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Case Study

The Absence of Minority Concentration Assessments in the Low Income Housing Tax Credit:
An Empirical Data Case Study of Durham, North Carolina

by Diane M. Standaert

The Low Income Housing Tax Credit has financed more than 1.8 million housing units targeted to families earning less than 60 percent of an area's median income. Although not currently required to do so, the U.S. Treasury and state housing finance agencies have the capacity to ensure racial equality among the beneficiaries of the Low Income Housing Tax Credit by considering racial composition of the neighborhoods in which they fund developments and monitoring the beneficiaries' racial characteristics (i.e., minority concentration assessments).

Planners may not fully comprehend how they can use GIS technology in a way that promotes integrated living patterns. This empirical data case study presents a method of analyzing racial characteristics of Low Income Housing Tax Credit-funded housing units in Durham, North Carolina. The methods provided in this case study demonstrate how planners can compile data and complete minority concentration assessments that may be used by both civil rights and housing advocates to protect minority communities against the over-concentration of tax credit units in their neighborhoods, thereby helping to determine whether their tax credit and other policies promote racial integration or segregation. Planners can help the U.S. Treasury and state housing finance agencies become social engineers and encourage racial integration in the nation's communities.

BACKGROUND

In 1993, Douglas Massey and Nancy Denton argued that the public debate had forgotten the issue of race and racial segregation.[1] The issue of race, however, is mobilizing housing advocates in the current era of de facto segregation where "racial hierarchy is maintained through institutional means."[2] Specifically, housing advocates are mobilizing around the Low Income Housing Tax Credit. The tax credit is regulated by the U.S. Department of Treasury and has financed more than 1.8 million units targeted to families earning less than 60 percent of an area's median income.[3] The number of units financed by the tax credit nearly equals the number of units constructed by the public housing program regulated by the U.S. Department of Housing and Urban Development (HUD).[4] Unlike HUD, the Treasury does not require that state-level entities responsible for allocating the tax credit assess the racial composition of proposed locations or collect data on the tenants' racial composition.[5] The issue presented in this case is whether the Treasury can ensure racial equality among the beneficiaries of the Low Income Housing Tax Credit without either considering racial composition of the neighborhoods in which it funds developments or monitoring the beneficiaries' racial characteristics.

FACTS OF THE CASE

Issue Context in Durham

This inquiry stems from the concerns of minority residents in Durham, North Carolina, who in 2003 opposed the development of an apartment complex funded through the Low Income Housing Tax Credit. In their neighborhood, more than 50 percent of the residents are minorities, the average income is $43,400, and 898 of the city's subsidized housing units are located in the census tract where the development is located and the one adjacent. The residents approached the Center for Civil Rights at the University of North Carolina to inquire about possible legal redress. Upon researching their legal claim, the center realized that the remedy for the Durham residents, and other communities similarly situated, lies in the availability of data regarding tenants and neighborhoods of developments funded through the tax credit.

This paper analyzes data maintained by the North Carolina Housing Finance Agency (NCHFA) using Geographic Information System technology. In the form of maps created with GIS technology, this study presents information for 2,240 households in tax credit-funded developments in Durham.

The case study demonstrates that data related to tenant and neighborhood racial characteristics can be readily collected and analyzed by state housing finance agencies. Additionally, and perhaps more importantly, the data show that, at least in Durham, race-neutral siting policies based on socio-economic status alone (i.e., a neighborhood's housing need or concentration of poverty)[6] do not guarantee success in siting developments in racially mixed or non-minority neighborhoods.[7] The case study concludes that not only is the data related to tenant and neighborhood racial characteristics necessary to ensure that the tax credit complies with the nation's fair housing laws under Title VIII of the Civil Rights Act of 1968, but also that state-level housing finance agencies have the ability to readily collect and analyze these data.

