Memo to Members

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Take Action

Sign Letter Supporting the National Housing Trust Fund, Deadline Extended

All organizations concerned about homelessness and the lack of affordable housing in the U.S. are urged to sign onto a letter calling on Congress to protect and expand the national Housing Trust Fund (HTF). The deadline for signing the letter has been extended to May 31.

The HTF is a critical new resource for building and preserving homes for the lowest income people in America. In 2016, its first year of funding, states made plans to use HTF resources to increase the supply of affordable rental homes for extremely low income veterans, seniors, people with disabilities or special needs, low-wage workers, and people experiencing homelessness. With more resources, the HTF can play a critical role in ensuring the nation's 11.4 million extremely low income households have access to decent, affordable housing.

The HTF is the first new federal affordable housing resource in a generation, and it is exclusively targeted to build and preserve housing affordable to people with the lowest incomes. In 2016, the first $174 million in HTF dollars were allocated to the states. Because the HTF is administered as a block grant, each state has the flexibility to decide how best to use HTF resources to address its most pressing housing needs. The first year of funding was a strong start to the program, but Congress must significantly expand the HTF to address the critical affordable housing needs of the lowest income renters in every community in the U.S.

The need to protect and preserve the HTF is relevant to Congressional negotiations on FY17 and FY18 appropriations. Additionally, Congress is considering reforms to the government sponsored enterprises (GSE), Fannie Mae and Freddie Mac, in 2017. Because the HTF is funded through a small assessment on Fannie Mae and Freddie Mac's new business each year, reforms to the GSEs would have a direct impact on the HTF. Previous bipartisan legislation reforming the GSEs included a significant increase in resources to the HTF. Congressional leaders considering reforms during this session of Congress must protect and expand the HTF to assist the 7.4 million extremely low income households who lack access to affordable homes. There may also be opportunities to expand the HTF in a comprehensive infrastructure package and in comprehensive tax reform efforts.

Sign the letter by **May 31** urging Congress to protect and expand the HTF and share it with your networks.

Contact your Congressional delegation directly at: http://bit.ly/2lBR7eM

United for Homes

Trump Proposes Massive Tax Reform, Misses Opportunity to Help Low Income Households

The Trump administration called for an overhaul of the tax code on April 26. In a one-page outline, Mr. Trump proposed to replace the seven income tax brackets with three new ones, cut the corporate tax rate by more than 50%, abolish the alternative-minimum tax and estate tax, and nearly double the standard deduction - from $12,600 to $24,000 for married couples. The plan fails to reform the mortgage interest deduction (MID), but the dramatic increase in the standard deduction would make the MID irrelevant except for those with the highest incomes.

The administration's tax proposal would lower the corporate tax rate from 35% to 15% and establish three tax rates for individuals at 10%, 25% and 35%, but it did not establish what incomes would fall into each bracket. Administration officials did not address how much the plan would reduce federal revenue or grow the debt, but the Committee for a Responsible Federal Budget estimates that the plan would lead to a loss in government revenue of roughly $5.5 trillion over 10 years.

“This is about economic growth, job creation, America first, and that’s what [Mr. Trump] cares about,” White House National Economic Council Director Gary Cohn said. “Our tax plan is a big leg of that stool.”

House Speaker Paul Ryan (R-WI), Senate Majority Leader Mitch McConnell (R-KY), House Ways and Means Committee Chairman Kevin Brady (R-TX), and Senate Finance Committee Chairman Orrin Hatch (R-UT) issued a joint statement that said in part: “The principles outlined by the Trump Administration today will serve as critical guideposts for Congress and the Administration as we work together to overhaul the American tax system and ensure middle-class families and job creators are better positioned for the 21st century economy.”

Democrats on Capitol Hill panned the proposal. House Minority Leader Nancy Pelosi (D-CA) called the plan a "wish list for billionaires." "The same Trickle Down Economics that undermined the middle class are alive and well in the President’s tax plan," she said in a statement. "True to form, President Trump’s tax plan is short on details and long on giveaways to big corporations and billionaires."

White House officials indicated that if Democrats oppose the plan, Congress could resort to using the reconciliation process to pass legislation through the Senate with a simple majority vote. Doing so, however, would limit the changes to ten years rather than making them permanent.

NLIHC released a press statement criticizing the Trump tax reform proposal for missing an opportunity to rebalance federal housing policy to help more everyday people – both homeowners and renters – afford a place to call home. “If Mr. Trump is serious about putting forward tax reform proposals to spur economic growth and help everyday Americans who have been left behind, he has sorely missed the mark,” said NLIHC President and CEO Diane Yentel.

The NLIHC-led United for Homes campaign calls on the president and Congress to embrace smart reforms to the MID. These include reducing the amount of a mortgage eligible for a tax break from $1 million to $500,000—impacting fewer than 6 percent of mortgage holders nationally—and converting the deduction into a credit, which would create a new tax break for 15 million low and moderate income homeowners who currently do not benefit from the MID. These changes would result in $241 billion in savings over 10 years to be reinvested into critical rental housing solutions, like the national Housing Trust Fund and rental assistance, for families with the greatest needs.

Instead of embracing the UFH campaign reforms to MID – a $70 billion tax write-off that largely benefits higher income households – to provide tax relief to millions of lower income homeowners, the Trump tax plan would make the MID even more regressive, benefitting only the wealthiest Americans. Rather than reinvesting the savings from MID reform to help our nation’s most vulnerable renters who struggle to pay their rent each month, the tax plan uses housing dollars to pay for lowering tax rates for millionaires, billionaires and corporations.

