

Using the Fair Housing Act to Forge More Racially and Economically Integrated Development Patterns

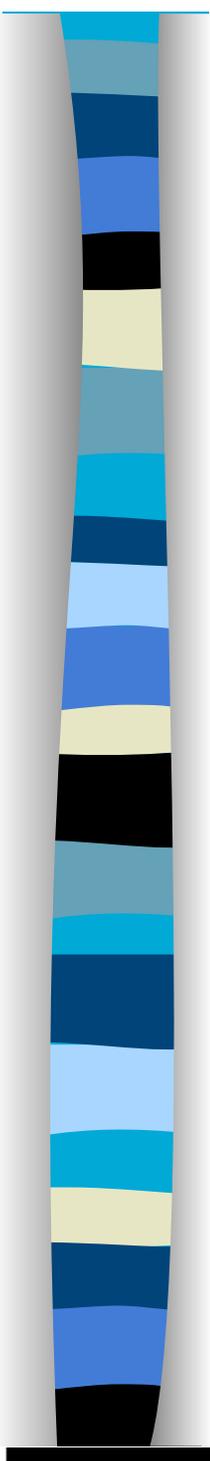
by Michael Allen, Relman, Dane & Colfax, PLLC

Creating Equitable Redevelopment: Utilizing Fair Housing Law to Development Communities of Opportunity

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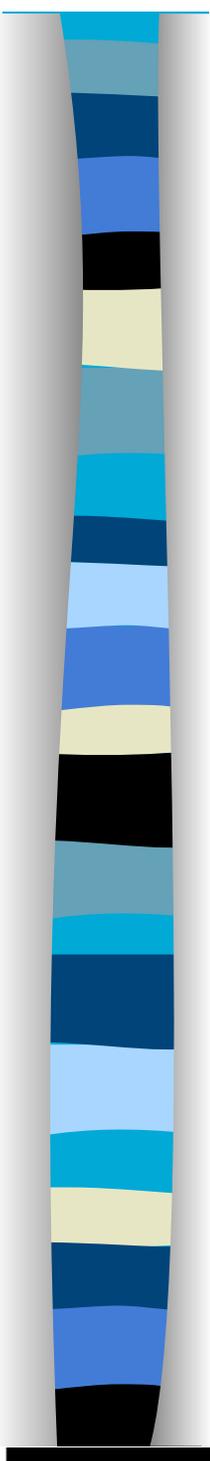
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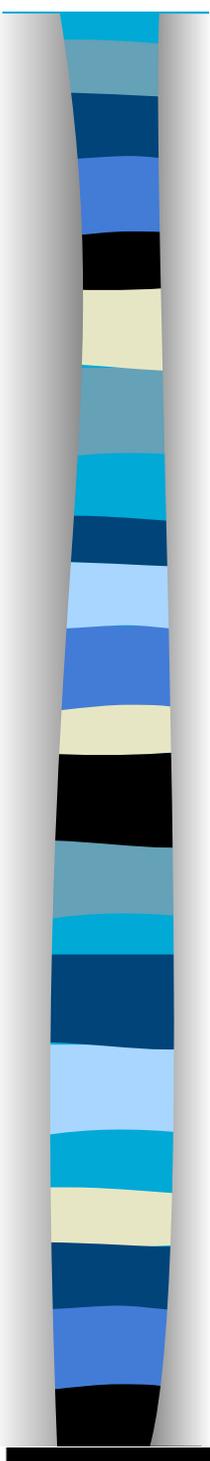
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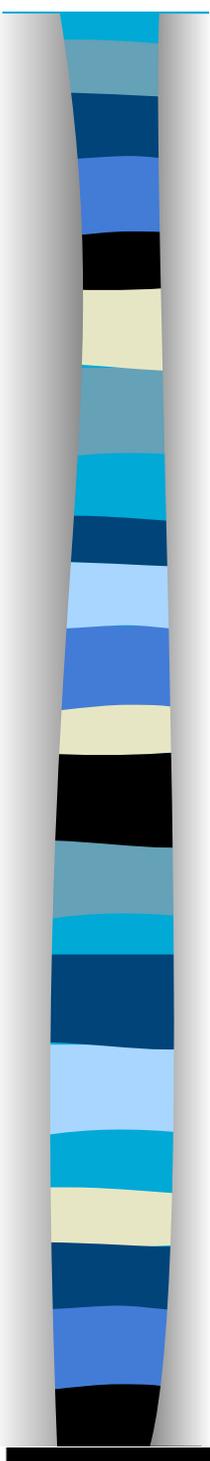
Segregation Puts a Target on the Backs of Communities of Color

- Poor Housing
- Failing Schools
- Disconnection from Employment
- Inadequate Transportation
- High Crime
- Poor Health Outcomes
- Diminished Social Capital
- Declining Home Equity



