



c/o National Housing Law Project  
703 Market Street, Suite 2000  
San Francisco, CA 94103  
(415) 546-7000; Fax: (415) 546-7007

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Regulations Division  
Office of General Counsel  
451 7<sup>th</sup> Street SW., Room 10276  
Department of Housing and Urban Development  
Washington DC 20410-0500  
*Submitted electronically through [www.regulations.gov](http://www.regulations.gov)*

Re: Docket No. FR-5578-P-01, "Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies"

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the proposed rule published on July 11, 2014, "Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies."<sup>1</sup> NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for racial and ethnic minorities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders. Housing Justice Network member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide.

NHLP and HJN commend the Department of Housing and Urban Development (HUD) for issuing this proposed rule with the goal of reducing the administrative burdens on local Public Housing Authorities (PHAs) and providing greater opportunity for housing choice and mobility among Section 8 Housing Choice Voucher participants. The formation of both multiple-ACC and single-ACC consortia have the potential to achieve economies of scale and free up a PHA's valuable resources needed to run successful housing programs. In addition, the rule creates opportunities for small and/or poor performing PHAs to team up with well-managed PHAs and improve both operations and the policies and procedures applicable to voucher families. Our comments focus on a few components of the rule that are most important to HJN members and the tenants they serve: tenant mobility and housing choice, waiting list preferences, the prohibition on MTW agencies to participate in consortia, and the ban on partial consortia. We conclude with a comment on a perceived weakness of the rule, which is a lack of incentives for PHAs to form consortia.

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<sup>1</sup> Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies, 79 Fed. Reg. 40,019 (July 11, 2014).

## Tenant Mobility and Housing Choice

HJN members support the rule's key innovation, single-ACC consortia, because the expansion of individual PHAs' jurisdictional boundaries fosters tenant mobility and housing choice. In areas where PHAs form single-ACC consortia, voucher participants will be free to choose a unit without the existing barriers created by complex portability rules. The formation of single-ACC consortia will allow an avenue of mobility for families to move closer to a current job, for example, or to move out of neighborhoods with high concentrations of poverty to those richer in community assets such as good schools and employment opportunities.

A substantial number of voucher holders, however, are often limited to areas in economically depressed neighborhoods with racial and ethnic concentrations of poverty. Several factors contribute to this problem including Fair Market Rents (FMRs) that grossly underestimate the cost of housing in higher opportunity neighborhoods (while overestimating it in poor neighborhoods); payment standards that are unrealistically low resulting in relatively high turn-back rates (unsuccessful housing searches) and/or high rent burdens; unrealistically short search periods or restrictive policies on extensions; lack of adequate housing search resources to assist clients in finding units in the broader market; source of income discrimination against voucher holders, and a lack of incentives for landlords to participate in Section 8. We suggest several revisions to the proposed rule with respect to single-ACC consortia that will help PHAs provide greater housing choice to low-income families, despite these barriers.

*The rule should include an explicit duty to affirmatively further fair housing.*

PHAs have a duty to promote deconcentration of poverty<sup>2</sup> and to affirmatively further fair housing (AFFH).<sup>3</sup> In recently issuing the proposed AFFH rule,<sup>4</sup> HUD renewed its commitment to help create inclusive communities for all. The formation of consortia has the potential to provide participating families with a smoother path to communities with assets. However, the formation of single-ACC consortia does not in itself affirmatively further fair housing, and could in some circumstances further segregate voucher holders. For example, upon formation of a consortium, a suburban PHA that collaborates with a metropolitan PHA may see families move into economically depressed urban neighborhoods because the rent is more affordable and there is a larger affordable housing stock. In this context, looking at data only at the metro level may obscure more finely grained segregative outcomes. As a result, the consortium may certify that it is reaching its fair housing goals, despite the racial and economic segregation occurring within pockets of the consortium's boundaries.

One strategy to avoid this outcome is to require that PHAs report on local deconcentration and fair housing goals, in addition to submitting joint PHA Plans on behalf of a single-ACC consortium. This approach will hold participating PHAs accountable for their duty to affirmatively further fair housing. HUD should clarify that single-ACC consortia have an obligation to complete a civil rights certification on behalf of the consortium that addresses the consortium's and participating PHAs' analysis of impediments to fair housing choice (replaced by the Assessment of Fair Housing in the proposed AFFH rule) and the interplay between the consortium and individual jurisdictions' analysis of impediments to fair housing choice. PHAs should also be required to address these issues in their Administrative and Annual Plans.

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<sup>2</sup> 24 C.F.R. § 903.2(a) (2014).

<sup>3</sup> *Id.* at 903.2(d).

<sup>4</sup> U.S. Dep't of Housing and Urban Dev., Proposed Rule, "Affirmatively Furthering Fair Housing," 78 Fed. Reg. 43,710 (July 19, 2013).

*The single-ACC consortia rule should allow for continued use of exception payment standards.* Another key component of a successful voucher program is that payment standards accurately reflect area rents so that voucher holders can fairly compete in the market. Generally, a PHA may set its payment standard at 90 percent to 110 percent of FMR.<sup>5</sup> A PHA can request HUD approval for a payment standard that is higher than this basic range (an “exception payment standard”).<sup>6</sup> In addition, a PHA may establish separate payments standards within any part of a designated FMR area.<sup>7</sup> If a PHA has an approved exception payment standard for at least part of its jurisdiction, upon joining a consortium, the exception payment standard should apply automatically to those areas. The PHA and/or the consortium should not have to reapply to HUD. Failure to allow a PHA to carry over an exception payment standard could act as a disincentive for PHAs with an approved exception payment standard to participate in a single-ACC consortium. In addition, allowing PHAs to continue to use an exception payment standard will result in payment schedules that most accurately reflect local rents and as a result, greater housing choice among voucher holders who would not otherwise be able to afford to live in those areas.

