

Executive Summary

Overview

As part of the Consolidated Plan for Housing and Community Development, entitlement jurisdictions are required to submit to HUD certification regarding affirmatively furthering fair housing. According to HUD, affirmatively furthering fair housing includes:

- Completing an Analysis of Impediments to Fair Housing Choice (AI);
- Taking actions to overcome the effects of impediments identified through the analysis; and
- Maintaining records reflecting the analysis and actions taken.

This document offers findings of the Analysis of Impediments to Fair Housing Choice and makes suggestions regarding actions the Community Development Division and others concerned with fair housing in Clackamas County can consider in overcoming the effects of the identified impediments. HUD defines impediments to fair housing choice as:

- Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin which restrict housing choices or the availability of housing choice; or
- Any actions, omissions, or decisions which have the effect of restricting housing choices or the availability of housing choice on the basis of race, color, religion, sex, disability, familial status, or national origin.

Since the state of Oregon, by extension of its fair housing laws, has extended protection to marital status and source of income, these additional elements were included in the Clackamas County AI. Furthermore, HUD interprets the three steps taken in affirmatively furthering fair housing to represent a set of broad objectives, as follows:

- Analysis and elimination of housing discrimination in the jurisdiction;
- Promotion of fair housing choice for all persons;
- The provision of opportunities for racially and ethnically inclusive patterns of housing occupancy;
- Promotion of housing that is physically accessible to, and usable by, all persons, particularly persons with disabilities, and fostering compliance with the nondiscrimination provisions of the Fair Housing Act.¹

The Clackamas County Community Development Division (CDD) is committed to affirmatively furthering fair housing and contributing to the elimination of impediments to fair housing choice. This is the second AI the CDD has undertaken. The first study found that great strides were being made to affirmatively further fair housing in Clackamas County, but that housing discrimination still existed, most frequently with familial status and disability bases of discrimination. Furthermore, other evidence suggested that Hispanic and other minority populations, as well as female headed households, faced more subtle forms of discrimination.

¹ *Fair Housing Planning Guide*. U.S. Department of Housing and Urban Development. March 1996, pgs.1-3.

The AI recommended that county government increase outreach and education, and review mass transit planning routes.

Since then, the county has participated in several coordinating committees and organizations, such as the Coordinating Council for Homeless Programs, the Clackamas Housing Advocacy Network, and Metro's Affordable Housing Technical Advisory Committee. Mass transit policy has been considered by different committees over the years. One includes Complete Communities for Clackamas County, a broad-based citizen group that looks at housing, jobs and transportation. In addition, there are several agencies that provide fair housing service in the county, including the United States Department of Housing and Urban Development, The Fair Housing Council of Oregon, Legal Aid Services of Oregon and Clackamas County Social Services Division.

Impediments to Fair Housing Choice

During the course of the 2005 AI analysis, some aspects of the old impediments were found to still exist, but other more subtle impediments to fair housing choice were also found to exist in Clackamas County. These impediments are attributable, with varying degrees of significance, to various aspects of the housing and housing service provider systems, such as rental market activities, credit and lending practices, outreach and education effectiveness, and housing service provider coordination. While these efforts are interrelated, they have been separated into four general categories. Each will be discussed in more detail below and, while all are of concern, they are ranked by general level of importance, from greater to lesser.

Organizational Structure

Some portions of the existing organizational structure that delivers fair housing services in Clackamas County may at times be an impediment to fair housing choice, based on data gathered and findings of analysis conducted during the AI research. For the purposes of this document, the term "organizational structure" refers to how fair housing services are delivered to citizens of the county, whether provided by Clackamas County government, Legal Aid Services of Oregon, HUD, or other regional fair housing agencies operating in the metropolitan area and state as a whole. This somewhat fragmented organizational structure has led to less harmonious and effective fair housing activities, including outreach, education, enforcement, and testing, as described below.

The Clackamas County CDD, the agency responsible for the Analysis of Impediments, provides counseling and referral for fair housing issues by way of a contract between the Social Services Division and Community Development Division and through the Clackamas County Department of Human Services, Community Action Agency (CAA). In its fair housing activities, the CAA may refer a client to an attorney or to HUD. However, the focus of this effort - referral and counseling - appears to be somewhat narrow.

Legal Aid Services of Oregon (LASO) provides legal assistance to low-income individuals and advocacy for individual clients and as a class to assure indirect benefits as mandated by the law

with regard to housing discrimination.² The LASO operates a regional office in Oregon City, but does not have the resources to conduct a comprehensive program for fair housing.

The Fair Housing Council of Oregon (FHCO) is a statewide civil rights organization whose mission is to eliminate housing discrimination through enforcement and education. The FHCO is a non-profit corporation.³ The FHCO receives funding from HUD for many of its activities, but such activities are limited in Clackamas County. The FHCO typically refers callers to the Clackamas County CAA in cases occurring in Clackamas County.

The United States Department of Housing and Urban Development oversees, administers, and enforces the Fair Housing Act. The Office of Fair Housing and Equal Opportunity (FHEO) of HUD is responsible for administration of fair housing programs and for processing fair housing complaints. The Civil Rights Division of the U.S. Department of Justice is responsible for litigating on behalf of HUD in select cases of fair housing violations.