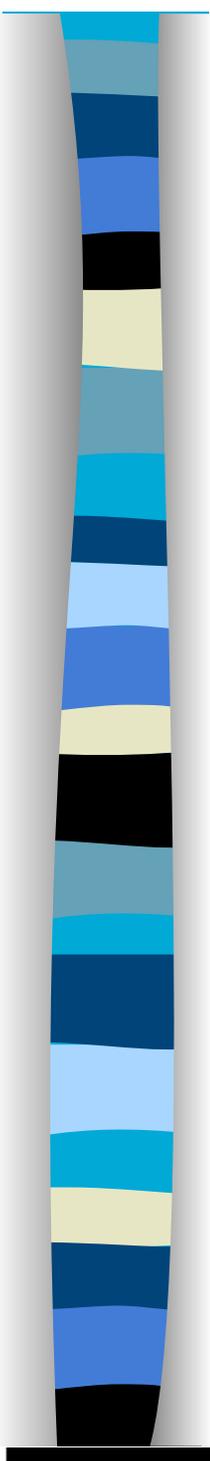
Segregation Permits Discriminators to be More Efficient

- Steering
- Blockbusting
- Redlining
- Predatory Lending
- Equity Stripping
- NIMBYism
- Where to disinvest
- Where to Gentrify?
- Discriminatory zoning
- Discriminatory building standards
- Discriminatory refusal of municipal services
- Environmental racism



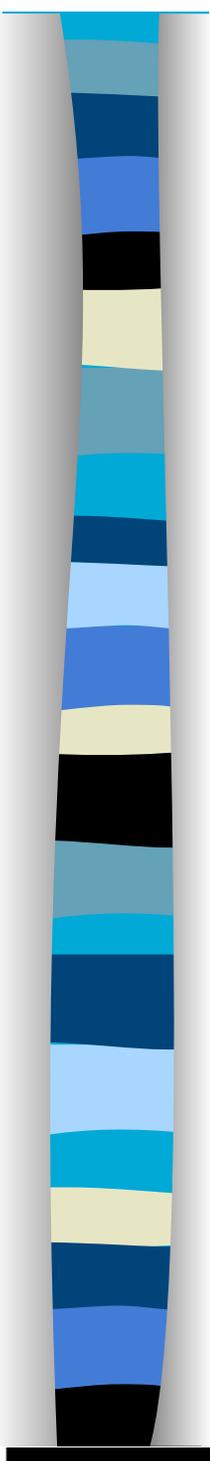
AFFH Statutory Authority

- 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).



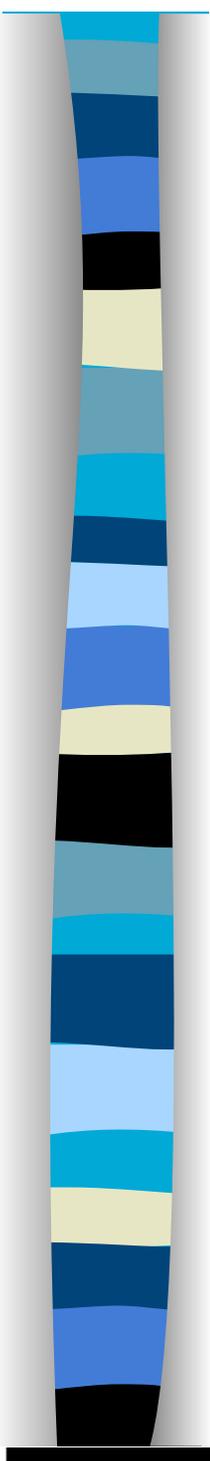
“No Certification, No Money”

- 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.”



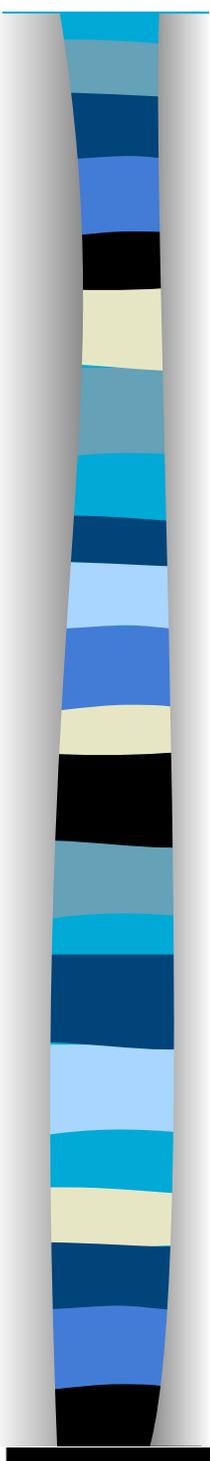
CDBG/Con Plan AFFH Regs

- 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).



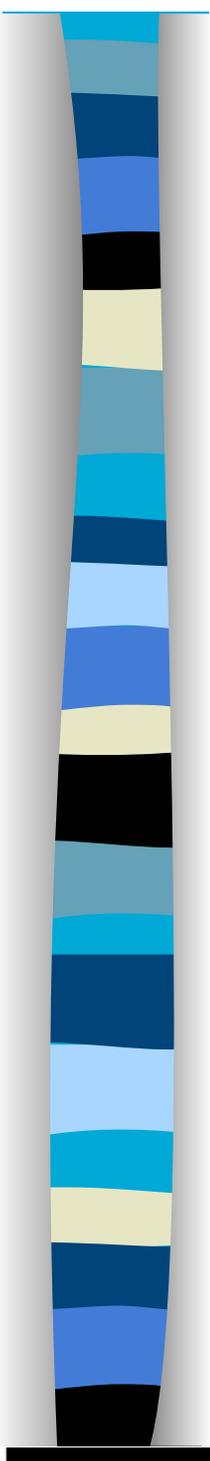
Obligations Apply to All Funds

- “Although the grantee’s AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-funded programs at the State or local level. The AFFH obligation extends to all housing and housing-related activities in the grantee’s jurisdictional area whether publicly or privately funded.”
 - *Fair Housing Planning Guide* (1995), at p.1-3.