*HUD should scrutinize any changes to a single-ACC consortium’s payment standards.* HUD should also require single-ACC consortia to evaluate all revisions to its payment standards in terms of impact on fair housing, turn-back rates, and excessive rent burdens. This will help participant agencies comply with their deconcentration and fair housing goals.

### **Waiting List Preferences**

The proposed rule sets forth the elements of a single-ACC consortium agreement including the process for merging the consortium members’ waiting lists and the adoption of waiting list preferences.<sup>8</sup> Preferences are a local decision and reflect a community’s needs. We decline to comment on the use of consortium-wide preferences, generally, and support HUD’s inclusion of the civil rights language in the proposed rule that mandates that all preferences must not have the purpose of delaying or denying admission to the program based on protected class.

However, we remain particularly skeptical of residency preferences because of the policy’s discriminatory effects. While residency preferences, like all preferences, must comply with fair housing laws, they have been used in the past to further racial and ethnic segregation. In order to minimize the risk that a single-ACC consortium will deny admission based on a protected class, HUD should clarify that residency preferences apply to the entire consortium, and not individual participating jurisdictions. This is consistent with the goal of the proposed rule to promote mobility and housing choice.

### **Prohibition on MTW Agencies Participating in Consortia**

HJN members support HUD’s prohibition on Moving to Work (“MTW”) agencies participating in consortia.<sup>9</sup> Especially in light of the lack of data regarding MTW program outcomes, we commend HUD for recognizing that allowing MTW agencies to expand their jurisdiction amounts to the unauthorized expansion of the MTW demonstration program. However, an

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<sup>5</sup> 24 C.F.R. § 902.503(b)(i) (2014).

<sup>6</sup> *Id.* § 902.503(b)(2).

<sup>7</sup> *Id.* § 902.503(b)(1)(ii).

<sup>8</sup> Proposed § 943.207(a)(4), 79 Fed. Reg. at 40,026.

<sup>9</sup> Proposed § 943.201(c), 79 Fed. Reg. at 40,025.

absolute ban will also preclude many large, metropolitan PHAs from the benefits of participating in a consortium, and will deny the largely minority voucher participants of those large MTW PHAs the benefits of housing choice and mobility that the consortia rule was intended to provide and that is one of the statutory purposes of MTW. To lock MTW agency voucher holders into the center city while allowing suburban voucher holders to move about a metro area more freely, could raise serious fair housing concerns.

One strategy to address the prohibition on MTW agencies while not expanding the program is to allow MTW PHAs to participate in partial consortia and administer some of their vouchers as part of a single-ACC consortium. MTW agencies will retain their MTW status, although the vouchers administered by the consortium will be subject to the standard voucher rules and the consortium's policies as set forth in the consortium's Administrative and Annual Plans. In this scenario, MTW authority will not expand to the agencies participating in the consortium, yet voucher participants will receive the benefits of consortia. Agencies could reserve the right to retain their MTW status should the PHA withdraw from the consortium or the consortium dissolves. This strategy must include a revision to the rule that would allow for partial consortia. See the additional comments below that further support revising the prohibition on partial consortia.

### **Prohibition on Partial Consortia**

We urge HUD to revise the proposed rule to allow PHAs to enter into partial consortia. Allowing agencies to allocate some of their vouchers to a consortium will act as an incentive to the formation of consortia and could lead to a larger number of PHAs willing to fully participate in single-ACC consortia, thereby reducing administrative burdens on HUD in the long term. Partial consortia eliminate portability barriers for some voucher participants and improve opportunities for tenant mobility and housing choice. We support the lengthier discussion of partial consortia in comments submitted by the Center on Budget and Policy Priorities on behalf of NHLP and our national partners.

### **Lack of Incentives and Technical Assistance**

Aside from the benefits of forming single-ACC consortia, the proposed rule does not include sufficient incentives for PHAs to form consortia, nor does it provide the technical assistance necessary to support PHA collaboration. Without funding, non-financial incentives, or technical assistance, cash-strapped PHAs will not have the means to take advantage of the proposed rule's key innovation, single-ACC consortia. In order to breathe life into this rule, HUD should provide additional support for PHAs to form consortia.

Thank you for the opportunity to submit these comments, and please contact Deborah Thrope, National Housing Law Project, at 415-546-7000 x. 3124 or [dthrope@nhlp.org](mailto:dthrope@nhlp.org) if you have any questions.

Sincerely,



Marcia Rosen  
Executive Director  
National Housing Law Project

On behalf of the Housing Justice Network:

Massachusetts Law Reform Institute

Texas RioGrande Legal Aid

Sargent Shriver National Center on Poverty Law

The Public Interest Law Project

National Low Income Housing Coalition

Florida Alliance for Consumer Protection

Coalition on Homelessness and Housing in Ohio

Florida Housing Umbrella Group

Brian Gilmore, Michigan State University College of Law

Mac McCreight, Greater Boston Legal Services

Anne-Marie Mokritsky-Martin, Advocate