

Affirmatively Furthering Fair Housing & Site Selection Requirements in HUD-Assisted Development

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Presentation will focus on how HUD implements the “affirmatively furthering fair housing” concepts to site selection in development assisted with HUD funds. We will include the most active development programs, which generally combine HUD funds with Low Income Housing Tax Credits (“LIHTCs”) – public housing mixed finance, RAD (both PBV and PBRA), Project Based Section 8, and HOME.

All HUD Federally Assisted Housing Programs

The following provisions apply to all site selection, whether it involves new construction or existing housing (with or without rehabilitation) for all HUD programs.

- Civil Rights Compliance. The site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (prohibits discrimination in federal programs), Title VIII of the Civil Rights Act of 1968 (prohibits discrimination in housing), and Executive Order 11063, and their implementing regulations (requiring equal opportunity in housing). (24 CFR Part 1)
- Section 504 of the Rehabilitation Act of 1973. The site must meet the Section 504 site selection requirements, which, among other things, prohibit site selections that would have the purpose or effect of subjecting qualified individuals with disabilities to discrimination (see 24 C.F.R. § 8.4(b)(5)). Among the factors that a HUD directs recipients to consider are:
 - The physical characteristics of the site, such as slope, and whether they impede the accessibility of the project for persons with disabilities.
 - Proximity to accessible transit or para-transit.
 - Proximity to social services, education, and employment opportunities for persons with disabilities.
 - For sites with an existing project, the accessibility of the public and common use areas of the site, such as the rental office, walkways, parking areas, mail areas, trash areas, community rooms, and laundry facilities; the number and bedroom

distribution of accessible units, and the physical distribution or clustering of accessible units.

- **DISCUSS PRACTICAL EXAMPLE**
- Affirmatively Furthering Fair Housing.
 - Recipients of HUD funds have the duty to “affirmatively further fair housing” means taking meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.
 - The term “affirmatively furthering fair housing” means taking meaningful actions that address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
 - The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.
 - “Meaningful actions” means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.
 - Affirmatively Furthering Fair Housing Rule establishes specific requirements for the development and submission of an Assessment of Fair Housing (AFH) by program participants (including local governments, States, and public housing agencies (PHAs)), and the incorporation and implementation of that AFH into subsequent consolidated plans and PHA Plans in a manner that connects housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing.
 - Site and neighborhood standard requirements in HUD regulation are designed to implement aspects of the “affirmatively furthering fair housing” principle, by requiring recipients of federal funds to make specific showings to HUD that a site complies with the requirements of the laws implementing fair housing.

§905.602 Program requirements. (Public Housing)

Overall Requirements. Each proposed site to be newly acquired for a public housing project or for construction or rehabilitation of public housing must be reviewed and approved by the field office as meeting the following standards, as applicable:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed. Adequate utilities (e.g., water, sewer, gas, and electricity) and streets shall be available to service the site.
- The site and neighborhood shall be suitable to facilitating and furthering full compliance with the applicable laws that prohibit discrimination in providing federal assistance, discrimination in housing, and requirements of equal opportunity to housing.

New Construction. The regulations require that:

- The site for new construction shall not be located in an area of minority concentration unless:
 - There are already sufficient, comparable opportunities outside areas of minority concentration for housing minority families in the income range that is to be served by the proposed project; or
 - The project is necessary to meet overriding housing needs that cannot feasibly be met otherwise in that housing market area.
 - “Overriding housing needs” shall not serve as the basis for determining that a site is acceptable if the only reason that these needs cannot otherwise feasibly be met is that, due to discrimination because of race, color, religion, creed, sex, disability, familial status, or national origin, sites outside areas of minority concentration are unavailable.
- The site for new construction shall not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area.
- Rebuilding on Former Public Housing Site. Notwithstanding the foregoing, after demolition of public housing units a PHA may construct public housing units on the original public housing site or in the same neighborhood if the number of replacement

public housing units is significantly fewer than the number of public housing units demolished. One of the following criteria must be satisfied:

