

Affirmatively Furthering Fair Housing

2016 NC Affordable Housing Conference

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Protected Classes



Race



Color



Religion



Sex



Handicap



Familial Status



National Origin

Fair Housing Act Components

Each apply at project and program level

Intentional Discrimination – most common

Disparate Impact – liability without proof of intent

Affirmatively Furthering – applicable when accept HUD funding

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HUD's Disparate Impact Rule

“A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of [protected class status].”

Affirmatively Furthering

- AFFH means ***more than not*** discriminating
- A basic purpose of federal funding is to eliminate barriers, desegregate, expand choice/opportunity
- HUD changed its approach with 2015 rule
- Does not mandate specific outcomes
- Agencies must undertake “meaningful actions” as a condition of accepting federal resources

Legal Background

- HUD must “administer [housing] programs...in a manner affirmatively to further the policies of [the Fair Housing Act],” including the general policy to “provide, within constitutional limits, for fair housing throughout the United States.”
 - 42 USC §3608(e)(5)

Legal Background

- “Any [CDBG] grant shall be made only if the grantee certifies to the satisfaction of the Secretary that... the grant will be conducted and administered in conformity with the Civil Rights Act and the Fair Housing Act, and the grantee will affirmatively further fair housing.”
 - 42 U.S.C. §5304(b)(2)

Legal Background

- “...every court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating. This broader goal... reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”
 - *NAACP v. Sec’y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987)

AFFH Process

- HUD will provide data, supplemented by local info
- Used to prepare an “Assessment of Fair Housing”



Patterns of integration
and segregation;



Racially and ethnically
concentrated areas of
poverty;



Disparities in access to
opportunity; and



Disproportionate
housing needs

- Jurisdictions must take meaningful actions
- First submissions due last week

	Fair Housing In General	Affirmatively Furthering
Applicable...	regardless of any subsidy.	when using certain federal subsidies (e.g., HOME).
Meaning for owners and managers:	Cannot intentionally discriminate, or use policies/practices which have a disparate impact.	Must actively market housing to those in protected classes who are the least likely to apply for occupancy.
Example:	screening criteria	marketing plan
Meaning for agencies:	Same requirements as for owners and managers.	Must use all program resources to advance desegregation.
Example:	<i>ICP v. TDHCA</i> case; exclusionary zoning	opportunity area siting preference; a unit set-aside for PWD
How enforced:	Either through HUD administrative complaints or in federal court.	Same as the other column, plus HUD review of agencies' compliance.

Policy Implications

“Explanations exist; they have existed for all time; there is always a well-known solution to every human problem --- neat, plausible, and wrong.”

- H.L. Mencken, *Prejudices: Second Series*, 1920

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