

FAIR HOUSING:

Serious Responsibility, Serious Liability

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WEBINAR OVERVIEW

- 1) Federal Fair Housing law—U.S. Supreme Court ruling, new HUD Rule
- 2) Implementation of above through Assessment of Fair Housing (AFH)

FAIR HOUSING LAWS

Fair Housing Act (FHA):

Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex and national origin.

Amended in 1988 to prohibit discrimination on the basis of disability or familial status and to require accessible units as part of multifamily units built after 1991.

Exemptions from FHA:

Housing developments for seniors, housing strictly reserved for members of religious organizations or private clubs, multifamily housing of four units or less with the owner occupying one unit.

Trending?

Sexual orientation: HUD prohibits discrimination based on sexual orientation/gender identity in HUD-funded housing programs.

HUD shows growing interest in **Source of Income protections** at the state and local level.

COVERED HOUSING

FHA protections apply
to dwellings:

“‘ Dwelling ’ means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.”

FHA PROHIBITIONS

Discrimination means...

*“To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise **make unavailable or deny**, a dwelling ...”*

-42 U.S.C. § 3604(a)

FHA PROHIBITIONS

Discrimination means...

*“a refusal to make **reasonable accommodations** in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled] person equal opportunity to use and enjoy a dwelling”*

-42 U.S.C. § 3604(f)(3)(b)

RECENT FHA CHANGES = BIG!

- 1) June 2015—U.S. Supreme Court found disparate impact to be cognizable under the FHA
- 2) HUD previously issued Disparate Impact Regulation
24 CFR 100,500(c): (2014)

FHA CHANGES

3) What this means:

Disparate impact claims can be brought under the FHA. Limitations prevent against overbroad disparate impact claims:

1. Must identify a specific policy and show it is the cause of the disparity.
2. Racial imbalance is not a *prima facie* case of disparate impact.
3. Plaintiff can no longer maintain disparate impact claim only with statistical disparity.

FHA CHANGES

4) Process:

- ▶ Plaintiff has burden of proving that practice caused or predictably will cause a discriminatory effect
- ▶ Defendant must then prove practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests
- ▶ Plaintiff could still prevail by proving that challenged practice could be served by another practice with a less discriminatory effect

FHA CHANGES:

HOW DO THEY AFFECT MY COMMUNITY?

- ▶ All cities, counties, and states held to FHA
- ▶ No “exemption” if you do not receive HUD block grant or other federal housing funds
- ▶ If HUD entitlement community, may receive greater scrutiny through AFFH obligation

AFFH CHANGES = ALSO BIG!

Recipients of the Community Development Block Grant (CDBG) sign a certification with their annual application to HUD that promises to “**affirmatively further fair housing choice**” or AFFH

- ▶ Analysis of Impediments to Fair Housing Choice (AI) study required as part of AFFH obligation

Soft enforcement until “Westchester”

- ▶ This case + GAO audit → stricter enforcement of AFFH obligation

THE AI BECOMES THE AFH

July 2013

HUD issues proposed rule to clarify and strengthen AIs



September 26 – November 24 2014

60-day public comment

July 16 – August 15 2015

30-day public comment

December 31, 2015

Happy New Year!
Final AFH released

HUD releases a draft assessment tool, called the Assessment of Fair Housing

September 2014



Final Rule is published (Supreme Court ruling)

July 16 2015

WHO DOES AN AFH

Which grantees will use the Assessment Tool (December 31, 2015)	Which grantees will use a different Assessment Tool
<ul style="list-style-type: none">1) Local governments (that receive CDBG, HOME, ESG or HOPWA funds) submitting an AFH alone2) Joint or regional collaborations between:<ul style="list-style-type: none">a. Only local governmentsb. One or more local governments with one or more PHAsc. Other collaborations in which a local government is designated as the lead entity	<ul style="list-style-type: none">1) States and insular areas submitting alone2) Joint or regional collaborations (with local governments and/or PHAs) where the State is designated as the lead entity3) PHAs submitting alone4) Joint collaborations among only PHAs

AFH REQUIRES COMMUNITY INPUT

AFH Community Participation Requirements

- 1) Describe outreach activities undertaken to encourage community participation.
- 2) Identify media outlets used and include a description of efforts made to reach the public, including those **representing populations that are typically underrepresented** in the planning process such as persons who reside in areas identified as R/ECAPs, persons who are limited English proficient, persons with disabilities.
- 3) How successful were those efforts at eliciting community participation?
- 4) Summarize all comments obtained in the community participation process. Include a summary of any comments or views not accepted and the reasons why.