HUD maintains an office in Portland, Oregon, that coordinates a variety of agency programs, including some fair housing activities. For example, the office provides information to persons interested in fair housing and investigates fair housing complaints. However, the office does not directly handle fair housing complaints, but refers them to the Seattle regional office. Results of the analysis of complaint activity lodged with HUD over the last fifteen years indicate that housing complaints are scant, the opposite of state and national trends.

According to a survey of housing experts conducted for the AI, some confusion as to where referrals should be sent exists as well, regardless of the level of housing expertise. Furthermore, the confusion in the existing referral system may discourage pursuit of a fair housing complaint, leading to the existence of a small incidence of complaint data.

Consequently, AI findings indicate that fair housing entities working within Clackamas County tend to lack a consistent referral system for prospective discrimination victims and prospective violations of fair housing law. Further, it appears that citizens living in Clackamas County do not have the same access to fair housing testing and enforcement mechanisms as those living in nearby counties.

The Fair Housing Council of Oregon has the capacity to provide an array of fair housing services, but lacks any formal relationship to do so in Clackamas County. Besides Legal Aid of Oregon, no local avenue is open to persons who wish to move forward with alleged violations of housing law in Clackamas County.

Even though current statistics are scant, it appears that possible violations of fair housing law may be occurring in Clackamas County. This is evidenced by information from HUD complaints, the Fair Housing Council and a phone survey of 70 people within the county who are knowledgeable about housing issues, as explained below.

According to opinions expressed in the AI survey of experts, education and outreach, a key and necessary part of any set of fair housing efforts, is not providing the level of knowledge

² Ronald Rubino, Legal Aid Services of Oregon, 6/10/05

³ <http://www.fhco.org/mission.htm>

necessary for responsible housing providers and may be falling short for the general public as well. As demonstrated in the telephone interviews, knowledge of fair housing laws is less than desirable and outreach and education needs much more attention.

Issues attributable to lack of knowledge and understanding of fair housing laws, including provisions of the ADA, lead to many misinterpretations and miscommunications. This includes restrictive advertising, discriminatory terms and conditions during rental transactions, failure to make reasonable accommodation, and a variety of other discriminatory actions.

This also includes construction of new housing facilities. These imbalances in the fair housing system include the notion that county government lacks adequate resources to enforce fair housing code compliance or lacks the capacity to inspect housing for safety and health violations, which typically occur in lower income households.

Hence, access to the fair housing complaint system appears to be limited. Further, the capacity to engender an enhanced understanding of fair housing law is lacking. Resources devoted by the CDD and other fair housing entities operating in the county do not appear to be coordinated in such a fashion as to be most effective.

Confusion with ADA and Fair Housing Law

During the course of the analysis, a series of interviews was conducted with various building officials, planners, and other government employees, both at the county and city level. Based on the data gathered, there tends to be a general lack of understanding as to when the Fair Housing Act applies and when the Americans with Disabilities Act applies. Lack of knowledge and understanding of fair housing laws, including provisions of the ADA, lead to many misinterpretations and miscommunications. Of late, these misunderstandings and lack of knowledge are most often seen in new construction, leading to an impediment to fair housing choice for disabled citizens.

The Americans with Disabilities Act, Title II and III, covers public services and places of public accommodation. It states that all commercial buildings constructed for occupancy after January 26, 1992 must be made accessible to people with disabilities. This includes facilities such as hotels, grocery stores, government buildings (including government run housing), service establishments, schools, movie theaters and recreational facilities.

The Fair Housing Act disability provision covers multi-family residential housing constructed for first-time occupancy after March 1991. It also states that landlords cannot refuse to let tenants make reasonable modifications to their dwelling or common use areas built before 1991, at the tenant's expense, if it is necessary for them to use the housing.

On the surface, these appear reasonable, but interpretations regarding specific instances can often be confusing, not only to the general public, but to building officials, developers, community planners and other officials who are supposed to make sure the rules are being followed. The terms "ADA compliance" and "fair housing compliance" are used interchangeably, even though these are two different laws. This is not only an issue within various county government entities, but also with housing at the state and federal level.

City, County, and State Policies

Assessment of census data determined that there exist disproportionate rates of minority racial and ethnic concentrations, as well as concentrations of low-income and disabled households, in selected areas of the county. There also appears to be some correlation between areas with high concentrations of disabled households and areas of low-income concentration. Further, these latter areas tend to correspond with major transportation corridors. This is neither a positive or negative conclusion, as those who are disabled are most likely to rely on public transportation, which is more readily available near major transportation corridors.

However, responses to the telephone interviews cast doubts upon the equity of prospective land use controls and selected public policies. Additional inquiries with planners and building officials at the county and city level indicated that some land use practices and public policies contribute to land costs that cause housing prices to be prohibitive for many. Some examples of the increasing price of land were a lack of available land for the construction of multi-family units, the lack of incentives or bonuses for those who build affordable housing, and overly restrictive building codes that require certain materials, such as energy efficient windows and thicker insulation. While some of these tend to be socially desirable, such as conserving natural resources, the cost burdens fall mostly on protected classes of persons, according to respondents of the interviews.