Overview of the Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit is a federal tax credit available to private investors who invest in affordable housing. Under Section 42 of the U.S. Tax Code, the Treasury promulgates the regulations for the tax credit. The Treasury determines the amount of tax credits allocated to each state,[8] minimum number of units a developer must reserve for low-income households in order to qualify for the credit,[9] definition of low income,[10] consequences of combining the credit with federal funding programs,[11] and annual reporting requirements for the state housing finance agencies and developers. Race of the tenants is not required.[12]

In addition to the Treasury, numerous public and private actors are involved in the development of tax credit-funded housing. State-level housing finance agencies award tax credit allocations to private developers, who in turn sell the tax credits to private investors. The transaction provides upfront equity to the developer and a dollar-for-dollar reduction in an investor's federal income taxes over 10 years following the investor's purchase of the credits. For example, if a housing finance agency awards a private developer $10 million in tax credits, the developer sells the credits to a private investor.[13] Once an investor purchases the credits, the developer uses the money to finance the development of an affordable housing project and the private investor can annually subtract $1 million from federal taxes owed over the next 10 years. The involvement of private investors is the primary distinction between the Treasury's tax credit and HUD's public housing funds.

While obligated to adhere to the Treasury's minimum requirements, state housing finance agencies have broad authority to allocate the credits in accordance with local needs.[14]Other than a reference to "project location"[15] and "assessment of the populations with housing need,"[16] the Treasury sets forth no requirement for assessing the racial and socioeconomic characteristics of the neighborhood or the tenants in its developments. The Treasury requires each state to adopt a qualified allocation plan (QAP) establishing the selection criteria, preferences for certain types of housing, and procedures for compliance monitoring.[17]

Overview of the North Carolina Housing Finance Agency's Qualified Allocation Plan

Unlike housing finance agencies in many states, the North Carolina Housing Finance Agency has included the following language in its Qualified Allocation Plan since 2001:

> *Concentration:* Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas that have community revitalization plans with public funds committed to support the effort.[18]

The language provides the housing finance agency the option to deny funds to a particular development if it is in an area of minority concentration. Based on conversations with NCHFA staff, the language was added in response to the 1996 rule that imposed the minority concentration assessment for developments funded through HUD's HOME program.[19] While it is a program administered by HUD, the HOME program is not a public housing program. In fact, it is similar to the tax credit: It serves households earning between 50 percent and 60 percent of the area median income. Developers submit proposals to municipalities or housing finance agencies, which then award dollars based on the greatest number of points. It differs from the tax credit in that it is administered by HUD not the Treasury, it funds both homeownership and rental housing, and HUD requires housing finance agencies to conduct a minority concentration assessment prior to funding rental housing. The NCHFA also administers the HOME program and many developments often combine the funds with other programs, so NCHFA added the language in order to comply with the HOME regulations. The effectiveness of the concentration clause is not clear.

One factor contributing to the difficulty in measuring the concentration clause's effectiveness is that there is no language that defines what percentage of minority and low-income households constitutes a concentration, nor does it define community. As a result of the lack of operational definitions for minority concentration in NCHFA's QAP, the maps in this case study utilize the definitions of "minority," "racially mixed," and "non-minority" as defined by the Georgia Department of Community Affairs. In its *Annual Impediments to Fair Housing Report*, Georgia defines areas of minority concentration as areas where more than 50 percent of the residents are minority.[20] Racially mixed areas are those where the population is between 50 percent and 25 percent minority.[21] Non-minority areas are those with less than 25 percent minority population.[22] Even Georgia, however, has no definition for "area," so it is not certain if census tracts or block groups are utilized.

Methodology

The data for development locations and tenants' demographic characteristics came from NCHFA's Rental Compliance Reporting System. The reporting system facilitates NCHFA's ability to monitor tax credit-funded developments to ensure compliance with Section 42 of the Internal Revenue Code. As a public agency, NCHFA is required by state law to make the information contained in the reporting system available to the public, at no charge, within a reasonable time.[23] The information for this case study was gathered in electronic format in the fall of 2004, due largely in part to the quick and helpful responses from staff of the NCHFA.

NCHFA's reporting system's database includes the following information for each unit that it monitors: number of bedrooms, square feet, unit type, number of occupants, move-in date, move-out or lease renewal date, annual gross income, maximum eligible income, tenant rent payment, housing assistance payment, type of housing assistance, utility allowance, total rent charged to the tenant, maximum allowable rent, and whether the tenant is a student.

