

June 12, 2018

Mr. Mike Wilkinson  
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**Via Hand Delivery**

**Re: HUD Letter of Findings April 9, 2018**

Dear Mr. Wilkinson:

This shall serve as our written response to your inquiry concerning HUD FHEO's Letter of Findings dated April 9, 2018. Oakland County is surprised, disappointed and appalled that HUD FHEO has elected to attack Oakland County's programs in this fashion. Oakland County has successfully partnered with HUD for 45 years and has enjoyed an excellent relationship with the Office of Community Planning and Development in the Detroit HUD Office. As is explained in more detail below, HUD has specifically and repeatedly approved of the expenditure of funds for home improvements and HUD FHEO is now trying to engage in revisionist history. In addition, HUD FHEO's attack on Oakland County is completely wrong on the facts and is also wrong on the law. HUD has also failed to take into consideration programs that Oakland County offers.

**A. HUD HAS APPROVED THE EXPENDITURE OF CDBG FUNDS AND HOME FUNDS FOR HOME IMPROVEMENTS**

The expenditure of every dollar of HUD funds (both CDBG and HOME) by Oakland County for home improvements has been approved in advance and after the fact by HUD. This approval process has been in place for more than 45 years. The County submits an Action Plan annually for funding in advance. After the money is expended, the County submits a Consolidated Annual Performance and Evaluation Report ("CAPER") that demonstrates that the monies were spent per the Action Plan and HUD approval. The approval packages for years 2013 – 2017 are attached. FHEO is given a chance to comment on the Action Plans and until recently has failed to voice any objection to the County's plans to use HUD monies for its Home Improvement Program ("HIP") for low and moderate-income individuals.

As you will note, the approval letter from HUD dated October 19, 2017 from its Office of Community Planning and Development states as follows:

"We would like to take this opportunity to commend Oakland County on your successful completion of this year's Annual Plan. We believe that the goals and

objectives developed through this process provide the foundation for the formulation of new partnerships at all levels of government and with the private sector including for-profit and non-profit organizations. These partnerships are invaluable as you and your partners address the problems of affordable housing, homelessness, and economic opportunities for all citizens, particularly for very low-income, low-income and moderate-income persons.”

One Office of HUD (FHEO) is criticizing what has been repeatedly approved by another Office of HUD (OCPD). Oakland County submits that this represents bureaucracy run amuck. HUD FHEO is trying to change the rules of the game after the game has been played. That is fundamentally unfair, contrary to the approvals provided by HUD and relied on by the County, and inconsistent with the expectations of the more than fifty communities involved.

Oakland County’s HIP program has enjoyed the bipartisan support of its Board of Commissioners, the Oakland County Citizen’s Advisory Committee, and more than fifty communities in the County that receive HUD funds through the County.<sup>1</sup>

## **B. HUD IS WRONG ON THE FACTS**

FHEO bases its findings on faulty assumptions and skewed statistics. Oakland County’s → programs do not have a disparate impact on African Americans and we can and will demonstrate that statistically. Specifically, an analysis of the appropriate demographics and statistics by independent demographers retained by Oakland County shows that African American households typically receive assistance at levels that exceed their share of the relevant low and moderate income (LMI) population, as follows:

### **a. CDBG FUNDS**

#### **2016**

- 15.7% of LMI households in CDBG communities were African American
- 24% of the households that received CDBG funds were African American

#### **2014**

- 16.3% of LMI households in CDBG communities were African American
- 19.03% of the households that received CDBG funds were African American

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<sup>1</sup> As HUD is aware, Oakland County has agreements in place with more than fifty communities to share HUD funds.

## **b. HOME FUNDS**

### **2016**

- 20.1% of the LMI Households in Home communities were African American
- 21.48% of households that received Home funds were African American

### **2014**

- 20.5% of the LMI Households in Home communities were African American
- 19.7% of households that received Home funds were African American

There is no statistical basis to suggest that there has been a disparate impact. We can and will demonstrate that HUD FHEO intentionally skewed the data in this instance to try to favor renters over home owners.

## **C. HUD IS WRONG ON THE LAW**

### **a. CDBG FUNDS**

Oakland County's decision to subsidize home ownership is lawful and legal. As the United States Supreme Court has held, the Fair Housing Act is not a vehicle to second-guess the use of HUD grant monies based on differences in priorities, policies or politics. "Disparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies...." *Texas Dep't. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2522 (2015). FHEO has not and cannot make a showing that Oakland County has implemented any "artificial, arbitrary, and unnecessary barriers" to low-income minority populations.

The Regulations governing the receipt and distribution of CDBG funds expressly permit funds to be dedicated to the rehabilitation and improvement of residential homes. 24 CFR § 570.202(a)(1) states that "CDBG funds may be used to finance the rehabilitation of ... Privately owned buildings and improvements for residential purposes...".

