

NATIONAL COMMISSION ON FAIR HOUSING AND EQUAL OPPORTUNITY
THE STATE OF FAIR HOUSING IN AMERICA

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STATEMENT OF HARRY L. CAREY
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COOPERATION AND COORDINATION AMONG ALL FEDERAL AGENCIES IN
THE ACHIEVEMENT OF THE GOAL OF FAIR HOUSING

I want to thank the National Commission on Fair Housing Fair Housing and Equal Opportunity for the opportunity to provide my views on increasing the effectiveness of the Fair Housing Act through the affirmative administration of Federal programs to promote the goal of fair housing for all. I applaud your effort to speed the achievement of the goal of Fair Housing throughout the United States.

As you know, the Fair Housing Act envisions a two pronged attack on the barriers to equal housing choices for all. Both prongs are critical to the goal of fair housing. The first involves aggressive Federal, State and local enforcement against any person who unlawfully discriminates in connection with any aspect of housing. The second involves the special responsibility of the Federal government, through the Secretary of Housing and Urban Development and the heads of all Federal agencies, to affirmatively further fair housing in Federal programs.

Executive Order 12892 issued in January 1994, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing" implements the statutory responsibility of the Federal Government to affirmatively further fair housing. In this respect, the Order reaffirms the primary authority and responsibility of the Secretary of HUD to affirmatively furthering fair housing, but also directs all agencies (including those with regulatory or supervisory authority over financial institutions) to cooperate with the Secretary in affirmatively furthering fair housing.

The Order created a President's Fair Housing Council, assigned specific responsibilities for Secretary of HUD to promulgate regulations regarding all Federal efforts, and required executive agencies to promulgate regulations for their programs that are consistent with the Secretary's regulation. The Executive Order also provides for administrative sanctions where persons or entities participating in programs fail to comply with the affirmatively furthering requirements in regulations.

EO 12892 remains in effect and presents an basic framework for Federal affirmatively furthering efforts. However, implementation of the framework for Federal agencies has not been achieved in any meaningful way and the Fair Housing Council is inactive.

I believe this Commission should reaffirm the importance of EO 12892 and its full implementation. In the alternative, I would recommend the Commission to urge renewed action to assure that all Federal agencies, in consultation with the Secretary of Housing and Urban Development, take aggressive steps to assure that all programs relating to housing and community development promote the goal of fair housing for all persons in the United States through the issuance of a new Executive Order.

In connection with your consideration of action in the area of affirmatively furthering fair housing I would like to describe several points:

- The role of affirmatively further fair housing in Federal activities in the context of the achievement of the goal of fair housing in the Act.
- Examples of some of the efforts to coordinate the goal of fair housing in Federal activities and the benefits that have flowed from these efforts.
- The essential elements of a government-wide effort to promote achievement of the goal of fair housing in government operations and in the programs and activities that they operate or supervise.

AFFIRMATIVELY FURTHERING AND THE ACHIEVEMENT OF THE GOAL OF THE FAIR HOUSING

The Fair Housing Act provides a process for persons who believe they are victims of discrimination to obtain prompt and effective vindication of fair housing rights through administrative complaints filed with that Secretary or in Federal courts. Through investigation and conciliation the Act seeks to resolve alleged housing discrimination informally. But where these activities are not successful, the Act provides powerful administrative and judicial recourse and sanctions to vindicate the individual and governmental interest in fair housing. (Sections 810-814). The Secretary of Housing and Urban Development and the Attorney General of the United States are responsible for the enforcement of the rights protected in the Act. This includes the responsibility to coordinate the enforcement of the Act throughout the Government.

The Act also directs the Secretary of Housing and Urban Development to coordinate efforts of the Federal Government to promote fair housing through administration of programs and activities relating to housing and community development in a manner affirmatively to further fair housing. All agencies of the Federal government also are directed to cooperate with the Secretary with regard to this effort.

Specifically, the Act directs the Secretary of HUD to administer programs and activities relating to housing and community development “in a manner affirmatively to further the policies” of fair housing (Section 808 (e) (5)). The Act also directs that all Federal departments and agencies shall cooperate with the Secretary in enforcement and “shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner to affirmatively further fair housing”. (Section 808 (d))

This coordination and cooperation can be a powerful tool in assuring not only that housing discrimination will not occur but that Federal programs will promote achievement of the goal of fair housing. In my view, the goal of fair housing can not be achieved without positive and enforceable methods for assuring that Federal programs and activities promote the goal fair housing and do not perpetuate policies and practices that have worked to solidify current housing patterns or limit housing choices for persons based on race, color, national origin, religion, sex, familial status or disability.