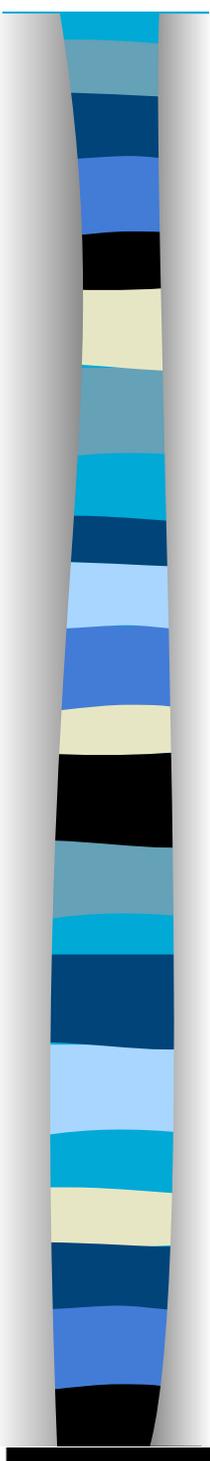
Preventing the Increase of Segregation

- “...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).



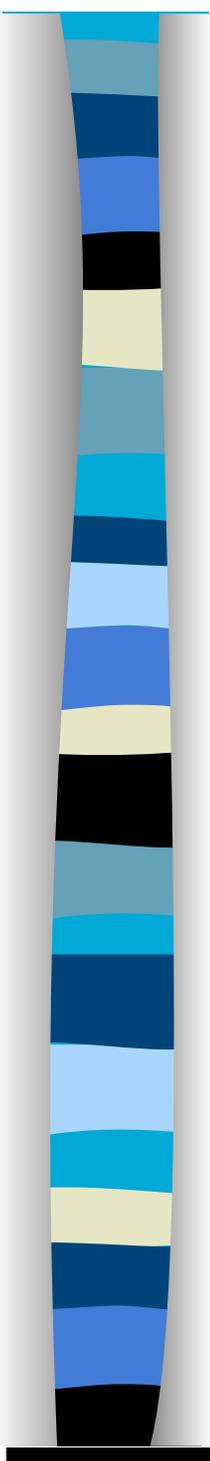
Refraining From Discrimination is Not Enough

- “...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 (1st Cir. 1987).



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Westchester Litigation: A Cautionary Tale

- 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”

