



# **Affirmatively Furthering Fair Housing:** *Using the Westchester Case to Address Racial Segregation and Other Impediments to Fair Housing Choice*

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# AFFH Statutory Authority

- FHA requires HUD to “administer [housing] programs...in a manner affirmatively to further the policies of [the Fair Housing Act],” including the general policy to “provide, within constitutional limits, for fair housing throughout the United States.”
  - 42 USC §3608(e)(5).



# “No Certification, No Money”

- 42 U.S.C. §5304(b)(2): “Any grant under [the CDBG program] shall be made only if the grantee certifies to the satisfaction of the Secretary that ... the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing.”



# Executive Order 12892 (1994)

- “[A]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the [Fair Housing] Act....” §2-202
- *See also* Executive Order 11063, Nov. 20, 1962, §102; Executive Order 12259, Dec. 31, 1980, §1-202



# CDBG/Con Plan AFFH Regs

- A grantee is “required to submit a certification that it will affirmatively further fair housing, which means that it will (1) conduct an analysis to identify impediments to fair housing choice within the jurisdiction; (2) take appropriate actions to overcome the effects of any impediments identified through that analysis; and (3) maintain records reflecting the analysis and actions in this regard.”
  - 24 C.F.R. § 570.601(a)(2)
  - 24 CFR § 91.225(a).



# Preventing the Increase of Segregation

- “...the affirmative duty placed on the Secretary of HUD by § 3608(d)(5)... requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built. **Action must be taken to fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat.**”
  - *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).



# Refraining From Discrimination is Not Enough

- “...every court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)... This broader goal [of truly open housing] ... reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”
  - *NAACP v. Sec’y of Housing and Urban Development*, 817 F.2d 149, 155 (1<sup>st</sup> Cir. 1987).



# Same Obligation Imposed on Grantees

- “When viewed in the larger context of Title VIII, the legislative history, and the case law, there is no way—at least no way that makes sense—to construe the boundary of the duty to [AFFH] as ending with the Secretary.... [t]hese regulations unambiguously impose mandatory requirements on the [recipients] not only to *certify* their compliance with fair housing laws, but actually *to comply*.”
  - *Langlois v. Abington Housing Authority*, 234 F.Supp.2d 33, 73, 75 (D.Mass. 2002)



# AFFH Enforcement Mechanisms

- No Private Right of Action re: §3608
- Administrative Complaint to HUD
- Administrative Procedures Act (for lawsuits against HUD)
- Section 1983 (for lawsuits against recipients)
- False Claims Act (for lawsuits against recipients)