Learn more about the United for Homes campaign at: www.unitedforhomes.org

What is the UFH Campaign About?

The United for Homes (UFH) proposal calls for reducing the portion of a mortgage eligible for a tax break from $1 million to $500,000, impacting fewer than 6% of mortgage holders nationwide, and converting the mortgage interest deduction (MID) into a tax credit. Nationally, these two changes would allow 15 million more low and moderate income homeowners who do not currently benefit from the MID to receive tax relief and would generate $241 billion over ten years to invest in affordable rental housing solutions like the national Housing Trust Fund and Housing Choice Vouchers.

The UFH website features an “About” section that outlines the campaign’s focus, integrated approach, and supporters. This section describes the key elements of the UFH proposal; how the campaign relates to health, communities, racial equity, education, jobs, economic mobility, and income equity; and provides a comprehensive list of campaign endorsers.

Research shows that affordable and accessible housing positively affects one's ability to thrive economically, stay healthy, and feel secure. The "Our Integrated Approach" section of the website provides concise summaries on how the affordable housing solutions advanced by UFH would impact such areas as:

- Health: Living in a stable, affordable home improves a family's mental and physical well-being.
- Education: Children living in a stable, affordable home are more likely to thrive in school and have greater opportunities to learn inside and outside the classroom.
- Jobs: Every dollar invested in affordable housing helps create jobs and increase local income and property values.

The "Supporters" section of the website provides a comprehensive list of national and state organizations that have endorsed the campaign. The UFH campaign is supported by more than 2,300 national, state and local organizations and elected officials—in all 435 congressional districts—working to rebalance federal housing policy with the goal of ending homelessness and housing poverty. A user can reach out to a national or state organization and inquire about partnering on UFH campaign-related activities or inquire about local UFH-related initiatives.

Visit the UFH website at: www.unitedforhomes.org

Budget

Congress Reaches Deal on FY17 Spending

Republican and Democratic leaders in Congress announced late in the evening Sunday, April 30 that they reached a deal on a final FY17 spending package to fund the federal government through September and avert a government shutdown. The spending package is expected to be voted on in the House and Senate later this week before the current Continuing Resolution ends on May 5, a full seven months after the start of the fiscal year last October.

At more than $1.07 trillion, the final budget agreement upholds the bipartisan deal made in late 2015 to lift the spending caps required by Budget Control Act for defense and non-defense programs. The deal does not include any of the $18 billion in cuts requested by the Trump administration for non-defense programs, which include affordable housing and community development. While an additional $15 billion for defense and $1.5 billion for border security were included in the final package, these resources are allocated through a separate account for war operations that does not count against the spending caps.

Many of the "poison pill" riders that threatened to prevent a spending deal and to shut down the federal government were omitted. The deal provides no funding to begin construction of a wall with Mexico, does not restrict funding for sanctuary cities, preserves funding for Planned Parenthood and subsidies for the Affordable Care Act, and includes $2 billion in disaster relief for California, West Virginia, Louisiana, and North Carolina and a permanent fix to provide healthcare to retired coal miners.

Housing and Urban Development
The FY17 spending bill funds most HUD programs at or above FY16 levels, but below the high-water marks provided in the draft versions. This is true for Tenant-Based Rental Assistance, Family Self-Sufficiency, Native American Block Grants, Native Hawaiian Block Grants, Community Development Block Grants, HOME Investment Partnerships programs, Self-Help Homeownership Opportunity Program (SHOP), Homeless Assistance Grants, Project-Based Rental Assistance, Section 202 Housing for the Elderly, Housing Counseling, Policy Development and Research, and Fair Housing and Equal Opportunity.

For some programs, the FY17 bill provides more funding than the levels proposed under the House and Senate draft bills. These include the Public Housing Capital Fund, Choice Neighborhoods Grants, Housing for Persons with AIDS, and Healthy Homes & Lead Hazard Control.

The only programs to see funding cuts compared to FY16 were the Public Housing Operating Fund ($4.4 billion in FY17 compared to $4.5 billion in FY16) and Section 811 Housing for People with Disabilities ($146 million in FY17 compared to $151 million in FY16).

Tenant-Based Rental Assistance:

The spending package provides $20.292 billion for tenant-based rental assistance, $18.355 billion of which is to renew previous contracts. The bill allocates $47 million for Veterans Affairs Supportive Housing (VASH), $7 million of which is to serve Native American veterans. The bill also provides $10 million to support new Family Unification Program (FUP) vouchers and $120 million for Section 811 mainstream vouchers.

Project-Based Rental Housing:

The bill provides $10.816 billion to renew project-based rental assistance contracts for calendar year 2017, an increase of $186 million from the FY16 funding level. Further analysis is needed to determine whether this is sufficient to fully renew all existing contracts.

Public Housing:

While the public housing capital fund saw a small increase, the operating fund received a $100 million cut. The operating fund allocation fell from $4.5 billion in FY16 to $4.4 billion, while the capital fund allocation increased from $1.9 billion to $1.942 billion to help address lead-based paint hazards in public housing. The bill directs $35 million of the capital fund to be used for supportive services and service coordinators.

Rental Assistance Demonstration

The bill increases the number of public housing units that can convert under the Rental Assistance Demonstration (RAD) program from 185,000 to 225,000 and extends the program's sunset date to 2020. Under RAD, public housing agencies are able to leverage public and private debt and equity, largely through the Low Income Housing Tax Credit, in order to rehabilitate public housing stock and make capital improvements. NLIHC will continue to work to ensure that tenants are fully engaged in and protected during RAD conversions.

