

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

OF THE ASSISTANT SECRETARY
FAIR HOUSING AND EQUAL OPPORTUNITY

OCT 11 1988

MEMORANDUM FOR: All Entitlement Grantees

FROM: Judith Y. Brachman, Assistant Secretary for Fair Housing
and Equal Opportunity, E *Judith Y. Brachman*

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SUBJECT: Community Development Block Grant (CDBG) Entitlement Communities
and their Duty to Affirmatively Further Fair Housing

The year 1988 has a special significance for those of us concerned with fair housing.

In April, we marked the 20th anniversary of the passage of one of the Nation's most important pieces of civil rights legislation—Title VIII of the Civil Rights Act of 1968. During this 20th year anniversary, the President signed into law on September 13, 1988, a piece of legislation that significantly strengthens Title VIII by providing stiffer penalties, establishing an administrative enforcement mechanism, and expanding the law's coverage to include the handicapped and families with children. The amended law, which becomes effective March 1989, signals a renewed commitment to achieving fair housing in this country.

Title VIII not only prohibits a wide range of discriminatory practices but also specifically requires the Secretary of HUD to administer all of the Department's housing and community development programs in a manner to affirmatively further fair housing. The Departmental mandate to affirmatively further fair housing is further bolstered by a similar requirement placed on CDBG Entitlement grantees through Section 104(b) (2) of Title I of the Housing and Community Development Act of 1974, as amended.

The Department, too, has acted to strengthen the affirmatively furthering fair housing provisions in the CDBG Program by issuing new CDBG regulations. Within these regulations, according to its preamble, there is: (1) a more accurate reflection of the conduct made unlawful under Title VIII; (2) an indication that the actions taken to affirmatively further fair housing required in the administration of programs must further the policies of Title VIII; and (3) an inclusion of activities to assure nondiscrimination in housing transactions.

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In addition, the new CDBG regulations identify the various types of activities a grantee can undertake to affirmatively further fair housing and three possible CDBG funding sources. One of those fair housing activities is the "analysis of impediments to fair housing choice," as provided for by Section 570.904(c) (1) of the new CDBG regulations, and which can be funded under the planning cost category of 570.205(a) (4) (vii).

"Fair housing choice" means the ability of persons of similar income levels regardless of race, color, religion, ~~sex~~ or national origin to have available to them the same housing choices. "Impediments to such housing choices" are any actions, omissions, or decisions taken because of race, color, religion, sex or national origin which restrict housing choices or the availability of housing choices. (Handicap and familial status will be included as protected classes once the Fair Housing Amendments Act of 1988 becomes effective on March 12, 1989.)

It is important to note that the preamble to the new CDBG regulations indicates that the conduct of a fair housing analysis cannot be used as justification for delaying actions to affirmatively further fair housing. It also states that carrying out an analysis would not be considered to constitute a fair housing action in and of itself; actions must be undertaken to address the impediments to fair housing choice identified in the analysis.

The new CDBG regulations, at Section 570.904(c) (2), provide specific examples of activities designed to overcome the effects of conditions that limit fair housing choice as identified in the analysis. Depending upon the nature of the fair housing activity, it would be eligible for CDBG funding as either a public service, under Section 570.201(e), or as an administrative cost under Section 570.206(c). For example, fair housing counseling, fair housing complaint processing, and testing in support of an individual complainant can be funded as a public service. Activities eligible for funding as administrative costs include those designed to further the objectives of Title VIII by making persons aware of the range of housing opportunities available to them through fair housing enforcement, education, and outreach activities.

It is against this backdrop that we want to stress the importance of your role in furthering fair housing in your communities. We acknowledge and commend the many CDBG grantees who have affirmatively furthered fair housing through the funding of Community Housing Resource Boards (CHRBs), and other fair housing agencies, groups and organizations experienced in this endeavor. We specifically encourage those communities not already doing so to consider the provision of financial support for such nonprofit fair housing groups and organizations as a means of achieving this objective.

Nationally, private fair housing groups and organizations have proven to be effective partners in uncovering and addressing housing discrimination, and in designing programs of outreach and education which prevent such discrimination from arising. Because of their specialized expertise, these groups and organizations generally offer CDBG communities a cost effective approach to maximizing fair housing activities.

In short, where such organizations exist, it is unlikely that a CDBG community can find a better means of furthering fair housing, and we strongly encourage you to work with and support these groups. Moreover, in those CDBG communities where no such groups exist, providing financial and technical support in helping to create a fair housing organization will be viewed positively by this Department in its review of your community's efforts to satisfy its fair housing certifications.

The Department's position that grantees may take actions to affirmatively further fair housing through contracting with such agencies has been specifically identified as a method of addressing conditions limiting fair housing choice under Section 570.904(c)(2)(iii). Grantees should note, however, that HUD's review of grantees' performance in fulfilling their fair housing certifications will focus on the actions that are undertaken--whether taken by the grantee itself or by agencies with which the grantee contracts.

As mentioned earlier, fair housing activities can be funded under the public services, administrative cost and planning categories, as applicable. It should be noted that some activities that qualify as a public service may also be classified as an administrative cost. This is important because it can enable you to provide a higher level of funding for these efforts since there is a 15 percent limitation on public services and a 20 percent ceiling for administrative and planning expenses. However, please remember that to be eligible, public services must meet the national objectives of the program for low and moderate income benefit.

We can do much more to affirmatively further fair housing with your help. How you carry out your CDBG affirmative fair housing responsibilities can and does make a difference. We urge you to consider strengthening your fair housing program in the ways we have described. After all, fair housing is both a right and a responsibility.