# *U.S. ex rel. Anti-Discrimination Center v. Westchester County*

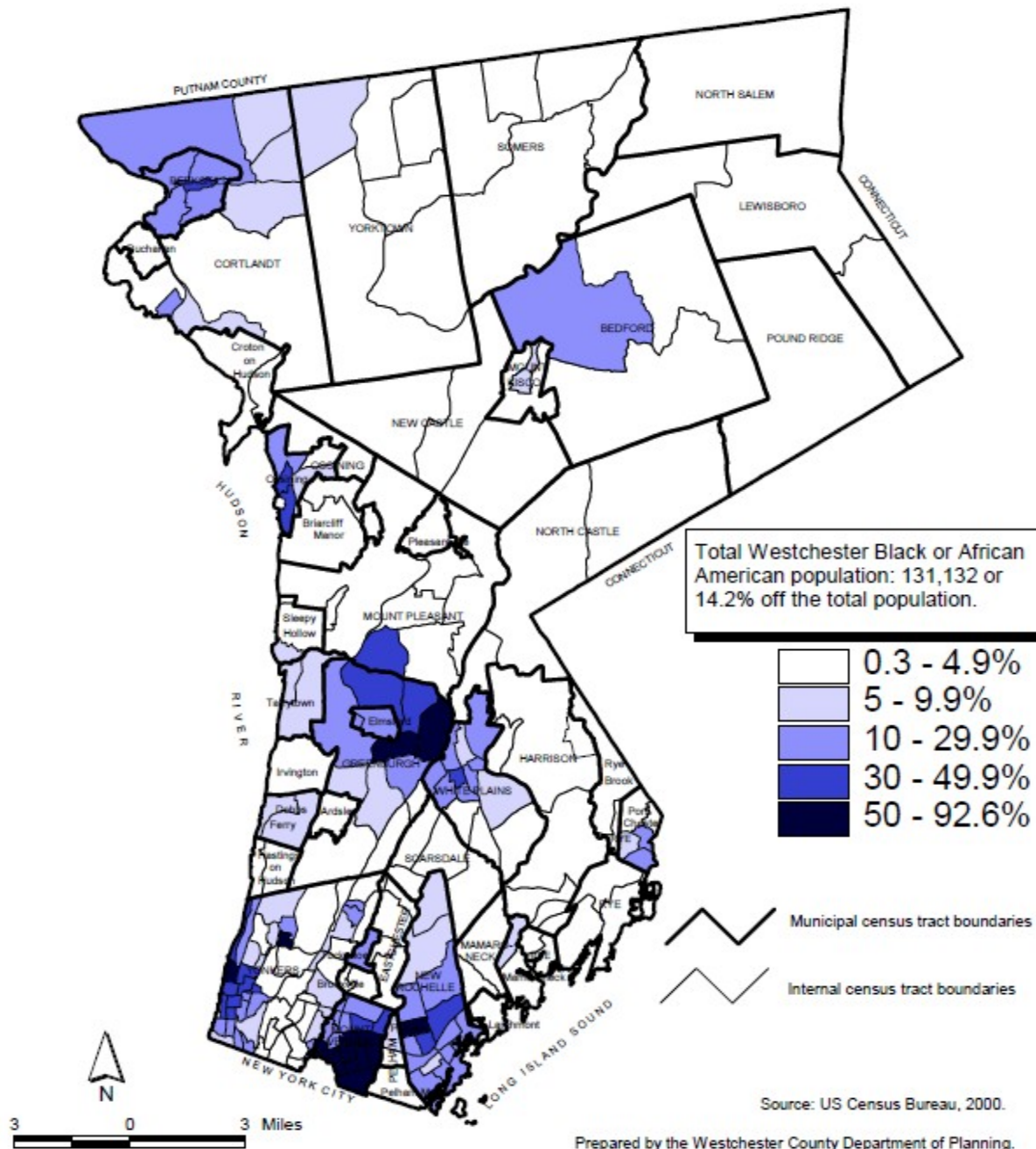
- County received \$52 million+ in CDBG, HOME, ESG funds from 2000-2006
- Receipt of funds required repeated AFFH certifications
- Litigation brought under the False Claims Act: AFFH certifications were false because County did not consider race-based impediments to fair housing choice
  - Treble Damages
  - Share available to “relator”



