



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

DEC 21 2010

December 21, 2010

Mr. Kevin Plunkett
Deputy County Executive
Westchester County
148 Martine Avenue
White Plains, NY 10601

Dear Mr. Plunkett:

The Department of Housing and Urban Development (“HUD”) has reviewed Westchester County’s (“the County”) revised Analysis of Impediments to Fair Housing Choice (“AI”), submitted to HUD on July 23, 2010 for approval under the August 10, 2009 Stipulation and Order of Settlement (“Settlement”). As discussed further below, although the AI provides data and identifies many issues central to furthering fair housing choice, it fails to make any material link between those impediments and the actions the County will take to overcome them. For example, the County has failed to set forth specific strategies in the AI to combat exclusionary zoning practices and promote fair housing choice for lower-income families of color. As a result, the AI is substantially incomplete and HUD does not accept it.

For HUD to approve its AI under the terms of the Settlement, the County must identify with specificity the actions it will take to further fair housing choice and submit a revised AI by April 1, 2011 that addresses the deficiencies set forth below. To date, HUD has provided extensive technical assistance to the County and will continue to make assistance available as the County revises its AI.

I. Background

On February 24, 2009, the U.S. District Court for the Southern District of New York ruled that the County had “utterly failed to comply with the regulatory requirement that the County perform and maintain a record of its analysis of the impediments to fair housing choice in terms of race.” *United States ex rel. Anti-Discrimination Center v. Westchester County*, 668 F. Supp. 2d 548, 563 (S.D.N.Y. 2009); *see also United States ex rel. Anti-Discrimination Center v. Westchester County*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007) (denying Westchester County’s motion to dismiss). Therefore, the County’s Affirmatively Further Fair Housing (“AFFH”) certification under 24 CFR 91.225(a)(1) was “false or fraudulent.” 668 F. Supp. 2d at 571.

On August 10, 2009, the County, the U.S. Department of Justice, and HUD entered into a Settlement, agreeing to a set of terms that are built on the core principle that the “broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns.” Settlement at 1. The County agreed to increase the supply of affordable housing,

particularly for non-elderly residents, in those parts of Westchester County with the least racial diversity. Further, the County agreed to undertake a process to plan for remedying what the District Court found the County had failed to do—to take seriously its obligation to identify impediments to fair housing choice and take appropriate actions to overcome those impediments.

The Settlement requires two indispensable planning tools—a revised AI¹ and an Implementation Plan—that are intended to guide the County as it implements its obligations under the Settlement. Specifically, the County agreed in the Settlement to “complete . . . an AI within its jurisdiction that complies with the guidance in HUD’s Fair Housing Planning Guide, *see* U.S. Dept. of HUD, Fair Housing Planning Guide (1996)” and that “the AI must be deemed acceptable by HUD.” Settlement ¶32. In the Settlement, the County further agreed that in the course of identifying and analyzing impediments in its AI, it must consider “impediments based on race or municipal resistance to the development of affordable housing.” Settlement ¶ 32(b)(i). Finally, highlighting the linked nature of the two planning tools, the County agreed in the Settlement to incorporate the Implementation Plan into the AI. Settlement ¶21.

Since the Court entered the Settlement, the County has taken some steps toward compliance. The County has identified sites, development opportunities, and financing strategies to move forward several affordable housing projects that will count toward the County’s obligations to ensure the development of 750 new affordable housing units in municipalities with little racial diversity. It also has developed a model ordinance that the Court-appointed Monitor has accepted.

At the same time, other actions taken by the County raise some concerns about its commitment to fulfilling its obligations under the Settlement. For instance, on June 25, 2010, County Executive Astorino vetoed the “Source of Income” legislation (Local Law 3-2010) passed by the Westchester County Board of Legislators despite the clear obligation in the Settlement to “promote, through the County Executive, legislation currently before the Board of Legislators to ban ‘source-of-income’ discrimination in housing.” Settlement ¶33(g).

Moreover, the County’s activities during this implementation period have occurred without an approved AI or an Implementation Plan that sets forth how it will meet its obligations to ensure the development of the new affordable housing under the Settlement. Without these planning tools guiding the County’s activities, the County has not demonstrated a strategy for how it will overcome barriers to fair housing choice, proactively identify sites and opportunities for affordable housing development, use the Settlement funds, or reach the desegregative goals of the Settlement. HUD believes these interlinked planning tools are fundamental to the County fulfilling the commitments it made under the Settlement.

¹ HUD’s Fair Housing Planning Guide, available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>, defines an AI as “a comprehensive review of a jurisdiction’s laws, regulations, and administrative policies, procedures, and practices affecting the location, availability, and accessibility of housing, as well as an assessment of conditions, both public and private, affecting fair housing choice. . .” Impediments to fair housing choice are any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices, or any actions, omissions, or decisions that have [such an] effect.” Fair Housing Planning Guide at 4-4.

II. The County's Submission

On July 23, 2010, after two extensions of the AI deadline, the County submitted a revised AI as required under the Settlement.² The County included in its AI a large volume of information and recognized many important fair housing choice issues. The County presents data across a range of issues and discusses many of the key impediments to promoting more inclusive communities. The County recognizes problematic land use approval processes and zoning ordinances, difficulties faced by lower-income and minority residents as they seek to move to higher-income neighborhoods, and local opposition to affordable housing development.

