

March 17, 2009

Shaun Donovan, Secretary of Housing & Urban Development  
Nelson Bregon, General Deputy Assistant Secretary,  
HUD Office of Community Planning and Development  
Bryan Greene, General Deputy Assistant Secretary,  
HUD Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing & Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Re: *United States of America ex rel. Antidiscrimination Center of Metro New York v. Westchester County* (S.D.N.Y Feb. 24, 2009)

Dear Secretary Donovan,

We write in the wake of U.S. District Judge Denise Cote's landmark decision enforcing the obligation on recipients of federal housing funds to "affirmatively further fair housing" ("AFFH"). Judge Cote expressly found 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.

2009 WL 455269. In the decision, Judge Cote – a former prosecutor and highly respected federal judge – went on to find as a matter of law that Westchester County, over a period of six years, had "utterly failed" to meet its AFFH requirements, notably failing even to analyze the role of race as an impediment to fair housing choice. The Court further concluded as a matter of law that each and all of Westchester's more than 1,000 representations of compliance with its AFFH duties were false. As Judge Cote pointed out, in the face of the "explicit statutory and regulatory scheme, it is easy to find that federal law conditioned payment of the housing and community development funds on compliance with the duty to AFFH and that each time the County submitted a request for payment of those funds it made an impliedly false certification." *Id.* at 17.

Construing HUD's Fair Housing Planning Guide and the statutory and regulatory framework on which it is based, the Court previously held that a grantee that certifies to the federal government that it will affirmatively further fair housing as a condition to its receipt of federal funds must analyze "the existence and impact of race discrimination on housing opportunities and choice in its jurisdiction." *United States of America ex rel. Anti-Discrimination Center of Metro New York v. Westchester County*, 495 F. Supp 2d 375, 376 (2007).

Some would argue that the identification of a serious and ongoing pattern of noncompliance and false statements by one grant recipient should be treated simply as an isolated phenomenon, but the continuing nationwide scourge of residential segregation suggests otherwise.

This is a moment when HUD should take the opportunity to remind all of its recipients that compliance with AFFH obligations is a precondition to receiving federal housing and community development funds. This includes affordable housing development as well as broader fair housing education and enforcement activities. Recipients cannot be permitted to ignore residential racial segregation and related forces that limit housing choice, and should be reminded that the mere building of affordable housing, by itself, does not fulfill their AFFH obligations. Rather, it is the location of affordable housing (and the opportunity of all applicants to live there, regardless of race or other protected class) that determines whether that affordable housing promotes fair housing choice or merely perpetuates segregation.

We are confident that the Court's thoughtful analysis regarding the AFFH duty will be instructive to HUD and to all who have such obligations under the Fair Housing Act. We look forward to working with you to make sure that HUD provides leadership on AFFH to communities throughout the country.

Sincerely,

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