



GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

November 5, 2010

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JAMES E. JOHNSON

James E. Johnson
Debevoise & Plimpton, LLP
919 Third Avenue
New York, NY 10022

Dear Mr. Johnson:

The Department of Housing and Urban Development received your letter dated October 8, 2010 regarding Inquiries 5 and 8 and the County's request for further guidance. HUD appreciates the opportunity to provide its position as to when housing units that are currently occupied should count towards the County's obligation to develop 750 new affordable housing units, assuming such units would otherwise meet the requirements set forth in the Stipulation. As explained further below, it is HUD's position that an acquired existing housing unit should only count towards the County's obligation when it creates a new affordable housing opportunity.

This question primarily arises when the County is seeking to acquire units under Paragraph 7(h) of the Stipulation, which provides that twenty-five percent of the new affordable housing units required may be achieved through the acquisition of existing housing units. This provision allows the County to take advantage of opportunities when existing housing units can provide new affordable housing units by converting market rate units into affordable housing or, as provided for in subsection (iii) of Paragraph 7(h), if such units "are affordable to households with incomes at or below eighty (80) percent of AMI, they shall be made affordable, after acquisition, through deed restrictions . . . that ensure that they remain affordable to . . . households with incomes at or below sixty-five (65) percent of AMI for a period of no less than fifty (50) years." (Stipulation, ¶7(h)(i).) Under either circumstance, "all such units shall meet the terms and conditions set forth in [Paragraph 7]." (Stipulation, ¶7(h)(i).)

The provisions of Paragraph 7(h) are not a stand-alone obligation but rather a subset of the obligation to "ensure the development of at least seven hundred fifty (750) *new* affordable housing units" required under the Stipulation. (Stipulation, ¶7 (emphasis added).) As such, acquired units must provide new affordable housing opportunities to count towards the County's obligation. Accordingly, it is HUD's position that an existing acquired housing unit should only count towards the County's obligation when the unit becomes vacant and there is an opportunity affirmatively to market the unit under the standards set forth in Paragraph 33(e). This position is bolstered by the Stipulation's purpose, which sets forth an Affirmatively Furthering Fair Housing strategy of providing new affordable housing opportunities in the eligible communities that will be marketed to a broader and more diverse set of potential residents.

HUD shares the County's concerns about displacement and does not want its position to be misconstrued as a position that any residential tenants should be evicted or otherwise displaced for projects that will implement the provisions of this Stipulation. Indeed, the Department does not consider an existing housing unit to be vacant, or to create a new affordable housing opportunity, if

such a tenant has been displaced. (*See, e.g.*, 24 CFR 42.375(b)(3); Stipulation ¶7(d)(iii).) Similarly, here, a unit should only count as a new affordable housing unit that meets the terms of Paragraph 7 when it becomes vacant absent any residential displacement.

We appreciate your attention to this issue and consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen R. Kanovsky', with a stylized, flowing script.

Helen R. Kanovsky

Cc: Kevin J. Plunkett, Deputy County Executive, Westchester County
Benjamin Torrance, Esq., Assistant U.S. Attorney for the Southern District of New York