I. Public Comment

II. Announcements
   A. Introductions

III. Minutes
   A. 7-10-19 Meeting Minutes – Review & Approval (ACTION)

IV. General Administration
   A. Policy & Procedures for CDBG Allocations to Local Units (ACTION)
   B. Ad Hoc Subcommittee on CDBG Set-Asides (DISCUSSION / POSSIBLE ACTION)
   C. Cancelation of December 4th UCEC Meeting (ACTION)
   D. General Updates
      1) CDBG annual award and allocation letters to local units
      2) HUD Disparate Impact Rule
      3) Local Projects
      4) Community Announcements

V. Adjournment

Next Meeting: Wed., November 6, 2019, 2:00 – 3:30pm, Washtenaw County LRC, Michigan Room
Members in Attendance: Treasurer Brenda McKinney (Superior Township); Cath Howard (Augusta Township); Craig Lyon (Pittsfield Township); Councilperson Elizabeth Nelson (City of Ann Arbor); Joe Meyers (City of Ypsilanti); Clerk Karen Lovejoy Roe (Ypsilanti Township); Supervisor Marlene Chockley (Northfield Township); Michael Moran (Ann Arbor Township); Michelle Aniol (City of Dexter)

Communities Absent: City of Saline; Bridgewater Township; Dexter Township; Lima Township; Manchester Township; Salem Township; Saline Township; Scio Township; Sylvan Township; Webster Township; York Township

OCED Staff Present: Mirada Jenkins, Morghan Williams Boydston, Tara Cohen

Guests: Chris Brown (Habitat for Humanity of Huron Valley); Marta Larson (Whitmore Lake resident); Pam Kisch (Fair Housing Center of Southeast and Mid MI)

Meeting called to order: 2:10pm

Mirada Jenkins, OCED Housing and Infrastructure Manager, called the meeting to order and explained that she would be facilitating due to Commissioner Morgan’s unexpected absence (another meeting ran longer than planned).

I. Public Comment – None

II. Announcements
   - Introductions were made around the room.

III. Minutes - Approval of 6-6-19 Meeting Minutes (ACTION)
Following Meyers’ seconding the motion to approve the June meeting minutes, Chockley pointed out Item IV.A where she was named as having asked a question that she did not recall asking, pertaining to Avalon Housing (CHDO) operating costs. Cohen responded that it is possible she may have confused her with someone else and will make a correction to the minutes.

Meyers stated that this can be treated as a “friendly amendment” and therefore the group did not need another motion for this item.

Moved by Lovejoy Roe. Support by Meyers.
Motion passed (with “friendly amendment” that Cohen will make one revision to item IV.A to replace Chockley with “a UCEC representative.”)

IV. General Administration
   A. Fair Housing Presentation (Pam Kisch, Fair Housing Center of Southeast & Mid MI) – Pam Kisch, Executive Director of the Fair Housing Center of Southeast & Mid MI, passed out a 1-page “Fair Housing Quiz” handout for everyone to complete individually. After everyone completed the quiz, Kisch led the group aloud through the correct answers for each question, followed by brief
discussion and questions from Committee members and staff. After this activity, Kisch showed an online film by Mark Lopez called *Segregated by Design* ([www.segregatedbydesign.com](http://www.segregatedbydesign.com)). The film is based on Richard Rothstein’s book *The Color of Law: A Forgotten History of How our Government Segregated America*.

After the film, Moran asked whether it is available and free to distribute. Kisch replied that it is intended to be shared widely. Cohen agreed to send out the website link to the UCEC listserv.

**B. Washtenaw County 2019 Point-in-Time Review (Morghan Boydston Williams, OCED)**

OCED Human Services Manager Morghan Boydston Williams presented on the most recent Point-in-Time Homeless Count (“PIT Count”) in Washtenaw County, which was conducted on January 30, 2019 between the hours of 10PM and 2AM (for the unsheltered count). The presentation was included in the meeting packet found [here](#).

