Black families with more modest incomes. The AI recommended that, to maintain the racial and economic integration in these neighborhoods, the District needed to preserve existing affordable housing and create new affordable housing units.

In its Consolidated Plan, the District cites as barriers to affordable housing the cost of property, particularly in the predominately White areas of the District, such as the Northwest quadrant, and the limited available areas for development. The District states that the price of

land, the limits on height imposed by District ordinance, and federal requirements placed on it that requires an Act of Congress to repeal the height restriction, make it difficult for developers to attempt development because projects cannot include sufficient units to make the development profitable. As a result, developers request approval for greater density. The District's lengthy and convoluted process to gain zoning approval for greater density adds to the difficulty.

IV. Deficiencies and Recommendations

The 2012 AI emphasizes that, since 2000, there has been a loss of affordable housing, particularly rental housing within the District, which has led to an increase in segregation and concentrations of poverty. However, the District's Consolidated Plan and AAP identify no concrete actions, strategies, or timelines to address these issues. While, as previously stated, the District has identified the expenditure of a large amount of CDBG and HOME funds as an effective way to revitalize and develop affordable housing, it fails to specifically identify the geographic neighborhoods where these expenditures would take place. As a result, FHEO cannot determine whether the expenditures will address areas identified as R/ECAPS; preserve and develop affordable housing in those areas that have been, and are, gentrifying; and/or develop new affordable housing in areas where there is a lack of affordable housing.

FHEO is particularly concerned that the District is not meeting the requirement of a balanced approach. While the District has an Inclusive Zoning Ordinance, it too often permits exceptions to that ordinance. For example, as the AI indicates, approximately twelve thousand units were exempted from the inclusive zoning ordinance because those units were in various stages of planning or development when the ordinance was passed, and those units were grandfathered in.

A similar example of FHEO's concern is the recent District approval given to relocate 100 units of affordable housing that would have been developed in a gentrifying neighborhood, to an area that is considered an R/ECAP. Specifically, the District approved the transfer of 100 inclusionary zoning units, affordable at 60% of AMI, which were to be included in the Peebles Development at 5th and I Streets, NW, to Anacostia, which is located in the Southeast quadrant of the District. This area is deeply segregated, and has been identified as a R/ECAP by HUD. There are other examples, such as Temple Courts, Sursum Corda, and Brookland Manor, where the District could have done more to preserve and develop affordable housing and decrease segregation, which would help address the lack of current affordable housing and the declining trend of available affordable housing since 2000. The District appears to be squandering opportunities to stem the tide of gentrification in neighborhoods where the majority Black population is decreasing. This concern clearly brings into question the District's ability and willingness to uphold its duty to affirmatively further fair housing.

The District's limited resources must be devoted to addressing the cost burdens and other housing problems of low and moderate income households. The Consolidated Plan indicates that Hispanic and Black populations are proportionately more represented in the extremely low income tier, which has a greater need for affordable rental housing. While efforts to increase homeownership among low- to moderate-income groups may be an appropriate part of a balanced approach to affirmatively furthering fair housing, the current Consolidated Plan and AAP focus on homeownership programs to the nearly total exclusion of activities geared toward development of affordable rental units in areas of opportunity.

Thus, the District, in the 2012 AI and the current Consolidated Plan, has identified housing rehabilitation, new housing construction, public facilities and infrastructure, homeless needs, and economic development as top priorities. However, FHEO is unable to draw any other conclusions regarding investment in affordable housing since the District fails to indicate where those investments will be made. FHEO is unable to determine whether the District intends to address the areas of minority concentration. This is particularly concerning, since the District itself identified a “lack of clear goals and objectives to achieve stable, racially-integrated neighborhoods;” and a “Lack of a cogent, pro-integrative policy for siting public housing and the use of Housing Choice Vouchers,” as impediments to be addressed.

Finally, FHEO proposes that the District, in developing policy priorities for the use of CDBG and HOME funds, should give first priority to the use of HOME and CDBG funds for new family rental and sales developments on sites in non-impacted areas. It is also suggested that the District, as part of the Consolidated Planning process, should: map the location of all new CDBG/HOME-assisted housing projects; analyze this information to determine the relative breakdown of projects in impacted areas versus projects in non-impacted areas; and establish internal goals for achieving balance relative to projects in impacted areas versus projects in non-impacted areas. The District should consider the results of this analysis before finalizing funding decisions and the analysis should be included in the CAPER.