Homelessness:

The bill increases funding for homeless assistance programs to $2.383 billion from $2.25 billion in FY16. The bill targets $43 million to address youth homelessness and waives the requirement that youth 24 years of age and under provide third-party documentation to receive housing and supportive services within the Continuums of Care. The bill extends the authorization for the U.S. Interagency Council on Homelessness (USICH), which is set to expire this year, by one additional year.

Other Housing Programs:

The bill provides $502 million to the Section 202 Housing for the Elderly program, enough to renew all existing contracts and provide $10 million to build new units or provide rental assistance. The bill also reduces funding for the Section 811 Housing for People with Disabilities program to $146 million, $5 million less than the FY16 level.

The bill does not include language allowing Section 202 Project Rental Assistance Contract (PRAC) properties to convert under RAD.

The bill would level-fund the HOME Investments Partnerships program (HOME) at $950 million and the Community Development Block Grant program at $3 billion. The bill also provides a four-year suspension of the 24-month funding commitment deadline under the HOME program. This language is identical to an amendment offered by Senators Dianne Feinstein (D-CA) and Rob Portman (R-OH) that was accepted onto the Senate bill by voice vote. Because of the additional requirements on project selection, underwriting standards, and developer capacity under the HOME program, many communities have struggled to meet the two-year commitment deadline, which led to funding being lost. This language removes this barrier while keeping in place other, more meaningful deadlines.

Funding for the Housing Opportunities for People with AIDS (HOPWA) program was increased to $356 million to account for changes made to how the program funds are awarded by the Housing Opportunities Through Modernization Act.

The Choice Neighborhoods Initiative received an increase over last year's funding level, from $125 million to $138 million. Jurisdictions that receive Choice grants must ensure that at least $50 million be made available to public housing authorities.

The bill provides a $4 million increase to the Native American Housing Block Grant program, which is funded at $654 million, while the Native Hawaiian Housing Block Grant program, which received no funding in FY16, received $2 million in FY17.

<u>Healthy Homes:</u>

The bill provides $145 million to the Office of Lead Hazard Control and Healthy Homes' grants, a $35 million increase over FY16, and proposes initiatives to address lead-based paint hazards in affordable housing. The bill directs HUD to establish a process to improve data on how PHAs are complying with lead-based paint regulations in properties that use Section 8 vouchers.

The bill also takes steps to address the physical conditions of HUD-assisted housing to ensure residents are living in decent and safe homes. It requires HUD to take action against property owners receiving rental subsidies that do not maintain safe properties. The language authorizes the HUD secretary to replace the property's management agent with one approved by HUD, impose civil monetary penalties, change HUD's contract with the property owner until the program is resolved, transfer the property or contract to a new owner, and relocate tenants, among other actions. This language is similar to previous amendments and legislation introduced by Senator Marco Rubio (R-FL) after his year-long investigation of Global Ministries Foundation and the unsafe conditions at its properties.

<u>Fair Housing:</u>

The bill flat funds the HUD's office of Fair Housing and Equal Opportunity. The bill also prohibits HUD from directing local governments to change their zoning laws under the agency's Affirmatively Furthering Fair Housing (AFFH) rule or with the AFFH assessment tool. This language essentially continues an amendment approved by the Senate in their version of the FY17 spending bill. The amendment was offered originally by Senators Susan Collins (R-ME), Jack Reed (D-RI) and Thad Cochran (R-MS) as a compromise with more conservative Senators who sought to prevent HUD from moving forward with its AFFH rule. Instead, this amendment is far more circumscribed and seeks to protect local decision making.

USDA Rural Housing

The FY17 spending bill includes $2.94 billion for rural development programs, which is $166 million above the FY16 enacted level.

The bill fully funds USDA's Section 521 Rural Rental Assistance program. It also provides a modest increase to USDA's Section 515 Rural Rental Housing Loan program and the Multifamily Preservation and Revitalization demonstration – two programs that are necessary for preserving rental homes in the agency's portfolio.

The bill also directs the USDA secretary to incentivize nonprofit organizations and public housing authorities (PHAs) to take over ownership of rental housing properties and to ensure that they remain affordable by allowing these entities to receive a return on investment and asset management fee up to $7,500 per property. Last year, a record number of USDA rental homes were lost due to prepayment or maturity of their USDA Section 515 loan. When that occurs, tenants are no longer eligible for USDA's rental assistance program and may be subject to rent increases. These incentives are aimed at making it more financially feasible for nonprofit organizations and PHAs to maintain these properties as affordable for the long term.

NLIHC's updated budget chart is available here: http://bit.ly/1SowzjU

The budget text is available here: http://bit.ly/2qoVGg3

HUD

President Trump Nominates Pamela Patenaude as HUD Deputy Secretary

The White House announced on April 28 its intention to nominate Pamela Patenaude to be deputy secretary of HUD. Ms. Patenaude is currently the president of the J. Ronald Terwilliger Foundation for Housing America's Families. Previously, she served as the director of the Bipartisan Policy Center Housing Commission.

NLIHC released a statement from NLIHC President and CEO Diane Yentel congratulating Ms. Patenaude on her nomination and encouraging the Senate to confirm her. "Ms. Patenaude is a strong leader with decades of experience cultivating bipartisan solutions to America's affordable rental housing crisis," Ms. Yentel said. "She has deep knowledge of, experience with, and appreciation for the critical programs she will oversee. We look forward to working with Ms. Patenaude to preserve, improve and expand the critical programs necessary to end homelessness and housing poverty for the millions of families who struggle to pay their rent each month."