While this is an encouraging first step, the AI remains devoid of any specific strategies and commitments to actions that will overcome these impediments.³ This lack of specific strategies for action that are consistent with the Fair Housing Planning Guide is the fundamental flaw in the AI. In addition, the County's AI alludes to other conditions that may affect fair housing choice but does not analyze their effects as contemplated by the Fair Housing Planning Guide. The data presented in the AI includes clear evidence of racial segregation, but the County fails to explain these segregation patterns. Conditions the County mentions that may relate to racial segregation and discrimination include mortgage denial rates based on race and income, AI at 62-63; disparities in access to opportunities including differential public school performance and differential access to jobs, AI at 37-40, 47-49; and the availability of regional public transportation and its effect on employment and affordable housing opportunities, AI at 110. To comply with the Fair Housing Planning Guide and the Settlement, the County must at a bare minimum meaningfully assess whether these conditions serve as impediments to fair housing choice and, if so, design a set of actions that will overcome these impediments.⁴

III. Remedying Deficiencies in the County's AI

A sufficient AI under the Settlement, as the County acknowledged, must not only present data but provide a road map of actions that the County will take to address the problems and barriers evident in that data. *See* Settlement ¶ 32(b)(ii) (the County agreed to provide an AI that specified "appropriate actions the County will take to address and overcome the effects of impediments."). As noted above, the County's submission takes an important first step and

² The Settlement required the County to submit to HUD a revised AI on December 8, 2009. On October 21, 2009, the Monitor granted the County's initial request for additional time, extending the deadline to January 30, 2010. On December 8, 2009, the County requested a second extension for the submission of the AI, which HUD granted by extending the deadline to June 30, 2010. In granting that second extension, HUD emphasized that "[i]t is critical [that] the County fulfill its obligation under the Stipulation and Order without any further delay." On June 25, 2010, Westchester County made a third request for an extension. HUD declined this third request and later informed the County that HUD would take action if it did not receive the County's AI by July 23, 2010. On July 23, the County submitted the AI that is the subject of this review.

³ By identifying the core deficiencies in the County's AI and providing examples of key corrective actions that are necessary to undertake, HUD is not altering the County's obligations to develop an AI that complies with HUD's Fair Housing Planning Guide. *See* Settlement ¶32.

⁴ HUD also notes that that the County in its AI mentions the use of public opinion surveys and other tools to involve the public but does not confirm that its conclusions are drawn from processes that "encourage[s] the participation of diverse population groups, and . . . ensure[s] that communications and activities are accessible to persons with disabilities" as required under the Fair Housing Planning Guide. Fair Housing Planning Guide at 2-14.

includes data and descriptions of many of the subjects outlined in the Fair Housing Planning Guide. Moreover, the AI reveals clear patterns of racial and ethnic segregation and mentions many issues that are central to furthering fair housing choice. *See, e.g.*, AI at 12-14, 18-20, 23-27, 36.

To develop an acceptable AI, however, the County must draw on this information to identify actions it will take to address and overcome the impediments that it articulated in its submission. The County must address the actions it will take in the following areas:

- Overcoming exclusionary zoning practices: The County notes the existence of lengthy and complex approval processes and zoning ordinances that serve as barriers to affordable housing development. *See* AI at 122-125, 127, 131. In response, the County states that it will “encourage” municipalities to develop ordinances similar to its model ordinance and “engage in substantive dialogue with municipalities urging them to give priority to fair and affordable housing development.” AI at 132. These vague steps do not commit the County to take concrete action that will address those jurisdictions’ exclusionary zoning practices.

Even more fundamentally, the County claims that it is unable to overcome municipal exclusionary zoning laws, stating “Westchester County is extremely limited in the action it can take to solve the [exclusionary zoning] problems.” AI at 131. This statement is inconsistent with both the County’s obligation under the Settlement to take appropriate actions to gain municipal cooperation and the County’s clear acknowledgement of a number of tools already at its disposal to overcome municipal resistance, including providing financial incentives, enforcing the terms and conditions of the Urban County Cooperative Agreements, and initiating legal action if necessary. *See* Settlement at 2, ¶¶7(i)&(j), 25.

The County accordingly must set forth specific steps it will take to overcome exclusionary zoning practices. In addition to the tools set forth in paragraph 7 of the Settlement, these actions must include the County’s detailed plans to promote its model ordinance as required under paragraph 25(a) of the Settlement.

- Addressing location of affordable housing: Both the District Court’s Summary Judgment Order and the Settlement emphasize that beyond merely increasing the number of affordable housing units, the County must consider the effects that the location of affordable housing will have on segregation patterns in the area. Indeed, the Court stated that “[a]s a matter of logic, providing more affordable housing for a low income racial minority will improve its housing stock but may do little to change any pattern of discrimination or segregation. Addressing that pattern would at a minimum necessitate an analysis of where the additional housing is placed.” 668 F. Supp. 2d at 564-65; *see also* Settlement at 1 and ¶¶ 7, 31(c). While the County acknowledges the lack of affordable housing in its communities, *see, e.g.*, AI at 129, it has not analyzed or provided a strategy in terms of the location of that affordable housing. To sufficiently address this deficiency in its AI, the County must set forth the strategies it will employ to ensure that as it develops affordable housing, it is reducing patterns of racial and ethnic segregation.