One committee member asked how the date and time is selected. Williams explained that HUD requires every Continuum of Care (CoC) across the U.S. to conduct the PIT count during the last week of January, however the local CoC gets to choose the specific night of the week.

Howard commented that the polar vortex this past winter had resulted in some churches and other locations opening their doors to serve as informal shelters, most likely getting the word out on the neighborhood level. She noted that these sites wouldn’t may not have been surveyed since they were not part of the more formal network of known/established shelters.

A brief discussion took place about how HUD defines “chronic homelessness” and whether there are common understandings of the definition. (More information can be found [here on the HUD Exchange website](#).)

**C. General Updates**

1) 2019-20 Action Plan approved by BOC; OCED submitted to HUD

2) Ad Hoc Subcommittee updates – Cohen stated that the following four (4) members have volunteered for the subcommittee to address CDBG funding set-asides: Aniol, Chockley, Howard, and Lyon. She mentioned that they are just waiting on one person to complete the online meeting calendar poll, at which point Cohen will confirm the date and time for the first meeting, likely to be in August. She noted that the goal is to meet twice before mid-October, so that the full UCEC can decide on any relevant process guidelines in time for the 2020 Action planning process beginning in November.

3) Local Project updates - Cohen provided some brief updates on CDBG-funded infrastructure and demolition/affordable housing projects underway or with pending contracts, which can be found in the [packet](#).

4) Community Announcements/updates – Aniol announced that on July 16th the City of Dexter will be holding a public forum for Avalon Housing to educate the public about their organization’s work and share plans for the Dan Hoey project. Aniol explained the context for this forum, in that a small group of residents in Dexter are advocating against this project to construct affordable housing. This group has expressed opposition to the City selling the land to Avalon Housing, and their petition has approximately 50 signatures thus far. Aniol’s sense is that
the City Council will not back away from the Dan Hoey project, also noting positive newspaper coverage in both the Sun Times and a second (online) paper.

V. **Adjournment** - Jenkins adjourned the meeting at 3:23pm (quorum no longer present).

Adjourned: 3:23pm
AGENDA SUMMARY

Policy & Procedures for CDBG Allocations to Local Units (ACTION)

Within the context of discussions at UCEC meetings over the last several months, and in the interest of CDBG administrative efficiencies, staff is requesting that the Committee approve a policy for local CDBG allocations, as outlined below, to take effect in the upcoming 2020 Action Plan cycle. Thank you to Karen Lovejoy Roe and Marlene Chockley for responding to Tara Cohen’s September 8th email to the whole UCEC requesting feedback and suggestions on this topic.

Staff proposes the following policy. Detailed procedures will be written up by staff based on whatever policy is approved by the UCEC.

1) Allocations must always be specifically programmed in the Annual Action Plan in order for a local unit to receive those funds;
2) Local Units program their annual allocations by completing CDBG project application form to include valid cost estimates, preliminary plans, and a realistic timeline with target completion date (updated application form is forthcoming); application must be reviewed and approved by OCED staff;
3) Banking of allocations is not permitted – with the exception of allocating multiple years of funding toward a specific project (project timeline and target completion date would be required up front- See #2 above);
4) CDBG allocations would expire after two (2) years; from the date of environmental clearance from HUD (communicated by OCED), the local unit has 2 years by which they must reach substantial completion on their specified project;
5) When applying for CDBG projects, the Local unit can request implementation for Year 1 and/or Year 2; subrecipient agreement contracts will be issued for 1-year contract terms based on project timeline and target completion date;
6) Balances on local allocations also expire after two (2) years; for example, if a City allocated $80,000 to Project ABC for 2020, City receives their allocation award letter on September 20, 2020 and after completion of Project ABC, they only requested CDBG reimbursement for eligible costs of $75,000, the City would have until September 20, 2022 to utilize the 2020 CDBG balance of $5,000.
7) During the Action Planning process for any given year, any Local Units that do not submit an application for an eligible project will be asked to complete a form stating their intent to “donate” that year’s allocation to the Housing Improvement Program (formerly known as the “Single Family Rehab Program”) if they do not have an eligible local project in a given year.
8) Local units with existing CDBG balances from prior year allocations will have until June 30, 2023 to program those funds for eligible CDBG projects.