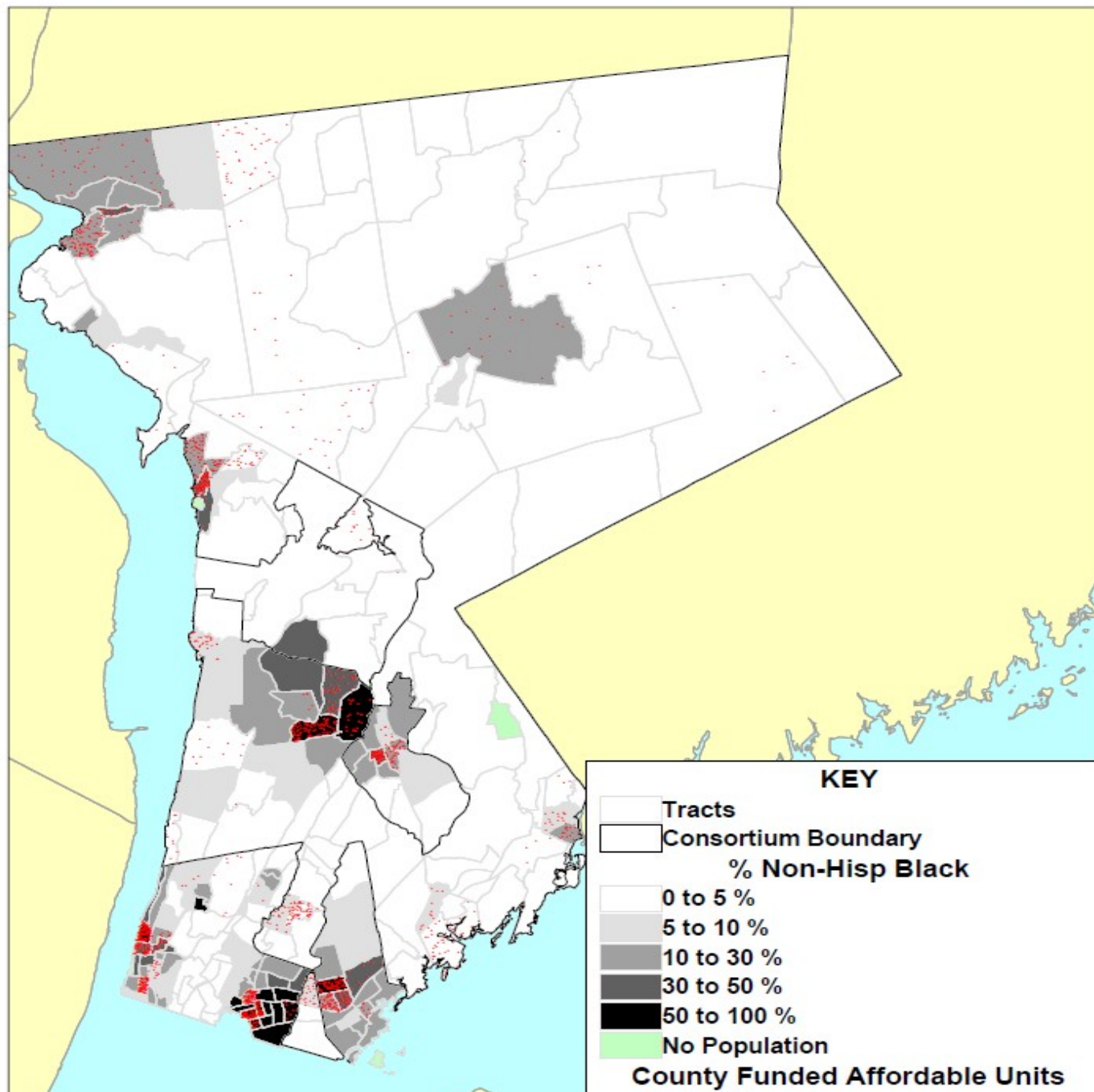
# 40 Consortium Municipalities

- County as a whole has 16% African-Americans
- 40% of Consortium Municipalities have African-American populations of 1% or less
- 60% of Consortium Municipalities have African-American populations of 3% or less
- A handful of municipalities have African-American populations above 16%: Yonkers, New Rochelle, Mount Vernon, White Plains, Peekskill, Greenburgh

# WESTCHESTER COUNTY, NY



# Funded Affordable Housing Units, 1996 through 2007





# Westchester AI

- 2000 and 2004 Analyses of Impediments (“AIs”):  
“The [Fair Housing Plan] describes the housing needs of handicapped persons, larger/smaller families [and] extended families....”
- AIs do not identify any impediments on the basis of race, color, national origin or any other protected class, even though County is part of one of the most segregated regions in the country
- No mention of housing discrimination or residential segregation



# Allegations of the Complaint

- Westchester excluded consideration of impediments to fair housing based on race when it was required by statute to consider them.
- Westchester did not engage in any independent analysis or exploration of impediments to fair housing choice
- Westchester refused to identify or analyze community resistance to integration on the basis of race and national origin as an impediment.



# Allegations of the Complaint

- As a matter of policy, County **refused to monitor** the efforts of participating municipalities to further fair housing and did not inform them that Westchester might withhold federal funds if the municipality did not take steps to further fair housing.
- Throughout the false claims period, Westchester **never required a participating municipality to take any steps** to increase the availability of affordable housing or otherwise affirmatively further fair housing.



