



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

April 23, 2014

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

**RE: Notice of Intent to Reallocate FY 2012 Westchester County Formula Funds**

Dear Mr. Astorino:

On August 16, 2013, I provided you with notice regarding Westchester County's FY 2011 HUD formula grant funds, which have since been reallocated or expired. In that letter, I also notified you that HUD would contact you concerning the County's intentions on the FY 2012 formula funds. HUD previously rejected the County's certification that it will affirmatively further fair housing ("AFFH") and disapproved its action plan for FY 2012 by letter dated April 27, 2012. Since that date, the County has failed to provide the assurances requested to come into compliance with its AFFH certification, so as to allow HUD to approve the FY 2012 annual action plan.

Because of the County's failure to undertake remedial action to date, HUD hereby provides notice of its intent to proceed with the reallocation of the County's FY 2012 formula funds in the following amounts:

<b>Program</b>	<b>FY 2012 Amount to Reallocate</b>
CDBG	\$3,915,674
HOME	\$846,884
ESG	\$465,769
<b>TOTAL</b>	<b>\$5,228,327</b>

By letter of August 9, 2013, HUD provided the County notice of its continuing noncompliance, and informed the County of the steps that it could take to avoid reallocation of FY2011 formula funds. Given the County's inaction and refusal to design its own solution, HUD provided the County with a roadmap to coming into compliance with the Settlement and its AFFH obligation. Specifically, the Department notified you that the County could receive the formula grants through the following steps: (1) acknowledge its legal duty to AFFH, (2) adopt the findings and recommendations in the Monitor's Report on Westchester County's Analysis of Municipal Zoning, (3) amend its zoning submission for the 31 municipalities with low

populations of Black and Hispanic households to address the impact that restrictive zoning practices may have on those populations by limiting the availability of affordable and multifamily housing, to the extent that those populations throughout the County have greater affordable and multifamily housing needs, consistent with the criteria set forth in HUD's letter, and (4) implement a strategy to overcome exclusionary zoning practices. Westchester, by letter dated August 15, 2013, rejected HUD's request for assurances that it would follow the roadmap provided by HUD. In the more than eight months that have followed, Westchester has not provided a productive alternative way to come into compliance with the Settlement Agreement and its AFFH obligations. Instead, the County has steadfastly refused to revise its Analysis of Impediments to Fair Housing Choice ("AI") to include an adequate analysis of restrictive zoning practices and a strategy to overcome exclusionary zoning.

As confirmed by United States District Court for the Southern District of New York, Section 104 of the Housing and Community Development Act of 1974 expressly commits certification decisions to HUD's discretion. County of Westchester v. HUD, 13 Civ. 2741, slip op., at 9 (S.D.N.Y. Aug. 14, 2013). And the August 10, 2009, Stipulation and Order of Settlement between the United States and the County, at paragraph 32, expressly requires the County to submit an AI deemed acceptable by HUD.

In view of the above, HUD intends to reallocate the FY 2012 formula funds for the same reasons outlined in the August 9, 2013, letter. Before it takes this action, however, HUD hereby renews its offer for the County to come into compliance. The attached special assurances are substantially identical to those presented to the County last year, and allow additional time for the completion of the amended zoning submission to be incorporated in the AI.

To avoid reallocation of the FY 2012 formula funds, the County must sign and submit the attached special assurances by 5 p.m. on Wednesday, May 7, 2014. If the assurances are provided, HUD will approve the County's FY 2012 and FY 2013 annual action plans and award the covered formula funds to the County upon timely satisfaction of all submission requirements.

Please contact me if you have any questions.

Sincerely,



Mark Johnston  
Deputy Assistant Secretary  
for Special Needs

**Required Special Assurances for Westchester County**

The County must sign and submit the following assurances to HUD by 5 p.m. on Wednesday, May 7, 2014.

1. The County acknowledges that it has an ongoing duty to affirmatively further fair housing that includes compliance with the 2009 Settlement.
2. The County adopts and incorporates by reference into its Analysis of Impediments to Fair Housing Choice ("AI") the findings of the Monitor's Report on Westchester County's Analysis of Municipal Zoning and will comply with the Monitor's recommendations and information requests.
3. The County will submit a final zoning submission for all 31 eligible municipalities by July 31, 2014 that is consistent with the amendments required in HUD's August 9, 2013, letter and is acceptable to HUD. The County will incorporate its final zoning analyses into the Updated AI.
4. The County adopts, incorporates by reference into its AI, and commits to implementation of, the attached strategy to overcome exclusionary zoning practices.

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Robert P. Astorino,  
County Executive

**Strategy on Exclusionary Zoning**

The County has incorporated into its Analysis of Impediments to Fair Housing Choice and commits to implementation of the following strategy to overcome exclusionary zoning practices:

- 1) First, the County will identify the eligible municipalities with Restrictive Practices that may potentially have discriminatory exclusionary effects by July 31, 2014.
- 2) The County will communicate in writing with municipal decision-makers to identify restrictions and seek removal or reduction of unjustifiable restrictions with potentially discriminatory exclusionary effects. Factors to be discussed and considered shall include, but shall not be limited to:
  - a. Identification of the Restrictive Practice(s) present in the municipality;
  - b. An examination of the representation of the single race black population in the municipality (as a percentage), in comparison to its representation in the County as a whole;
  - c. An examination of the representation of the Hispanic population in the municipality (as a percentage), in comparison to its representation in the County as a whole;
  - d. An examination of the representation of families with children in the municipality (as a percentage), in comparison to its representation in the County as a whole;
  - e. Observation that the presence of the Restrictive Practice(s) could have the potential to impede fair housing choice for such populations;
  - f. An explanation of whether the restriction is legally justified by examining:
    - i. Whether the restriction is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and
    - ii. Whether those interests could not be served by another practice that has a less discriminatory effect.
  - g. If any Restrictive Practice(s) does not have a legally sufficient justification, the County must insist that the municipality pursue a less restrictive alternative (note that a legally sufficient justification must be supported by evidence and may not be hypothetical or speculative).
- 3) Third, after the County has exhausted its attempts to communicate and obtain the cooperation of said municipality, as set forth above, where there is no legally sufficient justification for the Restrictive Practice, the County shall engage in enforcement activities, which may include:
  - a. Initiating litigation against the municipality, possibly under *Berenson*, an action for breach of the terms of the Urban County Consortium Cooperation Agreement, a Fair Housing Act action, or an Article 78 proceeding; or
  - b. Referral for enforcement to the U.S. Department of Justice.