Ad Hoc Subcommittee on CDBG Set-Asides (DISCUSSION ONLY)

The Ad Hoc Subcommittee has met twice and will be holding a third meeting immediately following today’s UCEC meeting, per the request of some of the subcommittee members. Subcommittee members include Cath Howard, Craig Lyon, Marlene Chockley, and Michelle Aniol. All 4 attended the first meeting (8/21/19) and 3 attended the second meeting (9/13/19).
By way of reminder, the UCEC passed the following motion at the UCEC regular meeting on June 5, 2019:

*The Urban County Executive Committee will form an ad hoc subcommittee to consist of members and staff to explore processes by which Committee members/designees may propose CDBG funding set-asides, beginning with 2020-21 Fiscal Year funds; subcommittee will also be responsible for proposing criteria to be accepted by the full Committee for potential set-aside projects.*

The Subcommittee has made good progress on their work to date, however, during the second meeting, a few members raised concerns about rushing the process of making a recommendation to the full UCEC on how to approach CDBG set-asides. Members expressed that they had not understood the June 5th action to mean that a process must be in place for the upcoming 2020 Action Planning cycle. This group has generated a number of options to narrow down for a final recommendation to the UCEC, but it was felt that more time is required in order to thoroughly define criteria and make changes to an application and scoring forms, if applicable.

A few key questions raised in the Subcommittee to date worth sharing at this time are:

1) *How does the 10% CDBG set-aside impact each community’s allocation?*

For 2019, the approved $153,184 in priority funds for Northfield and Ypsilanti Township’s projects equated to a 7% set-aside from the CDBG grant amount. The 7% set-aside effectively reduced each community’s allocation by 16.4%.

2) *How are the allocations for local units calculated every year?*

The formula that OCED applies to determine each local unit’s estimated (and then actual) allocations is identical to the formula that HUD uses to calculate our CDBG grant each year.

\[
\text{[\% of total Urban County population] + [2 x \% of total poverty in Urban County] + [\% of Urban County's total Housing Problems]}\]

<table>
<thead>
<tr>
<th>Data Point</th>
<th>Data Source used (for 2019 Allocations)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>American Community Survey 2013-2017</td>
</tr>
<tr>
<td>Poverty</td>
<td>American Community Survey 2013-2017</td>
</tr>
<tr>
<td>Housing Problems*</td>
<td>Comprehensive Housing Affordability Strategy Data (CHAS) 2011-2015</td>
</tr>
</tbody>
</table>

*Housing Problem statistics refer to a household having at least 1 of 4 possible problems, specifically:

- incomplete kitchen facilities;
- incomplete plumbing facilities;
- more than 1 person per room;
- cost burden greater than 30%*

Based on the approved motion on June 5th shown above, staff suggests that the UCEC decide today whether or not local units will be given an opportunity to apply for 2020 CDBG set-aside funds (i.e. upcoming Action Plan), bearing in mind that some members of the subcommittee have raised a concern that more time may be required to bring a well-thought out recommendation back to the full UCEC for consideration.
HUD Proposed Rule on Disparate Impact (DISCUSSION ONLY)

On August 19, 2019 HUD published a proposed rule that would change HUD’s implementation of the Fair Housing Act’s Disparate Impact Standard. The comment period closes on October 18th. As with the proposed rule a few months ago, staff wants to ensure that UCEC members are aware of this effort by HUD such that you have the opportunity to submit comments as individuals or local units of government. Details on the proposed rule can be found here on the Federal Register docket. According to the summary provided on the Federal Register page,

*Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act or Act), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, family status, or national origin. HUD has long interpreted the Act to create liability for practices with an unjustified discriminatory effect, even if those practices were not motivated by discriminatory intent. This rule proposes to amend HUD’s interpretation of the Fair Housing Act’s disparate impact standard to better reflect the Supreme Court’s 2015 ruling in “Texas Department of Housing and Community Affairs v Inclusive Communities Project, Inc.” and to provide clarification regarding the application of the standard to State laws governing the business of insurance.*

According to the Fair Housing Center of Southeast and Mid Michigan (FHC), the proposed rule would severely weaken the Fair Housing Act. A letter written by FHC is included in your meeting packet for additional context around potential concerns related to HUD’s proposed rule.

