

WebMemo



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HUD's Mandatory Minority Relocation Program

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President Obama's Department of Housing and Urban Development (HUD) is beginning to insidiously intrude in local housing policies in a concerted effort to require racial and economic integration in American communities. It started in 2009, when HUD began using a settlement between the county of Westchester in New York and a civil rights organization as an opportunity to impose its own "fair housing" practices on the county.

HUD has already cut off some federal funding to the county for not taking more aggressive steps to move minority households into predominantly white neighborhoods. Rod Sims, then HUD's Undersecretary, stated that this effort is designed to make Westchester an example for the rest of the country: "We're clearly messaging other jurisdictions across the country that there has been a significant change in the Department of Housing and Urban Development, and we're going to ask them to pursue similar goals as well."¹ Congress should be aware of these plans and be prepared to push back.

The Court's Relocation Plan and Settlement.

Despite allegations of discrimination, the 2010 census reveals that Westchester County has the fourth most racially diverse population in the state of New York. Nonetheless, in 2006 the New York-based Anti-Discrimination Center (ADC) brought suit against the county on the grounds of "making false

claims" in its application for HUD funding under the Community Development Block Grant program, which requires applicants to commit to fair housing goals. The ADC claimed that the county "failed to consider race-based impediments to fair housing choice and failed to identify and take steps to overcome such impediments."² Importantly, the ADC suit claimed that the county violated the federal False Claims Act in its application, not that the county willfully maintained a policy of racial discrimination in housing.

The court denied motions to dismiss from both sides, and in early 2009, the county sought to have the Obama Administration intervene in the hope of a more reasonable settlement. With U.S. Department of Justice involvement, the agreed-upon settlement required Westchester to spend \$51 million to build 750 subsidized housing units over the next seven years and that 630 of the units would be located in municipalities with fewer than 3 percent African-American residents and fewer than 7 percent Hispanic residents.

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In effect, the settlement would compel minorities to live in distinctly non-minority communities. Recognizing that there may be some resistance among targeted minority beneficiaries to moving to such neighborhoods, the settlement also required the county to “affirmatively market affordable housing within the County and in geographic areas with significant non-white populations outside, but contiguous with or within close proximity to, the County.”³ In effect, the court was encouraging Westchester to import minority families from other counties to meet its mandated integration targets.

HUD Intervenes. Despite the court settlement agreed to by both parties, HUD apparently saw the Westchester settlement—and the timid response of its Democrat-controlled county board—as an opportunity to renegotiate the settlement to advance a bolder “fair housing” agenda through its leverage over the federal funds it provides to the county. Specifically, HUD required⁴ that Westchester:

- More thoroughly identify acts and patterns of discrimination on the basis of race, color, national origin, religion, sex, disability, or familial status, arguing that “the County describes itself as having a diverse population...but fails to explain and analyze its long history of segregation and the impact that segregation has had and may have on the future of fair housing choice for racial and ethnic minorities.”
- Identify “above average” schools and locate three-bedroom affordable housing units in these above-average school districts. In effect, HUD is expanding the settlement to include a school

integration goal and increasing the cost of compliance by mandating that three-bedroom units be built as part of the agreed upon 750-unit build out.

- Challenge the zoning practices of local municipalities and “list the steps that the county will take if the municipalities do not enact the changes within three months of the County’s notification.”
- Pass “source-of-income”⁵ legislation and sign into law, despite the fact that HUD has been unable to get the U.S. Congress to pass similar legislation and that similar legislation in New York State was recently vetoed.
- Test banks for mortgage lending discrimination and undertake enforcement efforts.

On top of all of these demands, HUD has outsourced the oversight of the compliance measures to the legal profession (described as a monitor, currently charging the county \$990 per hour), who in turn has sought guidance from the academic community—in this case the Pratt Institute’s Graduate Center for Planning and the Environment. In turn, Pratt has suggested the creation of a third-party entity that would assume responsibilities for implementing the plan once the monitor’s seven-year tenure expires, thereby further disenfranchising the county’s elected officials for an indefinite period of time.

What HUD did not plan on when pursuing this aggressive social agenda was that the political leadership in Westchester would not always be as supine as those in office when it first challenged

1. *The Wall Street Journal*, “Social Engineering in Suburbia,” September 19, 2011, p. A16, at <http://online.wsj.com/article/SB10001424053111904060604576572402689866500.html> (January 30, 2012).
2. Institute for Affordable Housing Policy, Furman Center for Real Estate and Urban Policy, New York University, “An Overview of Affirmative Marketing and Implications for the Westchester Fair Housing Settlement,” March 15, 2011, p. 3, at http://furmancenter.org/files/publications/Furman_Center_Review_of_Affirmative_Marketing.pdf (January 30, 2012).
3. *Ibid.*, p. 4.
4. *Ibid.*
5. A “source of income” system would effectively delete or overrule the longstanding provision in federal law that allows private landlords to choose not to accept tenants whose “source of income” is a HUD housing voucher or certificate. Efforts to end this option have failed at the federal level and in New York State, but HUD is attempting to force Westchester alone to adopt it for the purpose of giving federally subsidized tenants more rental choices in the community. To date, Westchester County has resisted its adoption.

the county. Following the November 2009 election, the new county executive, Rob Astorino, stated his intention to push back on HUD's efforts to substantially revise the court-approved agreement between the ADC and the county. Astorino is now making good on his promise.

More Relocation Programs on the Way. In an October 2011 speech at Pace University, HUD Assistant Secretary John Trasvina echoed the earlier threat by Under Secretary Sims when he said that the government's housing settlement with Westchester should act as a "wake up call" for the nation. He noted that the government is "actively investigating" roughly 20 communities throughout the country.⁶ Marin County, California, another soft target, is already in negotiation with HUD for a similar agreement,⁷ and Dallas may soon be added to the

list as a consequence of a False Claims Act suit initiated by disgruntled developers wanting to build HUD-subsidized housing.

What to Do. For starters, Congress should hold hearings on this new HUD policy and the remedies required to determine whether they are within HUD's statutory authority and whether existing appropriations can be used to enforce such relocation plans. Westchester's robust legal challenge to HUD's vast intrusion into local housing policies should serve as a role model to fighting HUDs promised assault on another 20 communities.

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6. Gerald McKinstry, "HUD: Westchester Part of National Vision," *Politics on the Hudson*, October 21, 2011, at <http://polhudson.lohudblogs.com/2011/10/21/hud-westchester-part-of-national-vision/> (January 30, 2012).

7. Dick Spotswood, "County Supervisors Should Have Told HUD to 'Get Lost,'" *Marin Independent Journal*, October 16, 2011.