# County's Defense

- Nowhere in the statute itself or in the implementing regulations is race mentioned specifically as an impediment to fair housing that grantees were required to consider
- Westchester states that “income is arguably a better proxy for determining need than race when distributing housing funds.”
- Race is “not among the most challenging impediments” to fair housing



# Decision on Motion to Dismiss

- “In the face of the clear legislative purpose of the Fair Housing Act, enacted pursuant to Congress's power under the Thirteenth Amendment as Title VIII of the Civil Rights Act of 1968, to combat racial segregation and discrimination in housing, **an interpretation of ‘affirmatively further fair housing’ that excludes consideration of race would be an absurd result.**”
  - *Westchester*, 495 F.Supp.2d 375, 387-88 (S.D.N.Y. 2007)



# HUD *Fair Housing Planning Guide*

- “The HUD Guide is firmly rooted in the statutory and regulatory framework and consistent with the case law, and it is persuasive on the issue addressed in this Opinion.” 495 F.Supp.2d at 387



# Court Relies Upon *Guide* Provisions to Define AFFH Obligations

- “HUD interprets the objective affirmatively to further fair housing to mean, among other things, to ‘[p]rovide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability and national origin.’ HUD Guide at 1-3.” *Id.* at 387.



# Court Relies Upon *Guide* Provisions to Define AFFH Obligations

- “An analysis of impediments under this duty involves an ‘assessment of conditions, both public and private, affecting fair housing choice for all protected classes.’ [HUD Guide] at 2-7.” *Id.* at 387.



# Court Relies Upon *Guide* Provisions to Define AFFH Obligations

- “Such impediments are ‘actions, omissions or decisions’ which ‘restrict housing choices’ or the availability of housing choices’ ... based on ‘race, color, religion, sex, disability, familial status, or national origin,’ [HUD Guide] at 2-8, including ‘[p]olicies, practices, or procedures that appear neutral on their face,’ [HUD Guide] at 2-17.” *Id.* at 387.



# Court Relies Upon *Guide* Provisions to Define AFFH Obligations

- “HUD's suggested analysis-of-impediments format includes a housing profile describing ‘the degree of segregation and restricted housing by race, ethnicity, disability status, and families with children; [and] how segregation and restricted housing supply occurred.’ *Id.* at 2-28.” *Id.* at 387.



# Summary Judgment Decision

- “[T]he central goal of the obligation to AFFH [is] to end housing discrimination and segregation.”  
*U.S. ex rel. Anti-Discrimination Center v. Westchester County*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009), at \*14.
- “[A] determination that affordable housing is the greatest impediment does not absolve the County from its requirement to analyze race-based impediments to fair housing.” *Id.* at \*13.



# Summary Judgment Decision

- “The County **has simply not shown that it analyzed whether there were race-based impediments to housing choice independent of the problem of low income**, and as such, it did not comply with the requirement to AFFH.” *Id.* at \*16.
- All of the express annual AFFH certifications are false as a matter of law, and so are more than 1000 implied AFFH certifications (claims for payment based on the express certifications). *Id.* at \*16, \*17



# Summary Judgment Decision

- “[T]he County’s AIs ... **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. This failure is only compounded by the County’s failure to follow the guidance provided by HUD.” 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009), at \*14



# Summary Judgment Decision

- “As 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. *Id.* at \*15.



# Summary Judgment Decision

- “[T]he grant funds at issue in this case were expressly conditioned on the AFFH certification requirement. 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.” *Id.* at 20.



# Settlement Terms

- County required to ensure development of 750 affordable housing units, within 7 years, in the whitest neighborhoods
  - 660 units must be built in municipalities with African-American population of less than 3% and Latino population of less than 7%
  - Additional integrative criteria at the census block group level



# Settlement Terms

- HUD Appoints Monitor to Oversee Compliance with Settlement
- County Obligated to Conduct an Analysis of Impediments that Complies with FHA, Regulations and *Planning Guide*
- County Acknowledges its Authority to Sue Municipalities that Resist Affordable Units



# Settlement Terms

- County Returns \$30 Million to HUD
  - \$21.6 Million to Fund Integrative Units
  - \$7.5 Million to Pay “Relator’s Share” for Ferreting Out False Claims
- County Must Supply an Additional \$30 Million for Integrative Units
- County Pays \$2.5 Million in Attorneys’ Fees and Costs

# Media Coverage

A14

THE NEW YORK TIMES NEW YORK TUESDAY, AUGUST 11, 2009

## Westchester County Agrees to Desegregate Housing in Mostly White Towns

By SAM ROBERTS

Westchester County entered into a landmark desegregation agreement on Monday that would compel it to create hundreds of houses and apartments for moderate-income people in overwhelmingly white communities and aggressively market them to nonwhites in Westchester and New York City.