Local Project Updates

The past few months have been very busy for CDBG-funded projects. Highlights include:

**Ypsilanti Township:**
- Foley Avenue (2018 CDBG): Construction underway, expected to be complete within the next few weeks.
- Washtenaw Avenue Sidewalk (2014/2015/2016 CDBG): The Township and OCED obtained the last of the easements, and project is expected to be completed this fall or spring at the latest.
- Schooner Cove Bus Shelter (2016/2017 CDBG): A bid was awarded and the pre-construction meeting was held. Construction anticipated in 2-3 weeks pending required paperwork from the General Contractor, with substantial completion this fall and final restoration to be done in the spring.
- Community Center Flooring (2019 priority/2019 regular CDBG): Engineering firm currently working on bidding specifications for expected release of RFP mid-October after HUD grants the release of funds.

**City of Ypsilanti**
- ADA Ramps (2018 CDBG): Bid was awarded and construction expected to start in early October.
- Demolition of 448 S. Huron: Project is currently in an environmental public comment period and expects HUD to release the requested CDBG funds my mid-October, with construction to follow.

**Pittsfield Township**
- Packard Road Midblock Crossing (2016/2017/2018 CDBG): RFP was published last week.

**City of Ann Arbor/Ann Arbor Housing Commission:**
Swift Lane (2017/2018 CDBG; City of Ann Arbor CDBG Program Income): Below is the summary provided by AAHC’s Director Jennifer Hall at a recent City of Ann Arbor HHSAB meeting:

The **Swift Lane project (Creekside Court and State Crossing)** consists of 2 sites: State Street on the corners of White/State/Henry near Stadium Bridge & Creekside Court on the 3400 block of Platt Road about 1/2way between Packard and Ellsworth.

**State Crossing:** 28 public housing units were demolished and 32 new apartments (23 1-bdr, 10 2-bdr) and a community center are under construction. The underground storm water, water and sewer have been installed, foundations have been poured and vertical construction should begin by next week. All 10 of the first floor apartments are fully ADA compliant including automated door openers and high impact drywall. Avalon will be providing on-site services. 5 units will be reserved for Chronically Homeless Frequent Users of Emergency Services and 16 units will be reserved for other special needs tenants.

**Creekside Court:** 4 public housing units and a market-rate duplex were demolished and 32 new apartments and a community center are under construction (8 1-bdr, 12 2-bdr, 6 3-bdr, 2 4-bdr, and 4 5-bdr). Community Action Network will provide on-site services. 3 units will be reserved for Homeless Veterans through VASH. 5 units will be ADA compliant and 17 will be visitable (no step entry, 1st floor bathroom, 1st floor bedroom). The underground storm water, water and sewer are getting installed this week and foundations will be poured in the next 2 weeks.

*Construction will continue until the summer of 2020. Certificates of Occupancy are scheduled for July to Oct 2020.*

**Avalon Housing’s Hickory Way project (HOME funds)** to build affordable rental housing off Maple Road in Ann Arbor in the process of completing Phase I to build the first 34 units, and expects to close on the Phase II property in October, which will allow them to build the second set of 36 units.

