

Legal Settlement Signals HUD Approach To Affirmatively Furthering Fair Housing

HUD announced a historic fair housing settlement with Westchester County, NY on August 10, the latest step in a legal process started in April 2006 when the Anti-Discrimination Center (ADC) sued the county alleging that it violated the False Claims Act each time it certified from 2000 on that it was “affirmatively furthering fair housing” (AFFH). The U.S. District Court for the Southern District of New York found on February 24, 2009 that the county had “utterly failed” to meet its annual AFFH certification. Then on April 28, HUD rejected the accuracy of the county’s AFFH certification, leading to the rare disapproval of the county’s 2009 ConPlan and reflecting Secretary Shaun Donovan’s stated commitment to AFFH, (See *Memo*, 6/5).

Jurisdictions that receive CDBG, HOME, ESG, and HOPWA block grants are required to have a HUD-approved Consolidated Plan (ConPlan). In its ConPlan, a jurisdiction must certify that it is affirmatively furthering the jurisdiction’s commitment to fair housing choice.

"This is about expanding the geography of opportunity for families who may have been limited in their housing choices. The agreement we announce today demonstrates Westchester County's commitment to make sure its neighborhoods are open to everyone, regardless of the color of their skin," said HUD Secretary Shaun Donovan. "This agreement signals a new commitment by HUD to ensure that housing opportunities be available to all, and not just to some."

According to the settlement, the county must 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. At least 630 of these homes must be in municipalities with an African-American population of less than 3% and a Latino population of less than 7%; and, within such municipalities the homes cannot be developed in census blocks which have more than 10% African-American or Latino populations.

After there are building permits for 175 of these homes, up to 60 homes can be developed in municipalities that have African-American populations of less than 7% and Latino populations of less than 10%, while up to another 60 homes can be created in municipalities with African-American populations of less than 14% and Latino populations of less than 16%.

All 750 homes must remain affordable and occupied by income-eligible households for at least 50 years. At least half must be rental units, with a minimum of 20% affordable to households with very low incomes, below 50% of the area median income (AMI), and the remaining 80% affordable to households with incomes below 65% AMI. “Affordable” is defined by the HOME program, so rents can be no greater than the Fair Market Rent (FMR) or 30% of a hypothetical household with an income of 65% AMI. If there are more than five rental units in a building, 20% must be occupied by very low income people and have rents that are less than 30% of their income or less than 30% of the income of a hypothetical household with income at 50% AMI. Owner-occupied

homes must be occupied by households with incomes below 80% AMI and consume no more than 33% of the income of a hypothetical household with income at 80% AMI.

No more than 25% of all homes can be exclusively for senior citizens, and such senior homes cannot be developed until at least 175 non-senior homes have building permits. Up to 25% of the 750 homes could be previously existing homes as long as they meet several criteria.

The county has 120 days to come up with an implementation plan that has benchmarks specified by the settlement for each year through 2016. This plan must assess land suitable for development or adaptive reuse that has potential to provide access to services and facilities that promote employment and educational opportunities, as well as medical and other family services. Priority must be given to sites close to public transportation. The implementation plan obligates the county to promote to its municipalities a model inclusionary zoning ordinance and standards for affirmative marketing. The plan must also contain a CDBG allocation process that gives priority to and provides incentives for projects that further the development of AFFH affordable housing.

Among other requirements, the county must promote legislation already before the Board of Legislators that would ban “source of income” discrimination in housing, and use at least \$400,000 for public education, outreach, affirmative marketing, and consultants.

The court has appointed a monitor to oversee compliance with the settlement. Each quarter, the county must submit to the monitor reports that present the location of homes at three stages of development: completed, under construction, or merely with financing in place. The reports must also provide race and ethnic information about the occupants as well as the municipalities and census blocks where the homes are located. These reports must be available to the public.

"The resolution of this case is a positive step toward creating new housing opportunities and advancing integrated residential patterns in Westchester County," said Ron Sims, HUD Deputy Secretary. "This settlement reflects an approach to equitable development in suburban areas that can serve as a model for building inclusive, diverse and sustainable communities across the country."

“Residential segregation underlies virtually every racial disparity in America, from education to jobs to the delivery of health care, but has been a problem that too many have ignored for too long,” Gurian commented. “This settlement means that Westchester can no longer hide from the ugly reality of continuing residential segregation. More broadly, the settlement reflects a new commitment by HUD to make sure that recipients of federal housing funds throughout the country recognize that token efforts to affirmatively further fair housing will not be tolerated.”

More information, including the complete settlement agreement and earlier court decision, are available from ADC <http://www.antibiaslaw.com/westchester-false-claims->

[case](#), or Craig Gurian, Executive Director of the Anti-Discrimination Center,
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