Neal Rackleff Nominated as HUD Assistant Secretary for Community Planning and Development

President Donald Trump announced his intention to nominate Neal Rackleff to be the assistant secretary for HUD's Office of Community Planning and Development. Mr. Rackleff has served as the director of Houston's Housing and Community Development Department. According to a White House announcement, during his tenure Houston became the first major city to effectively end veteran homelessness while chronic homelessness declined more than 70%. Mr. Rackleff is a partner at the Locke Lord law firm where he focuses on community and economic development, affordable housing, and inner-city revitalization.

PIH Notice Provides Voucher Funding Shortfall Guidance

HUD's Office of Public and Indian Housing (PIH) issued Notice PIH 2017-07 to provide public housing agencies (PHAs) guidance regarding potential eligibility for Housing Choice Voucher (HCV) shortfall funding in calendar year 2017. Shortfall funding would have to be provided by Congress either through a full-year FY17 Continuing Resolution (CR) or appropriation. The Notice also provides instructions for PHAs identified to be at risk of a HCV funding shortfall.

The Notice states that based on possible funding scenarios if a full-year CR is enacted, or if an appropriations act is enacted at either the House- or Senate-proposed levels, HUD anticipates a deeper housing assistance payment (HAP) proration than previously experienced. To arrive at proration, HUD determines the total voucher eligibility for all PHAs and compares that amount to the total available HAP renewal funding provided by a funding appropriation. This proration factor is then applied to each PHA's calendar year eligibility. A proration of less than 100% is applied if the nationwide eligibility exceeds the available HAP renewal funding provided by Congress. The 2016 proration was 95%.

HUD writes that local HUD Field Offices (FO) and PIH's Shortfall Prevention Team (SPT) are currently identifying PHAs at risk of a shortfall based on specific criteria and estimated HAP proration levels. For PHAs identified as having a potential shortfall, the Notice specifies four actions that PHAs must take when instructed to do so by the SPT.

For instance, the Houston Housing Authority (HHA) received a letter on April 21 regarding a projected $9 million HAP funding shortfall. HUD's letter to HHA stated that the PHA is "expected to take every possible action to reduce costs to prevent the termination of HCV participants due to insufficient funds." The letter requires the four immediate actions listed in Notice PIH 2017-07:

1. Cease issuing vouchers to applicants. However, this does not apply to:
    a. Families who are HCV participants and are issued a voucher to move to a different unit;
    b. Tenant protection vouchers that are being issued to families residing in a covered property at the time of an eligibility event; or
    c. HUD-VASH vouchers up to the baseline level of units under all HUD-VASH allocations (not just recent allocations), including turnover of HUD-VASH vouchers.
2. Rescind any unused vouchers that were issued to applicant families and cease leasing those rescinded vouchers, unless the applicant family has turned in a Request for Tenancy Approval and the unit has passed inspection. (This does not apply to vouchers that were issued for project-based voucher [PBV] HAP contracts for units that were under an agreement to enter a HAP as of the application date.)
3. Cease absorbing portable vouchers, and do not allow current HCV participants to port to higher cost areas or voluntarily move to higher cost units within the agency's jurisdiction. Involuntary moves (for example, if the landlord won't renew the lease) and moves needed as a reasonable accommodation for families with a disabled family member should still be allowed.
4. Do not issue vouchers to a family who wants to voluntarily move from a PBV unit with tenant-based assistance. However, if a unit becomes vacant, the PBV unit shall be filled with a family from the waiting list.

According to an article in the *Houston Chronicle*, HHA plans to rescind vouchers already provided to 900 households whose chosen homes have yet to pass inspection and will keep 28,000 households on its waiting list.

Notice PIH 2017-07 is at: http://bit.ly/2oO1pdB

HUD's April 21, 2017 letter to the Houston Housing Authority is at: http://bit.ly/2oR1YEg

The April 26, 2017 *Houston Chronicle* article is at: http://bit.ly/2qkwir9

Webinar on Final HUD Rule on Housing Counselor Certification, May 2

Register today for a HUD Office of Housing Counseling webinar for NLIHC members on May 2 at 2:00 pm ET on the Final Rule on Housing Counselor Certification, which became effective on January 13, 2017. Housing counselor certification may affect your program even if you are not currently participating in the HUD Housing

Counseling Program. This webinar will help you understand the housing counselor certification requirements and discuss options for meeting them. Register for the webinar at http://bit.ly/2naEmKt

If you provide housing counseling services under HUD programs like HOME, CDBG, Housing Choice Voucher Ownership Option, or Family Self-Sufficiency, your program may be covered by the new housing counselor certification requirement. Housing counseling provided about HUD programs must be performed only by certified housing counselors who work for organizations approved to participate in HUD's Housing Counseling Program. This webinar will cover the definition of housing counseling, what is not housing counseling, the new certification/examination requirements, programs that are affected, and options for meeting the new certification standards.

More information on the Housing Counselor Certification final rule, with a list of HUD programs affected and FAQs, is at: http://bit.ly/2nGmH07

U.S. Department of Agriculture

Sonny Perdue Approved to Lead USDA

The Senate voted 87-11 to confirm former Georgia Governor Sonny Perdue as Secretary of the U.S. Department of Agriculture (USDA), with bipartisan support and praise from many senators. In this role, Mr. Perdue will oversee the Rural Housing Service, which offers a variety of housing programs in rural areas.