The agreement, if ratified by the county's Board of Legislators, would settle a lawsuit filed by an antidiscrimination group and could become a template for increased scrutiny of local governments' housing policies by the Obama administration.

"This is consistent with the president's desire to see a fully integrated society," said Ron Sims, the deputy secretary of housing and urban development, which helped broker the settlement along with the Justice Department. "Until now, we tended to lay dormant. This is historic, because we are going to hold people's feet to the fire."

The agreement calls for the county to spend more than \$50 million of its own money, in addition to other funds, to build or acquire 750 homes or apartments, 630 of which must be provided in towns and villages where black residents constitute 3 percent or less of the population and Hispanic residents make up less than 7 percent. The 120 other spaces must meet different criteria for cost and ethnic concentration.

The county, one of the nation's wealthiest suburbs, has seven years to complete the construction or acquisition of the affordable housing.

Affordable housing is defined by a complex formula, but generally it is meant to help working families keep from spending more than a third of their gross income on housing. A family of four could make up to \$53,000 as

Mathew R. Warren contributed reporting.

a tenant and up to \$75,000 as an owner and still qualify.

There is no minimum income level, "but it's not going to be no-income," said Craig Gurian, executive director of the Anti-Discrimination Center, which filed the lawsuit. "This agreement is not focused on facilitating housing for the poorest of the poor." The center is a nonprofit anti-bias advocacy and litigation group based in New York City.

Mr. Gurian said that while black and Hispanic residents have a disproportionate need for affordable housing, "this is an opportunity-creating agreement, not a guarantee" that the homes would go to minority members.

"Residential segregation underlies virtually every racial disparity in America, from education to jobs to the delivery of health care," said Mr. Gurian.

No communities have been chosen to receive the homes, officials said. But according to the Anti-Discrimination Center, more than two dozen predominantly white towns or villages are eligible, including Bedford, Bronxville, Eastchester, Hastings-on-Hudson, Harrison, Larchmont, Mamaroneck, New Castle, Pelham Manor, Rye and Scarsdale.

A federal monitor, James E. Johnson, has been appointed to ensure that the county abides by the settlement. Given that 120,000 acres in the county meet the criteria, the monitor "should have no difficulty making sure that Westchester ends its policy of allowing affordable housing to be off-limits in the most highly white neighborhoods in the county," Mr. Gurian said.

The lawsuit, filed under the federal False Claims Act, argued that when Westchester applied for federal Community Development Block Grants for affordable housing and other projects, county officials treated part of the application as boilerplate — lying when they claimed to have complied with mandates to encourage fair housing.

### Their Share

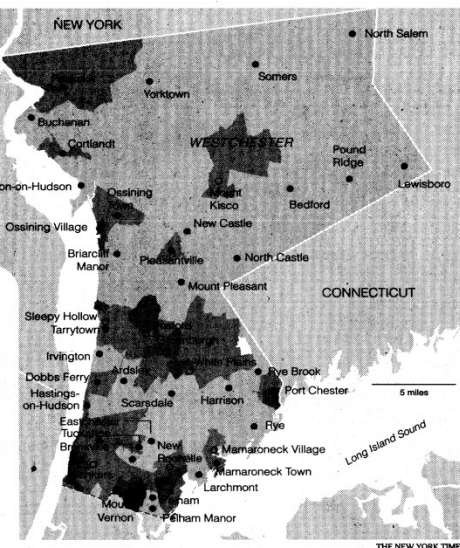
Under settlement terms of a lawsuit, Westchester County would be required to create at least 750 new moderate-income housing units in heavily white municipalities where few exist now.

Municipalities in which the county could build or acquire moderate-income housing units to meet the goal

Municipalities in which no new units would not count toward the goal

Percent black and Hispanic population in each tract

Source: Anti-Discrimination Center of Metro New York



The county's claims were largely repudiated in February when Judge Denise L. Cote ruled in Federal District Court that between 2000 and 2006 the county had misrepresented its efforts to desegregate overwhelmingly white communities when it applied for the federal funds.

Judge Cote concluded that Westchester had made little or no effort to find out where low-income housing was being placed, or to finance homes and apartments in communities that opposed affordable housing.

