

HUD and Court Monitor Respond to Westchester's Continued Failures to AFFH

On July 7, HUD notified Westchester County, NY that its continued failure to submit an Analysis of Impediments (AI) to fair housing choice violated a 2009 U.S. District Court settlement agreement and could “result in serious corrective action.” The court ruled that that Westchester had “utterly failed” to affirmatively further fair housing (AFFH). Also on July 7, the court-appointed monitor rejected the county's the second draft of a settlement implementation plan.

The Anti-Discrimination Center of Metro New York (ADC) sued the county in 2006 under the False Claims Act, asserting that the county's certification to HUD that it was affirmatively furthering fair housing was false. After the April 2009 February court decision, HUD offered to provisionally accept the AFFH certification (therefore allowing the continued flow of CDBG and HOME funds) if the county followed through on a set of provisions satisfying ADC's complaint (see *Memo*, 6/5/09).

On August 10, 2009, a settlement was reached that included a number of actions Westchester agreed to in a formal document called the “Stipulation”. One was to submit an Analysis of Impediments (AI) to fair housing choice by December 8, 2009, which the county failed to do after the second extension date of June 30, 2010. Without an AI HUD is questioning the veracity of Westchester's certification that it is AFFH, “a condition of its receipt of HUD funds...If the county does not submit its AI to HUD by July 23, HUD will promptly commence corrective action.”

Another feature of the Stipulation requires the county to spend \$51.6 million of non-federal, non-state funds to ensure the development of at least 750 new units of affordable housing over the next seven years, with 85% of the units to be located in areas with low concentrations of African-American or Latino populations (see *Memo* 8/21/09). In addition Westchester had to prepare an implementation plan (IP) addressing the Stipulation's requirements. The court-appointed monitor rejected the first IP draft February 11, 2010 (see *Memo* 2/26).

In his July 7, 2010 quarterly report to the court, the monitor wrote, “...the revised submission still falls short of a true plan to comply with either the Stipulation's specific terms or its overarching goal of building a more integrated Westchester.” ADC was pleased that the monitor highlighted a fundamental aspect of the Stipulation, “that Westchester County has continually tried to ignore the fact that the Stipulation is designed to begin the process of desegregating the county.”

The monitor gave the county until August 9 to comply with an extensive list of IP improvements. For instance, the IP must specifically state how the county will allocate the \$51.6 million to particular development projects. The IP should also include a strategy for distributing the required 750 affordable units to municipalities and census blocks with the lowest concentrations of African-Americans and Latinos.

The monitor also criticized the IP's proposed model ordinance for use by municipalities, because it continued to include impermissible preferences for current Westchester seniors, employees,

and volunteers, thereby “preserve[ing] the demographic status quo, directly cutting against the county’s obligation to AFFH.” The model ordinance also continues to emphasize the county’s claim that it lacks authority to influence municipalities’ zoning and land use control. Yet, the Stipulation explicitly states that the county shall use all available means as appropriate, including pursuing legal action to address a municipality’s failure to act to promote the objectives of providing affordable AFFH units.

According to the monitor, “Full compliance requires attention to all aspects of the Stipulation... Compliance is to be assessed in both substantive and procedural terms.” The monitor calls into question the “tone at the top”, citing the County Executive’s veto of a 10-4 vote by the Board of Legislators to ban source of income discrimination – despite the Stipulation’s requirement that the county promote, through the County Executive, such legislation.

ADC, while believing the monitor’s report contains many productive ingredients, is disappointed on several accounts. ADC regrets that the monitor did not exercise his authority to set forth IP revisions thought necessary after two failed IP proposals; affording any leeway to the county will not yield a satisfactory IP. Because of municipalities’ resistance to comply ADC also asserts that the monitor needs to be more specific regarding the county’s role in acquiring land and forcing zoning changes through litigation in order to facilitate the development of affordable AFFH homes.

The body of the monitor’s report is available on ADC’s website, <http://www.antibiaslaw.com/westchester-false-claims-case>.

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