

**OTTENJOHNSON**  
ROBINSON NEFF + RAGONETTI PC

June 19, 2017

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Board of County Commissioners  
Jefferson County  
100 Jefferson County Parkway  
Golden, CO 80419

Re: Continued Receipt of U.S. Department of Housing and Urban Development (“HUD”) Funds

Dear Commissioners Szabo, Tighe, and Rosier:

I write to you not in a representative capacity, but instead as an engaged member of the Jefferson County (the “County”) and Denver metropolitan development community. It is my understanding that the Board of County Commissioners (the “Board”) is, in the near future, expected to decide whether the County should continue to receive federal grants arising under certain HUD funding programs, including but not limited to the Community Development Block Grant (“CDBG”) program and the HOME Investment Partnerships Program (“HOME”). I wish to express my full support of the County’s continued receipt of these funds.

The CDBG program originated as part of the Housing and Community Development Act of 1974, 42 U.S.C. § 3501 *et seq.*, with the goal of providing decent housing, a suitable living environment and expanded economic opportunities, principally for persons of low and moderate income. The HOME program, which originated in the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. § 12701 *et seq.*, is for the purpose of providing down payment assistance, retaining affordable housing units, producing housing affordable to low- and moderate-income families, and to provide housing for people with special needs. The County has, for many years, received HUD funds under the CDBG and HOME programs, which have supported the County’s—and its constituent municipalities’—efforts to provide public services and housing opportunities for low- and moderate-income persons. The County’s receipt and expenditure of these funds has provided meaningful housing opportunities for individuals who might not otherwise be able to afford a home in the County, and has supported the production of affordable housing in the County.

Recent news reports have highlighted the Denver metropolitan area’s increasing unaffordability, which has most severely impacted first-time homebuyers and renters, including young professionals and persons employed in service industry jobs. A shortage of affordable housing in the County will make it more difficult for first-time homebuyers to obtain housing in the County, which will result in young professionals seeking other locations in which to live and work. As service industry employees are forced out of the County due to high home prices and rents, local businesses will have difficulty finding and keeping employees, straining the County’s business community. Moreover, failure to maintain the County’s existing housing stock could result in neighborhood decline and turnover. To maintain the region’s and the County’s economic competitiveness, the County must do its part to ensure the production and maintenance of affordable housing opportunities, and preservation of the County’s housing stock. To the extent the County declines participation in HUD programs, these funds, which

County taxpayers have underwritten through their federal taxes, would be diverted to other jurisdictions around the nation.

I understand that the Board's hesitation with respect to continued participation in HUD grant programs pertains to the Affirmatively Furthering Fair Housing final rule (the "AFFH Rule") promulgated by HUD in 2015. The AFFH Rule was a response to findings by the federal government that HUD grant recipients were conducting incomplete analyses of the fair housing impacts of their rules, regulations, and actions, and that HUD grant programs were not being deployed in a manner so as to affirmatively further fair housing, which is a requirement of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (as amended, the "FHA"). In essence, the AFFH Rule imposes new analysis and reporting requirements upon grantees in order to ensure that the purposes of the FHA are being furthered in the administration of HUD grants.

Importantly, the AFFH Rule is intended to ensure that HUD grantees operate in compliance with the FHA, however, the FHA imposes obligations on local governments irrespective of their participation in HUD grant programs. Specifically, the FHA prohibits local governments from enacting regulations or taking actions that would constitute disparate treatment or have a disparate impact on any "protected class," including race, ethnicity, national origin, sex, religion, familial status, or disability. The AFFH Rule now requires a local government to conduct a more robust analysis, as a precondition to receiving HUD grants, to determine whether the local government's regulations or actions might run afoul of the FHA, or whether the local government could take steps to improve its compliance with the goals and requirements of the FHA.

Local and national campaigns against the AFFH Rule have argued that the AFFH Rule constitutes a federal incursion into matters of local concern such as zoning, or that the AFFH Rule will result in "busing" or other forms of forced desegregation. These fears are not rooted in fact, and there is no evidence to support their conclusions. The experience of Westchester County, New York, in which I had personal involvement and which is routinely cited by opponents of the AFFH Rule, was based on a unique set of facts and circumstances and occurred prior to the promulgation of the AFFH Rule.

Last year, I authored a law review article that appeared in *The Urban Lawyer* titled, "Promise Unfulfilled? Zoning Disparate Impact, and Affirmatively Furthering Fair Housing," which criticized certain aspects of the AFFH Rule. In particular, the article argued that some of the methods that HUD chose in implementing the AFFH Rule could deter local governments as they decide whether to maintain HUD funding streams. While the article argued for changes in the AFFH Rule, it should not be read as an indictment of any one local government's participation in HUD programs. On the contrary, it is my view that HUD grant programs serve meritorious purposes. Local governments should continue to work with HUD to ensure that these programs accomplish their goals of encouraging FHA compliance while continuing to evaluate the AFFH Rule to eliminate disincentives arising out of participation in the programs. A local government's decision to decline HUD funds does not avoid the obligation to adhere to the FHA, and a decision to decline HUD funds could actually imply the existence of FHA violations or bring negative legal attention to the County.

I can assure you that the County's continued participation in HUD programs will have a regional economic benefit, and will support continued growth in the County. While I recognize some of the shortcomings of the AFFH Rule, it is my position that these shortcomings do not outweigh the substantial benefit that these programs have for our communities here in the Denver metropolitan region.

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I staunchly support the County's continued receipt of HUD funds, and encourage the Board to do so as well. I would be happy to speak directly with any member of the Board to answer questions about the AFFH Rule, its impact on County regulations and programs, and to further substantiate my support of the County's participation in HUD programs.

Sincerely,



Brian J. Connolly

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