As part of Monday's agreement, the county admitted that it has the authority to challenge zoning rules in villages and

towns that in many cases implicitly discourage affordable housing by setting minimum lot sizes, discouraging higher-density developments or appropriating vacant property for other purposes. Westchester agreed to "take legal action to compel compliance if municipalities hinder or impede the county" in complying with the pact.

It was unclear Monday to what extent localities could thwart the agreement, if any chose to do so. Mary Beth Murphy, the town supervisor of Somers, which is among the possible locales for new housing, said that while she was unaware of the agreement, "we certainly are committed to

affordable housing and have amended our zoning legislation in recent years to create more opportunities."

The agreement could spark challenges to suburban county governments across the country that have resisted pressure to undo decades of residential segregation.

Andrew J. Spano, the Westchester County executive, attributed the settlement to "a historic shift of philosophy" by federal housing officials. Mr. Spano said he had signed the agreement to avoid further litigation and possible penalties.

The county admitted no wrongdoing, attributed the judge's rul-

ing to a technicality and argued that since it had previously invested in affordable housing, "what is different is the locations where the housing must be built."

"We are settling the lawsuit because we have no choice," Mr. Spano said.

The suit by the Anti-Discrimination Center applied to towns and villages in Westchester. The federal government deals directly with the county's larger cities, among them Yonkers, which nearly went bankrupt before capitulating in a housing segregation case that began in 1980 and dragged on for years. That city, which had concentrated public housing in its southwest, was forced to build on the east side, where more whites lived.

The agreement is subject to approval within 45 days by the county's Board of Legislators, which is also required to approve a \$32.9 million bond sale to help finance the housing. Without its approval, the litigation would resume and the county would have to prove at trial that it did not knowingly file false claims.

The case was litigated by Mr. Gurian and the center's lawyer, John Reiman, supported by testimony from Andrew A. Beveridge, a sociologist at Queens College of the City University of New York.

Dr. Beveridge found that "racial isolation is increasing for blacks, falling slightly for whites" and that "income level has very little impact on the degree of residential racial segregation experienced by African-Americans."

Mr. Gurian said that the 750 homes called for by the agreement "represents only a small percentage of need," but that "it's designed to be practical."

The housing is available to eligible renters and buyers regardless of race, but the county agreed to market it specifically to residents of heavily nonwhite neighborhoods. "It would not do very much good to post a notice at the Chappaqua Public Library," Mr. Gurian said.



# Media Coverage

THE NEW YORK TIMES EDITORIALS/LETTERS TUESDAY, AUGUST 11, 2009

## The New York Times

### Fair Housing in the Suburbs

When one thinks about segregation, the suburbs of New York's Westchester County don't immediately come to mind. Unless, of course, you're a minority resident searching in vain for an affordable place to live.

Westchester County has now announced an agreement to spend more than \$50 million to build or acquire 750 affordable housing units — 630 in towns and villages where the black population is 3 percent or less, and the Latino population is less than 7 percent.

The agreement, which needs to be ratified by the county Board of Legislators, settles a 3-year-old federal lawsuit, filed by the Anti-Discrimination Center, accusing the county of taking tens of millions of dollars in federal housing grants while falsely certifying that it was living up to its legal requirement to provide affordable housing without reinforcing racial segregation.

At the time, the county called those accusations “garbage,” and said it was powerless to force communities to integrate. But in February, Judge Denise L. Cote ruled that between 2000 and 2006 the county had, indeed,

misrepresented its actions and had made little or no effort to place affordable homes in overwhelmingly white communities where residents objected.

Those objections have been fierce. And we fear the battles are far from over. In the 1980s, Yonkers nearly bankrupted itself trying to fight a federal judge's order to integrate public housing. There are currently 120,000 acres of land in Westchester where integration is lagging, including in Bedford, Bronxville, Eastchester, Hastings-on-Hudson, Harrison, Larchmont, Mamaronck, New Castle, Pelham Manor and Scarsdale.

Westchester County officials insist that they have invested a lot of money and effort to identify potential affordable-housing sites and invite communities to do the right thing. But toothless plans setting community-by-community targets clearly will not be enough. With federal help and forceful oversight, the county must use all appropriate power, including lawsuits if necessary, to make sure that its communities work to solve a problem that has been too long ignored and resisted.