- The number of public housing units being constructed is not more than 50 percent of the number of public housing units in the original development; or
 - In the case of replacing an occupied development, the number of public housing units being constructed is the number needed to house current residents who want to remain at the site, so long as the number of public housing units being constructed is significantly fewer than the number being demolished; or
 - The public housing units being constructed constitute no more than 25 units.
 - Different for HOPE VI and CNI - Because the objective of the HOPE VI program is to alleviate distressed conditions at the Development and in the surrounding neighborhood, replacement housing under HOPE VI that is located on the site of the existing Development or in its surrounding neighborhood will not require independent approval by HUD under Site and Neighborhood Standards. The term "surrounding neighborhood" means the neighborhood within a three-mile radius of the site of the existing development. Sites outside the surrounding neighborhood do require a site and neighborhood review.
- The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
 - The site shall be free from adverse environmental conditions, natural or manmade, such as: Toxic or contaminated soils and substances; mudslide or other unstable soil conditions; flooding; septic tank backups or other sewage hazards; harmful air pollution or excessive smoke or dust; excessive noise or vibrations from vehicular traffic; insect, rodent, or vermin infestation; or fire hazards.
 - The neighborhood shall not be seriously detrimental to family life.
 - The neighborhood shall not be filled with substandard dwellings nor shall other undesirable elements predominate, unless there is a concerted program in progress to remedy the undesirable conditions.
 - The site shall be accessible to social, recreational, educational, commercial, and health facilities; health services; and other municipal facilities and services that are at least

equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing. The availability of public transportation must be considered.

- The site shall be accessible to a range of jobs for low-income workers and for other needs. The availability of public transportation must be considered, and travel time and cost via public transportation and private automobile must not be excessive. This requirement may be given less consideration for elderly housing.
- The project may not be built on a site that has occupants unless the relocation requirements are met.
- The site shall not be in an area that HUD has identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the development is covered by flood insurance required by the Flood Disaster Protection Act of 1973 and meets all applicable HUD standards and local requirements.
- **DISCUSS PRACTICAL EXAMPLE**

§983.57 Site selection standards. (Project Based Vouchers)

Compliance with PBV goals, civil rights requirements, and HQS. The PHA administrative plan must establish the PHA's policy for selection of PBV sites.

The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA administrative plan.

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

- Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.
- The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan and the PHA Administrative Plan.

- In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:
 - Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
 - Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
 - Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
 - Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
 - Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
 - If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;
 - Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.
- The site is suitable from the standpoint of facilitating and furthering full compliance with the all applicable provisions of law and regulation prohibiting discrimination in housing and in federal programs.
- The site meets the HQS site standards that the site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.

Existing and rehabilitated housing site and neighborhood standards (PBV). A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)
- Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

New construction site and neighborhood standards (PBV). A site for newly constructed housing must meet the following site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- A project may be located in an area of minority concentration only if:
 - Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or

- The project is necessary to meet overriding housing needs that cannot be met in that housing market.
- “Sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration.
 - Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration.
 - An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
- Units may be considered “comparable opportunities,” if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
- Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:
 - A significant number of assisted housing units are available outside areas of minority concentration.
 - There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
 - There are racially integrated neighborhoods in the locality.
 - Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

- Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
- A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
- Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”).
- An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

- Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§92.202 Site and neighborhood standards. (HOME Program)

- General. A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of applicable law and regulation prohibiting discrimination in housing and in providing federal assistance.
- New rental housing. In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the same requirements that a Project Based Voucher Program must meet.

Project Based Rental Assistance Program. Appendix III of the RAD Notice describes the site and neighborhood standards that apply to RAD projects converting to PBRA. These requirements are meant to mirror those established in Housing Notice 2014-14 generally applicable to PBRA.

- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- It must meet all applicable accessibility requirements, including, but not limited to, the accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

To the extent the covered project involves new construction, the following site selection requirements must also be met:

- The covered project may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area and may not be located in an area of minority concentration.
- If HUD determines that the covered project will be located in an area of minority concentration, additional supporting data (e.g., census data, evidence of local revitalization efforts, etc.) must be submitted in order for HUD to determine that they meet one of the exceptions below:
 - Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration.
 - Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority households and in relation to the racial mix of the locality's population.
 - Units may be considered to be comparable opportunities if they have the same household type and tenure type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.
 - Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:
 - A significant number of assisted housing units are available outside areas of minority concentration.

- There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
 - There are racially integrated neighborhoods in the locality.
 - Programs are operated by the locality to assist minority households that wish to find housing outside areas of minority concentration.
 - Minority households have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.
 - A significant proportion of minority households have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.
 - Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- The project is necessary to meet overriding housing needs that cannot be met in that housing market area. Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a “revitalizing area”).
 - An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

If you have any questions or require additional information, please do not hesitate to contact Megan Glasheen at (mglasheen@renocavanaugh.com or (202) 349-2454) or Iyen Acosta at (iacosta@renocavanaugh.com or (202) 349-2470).