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/

April 20, 2012

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

Subject: Notice of Intent to Reject FY2012 Action Plan Certification and Status of FY2011 Action Plan

Dear County Executive Astorino:

On March 15, 2012, the Department received Westchester County's FY2012 Action Plan. In addition, the Department received your letter of March 19, 2012 requesting the release of HUD block grant funding to the county. For the reasons set forth below, HUD intends to reject the county's certification to affirmatively further fair housing submitted with its FY2012 Action Plan. For the same reasons, HUD is unable at this time to release the FY2011 block grant funding. This action is being taken following consultation between this Office and HUD Headquarters.

On April 28, 2011, HUD notified the county of the rejection of its FY2011 Annual Action Plan and on May 13, 2011, HUD provided a letter to the county detailing the corrective actions HUD would require in the county's analysis of impediments to fair housing choice submission (AI submission) before HUD could accept the county's Action Plan submission. The county submitted a revised draft on June 13, 2011. HUD determined that, although progress had been made, the submission would not meet the standards set forth in the May 13 letter. Working with HUD staff, the county made additional improvements to its AI submission, but as HUD documented in its letter to the county of July 13, 2011, the revised AI did not meet the Settlement's requirements, as set forth in the May 13 Letter. Specifically, two issues remained outstanding and unresolved. The revised AI did not sufficiently address deficiencies regarding promotion of source-of-income legislation or plans to overcome exclusionary zoning practices, which were required pursuant to the terms 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").

As confirmed by the Monitor and Magistrate Judge Gorenstein, the Settlement vests authority for approval of the AI exclusively in HUD. The county's compliance with its obligations to promote legislation banning source-of-income discrimination remains under the District Court's

review. Nevertheless, as set forth in the Monitor's Report and Recommendation Regarding Dispute Resolution (Amended), dated November 17, 2011 (the "Monitor's Report"), the county is required to analyze local exclusionary zoning practices, to develop a clear strategy describing the steps that it will take to challenge those restrictive practices, and to identify the types of zoning practices that, if not remedied by the local jurisdictions, would lead the county to pursue legal action. On March 16, 2012, Magistrate Judge Gorenstein overruled the county's objections and, thus, these recommendations are now final. By separate letter, HUD advised the county that its February 29, 2012 submission entitled "Review and Analysis of Municipal Zoning Ordinances in Westchester County" (the "Zoning Submission") did not meet the Settlement's requirements, as established by the Monitor's Report. Accordingly, reconsideration of HUD's rejection of the county's FY2011AFFH certification and disapproval of the county's FY 2011 Annual Action Plan is not warranted.

HUD is providing the county an opportunity for comment before HUD makes its final determination whether the FY2012 AFFH certification is inaccurate. 24 CFR 91.5 defines "certification" to mean a written assertion based on supporting evidence that must be kept available for inspection by HUD, the Inspector General of HUD and the public. HUD may reject a certification if, after inspecting the supporting evidence and providing the county with due notice and an opportunity for comment, it determines that a certification is inaccurate.

A written response must be provided to HUD, along with specific evidence supporting the county's AFFH certification by April 26, 2012. If you fail to respond or to provide sufficient evidence that supports the county's certification, HUD will determine that the certification is inaccurate and will disapprove the county's FY 2012 submission in accordance with 24 CFR § 91.500. If the action plan is disapproved, HUD will provide further guidance on the actions the jurisdiction could take to meet the criteria for approval in accordance with 24 CFR 91.500(c).

If you have any questions please have the appropriate person contact me at (212) 542-7428.

Sincerely,

Vincent Hom

Vincent Hom
Director
Community Planning and Development