Majority Leader Mitch McConnell (R-KY) praised Mr. Perdue from the Senate floor on April 24, saying he would work with Mr. Perdue to "continue developing smart agriculture policies that support both Kentucky and our country."

"I'm pleased to vote for Agriculture Secretary nominee Sonny Perdue today," Senator Tammy Baldwin (D-WI) said in a statement. "I look forward to working together to strengthen Wisconsin's agricultural economy and our rural communities."

Senator Chris Coons (D-DE), the co-founder of the Senate Chicken Caucus, expressed support for Mr. Perdue but urged him to oppose President Trump's proposed budget cuts. "I will challenge Governor Perdue to push back against some of the biggest proposed budget cuts to vital federal programs that support Delaware agriculture," he said.

National Housing Trust Fund

Mortgage Bankers Association GSE Reform Paper Includes Dedicated Funding for HTF

The Mortgage Bankers Association (MBA) issued a paper on its recommended approach to reforming the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. The recommendations include an affordable housing fee dedicated in part to support the national Housing Trust Fund (HTF).

GSE Reform: Creating a Sustainable, More Vibrant Secondary Mortgage Market states that the nation's affordable housing needs cannot be achieved exclusively through the government-guaranteed secondary mortgage market as currently provided by the GSEs. The MBA recognizes that a supplement is necessary and recommends that GSE reform include an affordable housing fee dedicated to support affordable housing funds like national Housing Trust Fund (HTF) and the Capital Magnet Fund (CMF).

MBA says that core principles should guide the size and use of an affordable housing fee. The fee should:

- Work in a manner like the current (4.2 basis points) fee assessed on new business that the GSEs pay to the HTF and CMF. The current fee is charged on each dollar of the outstanding principal balance of total new single-family and multifamily loans purchased by the GSEs each year.
- Be established by the Federal Housing Finance Authority (FHFA) through public notice and comment rulemaking, subject to a range established by Congress.
- Be set at a level that generates meaningful contributions to a range of important affordable housing efforts without unduly raising the cost of mortgage credit for consumers.
- Be consistently applied for reasonable time periods to ensure continuity and maximize compliance.
- Support mission-related activities undertaken by funds such as the HTF, CMF, and a new Market Access Fund (MAF). The MAF would support research, development, and innovations in consumer education, product design, new market segments (such as single-family rentals), underwriting and servicing, as well as credit support for certain mortgage loans or pools and the development of affordable housing for rent and for sale. A similar fund was proposed in the Johnson-Crapo GSE reform legislation in 2014 (see NLIHC media release about Johnson-Crapo, http://bit.ly/OA7gk2).

In the larger context of GSE reform, the paper outlines the key principles that should guide the reform effort and provides a detailed picture of a new secondary-market end state. It also attempts to shed light on two critical areas that have tested past reform efforts: the appropriate transition to a post-GSE system and the role of the secondary market in advancing an affordable housing strategy.

The MBA paper is at: http://bit.ly/2qbu8e9

Affirmatively Furthering Fair Housing

New Developments in Westchester County AFFH Court Settlement

Three significant developments have taken place related to the ongoing affirmatively furthering fair housing (AFFH) 2009 court settlement involving Westchester Country, NY. HUD informed the County that its "Analysis of Impediments Supplement to Chapter 12 – Zoning Analysis" was unacceptable because it continues to lack appropriate analyses of impediments to fair housing choice and fails to identify forward-looking strategies to overcome those impediments. Separately, Judge Guido Calebresi of the United States Court of Appeals for the Second Circuit accused the County of consistently evading its obligation under the 2009 settlement. And the Court recently appointed former U.S. District Judge Stephen Robinson as a new "monitor" assigned to oversee the settlement.

Background

In April 2006, the New York-based not-for-profit Anti-Discrimination Center (ADC) sued Westchester County under the "False Claims Act," alleging that County had failed to affirmatively further fair housing and that the County's certifications to HUD from 2000 to 2006 that it had affirmatively furthered fair housing were false.

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 AFFH 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."

On April 28, 2009, HUD rejected the accuracy of Westchester County's 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 Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and Emergency Solutions Grant (ESG) funds until the County provided evidence that it in fact affirmatively furthers fair housing.

On August 10, 2009 HUD announced a settlement with Westchester County. Among other provisions, the settlement required the County to implement strategies for changes to local town-zoning ordinances to affirmatively further fair housing. In addition, a Court-appointed monitor was named to oversee implementation of the settlement's many provisions.

Because subsequent AI submissions were also found lacking, Westchester has not received CDBG, HOME, or ESG funds since its FY10 block grants (FY09 and FY10 funds were provided based on assurances in the court settlement. Westchester County stopped applying for funds in 2015).

<u>HUD's Tenth Rejection of Westchester's AI</u>

Although Westchester County has not been receiving HUD funds since its FY10 block grants, the County is still required to submit an acceptable AI as a remedial measure under the 2009 settlement. HUD found the AI Supplement concerning zoning unacceptable because it failed to:

1. Analyze areas of white segregation by focusing on concentrations of minority residents in some communities (examples were provided).
2. Fully acknowledge segregation of African American and Hispanic residents, erroneously claiming that there were no concentrations of minority populations in some communities (examples were provided).
3. Compare similarly situated communities (examples were provided).
4. Offer forward-looking actions the County could take to overcome the effects of identified impediments. Instead the County discussed education and outreach activities such as distributing fair housing posters, attending award ceremonies, and participating on panel discussions.

