U.S. Department of Housing and Urban Development
New York State Office
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278-0068
http://www.hud.gov/local/nyn/

March 25, 2013

Honorable Robert P. Astorino
County Executive
Westchester County
148 Martine Avenue
White Plains, NY 10601

Subject: Notice of Intent to Reallocate $7.4 Million in FY2011 Formula Funding

Dear Mr. Astorino:

This letter provides notice that HUD intends to reallocate approximately $7.4 million in CDBG, HOME, and ESG funding that had been allocated to Westchester County for FY 2011 to address housing and community development needs in your community. Unfortunately, the County's conduct has left us with no choice but to initiate this action. To date, the County has not provided satisfactory certification that it will comply with its obligation to affirmatively further fair housing as part of its FY 2011 Annual Action Plan. By statute, these formula funds are time-limited and will expire on September 30, 2013. If they are not reallocated, the funds will lapse and will not be able to be used to provide program assistance to anyone. Therefore, absent submission by April 25, 2013, of substantive assurance that the County will comply with its civil rights obligations, HUD will begin the process of reallocating Westchester County's CDBG, HOME and ESG funds to other eligible jurisdictions. The specific amounts at risk are as follows:

CDBG	HOME	ESG	TOTAL
$5,378,557	$1,655,688	$405,939	$7,440,184

Pursuant to Paragraph 32 of the Stipulation and Order of Settlement and Dismissal entered in *United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester County* (the "Settlement"), the County agreed to complete an Analysis of Impediments to Fair Housing Choice ("AI") acceptable to HUD. By letter dated July 13, 2011, HUD disapproved the County's FY2011 plan because the County's revised AI did not meet Settlement requirements. Specifically, the County did not incorporate a plan to promote source-of-income legislation or plans to overcome exclusionary zoning practices as set forth in HUD's May 13, 2011 Letter. By letter dated April 27, 2012, HUD offered to approve the CPD grants for FY 2011 and FY 2012 if the County provided assurances: (i) to submit a plan to overcome exclusionary zoning practices, in compliance with the direction provided in a letter from HUD's Office of General Counsel dated April 20, 2012 and update its AI accordingly, and (ii) to abide by the District Court's ruling on the parties' dispute, and to update its AI as appropriate to describe the County's plans to promote such legislation

consistent with that ruling when provided. To date, the County has failed to respond in writing to HUD's request for assurances. Instead, the County has repeatedly refused to take these remaining steps necessary to meet its obligations agreed to in the 2009 fair housing settlement.

On January 17, 2013, at the Monitor's request, HUD staff attended a meeting with the County. The County inquired about the status of the AI and the grant funding and asked for options to obtain the funding. The Deputy Regional Counsel responded that the April 27, 2012, letter explained to the County the steps that were necessary to receive the FY2011 and FY2012 funding. The County, however, never responded to that letter, despite numerous efforts to elicit a response. Although the County had not responded, HUD agreed to evaluate the County's zoning submissions to the Monitor to determine whether, if that work was incorporated into the County's AI, HUD would then be in a position to accept the County's AFFH certification with respect to the zoning issue. On March 13, 2013, HUD sent the County notification explaining why the submission to the monitor was not a sufficient response. That letter sets forth the corrective action HUD requires from the County in regards to the zoning analysis required in an acceptable AI under the Settlement.

As discussed above, with regard to the promotion of source of income legislation, HUD previously offered to accept a binding commitment by the County to comply with the District Court's order regarding the obligation to "promote, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income' discrimination in housing." On May 3, 2012, the District Court upheld the Monitor's findings and agreed that the County Executive should "[request] that the legislature reintroduce the prior legislation, [provide] information to assist in analyzing the impact of the legislation, and [sign] the legislation passed." On August 31, 2012, only after being threatened with contempt of court proceedings, the County Executive wrote a two line letter to the Board of Legislators stating that "[p]ursant to the May 3, 2012 Order of the Honorable Denise Cote, it is requested that the Board of Legislators reintroduce the prior source of income legislation." To HUD's knowledge, the County has taken no further action to promote source of income legislation and continues to appeal the Monitor and the Court's rulings on this matter notwithstanding the fact that both the District Court and the Second Circuit have denied the County's efforts to stay the order.

To avoid permanent loss of its FY 2011 CDBG, HOME and ESG funds, the County must provide to HUD, by April 25, 2013, a satisfactory zoning analysis and plan to overcome exclusionary zoning practices, as well as a plan to abide by the District Court's ruling on source of income. In light of the fact that the County has been on notice about these deficiencies now for years, HUD cannot at this point simply accept general promises of future performance but rather expects that the County will substantively comply with the requirements HUD has set forth for its AI. Specifically, the County must provide:

- A satisfactory plan, incorporated into the County's AI, to overcome exclusionary zoning practices within the eligible municipalities which will consist of:
    - Identification of local zoning practices that are having exclusionary impacts, or fail to take into account regional needs, in compliance with HUD's Office of General Counsel's letters of April 20, 2012 and March 13, 2013;
    - Development of a process for notifying municipalities of zoning issues that hinder the County's obligations under the Settlement and changes that must be made, and if not made, the consequences of municipalities' failure to make them;
    - Development of a process to involve municipal decision-makers in consultation regarding changes in zoning and land use restrictions;
    - Description of how these requirements will be included in future contracts or other written agreements between the County and municipalities; and
    - Identification of the types of zoning practices that would, if not remedied by the municipality, lead the County to pursue legal action.
- A description of the County's plan to promote source of income legislation that is consistent with the direction from the Monitor and the District Court and is incorporated into the County's AI.

Upon provision of satisfactory plans to HUD, HUD expects to be able to approve both the FY 2011 and FY 2012 annual action plans and allow block grants for these years to go forward. If the County does not provide satisfactory plans by the deadline, HUD will reallocate FY 2011 funds to other eligible jurisdictions and the funds will no longer be available for administration by the County.

If you have any questions, please have the appropriate person contact me.

Sincerely,

Vincent Hom

Vincent Hom
Director
Community Planning and Development