The reporting system also includes the following information for each development: year placed in service, the year it was awarded tax credits, address, number of market-rate units, number of units set aside for income-eligible families, funding sources, whether the development was constructed by a for-profit or nonprofit developer, whether it is targeted for families or elders, and contact information for the developer and manager. NCHFA has the ability to provide electronic data for 15 developments in about one hour.[24]

Based on the information provided, Durham's tax credit-funded units represent nearly half (46 percent) of the city's subsidized units. The city also maintains a subsidized housing database to facilitate the implementation of its affordable housing policy. Yet, NCHFA provided information for developments located in Durham that were not on the city's list. Additionally, discrepancies exist between the two sources regarding which developments receive tax credits and which do not. Where the two sources differed, information from NCHFA was used. Based on these two sources of information, the current estimate of subsidized units in the city is 5,892. To the best of NCHFA's knowledge, all tax credit units in Durham (2,736) were extracted from the reporting system database and provided for inclusion in this case study.[25]

The reporting system shows household move ins, move outs, and lease renewals in a tax credit-funded unit. The data collection for this case study was limited to households who moved in or renewed their leases during the 2004 calendar year. There were a total of 3,086 entries for the 2,562 units in 2004. Of these 3,086 entries, 842 were not included in the analysis because information was erroneously reported, the unit was unoccupied, or the household was reported as moving out. Two entries were excluded because they are courtesy apartments for police officers. An additional two units were excluded because one is a police substation and the other is a model apartment. Thus, the final number of entries analyzed equals 2,240, and each entry represents a separate household.

Notice that tenant race is not one of the variables monitored in this readily accessible database. NCHFA asserts that race is collected, but on a voluntary basis. The agency is not certain if race data are collected in ways accurate enough for analysis.[26] In addition, even though project managers may provide the information on tenants' race in the NCHFA's Annual Compliance Reporting System, NCHFA does not report the information to the Treasury.[27]

For the purposes of this case study, the racial characteristics of tenants were obtained through the North Carolina Board of Elections Voter Registration System.[28] For 35 of the developments, the data from the reporting system included tenants' names, which then could be attached to racial characteristic data maintained in the voter registration system. Because of the tedious and time-consuming nature of that task, data for developments located only in nonminority census tract block groups were included. This resulted in a data set of 621 households, the largest sample with racial characteristics of tenants in tax credit-funded units in any one city. Through this data set, it was possible to gather voter patterns, race, mobility, income, and neighborhood characteristics. The racial data were gathered in January and February 2005. To supplement the statistical data, the developments, neighborhood, and tenant characteristics were geocoded using ArcMap 9, software freely available at the University of North Carolina.[29] The maps were created primarily to show how a finance agency can pursue a minority concentration assessment analysis to monitor whether their policies promote residential integration or racial segregation.

CONCLUSIONS AND OUTCOMES

The data show that over time NCHFA has funded a few developments in areas outside of Durham's central city. Figure I shows the general location of tax credit-funded units in Durham. Consistent with national trends,[30] it shows that tax credit units are primarily located in minority neighborhoods.[31] Only one development has been funded through the tax credit in Durham since the addition of the concentration assessment requirement to the NCHFA's QAP. The development is located in a minority census tract. It is an 88-unit development with 100 percent of its units set aside for families earning below 60 percent of the area median income. In 2004 there were just 33 households occupying the 88 units. Of these units, 13 used Housing Choice Vouchers, and 29 paid more than 50 percent of income in rent.

Figure 1
Location of LIHTC Developments in Durham, North Carolina

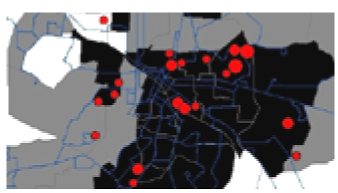

Figure 2
Number of Section 8 Vouchers in LITHC Developments

As Figure II shows, Housing Choice Voucher use depends on the neighborhood. Housing Choice Vouchers are used more frequently in outlying neighborhoods than in the central city,[32] and Housing Choice Voucher holders use the vouchers in units located in nonminority areas when provided the opportunity.[33] Given the mobility of the Housing Choice Voucher program, patterns of their use may, in part, reflect residential living preferences. A Housing Choice Voucher is a tenant-based subsidy issued by HUD to eligible families earning below 30 percent of area median income. Voucher holders may use the voucher at any private apartment complex that participates in the program. HUD pays the developer the difference between the 30 percent of the voucher holder's monthly income and fair market value.