<u>United States Court of Appeals for the Second Circuit</u>

Westchester County appealed a decision of the District Court concluding the County continued to fail in its obligation to provide an acceptable AI. County Attorney Robert Meehan is heard in a recording of April 21, 2017 oral arguments claiming frequently that HUD employed unreasonable standards in rejecting AIs. This was the fifth time the County came before the Second Circuit but the first time with Judge Guido Calebrisi sitting on the three-judge court.

Approaching the issue with fresh eyes, Judge Calebrisi acknowledged that he was being aggressive with Mr. Meehan. "I rarely get angry," Judge Calebrisi stated, "but it seems to me that what is going on is consistent evasion, consistent trying each time to find something new why you shouldn't live up to something that you agreed to [in the settlement]. And that is bad when parties do it. It is outrageous when the government does it."

Judge Calebrisi focused on two paragraphs of the settlement (7i and 7j) referred to by Mr. Meehan. Those paragraphs require Westchester to:

- "Use all available means appropriate to achieve objectives set forth in this paragraph, including…developing financial or other incentives for other entities to take steps to promote the objectives of this paragraph, and conditioning or withholding the provision of County funds…"

- "Use all available means as appropriate to address such action or inaction, including…pursuing legal action."

Judge Calebrisi asked whether Westchester used financial incentives when a town did not comply with its AFFH requirements. Mr. Meehan's response did not satisfy the judge, who stated, "As you've just told me, you didn't to that [offer financial incentives]."

Assistant U.S. Attorney David Kennedy spoke for the federal government. He cited numerous problems with the County's AI that the federal government presented to the court many times before, such as including a women's prison when counting the minority population as part of an analysis of whether there was exclusionary zoning, arguing that minimum lot sizes have no disparate impact on minorities, and omitting certain zones from charts to give the impression that there was no disparate impact. Mr. Kennedy also noted that the AIs failed to address why minority populations were so low in many of the towns compared to the minority population of the County as a whole. For example, several towns have a minority population of 1.5% or less, while Westchester County's African American population alone is 14.6% of the total. The federal attorney pointed out that there is a connection between the likelihood that minority families would need and use multifamily housing, while there is an absence of multifamily housing in many towns. Even when the County's "cherry-picked" data are considered, minority populations declined as lot sizes grew larger.

New Court-Appointed Monitor

According to the "Tax Watch" column of *The Journal News/lohud.com*, the court appointed a new monitor to oversee the settlement eight weeks ago. Former U.S. District Judge Stephen Robinson told "Tax Watch" that he is ready to "engage pretty heavily." The Anti-Discrimination Center had long been dissatisfied with the previous monitor, Jim Johnson.

HUD's April 10, 2017 letter is at: http://bit.ly/2pAIfMV

Second Circuit audio of oral arguments is at: http://bit.ly/2qf4pkg

The "Tax Watch" article is at: http://lohud.us/2q9iUth

Historical information about the Westchester County case is on the Anti-Discrimination Center website at: http://www.antibiaslaw.com/westchester-case

Research

NFHA Analyzes Housing Discrimination Complaints, Recommends Improvements

The National Fair Housing Alliance's (NFHA) *The Case for Fair Housing: 2017 Fair Housing Trends Report* reveals 28,181 housing discrimination complaints were filed in 2016. Fifty-five percent of these complaints were based on a disability, 19.6% based on race, and 8.5% based on familial status. The vast majority of these discrimination complaints occurred during rental transactions. NFHA estimates that more than 4 million instances of housing discrimination occur annually in the rental market alone, as many cases are frequently not reported.

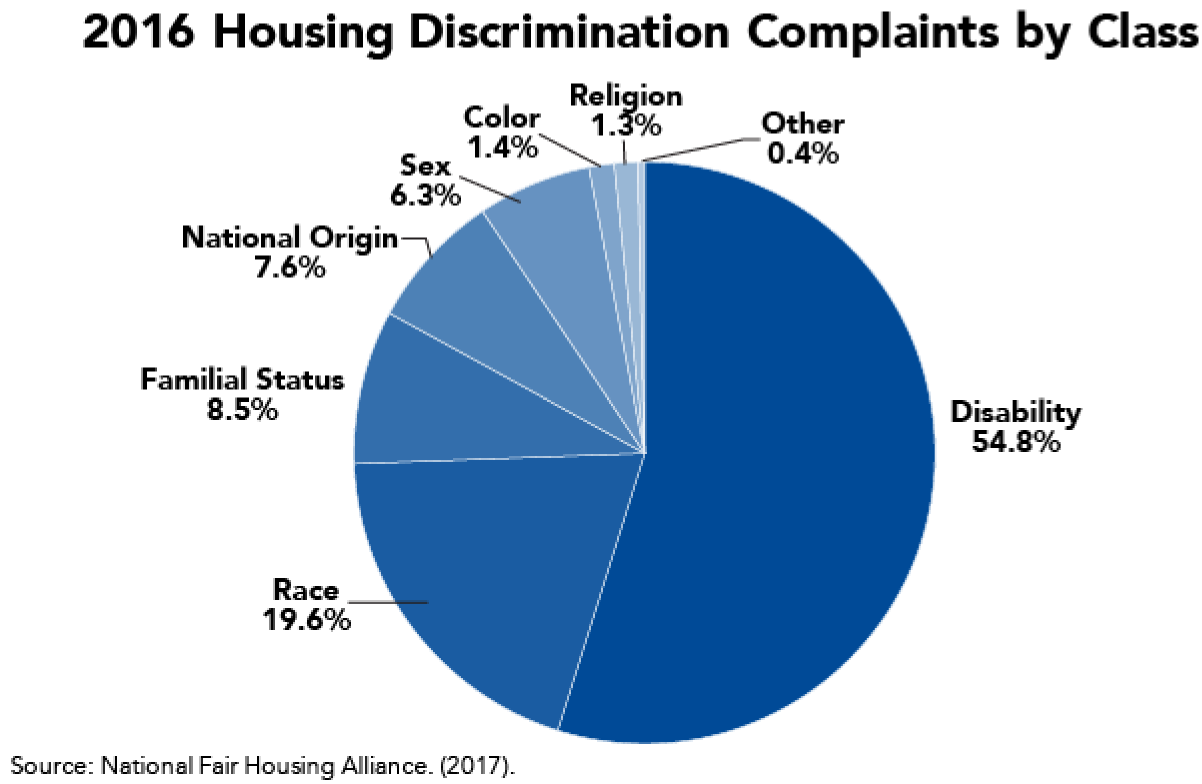
Local, private fair housing organizations processed 70% of the housing discrimination complaints, Fair Housing Assistance Program (FHAP) agencies processed 25% of complaints, and HUD processed nearly 5%. The Department of Justice processed 0.14% of the complaints. Many private fair housing organizations are funded through HUD's Fair Housing Initiatives Program (FHIP). They conduct extensive fair housing tests of discrimination in various sectors of the housing market and take part in systematic investigations at the regional or national level.