Permitted types of assistance to meet community objectives for the use of CDBG funds includes the ability to "finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements...." 24 CFR § 570.202(b).

HUD recognizes that local communities have the flexibility to use CDBG funds to meet the specific needs of the area. HUD's Community Planning and Development Office states that "[t]he Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs."<sup>2</sup>

<sup>2</sup> See [https://www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment/programs](https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs)

HUD's regulations afford local communities discretion to allocate CDBG funds to address needs specific to the area:

Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. [24 CFR § 570.200(a)(2)]

#### **b. HOME FUNDS**

FHEO's conclusion that HOME funds should be diverted from providing housing assistance to rental assistance is contrary to the Cranston-Gonzalez National Affordable Housing Act. The Act provides that "[f]unds made available under this part may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing..." 42 U.S.C. § 12742.

Section 12742(a)(2) expressly provides, however, that the *preferred* use of HOME funds is for *housing rehabilitation*. Subsection (a)(2) states: "A participating jurisdiction shall give preference to rehabilitation of substandard housing unless the jurisdiction determines that—

- i. such rehabilitation is not the most cost-effective way to meet the jurisdiction's need to expand the supply of affordable housing; and
- ii. the jurisdiction's housing needs cannot be met through rehabilitation of the available stock."

The Act also states that "[t]he Secretary shall not restrict a participating jurisdiction's choice of rehabilitation, substantial rehabilitation, new construction, reconstruction, acquisition, or other eligible housing use unless such restriction is explicitly authorized under section 12753(2) of this title." 42 U.S.C. § 12742(a)(2) (emphasis added).

Providing HOME funds for tenant-based rental assistance is discouraged and is only permissible in limited and inapplicable situations. See Subsection 42 U.S.C. § 12742(a)(3) ("A participating jurisdiction may use funds provided under this subtitle for tenant-based rental assistance only if...") (emphasis added).

HUD has recognized Congress' intent to provide state and local governments with the autonomy in using and distributing HOME funds. In its FY 2016 HOME Information Summary, HUD stated that the HOME "program's flexibility allows State and local governments to use HOME funds for grants, direct loans, loan guarantees or other forms of credit enhancements, or rental assistance or security depositions."<sup>3</sup> "The program was designed to reinforce several important values and principles of community development." *Id.* Specifically, "HOME's flexibility empowers people and communities to design and implement strategies tailored to their own needs and priorities." *Id.*

FHEO's conclusion that the County's HOME funds should be dedicated to rental assistance is at direct odds with the law and its own interpretation of the program.

#### **D. HUD'S OTHER ASSERTIONS ALSO MISS THE MARK**

FHEO's ultimate statement of "concern" that the County's \$7M annual CDBG and HOME grant administration is somehow responsible for the perpetuation of historical segregation in the greater Detroit metropolitan area is overblown, irrelevant and unfounded. Oakland County has provided significant benefits to low-income minority groups in the area. FHEO's accusations to the contrary are meritless.

Oakland County's programs provide funds to moderate and low-income homeowners for home improvements on a first come first served basis. Home Ownership has always been a HUD priority, which is why we made it a priority. Since the funds are supplied on a first come first served basis, there is no basis to claim discrimination. Our programs are neutral on their face and FHEO does not suggest otherwise.

HUD's criticisms of Oakland County also fail to consider:

- That there is about \$70 million dollars invested in affordable rental housing assistance through other HUD and state resources each year while there are very few programs in the County to subsidize home ownership improvements for low income households;
- Our home buyers' assistance program;
- Emergency Services Grant monies given to homeless for rent;
- That CDBG funds received can't be used for rental assistance; and
- The HOME monies received (\$2 million) won't have any significant impact on the rental market.

#### **E. CONCLUSION**

Oakland County's expenditure of HUD CDBG and Home funds for home improvements for low and moderate income families has been repeatedly approved and endorsed by HUD. If HUD FHEO had a concern about Oakland County's programs, it should have timely expressed them.

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<sup>3</sup> See [https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/programs/home/](https://www.hud.gov/program_offices/comm_planning/affordablehousing/programs/home/)

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It is simply disingenuous to do so after the fact, and after HUD has approved of the expenditure of the funds.

Moreover, HUD simply has the facts wrong. HUD does not claim intentional discrimination – it claims that Oakland County’s policies and procedures have a disparate impact on African Americans. The facts demonstrate that African American households receive assistance at levels that exceed their share of the relevant low and moderate income (LMI) population.

HUD FHEO’s position in this matter is also devoid of any legal merit. Oakland County’s decision to prioritize the use of funds for its HIP program is consistent with the law, regulations and Supreme Court precedent.

Oakland County will timely submit its Rebuttal to the Letter of Findings and expects that HUD will withdraw its Letter of Findings as it is fatally flawed.

Sincerely,

OAKLAND COUNTY CORPORATION COUNSEL



Keith J. Lermينياux  
Corporation Counsel

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Encl.