Figures III and IV demonstrate the race of more than 400 tenants in seven tax credit-funded units located in neighborhoods where less that 50 percent of the residents are minority.[34] The difference between Figure III and Figure IV is that the former defines neighborhoods by census tract and the latter defines neighborhoods by census block group. The maps show that an overwhelming percent of the tenants in tax credit-funded units are minority regardless of the surrounding neighborhoods. The lesson here is an important one: with the data, it is possible to show that placement in minority neighborhoods may perpetuate segregation and that construction in nonminority, affluent neighborhoods may promote integrated patterns as intended by the Fair Housing Act.[35]

Figure 3
Percent of Black Residents in Seven LITHC Developments in Durham, North Carolina (Census Tracts)

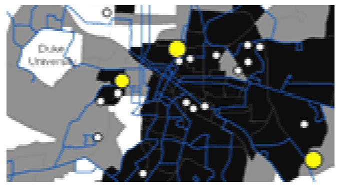

Figure 4
Percent of Black Residents in Seven LITHC Developments in Durham, North Carolina (Census Block Groups)

While the data show important patterns of racial characteristics in Durham, this case study demonstrates that the racial and socioeconomic characteristics of neighborhoods and developments' tenants easily can be incorporated into the existing reporting mechanisms of state housing finance agencies and the Treasury. For example, even though not directly related to the issue of race, the data also show the extent to which tenants remained cost-burdened. See Figure V.[36] Finally, the data served as a tangible mechanism to connect possible legal theories — such as a disparate impact claim ¾ with available data and to contemplate how such data may be used by both civil rights and housing advocates to protect minority communities against the over-concentration of tax credit units in their neighborhoods.

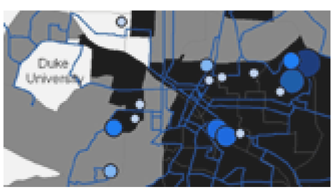

Figure 53
Number of Cost Burden Households in LITC Developments in Durham, North Carolina

Limitations

Even though the information is available, the case study methods used here did not fully exhaust all analyses that were suggested by previous research or that could be conducted to assess the extent to which the program is currently meeting the housing need in Durham, North Carolina. One area not demonstrated by the maps is whether any of the developments is mixed-income, even though three of the developments in Durham are indeed mixed income. Racial data were collected for one of the mixed-income developments; 91 percent of the tenants are African American. It is not possible to identify the racial characteristics of tenants in the nonsubsidized units because NCHFA does not require reporting for those units. In its 2000 study, Abt and Associates suggested comparing the incomes of tenants in mixed-income developments with those in nonmixed-income developments.[37] Such an analysis is possible with the current data set, but given that study's focus on race, such an analysis was not completed here. Other possible analyses include examining rent charged to tax credit households, analyzing tenants' actual income, and attaching race to both Housing Choice Voucher use and cost burden.

Several analyses related to the issues of locating housing further from a city's urban core are not addressed here, even though the data are available in part through the GIS data set. For example, no inquiry was made into the availability of sites zoned for multifamily housing in nonminority neighborhoods. Furthermore, this case study does not address the complex issues of access to public transportation and social services in areas outside of the central city. From the figures, it is apparent that the tax credit developments are located close to existing bus routes and that the bus routes do not extend beyond the central city. The issue, however, is racial composition of the neighborhood and tenants and needs to be addressed regardless of whether the development is located near or far from the urban core.

Finally, this case study does not discuss issues related to preservation of tax credit-funded units, as many of the units originally funded in the late 1980s and early 1990s reach the end of their required affordability period of 15 years. This case study also does not discuss the role of the increased basis developers receive for choosing to build in a difficult to develop area (DDA) or qualified census tract (QCT).[38] The reason for exclusion is primarily because only one of Durham's 39 developments was constructed in either a DDA or QCT. Additionally, this case study does not examine the consequences of demanding new regulations, such as the minority concentration assessment or collection of racial data, in a political climate where one of the federal government's top priorities is to create a more simple, fair, pro-growth tax system.[39]

LESSONS LEARNED

Given the intense competition for the equity and tax benefit provided by the tax credit, the Treasury and housing finance agencies can serve as social engineers with tremendous potential to encourage racial integration in the nation's communities. The tax credit is the largest federal program subsidizing private developers' production of affordable housing.[40] Specifically monitoring the implications of a neighborhood's racial composition may ensure that, as the program continues over time, developers are not merely building in minority neighborhoods given differences in land value.

