

AFFIRMATIVELY FURTHERING FAIR HOUSING

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Fair Housing Act

- ▶ Supreme Court found that one of the purposes of the Fair Housing Act was replacing ghettos with truly integrated living environments. Trafficante v. Metropolitan Life Insurance. Co.
- ▶ Section 808(e) (5) of the Act directs that the Secretary of Housing and Urban Development “shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further fair housing”

Affirmatively Furthering Fair Housing

- ▶ Obligation comes from the requirement in the Fair Housing Act that the Secretary of HUD act affirmatively in further fair housing
- ▶ Actions come through housing and urban development activities
- ▶ Purpose is not just to address discrimination and provide remedies for discrimination but also requires actions that would stop future discrimination and remove segregation and other effects of past discrimination

Political Leadership is Changing Emphasis

- ▶ HUD Secretary Shaun Donovan:
 - Donovan stated that the department will make sure that there are “neighborhoods of choice” and “geographies of opportunity.” ...HUD will rethink how to introduce affordable housing into all communities.

How Actions are Covered

- ▶ HUD requires that each program that it funds certify that it will affirmatively further fair housing (AND) comply with a variety of civil rights laws
- ▶ All actions within that program are covered:
 - Public Housing programs are covered (PHAs and Section 8)
 - Multifamily housing like Section 8 project-based are covered
 - CDBG covers states, entitlement jurisdictions and some small towns when they get grants
 - The jurisdiction, taken as a whole, must affirmatively further fair housing, NOT just with HUD funds
 - So if there are private acts of discrimination within one of those jurisdiction, the jurisdiction is required to identify those actions and take actions to counter them.

Key Issues

- ▶ What are the barriers to fair housing?
 - Not just the lack of affordable housing BUT
 - Where it is located – so it does not perpetuate segregation
 - How it is marketed – to those least likely to apply
 - Whether zoning and funding decision making excludes or limits opportunities
 - For people of color
 - For families with children
 - For people with disabilities
 - Regional considerations

Opposition of Communities and Elected Officials

- ▶ When Illegal considerations are part of the decision making, the Fair Housing Act, other civil rights laws and the affirmatively furthering obligation all come into play...
 - "Decline in property values"
 - "Like a ghetto"
 - "Criminal element"
 - "Changing neighborhood"
 - "We have enough affordable/multifamily/grouphome/tax credit housing"
 - "No more Mexicans"
 - "Burden on the schools"

Affirmatively Furthering Actions

- ▶ Are documented in specific documents
- ▶ Include
 - Impediments
 - Action Plan
 - Documentation

CDBG recipients in Analysis of Impediments to Fair Housing Choice as part of consolidated plan

- Public Housing in the PHA plan
- Housing ??

Examine the Analysis of Impediments/Action Plan

- ▶ Does it genuinely identify the barriers?
- ▶ Are the actual actions being taken consistent with fair housing principles?
- ▶ If the AI is deficient and/or the Action Plan inadequate or the entity is doing nothing
 - HUD may examine the AI
 - Conduct a monitoring review
 - Conduct a complaint investigation
 - Consider whether the jurisdiction is falsely claiming that it is complying with civil rights laws or the affirmatively furthering obligation

Sanctions

- ▶ If HUD finds a funded entity is discriminating HUD can issue a findings letter, seek voluntary compliance, and if that is not successful, challenge that certification of the jurisdiction that it is complying with civil rights laws
- ▶ A certification challenge gives the entity a short time to show how they really ARE complying. If they don't convince HUD, HUD can terminate funding and/or decide that the entity is not eligible for a current funding application

Westchester Case and Current Initiatives

- ▶ Westchester case was private litigation under the False Claims Act
 - HUD eventually challenged Westchester County's certification and terminated funding briefly
 - Remedy included large numbers of affordable housing units in segregated white neighborhoods
- ▶ High level of interest with Secretary Donovan, Assistant Secretaries Trask and Marquez
 - A new affirmatively furthering fair housing regulation is pending
- ▶ HUD has a new office focusing on sustainable communities led by Deputy Secretary Ron Simms, based on his Seattle experience
 - Tie integrated housing to jobs, transportation, schools, health care opportunities

Resources

- ▶ Fair Housing Planning Guide outlines the Analysis of Impediments/Action Plan/Documentation requirements
- ▶ <http://www.hud.gov/offices/fheo/images/fhpg.pdf>
- ▶ Fair Housing Toolkit for developers, municipalities and others...
<http://content.knowledgeplex.org/kp2/cache/documents/68549.pdf>