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

May 13, 2011

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

Dear Mr. Plunkett:

By letter dated April 28, 2011, HUD disapproved Westchester County's ("County") FY2011 annual action plan based on HUD's rejection of the County's FY 2011 certification that it will affirmatively further fair housing ("AFFH"). Pursuant to Section 105(c) of the Cranston-Gonzalez National Affordable Housing Act and 24 CFR 91.500, this letter provides the specific reasons for HUD's disapproval of the action plan as well as actions the County can take to meet the criteria for approval. The rejection of the County's AFFH certification is based on HUD's review of the Analysis of Impediments to Fair Housing Choice ("AI"), submitted on April 13, 2011 ("Submission").

In a letter dated December 21, 2010 ("December letter"), HUD identified deficiencies in the County's AI submitted on July 23, 2010, provided specific ways that the County could remedy the noted deficiencies, and offered further technical assistance for a revised AI. The County was given until April 1, 2011 to submit an acceptable AI. The Submission came to HUD on April 13, 2011, twelve days after the April 1, 2011 deadline. The Submission demonstrates limited progress in addressing the concerns outlined in the December letter, but it falls short of certain clear expectations. In this regard, the Submission remains substantially incomplete and unacceptable to HUD. To meet the criteria for HUD approval, the County must submit a revised AI that provides a clear response and specific goals and timetables for the corrective actions set forth in this letter by June 13, 2011. HUD will reconsider the County's AFFH certification(s) based on the submission of a revised AI. HUD will contact the County in the next five days to provide technical assistance to the County.

Reasons for Disapproval and Corrective Actions

The County's Submission does provide some specificity and discussion in response to the December letter, primarily in Chapter 12 of the document in terms of promotion of a model ordinance and its outreach and education efforts. It does not, however, adequately address certain other concerns raised in the December letter that were based on applicable HUD regulations, the Fair Housing Planning Guide ("FHPG") and requirements in the August 10, 2009 Stipulation and Order of Settlement ("Settlement"). The corrective actions set forth in this letter require a substantive response from the County for HUD to deem the AI acceptable and approve its action plan.

A. Promoting Fair Housing Choice for Voucher Holders and Other Lower-Income and Minority Households

1. Mobility Counseling

"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". (December letter at 5.)

As part of the Settlement, the County agreed to "identify and analyze...the potential need for mobility counseling and the steps the County will take to provide such counseling as needed." (Settlement at ¶ 32(b)(iii).) In the Submission, the County acknowledges that "[g]iven the strong barriers that prevent lower-income households from seeking housing in neighborhoods with high median incomes and with low concentrations of minorities, a strong, coordinated, and intentional mobility counseling program is needed." (Submission at 92.) The actions the County commits to in this regard, however, are limited to the development of web applications "that support mobility counseling." It is unclear whether and how the County will carry out the counseling itself.

Corrective Actions

To correct this deficiency, the County must commit to steps that it will take to provide mobility counseling. In describing its mobility counseling program, the County must estimate the number of persons who will need counseling for each year over the next five years and identify specific outreach and marketing strategies to reach those persons. It must identify which agency or agencies will operate the program, how, when and where counseling will be offered, and what components of mobility counseling will be made available. Considering the fact that the County identifies five public housing authorities that do not currently provide mobility counseling and that the County itself has relinquished its management of Housing Choice Vouchers (HCV), a resubmitted AI must describe the coordination efforts the County will make with HCV administrators at the State and local level and list the steps that will be taken with timelines for each step to coordinate counseling materials, resources, and personnel across the different agencies. The AI must identify additional approaches (e.g. one-on-one counseling, in-home counseling and telephone access points for persons with disabilities) that will be made available to low income or disabled individuals and families who may not have access to online mobility counseling or web resources because of technological barriers, language barriers or disability. The County must include a plan for translating vital documents and for providing oral translation services for meeting the needs of persons with limited English proficiency.

2. Promoting Source-of-Income Legislation

"[T]he County must set forth what actions it will take to promote source-of-income legislation." (December Letter at 5).

Under the terms of the Settlement, the County agreed to "promote, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income'

discrimination in housing." In light of the County Executive's veto of legislation prohibiting discrimination based on source of income, the Submission does not detail any steps the County will take to promote source-of-income legislation. Instead, the Submission states only that the County will review data obtained from the Westchester Residential Opportunities, Inc. (WRO) systemic tests to evaluate the future need for source-of-income legislation. (Submission at 150.) This suggests the County will defer its plans until it evaluates such a study. The Submission is substantially incomplete without a discussion of the planned actions by the County to promote passage of an effective source-of-income legislation that is substantively similar to the bill that was before the Board of Legislators as described in the Settlement. (See Settlement at ¶33(g)).