Planners have an important role in helping state housing finance agencies fulfill their civil rights mandates by working with agencies and private developers to incorporate the assessment of minority concentration into existing data collection, analysis, and allocation mechanisms. As shown, data collected by housing finance agencies is compatible with GIS technology in such a manner as to monitor minority concentration. Planners also will continue to have a role in analyzing whether requiring minority concentration assessment results in a withdrawal from minority neighborhoods where there is a demonstrated housing need and there is a resulting increase in the placement of affordable rental developments in nonminority neighborhoods.

Pursuing greater oversight within the tax credit program is not an exclusive advocacy effort. For example, planners undoubtedly have a role in promoting inclusionary zoning ordinances in their communities.[41] Inclusionary zoning describe[s] a wide variety of techniques used by local governments that link the construction of low- and moderate-income affordable housing to the construction of housing for the marketplace. Under an inclusionary zoning program, affordable housing is constructed and integrated into more expensive housing developments, thereby becoming an integral part of the overall residential development of a community. Simply put, inclusionary zoning encourages or requires developers (as a condition of permit approval) to include some portion of affordable housing in new market-rate housing developments.[42]

Thus, inclusionary zoning policies should also be promoted at the local level, as they may result in more available land for tax credit units in nonminority areas. While there are multiple reasons for focusing on the ability of housing finance agencies to collect racial data, for today's civil rights advocates, it is important enough that under current regulations, the tax credit contains no requirement for oversight in regard to either development location or tenant characteristics as to its impact on classes protected by the nation's fair housing laws.[43]

Diane Standaert will be serving as a fellow for UNC's Center for Civil Rights beginning in August. She graduated from UNC School of Law in May 2006. While in law school, Diane conducted the research for this article on a pro bono basis under the supervision of Anita Earls, Director of Advocacy for UNC's Center for Civil Rights; Professor Jack Boger, Deputy Director of UNC's Center for Civil Rights; Allen Parnell, Director of the Cedar Grove Institute, and Professor Charles Daye. Standaert also served as the law student liaison to the American Bar Association's Forum on Affordable Housing and Community Development Law. She graduated from Florida State University, summa cum laude, in 2001 where she was recognized as FSU's Undergraduate Humanitarian of the Year for her work with Habitat for Humanity.

NOTES

1. Massey, Douglas, and Nancy Denton. *American Apartheid*. 1993, p. 3.

2. Powell, John. "Housing Development, Equity, and Civil Rights," December 3, 2003, at www.kirwaninstitute.org/multimediapresentations/AffHousingBreadPresApril282004.ppt (last visited May 5, 2005).

3. Freeman, Lance. Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s. Brookings Institute, March 2004. www.brookings.edu/urban/pubs/20040405_Freeman.pdf (last visited May 29, 2006).

4. Freeman, Lance. Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s. Brookings Institute, March 2004. www.brookings.edu/urban/pubs/20040405_Freeman.pdf (last visited May 29, 2006).

5. See, for example, 24 C.F.R. § 983.6(b) (2005).

6. Since 1995, the City of Durham has had a subsidized housing location policy that prohibits the construction of housing in neighborhoods with a concentration of poverty greater than 40 percent or more than 20 percent subsidized housing units. See City of Durham Comprehensive Plan (May 3, 2003).

7. The LIHTC is unique among federal housing programs in that it does not require reporting on the racial and ethnic characteristics of its tenants. See Roisman, Florence Wagman, "Mandates Unsatisfied: The Low Income Housing Tax Credit Program and Civil Rights Laws." *University of Miami Law Review* 52, 1011 (1998), citing Shlay, Anne B., and Charles King, "Beneficiaries of Federal Housing Programs: A Data Reconnaissance," *Housing Policy Debate* 6, 481, 486 (1995). In the most recent analysis of tenants in LIHTC developments, however, Abt and Associates gained access to tenants' racial characteristics through resident surveys in 39 developments in five cities across the country. See Buron, Larry, Sandra Nolden, Kathleen Heintz, and Julie Stewart, Abt & Associates, "Assessment of the Economic and Social Characteristics of LIHTC Residents and Their Neighborhoods." (Feb. 28, 2000) (Nineteen percent of the residents were white and 81 percent of the residents were minority, considering both race and ethnicity.)