**Additional Information**

If you have any questions on any of the information included in this summary, or would like additional information, please contact Tara Cohen at (734) 544-3056 or cohent@washtenaw.org.
September 6, 2019

SUBMITTED VIA REGULATIONS.GOV

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

Re: Reconsideration of HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, Docket No. FR-6111-P-02

Dear Sir or Madam,

I write to you on behalf of the Fair Housing Center of Southeast & Mid Michigan to offer comments in response to the above-docketed notice ("Notice") about proposed changes to the disparate impact standard as interpreted by the U.S. Department of Housing and Urban Development (HUD). We strongly oppose any changes to HUD's current Disparate Impact Rule.

The mission of the Fair Housing Center is to end discrimination in housing and public accommodations and to promote accessible, integrated communities. Since 1992 we have investigated over 3,800 fair housing complaints, resolved over 100 reasonable accommodations, and opened up thousands of housing units from discrimination. Fair Housing Center-aided settlements total over $2.1 million. We cover eight counties in southeast and mid-Michigan including Ingham, Jackson, Monroe, and Washtenaw. More than 1.4 million people depend on our services.

As a nation, we have a shared interest in ensuring that housing opportunities are available to every person, regardless of their race, color, religion, national origin, sex, disability and/or familial status. The Fair Housing Act prohibits intentional discriminatory acts and facially “neutral” policies that limit housing opportunities based on race, color, national origin, religion, sex, the presence of families with children, and people with disabilities. Fully realizing the promises of the Fair Housing Act for every person in the United States is central to HUD’s mission.
The Fair Housing Center of Southeast & Mid Michigan shares this central mission and we write to urge you not to revise HUD’s existing Disparate Impact standard. HUD’s proposed change would risk the department failing to meet its critical obligation to achieve the Fair Housing Act’s “central purpose...to eradicate discriminatory practices within a sector of our Nation’s economy.” HUD’s current Disparate Impact Rule is a necessary tool in the ongoing effort to achieve open housing markets, free of discrimination, and to eliminate all forms of housing discrimination and illegal segregation.

- Complainant Aaronica Warren was sent an eviction notice after an ex-partner came to her house, assaulted her, and caused damage to the apartment she shared with her young son. She was sent an eviction notice for not being in control of her “guest.” Without the disparate impact standard, the Fair Housing Center would not have been able to help Ms. Warren file suit against her landlord and she and her son would have lost their housing. The case only settled for a few thousand dollars, but the property owner changed their policy. When batterers know that they can “get her evicted” by bringing violence to her home it gives these perpetrators one more tool to control survivors. The Disparate Impact Rule is vital for victims of domestic violence.

- We have also worked with a number of families with two parents and three children that were turned away from very large two-bedroom apartments because the landlord had an overly-restrictive “two heartbeats per bedroom” policy. It is extremely difficult to find a three-bedroom apartment in our area. If the square footage of the unit meets the local health and safety guidelines for five people it should be open to these families. Without the Disparate Impact Rule more and more families will be shut out of safe, affordable housing.

In its current form, the Disparate Impact Rule has proven practical and effective. It is also comports with decades of established judicial precedent, including the 2015 Supreme Court decision, Texas Department of Housing and Community Affairs v. Inclusive Communities Project, 135 S. Ct. 2507 (2015). In fact, Inclusive Communities quoted HUD’s existing rule at length without any suggestion that its opinion was in tension with that rule. The central premise of Inclusive Communities is that disparate impact claims are necessary to prohibit policies that may not be readily challenged under disparate treatment theories even though, particularly when overlaid on preexisting, long-standing disparities, they unnecessarily exclude minorities from housing. HUD’s proposal, however, would prevent disparate impact from performing this function by effectively limiting its application to classic disparate treatment cases.

---

Accordingly, HUD’s existing rule should not be revised. Instead, HUD must focus on real enforcement of the Rule to remove unnecessary barriers to housing choice throughout our housing markets.

HUD’s Proposed Rule Would Destroy Disparate Impact Liability in the Housing Markets

HUD’s Proposed Rule would make drastic changes to fundamentally weaken this long standing enforcement tool and would allow insurance companies, financial institutions, and other major corporations to engage in covert discriminatory practices with impunity. The Proposed Rule would destroy disparate impact liability and eliminate the incentives for major corporations to continue doing their part to eliminate discrimination. Accordingly, the Proposed Rule is directly contradictory to the Fair Housing Act and its basic purposes.