Clackamas County government has had provisions in its zoning code since 1980 that allow an increase in density if affordable housing is provided. This is referred to as a density bonus, or land use incentive, that allows a developer to construct more units than would otherwise be allowed in a specified residential zone in exchange for the more affordable housing units. The percentage increase in density varies with the Comprehensive Plan category. For low-density, single family homes, there is an incentive increase up to 5 percent. Medium- or high-density multi-family zones have an incentive increase of up to 8 percent.

Mortgage Lending Markets

Evaluation of Home Mortgage Disclosure Act Information indicates two prospective problems in the county. First, selected minorities have relatively high home purchase loan denial rates and may be missing out on acquiring homeownership, particularly black and Hispanic householders. Secondly, the potential for risky lending behavior is high for extremely low-income householders making use of sub-prime lenders. A sub-prime lender gives loans to borrowers who do not qualify for loans from conventional lenders.

However, Clackamas County has lower denial rates than Oregon and only slightly higher denial rates than those seen nationally, so the county is not alone in experiencing this market imperfection. Still, minority Asian populations in Clackamas County are experiencing relatively low denial rates, often lower than other races; therefore, the degree of racial or ethnic bias in the credit markets is likely to be limited. While the absolute number of black and Hispanic minority applicants is small, the frequency of denials for these minority applicants is higher than white households. The same is true for those minority low-income householders accepting undue debt to perform home improvements. This higher frequency of denials for selected minority householders should be of concern.

Actions for Clackamas County Community Development Division to Consider

Within each of these four broad impediment categories, the Clackamas County CDD can consider taking selected actions over the next several years. However, the problem is significantly greater than the authority vested in the Community Development Division or the resources available to the CDD, and some of the actions are the responsibilities of HUD, state government, or other fair housing agencies operating in Clackamas County and the state of Oregon. Nevertheless, the following represents the prospective actions, segmented by category.

Organizational Structure

1. The Community Development Division and Social Services Division should consider formalizing a fair housing planning process, perhaps as a component to the Consolidated Plan for Housing and Community Development. The purpose of such a process would be to gain the participation and commitment of active fair housing entities to pursue a uniform and coordinated effort to affirmatively further fair housing.
 - a. The SSD could take the lead and gain consensus on the best approaches for delivering fair housing services in the most cost effective fashions.
 - b. Through this process, the SSD could review best practices seen elsewhere in the region.
2. The SSD could examine options to expand the county's ability to better conduct housing and home inspections for fair housing compliance.
3. The CDD should consider reallocating and/or expanding fair housing resources to better serve the needs of the citizens of Clackamas County. Specific actions to consider are below.
 - a. Clackamas County could evaluate the feasibility of incorporating a testing and enforcement component to the county's fair housing system by providing funding to a third-party agency to conduct testing and enforcement.
 - b. The SSD, in cooperation with the CDD, could prepare a uniform and consistent fair housing referral policy, accomplished through cooperation and coordination with the active fair housing entities in Clackamas County.
 - c. The SSD could expand fair housing education and outreach by:
 - i. Broadening education and outreach methods
 - ii. Soliciting participation by construction trades and building inspectors

Confusion with ADA and Fair Housing Law

1. Legal Aid Services of Oregon should attempt to decrease confusion regarding the Fair Housing Act and Americans with Disabilities Act through the development of educational materials for new employees in the departments that deal with construction of residential buildings.
2. The LASO could review current literature on both laws to ensure that current construction inspection practices are in compliance with federal laws.
3. The LASO could create a short reference sheet that describes the differences between the two laws and when each of these applies. Make these available for the following agencies and individuals:

- a. Builders and developers of multi- and single family homes.
- b. Realtors, leasing agents and landlords.
- c. Employees in the planning and building departments.

City, County, and State Policies

1. The DTD could convene a process to inspect building codes and zoning and land use regulations that adversely affect fair housing choice, lead to unwanted disproportionate concentrations of selected populations, or could lower the cost of providing affordable housing.
2. The DTD could inventory best practices seen in other jurisdictions to discover alternative methods for lowering the cost of affordable housing units, such as:
 - a. Methods of creating affordable housing trust funds
 - b. Equity concerns related to waiver of system development charges
 - c. Contract purchase or bulk negotiation for construction and building materials

Mortgage Lending Markets

1. Oversight of the mortgage lending community is beyond the authority of Clackamas County government. However, educating people about how credit can impact them is needed. This can be done both at the county and state level through the public school system, Fair Housing Council of Oregon and the county's Community Development Department. The specific type of outreach effort or educational material would be left up to the discretion of the individual agencies. The following are general steps suggested to help consumers:
 - a. The FHCO could increase outreach and education to prospective homeowners through:
 - i. Enhanced home buyer training
 - ii. A high school training program, in cooperation with the local school district, on how credit markets can best work for the consumer
 - b. The FHCO could better inform consumers of the advantages and disadvantages of using credit from sub-prime lenders
2. The SSD and the FHCO could provide referral and counseling to householders seeking credit advice and support.