Corrective Actions

The County's AI must describe the County's plans to promote source-of-income legislation. The AI must include, at a minimum, the following information: a description or text of proposed legislation to ban source of income discrimination that is substantially similar to the bill introduced before the Board of Legislators and a description of the steps the County will take to promote passage of the legislation with the Board of Legislators and the public, including but not limited to support for passage of strong source of income protections in public forums including the media and the efforts the County will make to ensure the introduction and passage of the legislation including securing support from individual Legislators.

The proposed and enacted legislation must be substantially similar to the bill described in the Settlement and provide protection against housing discrimination on the basis of lawful sources of income such as Section 8 vouchers, Social Security, Supplemental Security Income (SSI), veteran's benefits and pensions. The AI must identify the steps planned or taken by the County to garner support for passage of the ordinance with the legislative body and with the public within the next legislative session. The AI must discuss efforts to inform the public, including elected and appointed decision makers, about the importance of such an ordinance and describe workshops and other community outreach planned to promote passage of the ordinance.

The AI must provide assurances that upon the passage of Source of Income legislation reasonable and necessary to implementation of the Settlement it will be supported by the County Executive.

B. Increase the Availability of Affordable Housing 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 other provisions of the Settlement." (December letter at 5.)

The data in the County's Consolidated Plan demonstrated scarcity in the availability of affordable rental housing for families needing more than two bedrooms (FY 2009-2013 Westchester Urban County Consortium Consolidated Plan, Chapter 2: Housing Market Analysis at 9, 28), which was not adequately addressed in the July AI or the most recent Submission. While the County's Submission includes some measures it is taking to promote family housing—including "urging" developers to include dens in apartments and implementing occupancy standards on

subsidized housing—it is not clear that the County has provided any further examination of the availability of family rental housing to determine what barriers exist. The County indicates that 33% of the households in the County have one or more children (Submission at 30.) and that there are 8600 households in the County that are overcrowded. (2009-2013 Consolidated Plan, Ch.2 page 10.) Currently most rental units in the County are one and two bedroom units. (*Id* at 9.) The County also acknowledges that black and Hispanic female-headed households are disproportionately more likely to have children compared with white female-headed households. (Submission at 57.)

Corrective Actions:

Based on HUD's analysis, the scarcity of affordable rental housing for families with children represents a barrier to fair housing choice. Consistent with its obligations under the Settlement, the County's description of appropriate actions to overcome this barrier by promoting affordable family housing throughout Westchester County must contain specific details on how the proposed actions will be implemented. In the absence of an explicit analysis of need, the County must commit that at least 50% of the affordable housing units developed by the County or with County support within the next five years, including the units covered by the Settlement Decree, will have three or more bedrooms. The County must also describe where it will locate, or incentivize development of, affordable rental housing for families with children in areas that do not further increase racial and ethnic segregation. (See Section E. Addressing the Location of Affordable Housing.). The County must identify in its AI the locations of above average schools and identify the steps it will take to prioritize the development of units with three or more bedrooms in areas that are within such public school districts. The County must also identify potential sites or incentives for development of larger housing units near public transportation and shopping. The County must locate sites for these units in areas that will not perpetuate racial segregation including those geographic areas prioritized in the Settlement.

C. Identifying Barriers Related to Patterns of Racial and Ethnic Segregation

"Conditions the County mentions that may relate to racial segregation and discrimination include mortgage denial rates based on race and income...; disparities in access to opportunities including differential public school performance and differential access to jobs...; and the availability of regional public transportation and its effect on employment and affordable housing opportunities.... To comply with the Fair Housing Planning Guide and the Settlement, the County must 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." (December letter at 3.)

Although the December letter stated that it must do so, the County still has not sufficiently analyzed data and information regarding demographics and local conditions to identify impediments to fair housing based on race, color, religion, sex, disability, familial status, or national origin. (December letter at 3.) According to Census 2010 data, 21 of the County's municipalities have non-Latino African-American population of less than 3% and 12 of these also have Latino populations of less than 7%. The County describes itself as having a diverse population (Submission at 11), but fails to explain and analyze its long history of segregation and the impact that segregation has had and may have in the future on fair housing choice for racial and ethnic minorities.