EXAMPLES OF COORDINATION AND COOPERATION IN FAIR HOUSING

Over the last 40 years, there have been efforts to promote fair housing through a combination of enforcement and affirmative administration of programs and activities. Several major initiatives have had significant impacts

In the early 1970s, the Secretary of HUD developed Affirmative Fair Housing Marketing regulations requiring person participating in HUD housing programs to develop and implement plans for the marketing of housing to assure that persons throughout the housing market area of the housing, including those who are least likely to know of and apply for housing without affirmative marketing efforts are aware of their opportunity to obtain housing. These regulations also require ongoing monitoring and adjustments to assure affirmative marketing efforts.

In addition, in response to litigation, HUD developed Project Site Selection Criteria designed to measure the socio-economic impact of the location of projects on residents of the community where the project would be located. Projects competing for assistance received ranking points based on the desirability of the project location from a fair housing standpoint. The fair housing criteria were designed to and did increase the likelihood that projects would promote fair housing.

Later, HUD developed Site and Neighborhood Standards to measure the impact of the location of project based assistance in its Section 8 housing program. These standards were designed to assure that projects approved improved housing opportunities consistent with the goal of fair housing or were necessary to meet an overriding housing need in their community.

More recently, HUD has required eligible recipients in certain of its community development programs to develop and implement strategies to identify and move toward elimination of barriers and impediments to fair housing choice in their communities. These plans and community performance in the removal of barriers and impediments are intended to help communities to make fair housing an integral part of their effort to address the needs of their communities, particularly the needs of low and moderate income persons and families.

In addition, HUD has worked with housing industry groups to develop guidelines for the design and construction of new multifamily housing to assure that covered housing will be designed and constructed in compliance with the Fair Housing accessibility requirements. These collaborations have resulted in 10 articulations of the Fair Housing Act design and construction requirements to facilitate full compliance at all points of development.

HUD has also worked with the Department of Justice to provide information regarding the protections accorded to persons with disabilities. As a result HUD and DOJ have published joint statements, using a question and answer format describing the principles of reasonable accommodation, reasonable modifications and group homes for persons with disabilities under the Act

Further, HUD work with the Department of Justice and Federal Financial Regulatory Agencies brought a strong Joint Statement on discriminatory lending. This statement not only outlined prohibited lending practices but established a framework for cooperative enforcement activity. Similarly, HUD along with the Internal Revenue Service issued a statement on fair housing requirements in connection with the development and operation of low income housing tax credit properties, including the potential for loss of credits where discrimination is found. These efforts reinforce the importance of compliance with the Act in the financing of housing.

These examples, in my view, indicate the power of affirmative efforts in promoting housing choice in Federal programs. They indicate as well the effect that coordination and collaboration among agencies can have in informing persons of the rights and responsibilities under the Act.

ESSENTIAL ELEMENTS IN THE COORDINATION OF FEDERAL EFFORTS

Based on the efforts described above, I believe an effective initiative throughout government in support of fair housing should include the following key principles.

The statutory leadership role of the Department of Housing and Urban Development in achieving the goal of fair housing should be affirmed. Specifically, the Secretary should be directed to provide regulatory guidance on actions to further fair housing in Federal programs. After publication of HUD's regulatory framework, all Federal agencies should be required to adopt the HUD framework and, with approval of HUD, indicate requirements applicable to their specific programs.

A Federal-wide strategy in support of coordination and cooperation in fair housing enforcement, led by the Secretary of HUD should be established. Enforcement of fair housing through the Fair Housing Act and agency program enforcement should result in better and more effective enforcement action. There must also be a

requirement that all agency programs and activities, including lending, and all agency regulatory activities, not only prevent discrimination, but also affirmatively further fair housing.

Such a strategy should include a mandate that all agencies require participants in their programs and activities to implement demonstrable and measurable actions to prevent housing discrimination and affirmatively further fair housing in the competition for or the receipt of agency funding or benefits and establish clear performance measures for determining whether these actions are promoting the goal of fair housing.

And finally, a regulatory framework needs to provide agencies authority to invoke strong, efficient and effective sanctions to address failures of regulated and supervised entities that fail to comply with requirements to assure fair housing, including the suspension, termination or limitation of participation in programs.

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