V. Conclusion

FHEO is aware that the template employed by HUD’s office of Community Planning and Development does not explicitly elicit plans to address identified impediments. Still, the District’s presentation of activities planned for the next five years conveys a lack of focus on the need to address areas of minority concentration and low opportunity and prevent re-segregation of high opportunity areas. Simply put, the existing impediments will not be ameliorated without conscious action toward that goal.

As previously indicated, the County’s 2012 AI identifies thirteen (13) impediments and thirty-four (34) proposed actions none of which are incorporated into the current Consolidated Plan and AAP. Therefore, before the District’s certification to Affirmatively Further Fair Housing can be deemed acceptable, the impediments and proposed actions that are not adequately addressed must be the subject of one of three possible actions: (1) identify previously unidentified activities of the District that address the impediment(s); (2) provide a statement concluding that the identified impediment(s) is no longer truly an impediment, supported by empirical data; or (3) offer some additional planned activity to adequately address the impediment. In essence, HUD, through the Office of Fair Housing and Equal Opportunity (FHEO) is looking for the District to provide assurances that it will address the impediments identified in the 2012 AI, specifically the issues identified in this letter.

HUD looks forward to seeing the District's efforts to affirmatively further fair housing and addressing the issues articulated in this letter. Should you have any questions or require any clarification with regard to the contents of this letter, please contact Steven Paikin, FHEO Director in the District of Columbia Field Office, at 202-275-6305, or by email at steven.m.paikin@hud.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Taylor', with a long horizontal flourish extending to the right.

Melody Taylor
Regional Director
Office of Fair Housing and Equal Opportunity

cc: Marvin Turner, Field Office Director, National Capital Area/DC Field Office
Michael Rose, CPD Director, National Capital Area/DC Field Office
Debra McGhee, Director, Baltimore FHEO Center
Steven M. Paikin, FHEO Director, National Capital Area/DC Field Office

**NOTICE OF OBLIGATIONS WITH REGARD TO
ACCESSIBILITY OF HOUSING DEVELOPED USING
HUD FUNDING**

Multifamily housing constructed with federal funding, generally must comply with the accessibility requirements of *both* the Fair Housing Act and Section 504. The information below highlights, but is an incomplete listing of requirements. Recipients must review cited regulations for full statement of requirements and applicability.

Fair Housing Act Accessibility Requirements

See HUD regulations at 24 CFR 100.205.

Applies to new construction built for first occupancy after March 13, 1991.

Applies to buildings of 4/more units if elevator-equipped building (only those units served by an elevator must comply); applies to ground floor units in buildings consisting of 4/more units when there is no elevator. Applies to almost all forms of private *and* federally-funded housing.

The Fair Housing Act Design Manual is the construction standard. Features which must conform with accessibility requirements include:

- Accessible building entrance on an accessible route
- Accessible & usable public/common use areas.
- Usable doors.
- Accessible route into/through the covered unit.
- Light switches, electrical outlets, thermostats, & other environmental controls in accessible locations.
- Reinforced walls for later installation of grab bars.
- Usable kitchens & bathrooms.

(www.fairhousingfirst.org or call toll-free (888) 341-7781 (V/TTY) or call your local HUD office.)

Section 504 of the Rehabilitation Act of 1973 Accessibility Requirements

See HUD regulations at 24 CFR 8.20, et seq.

A minimum of 5% (but at least one unit) of the total number of dwelling units in multifamily (5+ units) new construction (effective July 11, 1988) are to be made accessible for mobility impaired persons. An additional 2% of the total # of dwelling units are to be made accessible for persons with visual or hearing impairments. Applies to federally-funded housing and non-housing construction projects.

If substantial alterations are undertaken and the cost of the alterations is 75%/more of the replacement cost of the completed facility, then new construction provisions apply.

The Uniform Federal Accessibility Standard (UFAS) is the design standard for providing physical accessibility.

(www.hud.gov go to People with Disabilities or call your local HUD office.)