Corrective Actions

The County must provide steps it will take to identify mortgage lending, discrimination including working with private groups to conduct testing, undertaking enforcement efforts and working with lenders to educate borrowers about lending discrimination, investigating potential complaints of lending discrimination, and encouraging lenders to provide refinancing and loan modification opportunities in those neighborhoods. This revised submission must include specific details and timelines for proposed actions.

D. Addressing Plans to Overcome Exclusionary Zoning Practices

"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." (December letter at 5.)

The Submission mentions municipal ordinances as an impediment to fair housing, and states that the County will overcome exclusionary zoning practices by promoting a Model Ordinance, implementing a discretionary funding policy, establishing a bonus provision for awards of CDBG funds, and preparing for legal action to combat exclusionary zoning practices. These are all important first steps that HUD supports, but the plan lacks specifics in terms of a legal strategy.

Corrective Actions

The legal strategy must include: identification of specific zoning issues that the County will challenge, identification of the specific municipalities where the zoning issues exist, and a process for notifying the jurisdictions of the changes that must be made and of the consequences of their failure to do so. The plan must also include a list of the steps that the County will take if the municipalities do not enact the changes within three months of the County's notification. The AI must include a strategy to involve municipal decision makers in leading changes on zoning and land use restrictions and ways in which substantive dialogue and other, more concrete steps will be used in an orderly fashion to achieve changes.

The specific zoning practices which must be addressed by the County include restrictions that limit multifamily housing development, including outright prohibition of such housing, limitation by the size of a development, limitations directed at Section 8 or other affordable housing, and limitations on the number of such developments in a municipality, restrictions that directly or indirectly limit the number of bedrooms in a unit, restrictions on lot size or other density requirements that encourage single family housing or restrict multifamily housing, limitations on townhouse development, and infrastructure barriers related to zoning such as the absence of sewer systems that are impediments to the development of rental housing or to affordable housing.

The following specific steps that the County must include, at a minimum:

- Provision of notice to a municipality that fails to remove, or which enacts during the next five years, a prohibited zoning ordinance and the timeframe, not to exceed 90 days, for the municipality to act.
- A requirement that the municipality provide evidence of the change within the designated time frame to the County
- Designation of an office to which the evidence will be provided
- A list of actions that the County will take when a municipality does not make the zoning change or where action is inadequate including funding suspension or termination and litigation. Such action must be initiated within 30 days of the date that the County becomes aware of the failure of the municipality to take the action.
- A description of how these requirements, in the future, will be included in contracts or other written agreements between the County and a municipality.

E. Addressing the Location of 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. (December letter at 4.)

The County agreed to adopt a policy acknowledging that "the location of affordable housing is central to fulfilling the commitment to AFFH because it determines whether such housing will reduce or perpetuate residential segregation. (Settlement at ¶31(c)). The County must consider the effects that the location of affordable housing will have on segregation patterns in the area and describe detailed strategies that it will use to ensure that it reduces patterns of racial and ethnic segregation as it supports the development of affordable housing.

In its Submission, the County sets forth strategies to increase the placement of "fair and affordable" housing opportunities in census blocks with the lowest concentration of African-American and Hispanic residents under the terms of the Settlement. However, the discussion does not adequately address how it will reduce segregation patterns apart from its obligation under the Settlement, including in its existing housing stock. (Submission Table 12.1 lists all County funded affordable housing developments as of December 1, 2010.) (December letter at 4.) The data indicates that almost 54% of the existing affordable housing units are located in the racially concentrated areas of New Rochelle, Port Chester, Sleepy Hollow, White Plains and Yonkers. These municipalities are ineligible for the placement of the required 750 AFFH units. The Submission briefly mentions that the County "will utilize the same analytical tools to address patterns of segregation" (Submission at 138) in non-eligible municipalities but it is unclear how such strategies address patterns of segregation in those communities. The County must apply a similar analysis to all non-eligible municipalities and provide a list of the geographic areas which the County intends to target to locate affordable housing and provide for each area the County's justification for selecting them as areas that will reduce the concentration of African American and Hispanic residents.