WESTCHESTER COUNTY, NY

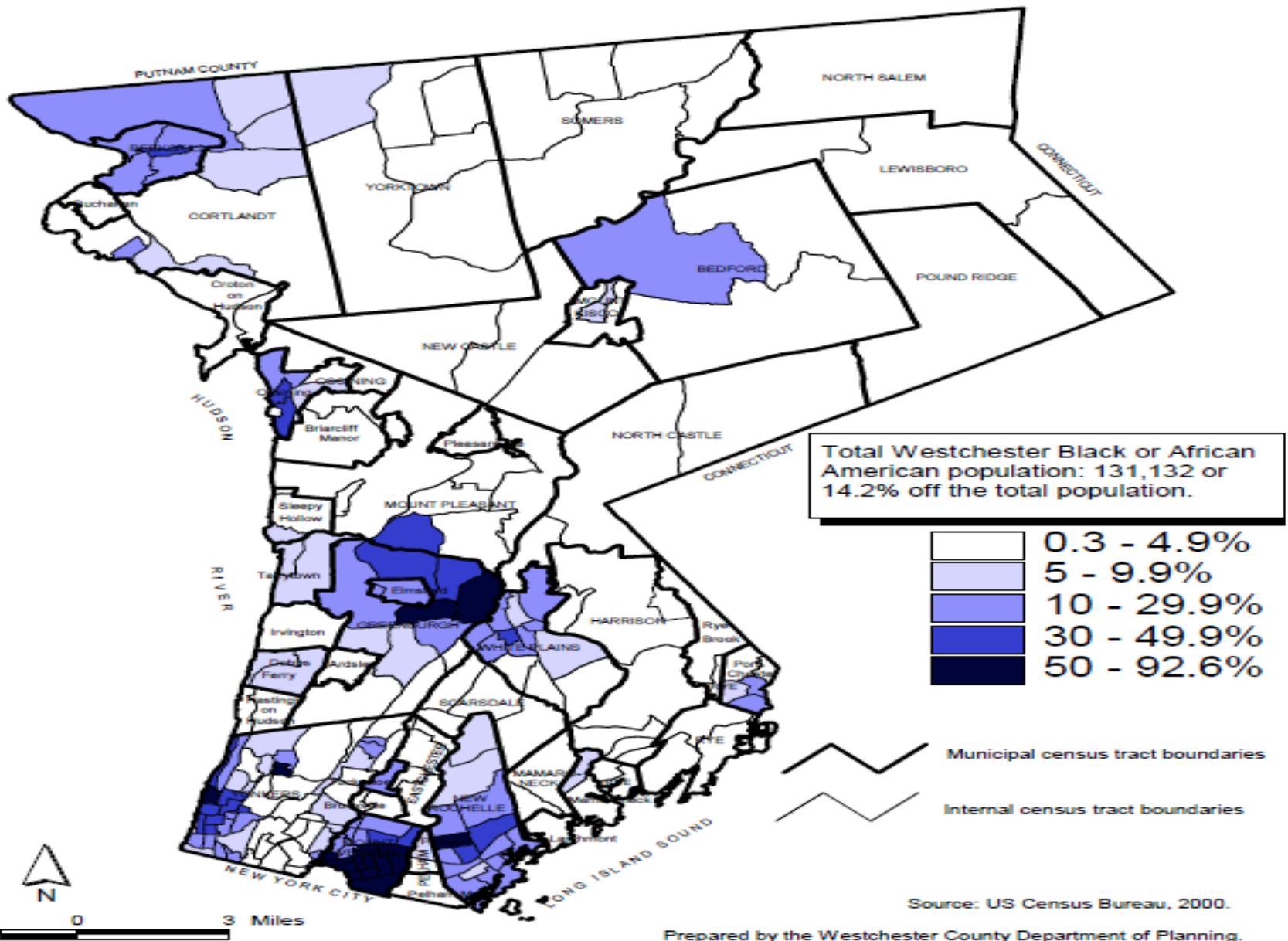
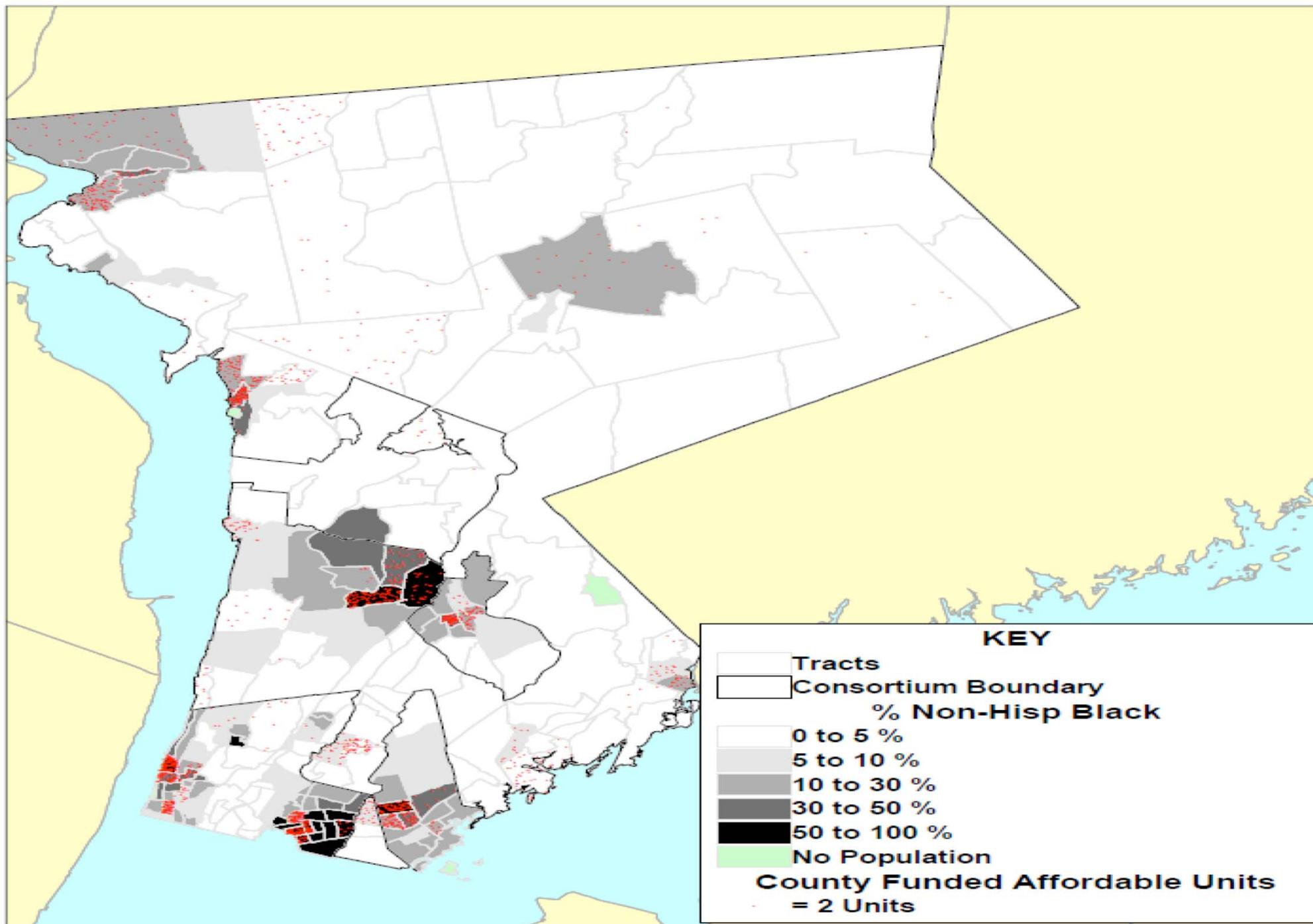
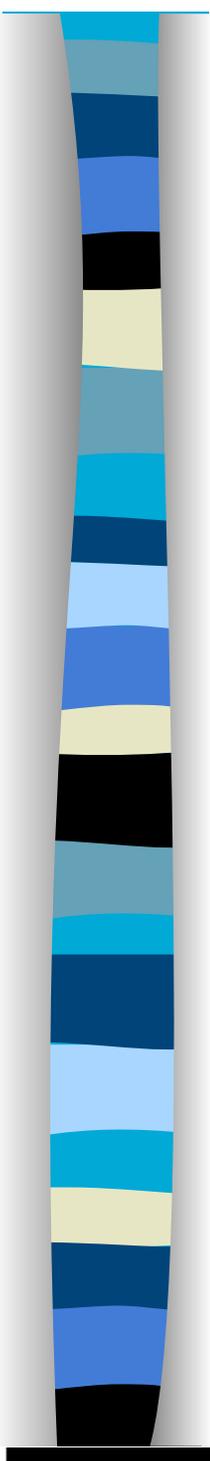


