



MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

FEDERAL GRANTS DIVISION

November 30, 2010

Board of Supervisors
County of Marin

SUBJECT: Voluntary Compliance Agreement with U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity

(Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program)

RECOMMENDATION: Authorize the Board President to execute Voluntary Compliance Agreement with U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity.

SUMMARY: In 2009, HUD monitored Marin's compliance with its fair housing and equal opportunity regulations. That monitoring has resulted in the attached proposed Voluntary Compliance Agreement (VCA). HUD staff have assured us that they have not found serious violations in Marin, but want to be sure that the County is diligent in its implementation and oversight of CDBG and HOME activities.

Part of the reason for the attention that HUD is giving Marin is the aftermath of what has become known as "the Westchester case." The Anti-Discrimination Center, a nonprofit, sued Westchester County, located just north of New York City, alleging that the County lied when it filed its annual applications for CDBG and HOME funds. The applications included standard language, required by HUD, certifying that the applicant community will affirmatively further fair housing, conduct an analysis to identify impediments to fair housing choice, and take action to overcome the identified impediments. The suit alleged that each time it drew funds from HUD, the County was committing a separate act of fraud in violation of the federal False Claims Act. HUD joined the litigation, which resulted in a settlement, under which Westchester County agreed to spend over \$50 million in a 7-year period to create affordable housing, targeted to communities with the smallest minority populations.

There are significant differences between Marin and Westchester. Most of the federally-assisted affordable housing built in Westchester has been located in areas of minority concentration and has not contributed towards the goal of residential integration. Some of the largest subsidized family housing

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projects in Marin are located in communities like Mill Valley and Tiburon, where they contribute significantly to integration. (In fact, the sponsors of those projects had the specific goal of promoting integration.) Because the methodology of their monitoring focused on just a few years, HUD did not look at the overall history of Marin's siting of affordable housing.

However, both Marin and Westchester are very affluent and mostly white counties, and both have significantly less racial and ethnic diversity than some adjacent counties. In Westchester, 60% of the population is non-Hispanic whites. Marin does not have the ethnic and racial diversity of counties to the south and east. In Marin, 75% of the population is non-Hispanic whites.

We are fortunate to have an excellent fair housing agency in Marin. The CDBG Program has a long history of funding Fair Housing of Marin for its education, testing, and enforcement programs. We have contracted with Fair Housing of Marin to prepare an updated Analysis of Impediments to Fair Housing Choice (AI), to replace one which they prepared in 1994. HUD requires all of its CDBG recipient communities to have an AI and to periodically update it. By its nature, an AI should look beyond current practices and provide some direction towards positive change. Fair Housing of Marin has prepared a draft AI and is in the process of incorporating comments from CDBG staff. We hope to be able to bring a final AI to the CDBG Priority Setting Committee at its March 2011 meeting and to the Board of Supervisors in May 2011.

The Westchester pattern was for the affordable housing to be located in the areas of the County with the highest concentrations of low-income and minority residents, and for that housing to be occupied primarily by minorities. It should be our goal in Marin to show that our affordable housing--both past projects and new sites--improves residential integration. To meet that goal, most new projects should be located outside existing areas of minority concentration.

We plan to collect demographic data on the current residents of the affordable housing that has received assistance from CDBG and HOME over the history of the programs. That data will enable us to determine to what extent these projects have been successful in increasing the diversity of the neighborhoods where they are located.

While the VCA will increase CDBG and HOME recordkeeping and paperwork requirements, HUD's ultimate goal is CDBG and HOME activities that affirmatively further the goal of neighborhood diversity. HUD wants to see our project sponsors track the demographics of their beneficiaries and make efforts to affirmatively market to underrepresented groups. While this principle applies most obviously to housing projects, it also applies to capital and public service projects.

In its role as administrator of the CDBG and HOME programs in Marin, the County is acting on behalf of itself and all the cities and towns in Marin. To be successful in meeting the goals of the VCA, it is important that all the local governments in Marin be mindful of possible fair housing and equal opportunity implications of their policies and decisions. In fact, HUD requires that the City-County Cooperation Agreements (the Agreements by which the Cities and the County agree to operate a joint CDBG program) *"contain a provision prohibiting urban county funding for activities in, or in support of, any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification. This provision is required because noncompliance by a unit of general local government*

included in an urban county may constitute noncompliance by the grantee (i.e., the county) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department." A provision consistent with this policy has been in Marin's City-County Cooperation Agreements for many years, but in this time of increased scrutiny from HUD on fair housing issues, we may need to be more conscious of how HUD might interpret it. Because the proposed VCA has implications for all of the cities in Marin, a briefing on the VCA was part of the agenda for the November 17, 2010 meeting of the CDBG Countywide Priority Setting Committee, which includes councilmembers from the participating cities.

All the local governments and recipients of CDBG and HOME funds will be asked to provide data for reports required by the VCA. In order to comply with the VCA, CDBG staff will be asking local governments for demographic information about the occupants of their inclusionary units. That particular requirement will have the most impact on the largest cities. San Rafael and Novato staff have already graciously offered their assistance. CDBG staff will also ask sponsors of CDBG and HOME projects to increase their affirmative marketing efforts to recruit participants and residents from the demographic groups deemed least likely to apply. For housing projects, where there is likely to be very slow turnover of units after initial occupancy, it is particularly important that affirmative marketing occur at the outset. Staff will be asking all project sponsors, including public services, to collect data on the beneficiaries of their programs and to analyze that data to determine how their future affirmative marketing efforts should be shaped and targeted. In some cases, that might mean recruiting non-minorities to participate in programs that currently serve mostly minorities. As part of the staff evaluation of CDBG and HOME applications, we will consider the sponsor's affirmative marketing plans.

Among the other requirements of the VCA are the collection of information about people on waiting lists (rather than just beneficiaries) for CDBG and HOME projects, affirmative marketing of housing projects receiving non-federal funds, and giving priority to proposed CDBG and HOME projects that would address the impediments to housing choice that are identified in the AI.

While the signing of the VCA represents the conclusion of negotiations between HUD and the County, the VCA also represents the beginning of a process that will include compliance activities, monitoring reports, analysis of the demographics of project beneficiaries, more effective affirmative marketing, the completion of the AI, and ongoing activities to address the issues raised by the AI. Ideally, the result will be an increased awareness of the potential equal opportunity implications of small and large decisions.

FISCAL IMPACT: Because administrative costs for CDBG and HOME are charged to federal CDBG and HOME grants, there is no financial impact on the County general fund.

REVIEWED BY:

☐ Auditor Controller
☒ County Counsel
☐ Human Resources

☒ Not Applicable
☐ Not Applicable
☒ Not Applicable



Roy Bateman
 Community Development Coordinator