8. I.R.C. § 42(h)(3) (2005). Each state annually receives the greater of $1.85 times the state population or $2,125,000.

9. § 42(g)(1)(A). At minimum, a developer must agree to set aside 20 percent of the units for households earning less than 50 percent of the area median income or 40 percent for households earning less than 60 percent of area median income.

10. § 42(g)(1)(A).

11. § 42(b).

12. Developers are required to annually report the following information: (A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer, (B) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency, and (C) such other information as the Secretary may require § 42(k)(1). State housing credit agencies are required to annually report: (A) the amount of housing credit amount allocated to each

building for such year, (B) sufficient information to identify each such building and the taxpayer with respect thereto, and (C) such other information as the Secretary may require. § 42 (k)(2). Some states collect tenant race data voluntarily. See, for example, North Carolina Housing Finance Agency, *Annual Compliance Activity Report* www.nchfa.com/Forms/Forms/Rental/AnnualBuildingActivityReport.xls (last visited May 29, 2006), and Florida Housing Finance Corporation, "Tenant Income Certification Form," www.floridahousing.org/Home/PropertyOwnersManagers/Forms (last visited May 29, 2006).

13. The longer the credit has been in existence, the more familiar actors have become with the process, thus increasing the program's efficiency and generating more equity for each credit allocated. In 1988, the selling price averaged 47 cents on the dollar. See Daye, Charles, et.al, *Housing and Community Development* (1999) at 253. In 1997, developers sold their tax credits for as much as 70 cents on the dollar. *Id.* In some instances, however, investors are paying more than one dollar per dollar of tax credit. In other words, an investor may pay a developer $550,000 for $500,000 of tax credits. Even though such an investment results in a loss on the credit, investors also may be able to receive tax benefits from the loss. Additionally, investors receive the benefit of the investment counting toward their obligation under the Community Reinvestment Act of 1977, thus partially explaining the location patterns of the concentration of tax credit-funded units in urban areas.

14. In fact, the IRS states that housing finance agencies have "broad general authority" in making decisions. Internal Revenue Service, U.S. Department of Treasury, Market Segment Specialization Program Low-Income Housing Credit 190 (1999).

15. § 42(m)(C)(i).

16. § 42(m)(C)(ii).

17. § 42(m)(1)(B).

18. North Carolina Housing Finance Agency. 2005. Qualified Allocation Plan, p. 20, www.nchfa.com/Forms/QAP/2005/Final2005QAP.pdf (last visited May 29, 2006).

19. Telephone interview with North Carolina Housing Finance Agency staff, May 5, 2005. Note the time span between 1996 and 2001.

20. Georgia Department of Community Affairs. *Analysis of Impediments to Fair Housing Choice FFY 2003 — FFY 2007*, 43-45. www.dca.state.ga.us/housing/homeownership/programs/downloads/AIFinal_03.pdf (last visited May 29, 2006).

21. Georgia Department of Community Affairs. *Analysis of Impediments to Fair Housing Choice FFY 2003 — FFY 2007*, 43-45. www.dca.state.ga.us/housing/homeownership/programs/downloads/AIFinal_03.pdf (last visited May 29, 2006).

22. Georgia Department of Community Affairs. *Analysis of Impediments to Fair Housing Choice FFY 2003 — FFY 2007*, 43-45. www.dca.state.ga.us/housing/homeownership/programs/downloads/AIFinal_03.pdf (last visited May 29, 2006).

23. North Carolina General Statutes § 132–6 (2004).

24. E-mail from Erik Apinis, Intern, North Carolina Housing Finance Agency, to Mark Shelburne, General Counsel, North Carolina Housing Finance Agency, (June 1, 2004, 11:11 a.m.) (on file with author).

25. NCHFA reports that it has financed more than 41,500 privately owned affordable apartments throughout the state since 1987 with the federal tax credit. See North Carolina Housing Finance Agency, "Facts on the Federal Low-Income Housing Tax Credit (2004)," at www.nchfa.com/About/profile.aspx (last visited May 29, 2006). Note the developments presented on the maps do not include developments funded through other NCHFA-administered programs, such as tax-exempt bonds and HOPE VI. According to information provided by NCHFA, this excludes only five additional developments. E-mail from Mark Shelburne, General Counsel and Policy Coordinator, North Carolina Housing Finance Agency, (May 3, 2005, 10:53 p.m.) (on file with author).