NFHA provides a number of recommendations to better address housing discrimination, including increased federal funding for private fair housing organizations, HUD, and state and local public enforcement agencies; the establishment of an independent fair housing enforcement agency with career staff with fair housing experience, an advisory committee, and sufficient resources to better investigate discrimination complaints and implement policies concerning federal agencies' responsibilities related to affirmatively furthering fair housing; effective implementation of HUD's Affirmatively Furthering Fair Housing rule and holding grantees accountable to it; and strengthening FHIP with greater funding and the creation of fair housing organizations in states and large metropolitan areas where no organization exists. Absent the establishment of an independent fair housing enforcement agency, NFHA recommends a reorganization of HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The Case for Fair Housing: 2017 Fair Housing Trends Report is available at: http://bit.ly/2q1Ae0L

Fact of The Week

Most Housing Discrimination Complaints Related to Disabilities and Race



Source: National Fair Housing Alliance. (2017). *The Case for Fair Housing: 2017 Fair Housing Trends Report*. Washington, DC: Author.

From the Field

Virginia Advocates Urge Members of Congress to Oppose Trump Budget Cuts and Increase Affordable Housing

The Virginia Housing Alliance (VHA/Alliance), an NLIHC state partner, joined with the Virginia Association of Housing and Community Development Officials (VAHCDO), on March 28 for the Alliance's largest Federal Housing Day ever. The two groups brought more than 50 advocates to Washington DC to meet with their members of Congress and push for reforms to and funding increases for federal housing programs. They protested the attack on affordable housing programs in President Donald Trump's FY18 budget, advocated for preserving and expanding the Low Income Housing Tax Credit (LIHTC), and encouraged their Congressional delegations to defend the national Housing Trust Fund (HTF) and the Affirmatively Furthering Fair Housing (AFFH) rule.

Virginia Advocates at the U.S. Capitol

The 2017 Federal Housing Day began with a meeting with the staffs of Senators Tim Kaine (D-VA) and Mark Warner (D-VA). The staffers welcomed the group to Washington and listened to their appeals for increased investments in affordable housing. Later in the day, the group visited their representatives in eleven House offices. They shared the Alliance's congressional district housing profiles, which pull data from the NLIHC district profiles and include information about public housing, vouchers, USDA-Rural Development affordable housing, and the impact of Community Development Block Grants and the HOME program in each district. Advocates also shared the Alliance's LIHTC district profiles that provide LIHTC economic impacts and project information in each district. In meeting follow-ups, advocates got several members to sign onto many of the FY18 House and Senate Dear Colleague letters related to housing and community development.

Advocates' policy priorities centered on expanding access to affordable homes for those who need them most. Advocates highlighted the devastating impact President Trump's budget cuts, which included a $6.2 billion cut to the FY18 HUD budget from FY16 levels, would have on households who depend on federal assistance. They encouraged their members of Congress to instead raise the budget caps put in place by the 2011 "Budget Control Act," while maintaining parity between defense and non-defense spending. Advocates also encouraged their members of Congress to use tax reform as a vehicle to expand federal housing assistance. They praised the "Affordable Housing Credit Improvement Act," in both its House (HR 1661) and Senate (S. 548) versions, highlighting the importance of LIHTC as well as the need to expand and reform the program. The group discussed the possible positive implications tax reform could have for affordable housing, including using the savings from reforms to the mortgage interest deduction to increase funding for vital affordable housing programs, like the national Housing Trust Fund and vouchers, as proposed in the "Common Sense Housing Investment Act" (HR 948) and the United for Homes campaign. Advocates also urged their Congressional delegations to protect funding for legal aid, the Low Income Home Energy Assistance Program (LIHEAP) and weatherization, and the Corporation for National and Community Service that includes AmeriCorps.

The meetings provided advocates with opportunities to educate their members of Congress about the growing challenges low income Virginians face finding affordable and accessible housing. They emphasized the cost-saving and lifesaving impacts of federal housing programs and the need to defend housing programs from budget cuts. By joining together, VAHCDO and VHA amplified their call for increased investments to make homes affordable for all.