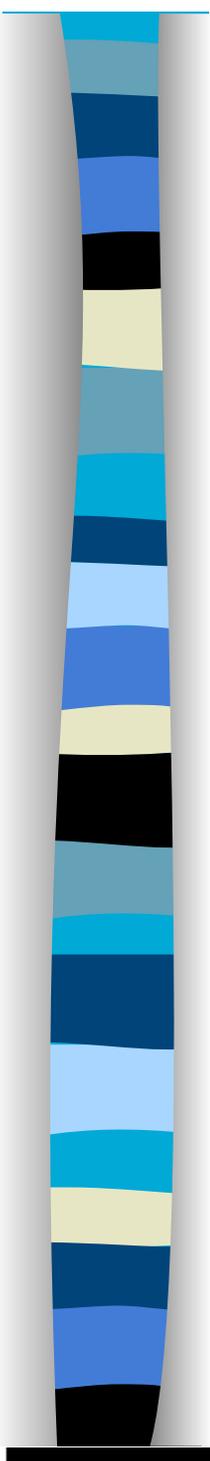
Exhibit R-2. Placement of Proposed and Built County Funded Affordable Housing Units, 1996 through 2007





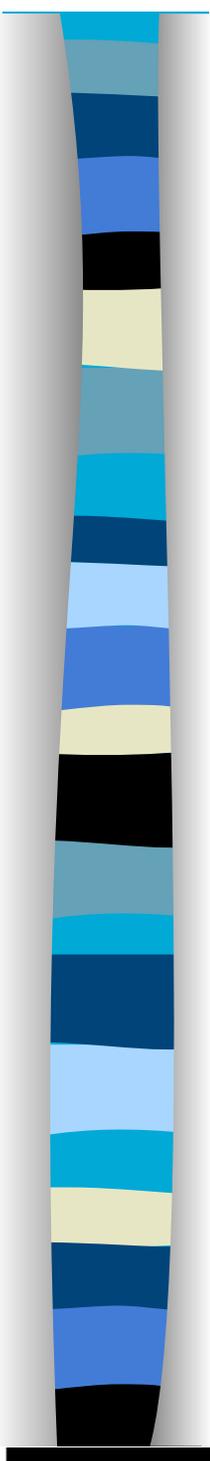
Westchester AI

- 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



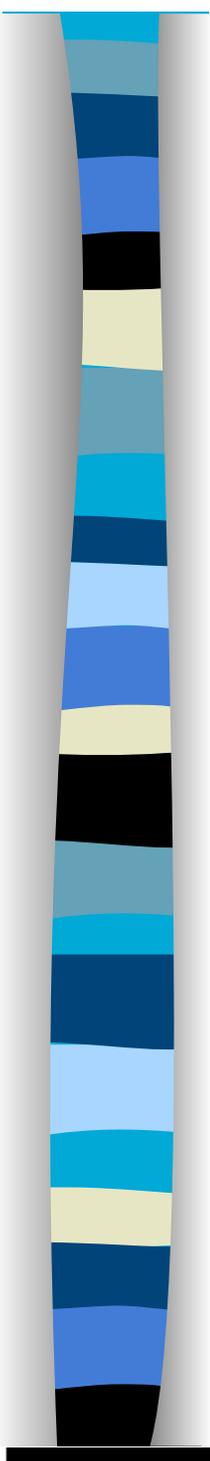
Allegations of the Complaint

- 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.