# Reviving AFFH Enforcement

- Deputy Secretary Ron Sims: “This is consistent with the president’s desire to see a fully integrated society.... Until now, we tended to lay dormant. This is historic, because we are going to hold people’s feet to the fire.”



# Reviving AFFH Enforcement

- HUD to Publish Proposed Rule on AFFH
- HUD to Revise *Planning Guide*?
- HUD to Provide Technical Assistance to Recipients?
- HUD to Increase Enforcement Staffing?



# Scattering the Seeds of Westchester?

# St. Bernard Parish (November 2009)

Breaking News »

## St. Bernard Parish Council backs off on vote on apartments

By Chris Kirkham, The Times-Picayune  
November 03, 2009, 10:05 PM

After pressure from federal housing officials and a pending lawsuit in federal court, the St. Bernard Parish Council on Tuesday officially rescinded an item on this month's special election ballot that would have given voters the chance to permanently ban large apartment complexes in the parish.

The move came on advice from the parish's lawyers, who last month told the council that they believed the potential apartment ban would jeopardize federal financing for recovery projects and hurt the parish's appeals of its ongoing fair housing lawsuit.

The council proposed the voter referendum on future apartment complexes after three defeats in federal court this year over its attempt to block construction of four 72-unit mixed-income apartment buildings in Chalmette. U.S. District Judge Ginger Berrigan sided with a local fair housing group and a Dallas real estate company on the four apartment complexes, and the parish eventually granted the building permits necessary for the developers, Provident Realty Advisors, to begin construction.

The council's plan for the apartment referendum would not have applied to the Provident developments, but was crafted to allow voters to ban any future apartment complexes of more than six units. After the council called for the election, the Greater New Orleans Fair Housing Action Center filed a motion last month arguing that parish officials were again in contempt of court.



"I think the judge was wrong," St. Bernard Parish Councilmember Wayne Landry said.



# State of Texas (November 2009)

## State plan for Ike money draws 2nd complaint

**By Rhiannon Meyers**  
The Daily News

Published December 9, 2009

**GALVESTON** — The state's plan for spending \$1.7 billion in federal disaster recovery money has drawn a second legal complaint, this time from an advocacy group for public housing residents.

The Texas Low-Income Housing Information Service filed a complaint with the U.S. Department of Housing and Urban Development, claiming Texas was not taking steps to further fair housing with federal Community Development Block Grant funds it was to receive after hurricanes Dolly and Ike struck in 2008.

Specifically in Galveston, the housing authority proposes to rebuild 569 units of public housing on sites that are "highly vulnerable to future extreme weather conditions, and in neighborhoods that are hyper-segregated, rather than develop housing in neighborhoods with greater opportunities for residents," the complaint states.

The Texas Low-Income Housing Information Service calls for the federal housing department to reject the state's plan to spend the money — and bar the state from receiving future federal dollars — until Texas updates its federally mandated analysis of fair housing impediments. The analysis was last updated in 2003, long before hurricanes Katrina, Rita, Dolly and Ike changed the landscape for low-income families, the complaint states.



# City of Joliet, Illinois (January 2010)

## HUD ALLEGES: Joliet cutting black housing

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[Comments](#)

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January 23, 2010

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By **BOB OKON** [bokon@scn1.com](mailto:bokon@scn1.com)

JOLIET -- Federal authorities are accusing Joliet of trying to reduce subsidized housing available to black residents.

The U.S. Department of Housing and Urban Development pointed to the city's attempts to condemn Evergreen Terrace and the Housing Authority of Joliet's demolition of the Poole Gardens housing project.

HUD's charges came in a letter rejecting the city's five-year, fair-housing plan and threatens to take away roughly \$1.4 million in federal funds used for low-income residential development.

Some city officials, however, say they find HUD's criticisms odd. Poole Gardens, they note, was torn down with HUD approval and has been replaced with subsidized single-family houses and duplexes occupied primarily by black residents.

### Evergreen Terrace fight

The HUD notice "came as a complete mystery to us because we had such a good working relationship with HUD over the years, and we always seek their approval for the actions that we take," City Councilman Timothy Brophy said Friday.

The city and HUD, however, have been at odds over the condemnation of Evergreen Terrace, a 356-apartment development that is privately owned but government subsidized.

