

# 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/group/home/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 Trasvina 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>