PRIMARY AFH TOPICS

Analysis of Fair Housing Issues

- ▶ Demographic Summary
- ▶ Segregation/Integration
- ▶ R/ECAPs
- ▶ Disparities in Access to Opportunity
- ▶ Disproportionate Housing Needs

Publicly Supported Housing Analysis

Disability and Access Analysis

Fair Housing Enforcement, Outreach Capacity, and Resources Analysis

SEGREGATION/INTEGRATION

Segregation: Areas of concentration due to policies, programs, discrimination

Concentrations can be due to housing preferences; segregation is caused by more than preferences.

HUD purposes; more than race/ethnicity:

- ▶ Race
- ▶ National Origin
- ▶ Ethnicity (Hispanic/non)
- ▶ Limited English Proficiency (LEP)

You also need to analyze distribution of residents by:

- ▶ Poverty
- ▶ Disability
- ▶ Family status—focus on single parents and large families

SEGREGATION/INTEGRATION

“Segregation” and “integration” require further analysis. Segregation can be determined through an analysis of historical (hopefully not current) policies and practices. Analysis of what has driven housing choices of residents in segregated areas informed by input from residents living in these areas through focus groups and surveys.

“Integration” = areas that are not segregated. We define area with a diverse socioeconomic base—i.e., where income and racial/ethnic distribution representative of region.

R/ECAPS AND OPPORTUNITY

R/ECAPs are “racially or ethnically concentrated areas of poverty.”

Defined as concentrated areas + 40% family poverty rate or higher, or a poverty rate exceeding three times the region’s rate

DISSIMILARITY INDEX

Dissimilarity Index: Measures “evenness” in which two separate groups are distributed across geographic units—such as a county

- ▶ The dissimilarity index is somewhere between 0 and 1
- ▶ An index near 0 indicates perfect distribution of racial groups across all Census tracts in a region
- ▶ An index of 1 indicates perfect segregation of racial groups across the region
- ▶ Use caution when protected class population is small (< 1,000 people)

DISPROPORTIONATE HOUSING NEEDS

a. Which groups (by race/ethnicity and family status) are more likely than other groups to experience housing cost burden, overcrowding, or substandard housing? Which groups also disproportionately experience severe housing cost burdens?

b. Which areas in the jurisdiction and region experience the greatest housing burdens? Which of these areas align with segregated areas, integrated areas, or R/ECAPs and what are the predominant race/ethnicity or national origin groups in such areas?

c. Compare the needs of families with children for housing units with two, three, or four bedrooms with the available existing housing stock in each category of publicly supported housing."

*Use HUD maps, data, CHAS tables from
eCon Plan, Housing Market Analyses*

PUBLICLY SUPPORTED HOUSING PATTERNS ANALYSIS

Concentrations of racial/ethnic groups in public housing

Concentrations of voucher holders in certain neighborhoods

- ▶ Who is concentrated?
- ▶ Why?
- ▶ What are the characteristics of these neighborhoods?

Difference in demographic composition of persons living in assisted housing v. income-eligible population overall

- ▶ Are certain protected classes under- or over-represented?
- ▶ Why?

Differences in siting of public-assisted housing

Public housing authority policies, decisions for preferences, siting of housing, community opposition, impediments to mobility, quality of affordable housing information

DISPARITIES IN ACCESS TO OPPORTUNITY

Data HUD provides:

- ▶ Low poverty index—includes receipt of public assistance. High score=low poverty
- ▶ School proficiency index—based on 4th grade state tests in reading and math. Complicated by choice and magnet/charter schools enrollment.
- ▶ Labor [engagement] market index—measures human capital and labor market engagement by neighborhood.
- ▶ Jobs proximity index—examines location of neighborhoods to employment concentrations (DIA, downtown Denver, tech center)