City officials say Evergreen Terrace has been plagued for years by bad management, code violations and crime. But HUD in a Dec. 23 notice said the city has continued to pursue condemnation "even though Evergreen Terrace has undergone substantial rehabilitation."

"The city has not only stated its desire to demolish Evergreen Terrace, but some city officials have expressed their extreme animus towards its residents," the HUD letter states.

HUD quotes an unnamed city councilman as comparing Evergreen Terrace residents to a "pack of wolves" and an unnamed city official as referring to them as "all those rats."

Brophy said city officials have questioned each other about the quotes. "We don't know where that came from," he said.



# Policy Recommendations

- Private Right of Action to Enforce AFFH: amend definition of “discriminatory housing practice” provided in 42 U.S.C. §3602 to include “a failure to comply with the obligations of section 3608(e)(5).”
- Require concurrence of local fair housing enforcement groups on sufficiency of AI



# Policy Recommendations

- HUD to fund an independent nonprofit agency with responsibilities to:
  - Collect all AIs
  - Post them on the Internet
  - Identify exemplary AIs and promoting them as models for other communities.
  - Provide technical assistances to fair housing and community groups to enhance their capacity to review and analyze AIs and to participate in the process of identifying fair housing impediments and appropriate actions to overcome them



# Lessons for Recipients of Housing and Community Development Funds

- “[T]he central goal of the obligation to AFFH [is] to end housing discrimination and segregation.”
- Taking AFFH seriously can alert a recipient to ways in which private sector activity is harming the recipient—e.g., *City of Baltimore v. Wells Fargo*



# Lessons for Recipients of Housing and Community Development Funds

- AFFH certifications are material preconditions to the receipt of HUD funds
- Courts likely to see claims for payment as implicit AFFH certifications
- Recipients ignore HUD's *Fair Housing Planning Guide* and AFFH regulations at their peril



# Lessons for Recipients of Housing and Community Development Funds

- A recipient must identify *all* impediments experienced by *all* protected classes, and must keep records of this analysis
  - Whether created by public or private sector, impediments must be analyzed
  - Impediments may include actions or policies that discriminate on the basis of protected class, whether by way of intentional discrimination or disparate treatment
  - A recipient is not excused from such an analysis by identifying the “greatest” or “most challenging” impediment; it must analyze everything it finds



# Lessons for Recipients of Housing and Community Development Funds

- Permitting concentration of affordable housing development in minority neighborhoods likely perpetuates segregation and is a violation of the recipient's AFFH obligation
- A recipient must take appropriate actions to overcome the impediments identified, and keep records of those actions
- It is impossible to meet this requirement in the absence of an adequate identification and analysis of underlying impediments



# Lessons for Recipients of Housing and Community Development Funds

- Recipients are responsible for the AFFH compliance of their sub-recipients
  - You can't fund jurisdictions whose policies and practices are AFFH non-compliant
- There will be more vigorous AFFH enforcement in the coming years:
  - Administrative complaints to HUD
  - HUD “front end” and compliance reviews
  - Litigation by civil rights groups
  - Litigation by developers and property owners



# What is a Recipient to Do?

- Be proactive about AFFH and partner with knowledgeable public and private fair housing agencies
- Recipients who have not done or updated an AI since 2006 should conduct a new one ASAP, and engage with *all* interested parties
- Make sure the AI is an honest review of local government policies that may diminish fair housing choice in the jurisdiction



# What is a Recipient to Do?

- Be vigilant about changes in housing and credit markets
- Since regional housing markets do not stop at your jurisdiction's border, investigate other communities' AFFH practices and coordinate with them appropriately
- TARP and economic stimulus money—to the extent it is in “programs and activities relating to housing and urban development”—brings AFFH obligations



# Resources

- HUD *Fair Housing Planning Guide*:  
<http://fhasecure.gov/offices/fheo/images/fhpg.pdf>
- Information about Westchester litigation:  
[www.antibiaslaw.com/wfc](http://www.antibiaslaw.com/wfc)
- City of Naperville (Ill.) Analysis of Impediments:  
[www.planningcommunications.com/ai/naperville\\_ai\\_2007.pdf](http://www.planningcommunications.com/ai/naperville_ai_2007.pdf)