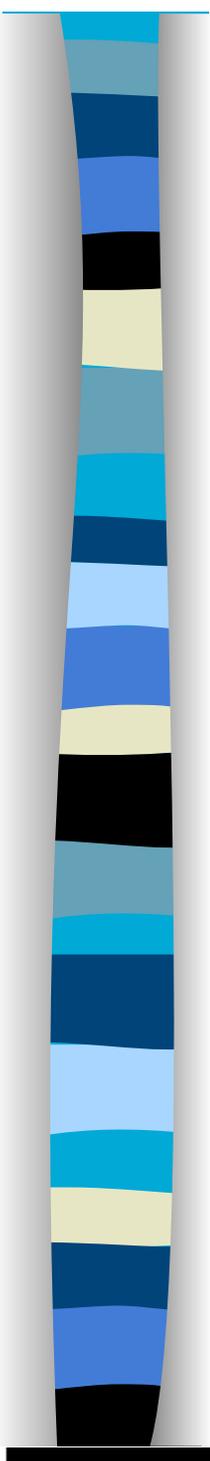
County's Defense

- 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



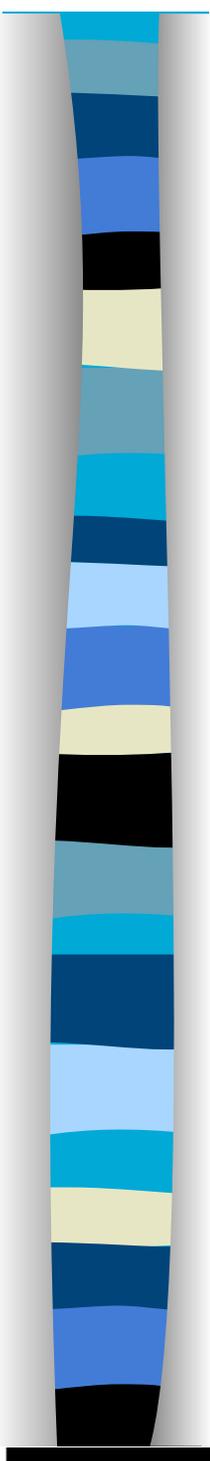
Court Decision—2007

- “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)



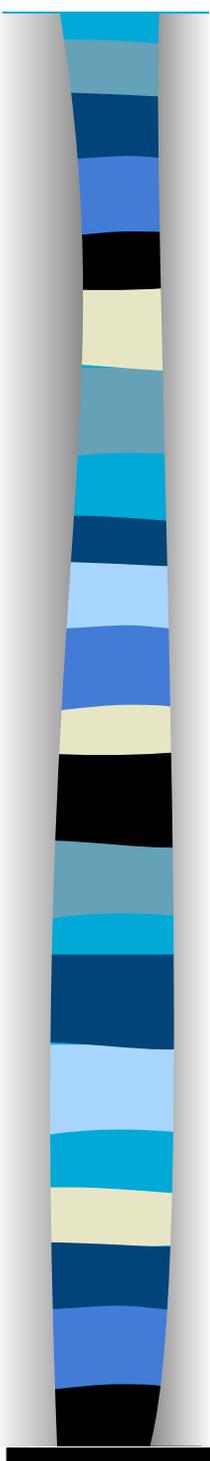
Court Decision—2009

- “[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, 668 F.Supp.2d 548, 564 (S.D.N.Y. Feb. 24, 2009).
- “[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 562.



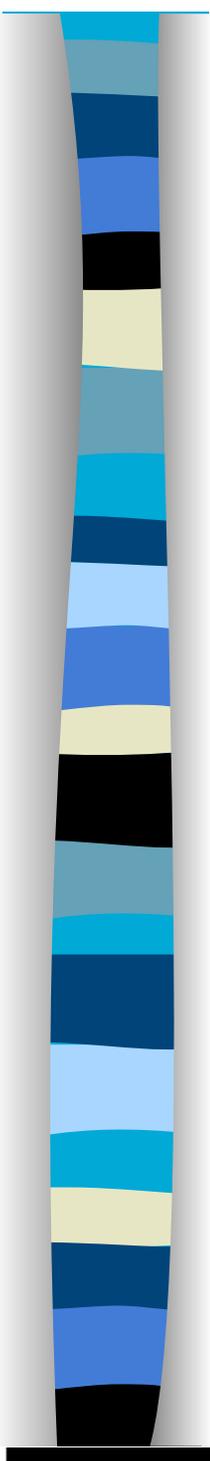
Court Decision—2009

- “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 564.