Note: Inversely weighted by labor supply (competition)

DISPARITIES IN ACCESS TO OPPORTUNITY

Data HUD provides:

- ▶ Transit trips index—likelihood that low income renters in that neighborhood use public transit
- ▶ Low transportation cost index—transportation costs for low income renters
- ▶ Environmental health index—exposure to toxins

DISABILITY AND ACCESS ANALYSIS

- ▶ Locational distribution by age, reasons for demographic patterns
- ▶ Is there sufficient affordable and accessible housing in a range of unit sizes?
- ▶ To what extent do persons with disabilities in or from the jurisdiction or region reside in segregated or integrated settings?

DISABILITY AND ACCESS ANALYSIS

What are the range of options for persons with disabilities to access affordable housing and supportive services?

- A. To what extent are persons with disabilities able to access the following? Identify barriers faced.
- 1) Government services and facilities
 - 2) Public infrastructure (e.g., sidewalks, pedestrian crossings, pedestrian signals)
 - 3) Transportation
 - 4) Proficient schools and educational programs
 - 5) Jobs
- B. What processes exist in the jurisdiction and region for persons with disabilities to request and obtain reasonable accommodations and accessibility modifications to address the barriers discussed above?

FAIR HOUSING CONTRIBUTING FACTORS

Defined by rule as:

*“a factor that creates, contributes to, perpetuates, or increases the severity of **one or more** fair housing issues.”*

-24 C.F.R. Sec. 5.152

FAIR HOUSING CONTRIBUTING FACTORS

Excellent description beginning on page 202 of AFFH Rule Guidebook:

Access to financial services	Lack of local private fair housing outreach and enforcement
Access to proficient schools for person with disabilities	Lack of local public fair housing enforcement
Access to publicly supported housing for persons with disabilities	Lack of private investment in specific neighborhoods
Access to transportation for persons with disabilities	Lack of public investment in specific neighborhoods, including services or amenities
Admissions and occupancy policies and procedures, including preferences in publicly supported housing	Lack of regional cooperation
The availability of affordable units in a range of sizes	Lack of resources for fair housing agencies and organizations
The availability, type, frequency, and reliability of public transportation	Lack of state or local fair housing laws
Community opposition	Land use and zoning laws
Deteriorated and abandoned properties	Lending discrimination
Displacement of residents due to economic pressures	Location of accessible housing
Impediments to mobility	Location of employers
Inaccessible buildings, sidewalks, pedestrian crossings, or other infrastructures	Location of environmental health hazards
Inaccessible government facilities or services	Location of proficient schools and school assignment policies
Lack of affordable, accessible housing in a range of unit sizes	Location and types of affordable housing
Lack of affordable in-home or community-based supportive services	Occupancy codes and restrictions
Lack of affordable, integrated housing for individuals who need supportive services	Private discrimination
Lack of assistance for housing accessibility modifications	Quality of affordable housing information programs
Lack of assistance for transitioning from institutional settings to integrated housing	Regulatory barriers to providing housing and supportive services for persons with disabilities
Lack of community revitalization strategies	

AFH APPLIED TO ZONING

Focus areas recommended in AFH:

- ▶ Availability of affordable units in a range of sizes
- ▶ Affordable, integrated housing for persons with disabilities/persons who need supportive services
- ▶ Occupancy restrictions
- ▶ Maximum occupancy limits rarely questioned, but family composition rules cannot discriminate
- ▶ Limits on multifamily developments
- ▶ Direct correlations between protected classes, income/affordability and rental housing availability
- ▶ Facility spacing or dispersal requirements
- ▶ Use the minimum necessary to achieve treatment outcomes
- ▶ Special use permit requirements
- ▶ Growth management ordinances
- ▶ Inclusionary zoning practices

SETTING FAIR HOUSING PRIORITIES AND GOALS

Fair Housing Goals:

- ▶ Identify one or more contributing factors that the goal is designed to address
- ▶ Describe how the goal relates to overcoming the contributing factor(s) and related fair housing issues
- ▶ Identify metrics and milestones for results—with timeframes
- ▶ Identifies responsible parties

See Guidebook, page 124, for strategy examples

QUESTIONS?

Thank you for your participation!