- Promoting fair housing choice of voucher holders and other lower-income and minority households: In its AI, the County recognizes that there are “strong barriers that prevent lower-income households from seeking housing in neighborhoods with high median incomes and with low concentrations of minorities.” AI at 92. It does not, however, adequately commit to actions to address these barriers.

The Settlement explicitly sets forth two of the actions the County must take. First, the Settlement requires the County to “identify and analyze . . . the potential need for mobility counseling, and the steps the County will take to provide such counseling as needed.” Settlement ¶ 32(b)(iii). While the County identified the need for mobility counseling, and in the AI recommends that “[a] coordinated, comprehensive, county-wide mobility counseling program should also be funded, continued, and widely promoted,” the County makes no commitment to take any action. AI at 132. To satisfy the requirements under the Fair Housing Planning Guide and paragraph 32(b)(iii) of the Settlement, the County must identify the steps it will take to provide mobility counseling.

Second, the Settlement requires the County to “promote, through the County Executive, legislation [then] currently before the Board of Legislators to ban ‘source-of-income’ discrimination in housing.” Settlement ¶33(g). In light of the County Executive’s subsequent veto of the source-of-income discrimination legislation which passed by a wide majority in the County Legislature, and the absence of any plans by Executive Astorino to promote passage of comprehensive source-of-income legislation in the future, the County’s conduct here clearly conflicts with the terms of the Settlement. Thus, the County must set forth what actions it will take to promote source-of-income legislation.

- Increasing availability of affordable housing for families with children: The County’s AI included an analysis of the spatial concentration of families with children and a table demonstrating the relative incidence of poverty in the County. AI at 30-32, 45-46. In light of this and data in the County’s Consolidated Plan demonstrating a scarcity of large multi-bedroom rental units, there is evidence of barriers to fair housing choice for families with children. The County must examine the scarcity of affordable rental housing for families with children and take action to address the impediments it identifies, which includes plans to locate such housing consistent with the other provisions of the Settlement.
- Combating local opposition to affordable housing: In its AI, the County recognizes that there is local opposition to affordable housing and that “the political will to support any sort of affordable housing legislation, or even a particular affordable housing project, is generally in very short supply.” AI at 132. It further acknowledges that “[r]acism and classicism in more affluent communities may additionally contribute to voucher holders’ unwillingness to move.” AI at 81. In response to these impediments, the County states that an “education campaign” is needed, but does not commit to any approach. Instead, it only provides recommendations to engage in community dialogue and support programs that “provide technical assistance to housing developers and inform County residents of fair housing opportunities.” AI at 132. To satisfy its obligation under the Settlement, the

County must set forth what specific actions it will take to address the local opposition to affordable housing that the AI reveals exists in the County.

In proposing actions in each of these areas, the AI should be specific and include deadlines for completion; identify resources, from the County, local, State, and Federal agencies or programs as well as from financial, non-profit, and other organizations that have agreed to finance or otherwise support fair housing choice actions; and identify individuals, groups, and organizations to be involved in each action and define their responsibilities. Fair Housing Planning Guide at 2-22. Further, the County must consider whether regional approaches or collaboration with regional actors is needed to sufficiently address each impediment. *See* Fair Housing Planning Guide at 2-10, 2-11.

IV. Conclusion

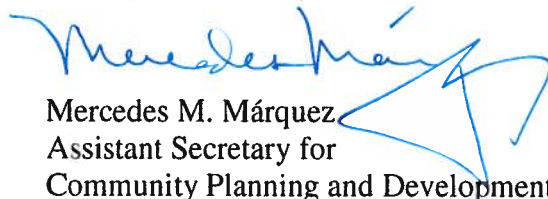
The County's AI is incomplete and unacceptable because it fails to link the information the County presents with a set of sufficiently responsive actions that will further fair housing choice. In order to comply with its commitments under the Settlement, and uphold its responsibilities under 24 CFR 91.225(a)(1), the County must submit to HUD a revised AI that takes into account the deficiencies described above by April 1, 2011. HUD believes that this deadline provides the County sufficient time to substantively address the identified issues. If a complete and acceptable AI is not received within this timeline, HUD is prepared to take formal action.

As mentioned above, as the County takes steps to bring the AI into compliance with the terms of the Settlement, HUD will continue to offer ongoing technical assistance, including reviewing or providing more specific guidance on interim drafts. We will contact you shortly to discuss how we can be helpful to you and the County as you complete the AI.

Sincerely,



John D. Trasviña
Assistant Secretary for
Fair Housing and Equal Opportunity



Mercedes M. Márquez
Assistant Secretary for
Community Planning and Development

cc: Jim Johnson, Debevoise & Plimpton LLP
Benjamin Torrance, Assistant U.S. Attorney for the Southern District of New York