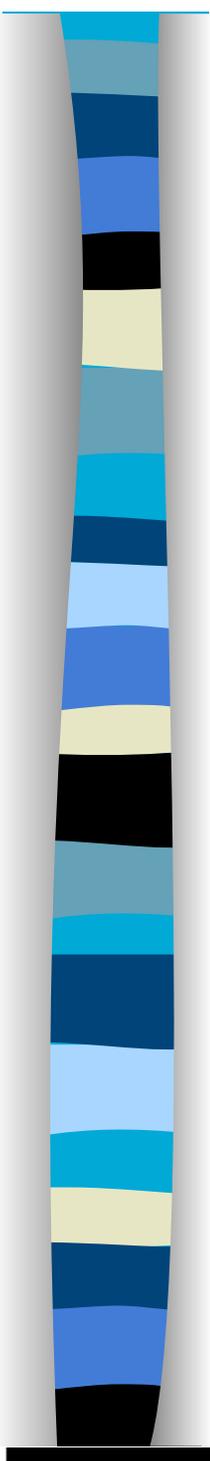
Settlement Terms

- 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



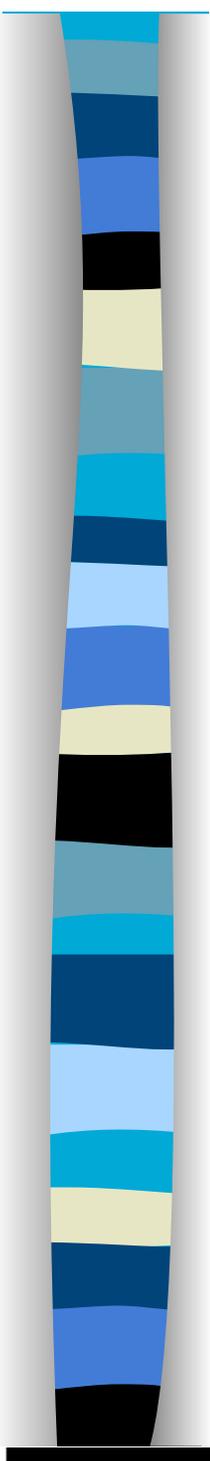
Settlement Terms

- 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



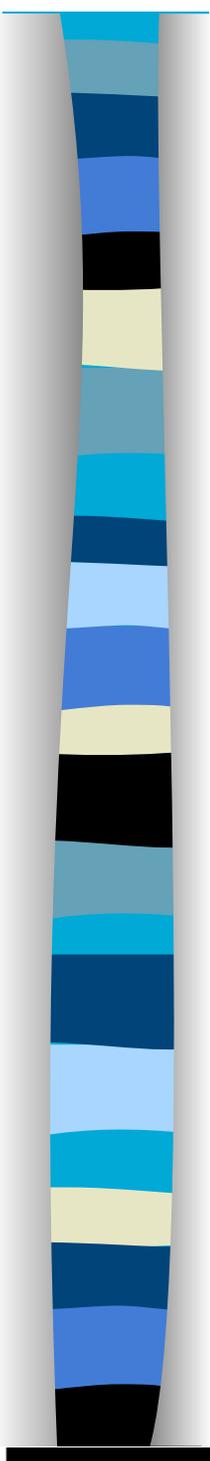
Reviving AFFH Enforcement

- 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.”



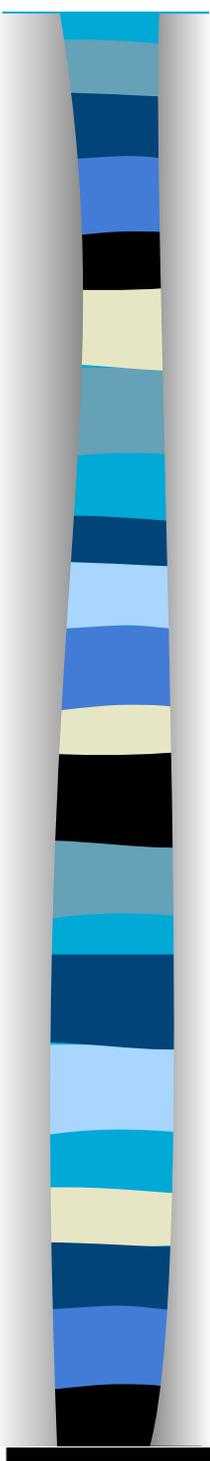
Displacement/Gentrification

- Must be assessed as a “fair housing impediment” faced by communities of color
- Relocation/replacement housing options must expand, not contract, housing choice
- Revitalization must ensure some right of return as part of housing choice
- Who Benefits from Redevelopment?
- Recipient risks loss of funds for failure to certify or to comply with civil rights obligations



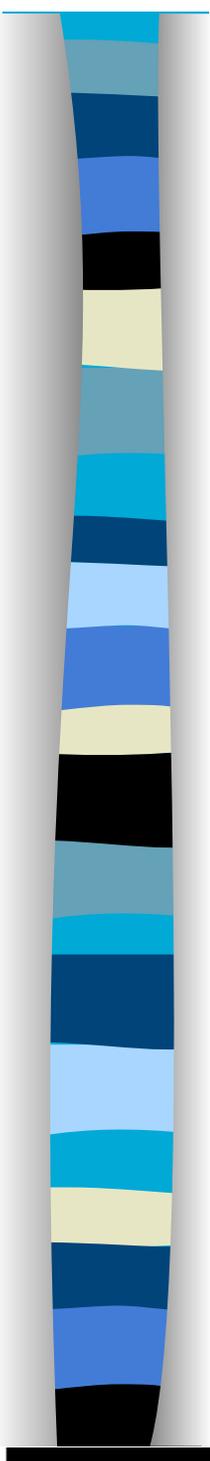
Disaster Relief

- Fair Housing Principles apply to every aspect:
 - Housing
 - Infrastructure
 - Public Services
 - Methods of Distribution and Administration
 - Funding Priorities



