**HUD Affirmatively Furthering Fair Housing in Westchester County NY**

Advocates will want to know about and take advantage of what appears to be a fresh, new position at HUD toward ensuring that jurisdictions affirmatively further fair housing (AFFH). While the initial indication that HUD under the new Administration will enforce AFFH seems to be triggered by an old law suit, it could signal the beginning of future policy making independent of any litigation.

On April 28 HUD rejected the accuracy of Westchester County's (NY) certification that it affirmatively furthers fair housing. As a result, HUD did not approve the County's 2009 Consolidated Plan, which in turn delayed the County's receipt of more than $8 million in CDBG, HOME, and ESG funds until the County could provide evidence that it in fact affirmatively furthers fair housing. See the last paragraph for brief background on AFFH and the Consolidated Plan.

However, on May 8 HUD wrote to the County that it was provisionally accepting the AFFH certification if the County followed through on an agreement to settle a law suit brought against it by the Anti-Discrimination Center (ADC) in April 2006. ADC had sued the County under the False Claims Act, alleging that County had failed to AFFH, and that the County's certifications from 2000 to 2006 that it had AFFH were false.

HUD's letter to the County references a May 4 "Term Sheet," – an agreement on the outlines of a settlement – containing provisions requiring specific commitments from the County regarding its AFFH obligations. The Term Sheet must be converted into a final settlement with ADC before July 6. The May 8 letter states that HUD's acceptance of the AFFH certification is based on the commitments made by the County in the Term Sheet that address all of the problems in previous AFFH certifications; and it is based on the premises that there is continuing, good faith progress by the County toward incorporating those commitments in a final settlement to be implemented in a timely manner.

The False Claims Suit. On February 24, 2009, the U.S. District Court for the Southern District of New York found that Westchester County had "utterly failed" to meet its AFFH certification, and that its annual certification and more than 1,000 claims for payments sought from HUD over a six-year period were false.

The Court wrote, "The County's AI [Analysis of Impediments to Fair Housing Choice]… utterly failed to comply with the regulatory requirement that the County perform and maintain a record of its analysis of impediments to fair housing choice in terms of race. This failure is only compounded by the County's failure to follow the guidance provided by HUD."

The Court stressed that, "The AFFH certification was not a mere boilerplate formality, but rather was a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the County to conduct an AI, take appropriate actions in response, and to document its analysis and actions."

According to the Court, the County's AIs "…were conducted through the lens of affordable housing, rather than fair housing and its focus on protected classes such as race. Both AIs [2000 and 2004] are devoted entirely [only] to the lack of affordable housing in the County…[T]here is simply no evidence that either of the County's AIs…analyzed race-based impediments to fair housing…" Yet, over half of the municipalities in the Westchester County Urban Consortium had African-American populations of 3% or less, while entitlement cities such as Mount Vernon and Yonkers which receive CDBG, HOME, and ESG directly from HUD, had populations which were 68% and 41% Black or Latino, respectively.

The Court emphasizes that "The statutes and regulations require not just any AI, but one that analyzes impediments to fair housing that are related to race." Elaborating, the Court declares, "The focus of the AI is to be on 'actions, omissions or decisions' which 'restrict housing choices or the availability of housing choices,' or which have the effect of doing so, based on '*race, color,* religion, sex, disability, familial status, or national origin,' including '[p]olicies, practices, or procedures that appear neutral on their face,' and HUD suggests that the AI contain a housing profile describing 'the degree of *segregation* and restricted housing *by race*, ethnicity, disability status, and families with children; [and] how segregation and restricted housing supply occurred. There is no dispute that the County's AIs did not contain this analysis of segregation and the housing supply."

Background. Affirmatively furthering fair housing (AFFH) is defined in the regulations as: having an Analysis of Impediments (AI) to fair housing choice; taking appropriate actions to overcome the effects of impediments; and, keeping records reflecting the analysis and showing the actions taken. An AI is: A comprehensive review of a jurisdiction's laws, regulations and administrative policies, procedures and practices, and an assessment of how these affect the location, availability and accessibility of housing. An AI also assesses conditions, both public and private, affecting fair housing choice for all protected classes. The protected classes are: race, color, religion, sex, national origin, familial status (in other words, households with children) and disability. For more information, see NLIHC's Advocates' Guide, page 169, http://www.nlihc.org/doc/AdvocacyGuide2009-web.pdf.

The Consolidated Plan is a 5-Year plan that is required in order to receive CDBG, HOME, ESG, and HOPWA funds. ConPlans must identify housing needs by income categories, assess the housing market, and then establish priorities for distributing this federal money among needs and various neighborhoods. For more information, see NLIHC's Advocates' Guide, page 172, http://www.nlihc.org/doc/AdvocacyGuide2009-web.pdf.

For more about the False Claims suit, see the Anti-Discrimination Center's website, http://www.antibiaslaw.com/westchester-false-claims-case.