Corrective Actions

The AI must address the County's obligation to affirmatively further fair housing beyond the four corners of the Settlement. A considerable part of the County's plans to locate affordable housing includes strategies to provide at least 750 units consistent with the terms of the Settlement. However, the County must include a description of its strategies to develop, support the development of, or preserve affordable housing in areas of the County that are not included in the Settlement and for housing units beyond those provided for in the Settlement.

F. Considering Regional Approaches or Collaboration

"[T]he County must consider whether regional approaches or collaboration with regional actors is needed to sufficiently address each impediment." (December letter at 6.)

The FHPG indicates that an AI should be made in a manner that "will provide . . . a comprehensive picture of the status of fair housing at local, *regional*, and State levels." (FHPG at 2-10 (emphasis added).) A regional approach is necessary to understand and overcome impediments, given the regional nature of housing markets and the barriers that operate within them. (FHPG at 2-11.) HUD's October 2009 letter to the County also highlighted this issue and cautioned "[i]t is likely that Westchester will not be able to adequately address issues of discrimination and segregation without a regional approach." (October 2009 Letter at 4.)

While the County's Submission includes a section titled "Regional Impediments Analysis," it merely recounts the impediments identified in the AIs of four jurisdictions—Mount Vernon, New Rochelle, White Plains and Yonkers—and concludes that "outside forces dictate and control" the impediments identified in those other jurisdictions' AIs. (Submission at 127.)

Corrective Actions

The County must develop a strategy for outreach and communication with neighboring jurisdictions to develop regional approaches or collaboration on shared or related impediments it identifies. The strategy should include specific steps for outreach, meetings, and coordination on fair housing.

G. Combating Community Opposition

"...[T]he 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." (December letter at page 6.)

Although the Submission notes the County will address local opposition to affordable housing "with an outreach and education campaign to reach as broad an audience as possible on the benefits of mixed-income housing and racially and ethnically integrated communities" (Submission at 145). It does not adequately "set forth what specific actions it will undertake to address the local opposition to affordable housing that the AI reveals exists in the County." (December letter at 6.)

The County has committed to a program to "reach community leaders with the message that they need to actively support the development of affordable housing and housing choice." (AI at 148.) This is a critical part of any plan to addressing community opposition but the AI lacks details on the specifics of the plan.

Corrective Action

The County must commit to meeting with elected and appointed officials in jurisdictions where affordable housing is likely to be sited to remind them of their obligations to comply with the Fair Housing Act and not act on opposition to affordable housing development based on race, national origin, presence of children in the household and other prohibited bases. The County must advise the officials that the County will take action to counter community opposition including actions by elected or appoint officials that interferes with the actions that will be taken by the County under the AI. In addition, the County must have a policy that describes the County's response and designated responders to cases of hate crimes or other criminal acts that target housing providers or actual or potential residents of affordable housing. HUD will provide resources to assist the County in this area.

H. Adequately Addressing the Engagement of LEP and Disabled Populations

In developing actions for each impediment, the County must address access to its programs for persons with limited English proficiency and with disabilities. The County must list the populations that need special outreach for engagement, including the specific populations in its Market Area where more than 5% of the population speaks or reads English not well or at all. The American Census FactFinder data from 2005-2009 indicates that more than 5% of the County's Spanish speaking population does not speak English very well and the County indicates that the Latino population in the County is increasing. The County must provide a plan, with timelines, to offer translation into Spanish of vital documents including surveys and marketing materials for its public engagement activities, and documents used to publicize or disseminate information described in the AI. It must also commit to providing Spanish language interpretations at all public meetings related to the activities in the AI and publicize those meetings in Spanish.

The County must also commit to provide sign language interpretation at public engagement meetings and for meetings related to the actions in the AI, and offer materials in alternative formats for blind persons on demand. Material on the County's website for the public must comply with Section 508 of the Rehabilitation Act of 1973. In developing actions for each impediment, the County must identify the actions that it will take, and include those actions and a timeframe for those actions to provide written translations for documents and oral translation at public meetings that assure that the activities are accessible to persons with limited English proficiency or disabilities.

Conclusion

The County must resubmit a revised AI by June 13, 2011 that complies with the directions in this letter. Failure to provide a revised AI by that date may result in further action against the County. In accordance with 24 CFR 91.500, HUD will reconsider the County's AFFH

certification(s) based on the submission of a revised AI that fully addresses the corrective actions required by this letter. As noted, these corrective actions are based on agreements the County has made and clear guidance set forth in the Fair Housing Planning Guide. HUD will contact the County within five days from the date of this letter to schedule technical assistance.

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