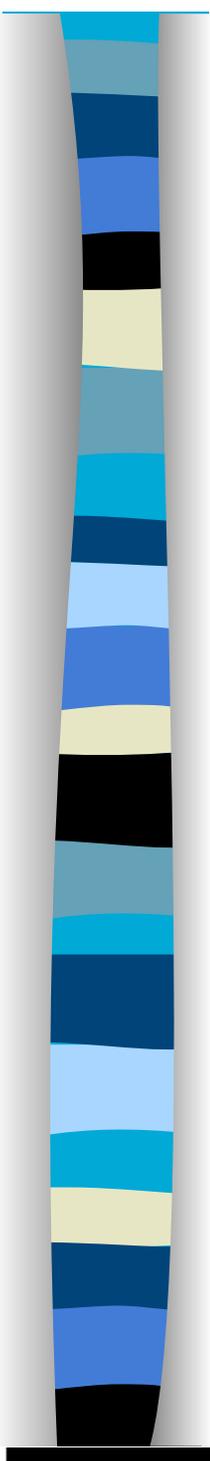
“Municipal Exclusion”

- Public water (Zanesville)
- Drainage
- Sewer, Streetlights, Sidewalks, Garbage Collection, Police & Fire Service (Modesto)
- Annexation (Mebane, NC)
- Voting Rights
- Environmental Racism (Dickson Co, TN)



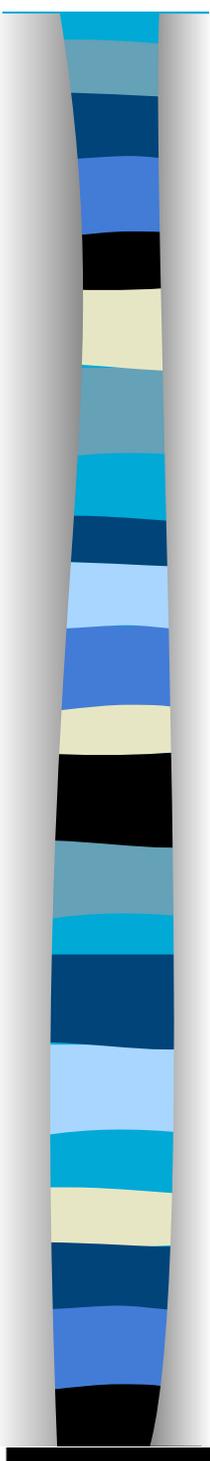
Resources

- Michael Allen's Emory U. Presentation on AFFH: <http://www.youtube.com/watch?v=yzYSH1KcuAQ>
- Gurian and Allen, *Making Real the Desegregating Promise of the Fair Housing Act: "Affirmatively Furthering Fair Housing" Comes of Age*, in Clearinghouse Review: http://www.reلمانlaw.com/docs/Clearinghouse_Article_on_Westchester.pdf



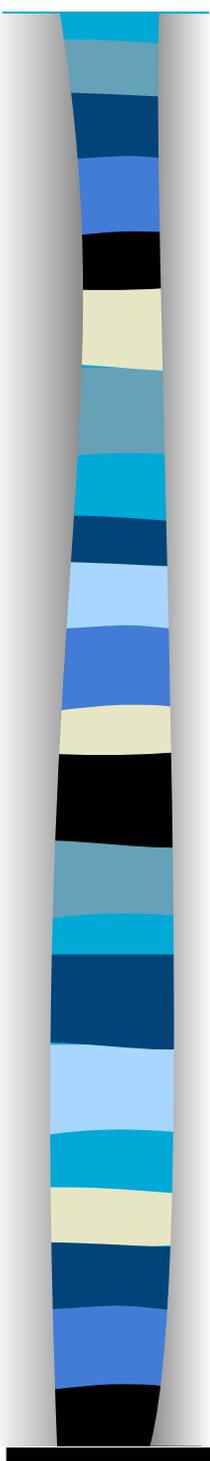
Resources

- Allen, *No Certification, No Money: The Revival of Civil Rights Obligations in HUD Funding Programs*, in *Planning Commissioners Journal*: [http://
www.relmanlaw.com/docs/WestchesterArticle.pdf](http://www.relmanlaw.com/docs/WestchesterArticle.pdf)
- HUD *Fair Housing Planning Guide*: [http://
fhasecure.gov/offices/ftheo/images/fhpg.pdf](http://fhasecure.gov/offices/ftheo/images/fhpg.pdf)



Resources

- **Conciliation Agreement in Texas AFFH Complaint: http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-106/conciliationagreement.pdf**



Resources

- Information about Westchester litigation: 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)
- City of Murfreesboro (Tenn.) Analysis of Impediments: [http:// planningcommunications.com/ai/ murfreesboro tn ai 2010.pdf](http://planningcommunications.com/ai/murfreesboro_tn_ai_2010.pdf)