"By combining forces with VAHCDO this year and including better representation of those served by federal housing programs than in years past, we had a strong physical presence in DC that got us more attention from staffers and more face time with members," said VHA Director of Policy Zack Miller. "Attendees from across the state were better able to communicate the impacts that the President's proposed budget would have in their districts.

For more information, contact Zack Miller at: zmiller@vahousingalliance.org. To view VHA's congressional district profiles and other materials, see: http://bit.ly/2obP3MM

National Association of Counties Spotlights Efforts to End Homelessness in Los Angeles

The National Association of Counties' forum "Working Together to End Homelessness: A Discussion of Local and National Efforts to Combat Homelessness" on April 25 highlighted Los Angeles County's efforts to end homelessness.

Los Angeles County was home to approximately 40% of the statewide homeless population in 2016. In March 2017, voters approved Measure H, a 0.25 cent special sales tax lasting ten years to fund efforts to address homelessness. An estimated $355 million per year will be raised to implement the county's strategies, including homelessness prevention, subsidized housing, efforts to increase incomes, case management and services, new affordable housing, and the creation of a coordinated service-delivery system.

Mark Ridley-Thomas, board of supervisors chairman for the County of Los Angeles, spoke about the difficulties in passing the measure and the collaborative efforts that were necessary to ensure its approval. "Our county has a disjointed geography," said Mr. Ridley-Thomas, "which made collaboration difficult. However, seven out of ten voters came out to approve only this measure. That speaks volumes of its importance to them."

Measure H is projected to help 45,000 individuals and families escape homelessness in the first five years, while preventing homelessness for 30,000 additional families and individuals.

Resources

Guidebook on the Rights of People with Disabilities

The Ability Center of Greater Toledo has produced a guidebook of tools for people with disabilities, advocates, housing providers, and state and local governments to create local ordinances that further the goal of community inclusion for people with disabilities. *The Rights of People with Disabilities in Inclusive Communities under the Americans with Disabilities Act, Fair Housing Act, and Section 504 of the Rehabilitation Act* aims to help stakeholders understand laws that protect people with disabilities and help them undertake community planning for inclusive, single-family neighborhoods. Inclusive neighborhoods exist where people with disabilities have the right to choose to live in, and visit, neighborhoods of their choice.

The booklet provides basic information about the Fair Housing Act Amendments of 1988, which added people with disabilities as a protected class, Title II of the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. It also discusses the 1999 Supreme Court *Olmstead* decision that held that unjustifiable isolation of people with disabilities constitutes discrimination under Title II of the ADA. Title II of the ADA requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified people with disabilities.

The guidebook discusses discriminatory zoning and land use laws, as well as exceptions that should be made to them to provide reasonable accommodations for people with disabilities. The guide also provides sample local ordinances that have procedures for requesting a reasonable accommodation and explains how to make a complaint to HUD or the Department of Justice.

Another section describes the concept of "visitability," explains the standard International Building Code model, and discusses visitability ordinances. In addition, the distinction between universal design and visitability is clarified.

The guidebook is at: http://bit.ly/2plA8D9

Additional information about the *Olmstead* decision is on page 6-13 of NLIHC's *2017 Advocates' Guide* at: http://bit.ly/2plR2Br

CBPP Launches "This Is SNAP" Campaign

The Center on Budget and Policy Priorities (CBPP) launched their "This Is SNAP" campaign to promote awareness of the benefits the federal Supplemental Nutrition Assistance Program (SNAP) has provided to people and communities across the country. The campaign website, which provides state-based SNAP program assessments and video testimonials from SNAP participants, doctors, and business people, equips advocates with resources and data to demonstrate how the program serves people with the lowest incomes. SNAP and other federal programs that ensure families a basic living standard face the threat of deep budget cuts in FY18.

"SNAP, simply put, is the most efficient and effective program at meeting the nutritional needs of low income families," says Jared Bernstein, a senior fellow at CBPP and former chief economic adviser to Vice President Joe Biden, in an interview on the website. "Over 90% of SNAPs resources, of its budget, go out in benefits to SNAP households. Let me tell you, many businesses would love to see an efficiency metric at that level."

The site also includes fact sheets and interactive maps, allowing users to access state-specific data and links to connect with their states' SNAP program offices.

View the website at: ThisIsSNAP.org

Event

Today is Pre-Event Registration Deadline Minneapolis NTI, May 22-26

Today, May 1, is the pre-event registration deadline for the NeighborWorks Training Institute (NTI) taking place May 22-26 in Minneapolis, MN. The NTI offers more than 100 course offerings in affordable housing development and financing; housing asset management; community engagement; community revitalization; community economic development; housing construction and rehabilitation; financial capability and homeownership education, coaching, and counseling; nonprofit management and leadership; and single-family and small business lending.

More information about the NTI is at: http://bit.ly/1Zx8Ima

Register for the NTI at: http://bit.ly/1ATs8Ia

NLIHC in the News

NLIHC in the News for the Week of April 23

The following are some of the news stories that NLIHC contributed to during the week of April 23:

- "Hundreds of Houston Families Aren't Getting the Housing Vouchers They Expected Because HUD Doesn't Have the Money," *MoneyBox*, April 27 at: http://slate.me/2qf80iS
- "Florida affordable housing funds likely to get shifted," *Orlando Sentinel*, April 25 at: http://bit.ly/2qeNKkp
- "Should you rent or own a home in retirement?," *The Washington Post*, April 24 at: http://wapo.st/2oFwjtd
- "Carson's God-and-bootstraps message fails to hearten housing advocates," *Politico*, April 23 at: http://politi.co/2p5R3re

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