The Proposed Rule shifts the burden of proof and inserts inordinately high barriers that would make it virtually impossible to bring the bedrock and heartland housing discrimination cases that Justice Kennedy expressly stated should be brought using disparate impact.²

We find the proposals to be problematic for some of the following reasons:

- It is already very difficult to for victims of housing and lending discrimination to prevail in a claim under the Fair Housing Act. Without the Disparate Impact Rule it will be virtually impossible to succeed. Specifically, victims will be asked to read the Defendant’s mind, try to guess which justifications they might use and preemptively counter them.

- A business practice that relies on statistics or algorithms and has some predictive value will almost always be immune from liability, such that credit scoring, pricing, marketing, or underwriting models would be exempt from the Fair Housing Act, even if it is clear that they result in the discriminatory denial of access to housing and home loans. It is widely known that algorithms based on past discriminatory behavior will perpetuate discriminatory behavior.

- In Connecticut Fair Hous. Ctr. v. Corelogic, a plaintiff with a disability was denied housing based on criminal history. The plaintiff’s criminal record consisted of a single charge for retail theft in 2014, when he was 20 years old. The grade of the charge was “summary offense,” which is below the level of a misdemeanor. The charge was ultimately withdrawn.

Ultimately, the Proposed Rule contains a host of changes that, in practice, amount to insurmountable obstacles to proving what should be clear claims of

² Inclusive Communities, 135 S. Ct. at 2522.
housing discrimination. These proposed changes would ultimately result in an inoperable disparate impact standard of liability. Moreover, the proposed changes dangerously move companies and housing providers away from the practice of seeking out less discriminatory alternatives to harmful policies and practices. People of color, women, families with children, and people with disabilities can not lose one more tool that helps to temper the power of corporations that favor profits over civil rights.

The Disparate Impact Rule is Critical to Ensuring Housing Is Free of Systemic Discrimination

The existing Disparate Impact Rule is critical to ensuring optimum compliance with the federal Fair Housing Act and providing victims of widespread discrimination with rightful recourse.

In our eight-county service area in southeast and mid-Michigan, systemic discriminatory policies and practices limit housing opportunities and choices that the current Disparate Impact Rule can be useful in addressing.

Those include using police calls for domestic violence as a reason to evict; requiring women to go back to work after a pregnancy before a mortgage can be closed; denying housing to otherwise qualified families with children because of overly restrictive occupancy standards; local municipality barring the developer from accepting section 8 at a new housing community as a requirement for developing the land; landlords that require income from work only.

The discriminatory impact of these policies can and should be altered. The focus on less discriminatory alternatives encourages housing providers to adopt less restrictive practices while meeting their business needs, but the Proposed Rule would ultimately preserve discriminatory barriers to open housing markets by not allowing victims to get past the burden of establishing that a policy has a discriminatory impact.

Conclusion

Please keep in mind that HUD is the principal Federal agency responsible for programs concerned with the Nation's housing needs, fair housing opportunities, and improvement and development of the Nation's communities.

The Proposed Rule operates to destroy disparate impact liability. It is in direct contradiction to HUD's mission, decades of legal precedent, and the Supreme Court's recent decision in Inclusive Communities.
Before finalizing the current Disparate Impact Rule in 2013, HUD engaged in a thoughtful and thorough process, considering decades of federal court jurisprudence. In 2016, HUD considered additional federal court jurisprudence when it issued its well-reasoned supplement to insurance industry comments. HUD should not change the current Disparate Impact Rule.

Thank you for the opportunity to comment. Please contact Pamela A. Kisch at Fair Housing Center, P.O. Box 7825, Ann Arbor, MI 48107 regarding these comments.

Sincerely,

Pamela A. Kisch, Executive Director
Fair Housing Center of Southeast & Mid Michigan