26. E-mail from Mark Shelburne, Counsel and Policy Coordinator, North Carolina Housing Finance Agency, (May 3, 2005, 10:53 p.m.) (on file with author).

27. E-mail from Paul Kimball, Manager of Rental Assets, North Carolina Housing Finance Agency (April 12, 2005, 11:21 a.m.) (on file with author). In response to a question about what information is reported to the Treasury, the reply confirmed that race data are not reported. The e-mail states, "The only data that is sent to the service annually is total number active projects, total number of projects monitored during the last three years, and non-compliance."

28. The North Carolina Board of Elections Voter Registration System is publicly available at www.sboe.state.nc.us/votersearch/seimsvot.htm (last visited May 29, 2006).

29. Erik Apinis, a master's student in UNC's Urban and Regional Planning program, provided major assistance in creating the maps. Other than Apinis's work geocoding the developments and developing the use of the circular symbols to represent the developments, the author completed all other work on the maps, including additional work formatting and standardizing.

30. According to the most recent analysis of the LIHTC Database, 30 percent of the units constructed between 1995 and 2002 are located in census tracts with zero to 20 percent minority population, 22 percent are in areas with 21 percent to 40 percent minority population, 14 percent are in areas with 41 percent to 60 percent, 13 percent are in areas with 61 percent to 80 percent, and 22 percent are in areas with more than 80 percent concentration. Office of Policy Development and Research, U.S. Department of Housing and Urban Development, "Updating the Low Income Housing Tax Credit Database Projects Placed in Service Through 2002," p. 34 (Dec.2004), Compare, Cummings, Jean and Denise DiPasquale, "The Low-Income Housing Tax Credit: An Analysis of the First Ten Years," *Housing Policy Debate* 10, 2 (1999). The nationwide analysis consisted of 2,554 developments containing 150,570 units. *Id.* at 251. "On average, the census tracts that house LIHTC developments in our sample are 59 percent white, 25 percent black, and 13 percent Hispanic." *Id.* at 268.

31. In Durham County, two developments are located in nonminority neighborhoods, six are located in racially integrated neighborhoods, and the remaining 31 are located in neighborhoods where more than 50 percent of the population is African American. Note that the number of Hispanic/Latino residents is not included in this count.

32. According to the records maintained by the NCHFA, 796 of tax credit-funded units also are subsidized with HUD rental assistance. Of these, 782 are voucher holders and 14 units also are subsidized by project-based subsidy. According to HUD's Public Information Center, the Durham Public Housing Authority has the authority to issue 2,648 Section 8 Vouchers. https://pic.hud.gov/pic/haprofiles/haprofiledetails.asp (last visited May 30, 2005).

33. See Figure III. See also Poverty Race Research and Action Council, "Civil Rights Mandates In The Low Income Housing Tax Credit (LIHTC) Program (An Advocate's Guide)," at www.prrac.org/pdf/crmandates.pdf (asserting that tracking Section 8 vouchers within tax credit-funded units is an important civil rights goal) (last visited May 29, 2006).

34. While the information provided here includes 410 households, the sample actually included 621 households. Of the original 621 households, the racial characteristics for 211 households were not available from the North Carolina Voter Registration Database.

35. See 114 *Congressional Record* S3421 (daily ed. Feb. 20, 1968) (statement of Sen. Walter Mondale). See also 114 *Congressional Record* S2525 (daily ed. February 7, 1968) (statement of Sen. Edward Brooke) ("America's future must lie in the successful integration of all our many minorities, or there will be no future worthy of America.") cited in Leland B. Ware, "New Weapons for an Old Battle: The Enforcement Provisions of the 1988 Amendments to the Fair Housing Act," *American University Administrative Law Journal* 7, 72 (1993).

36. According to the income level information maintained in the Reporting System, 1,109 (49 percent) of the 2,240 households in the sample pay between zero and 30 percent of their income in rent and utility

expenses, 602 (27 percent) pay between 31 percent and 40 percent, 255 (11 percent) pay between 41 percent and 50 percent, and 227 (12 percent) pay more than 50 percent of their income towards housing expenses.

37. Buron, Larry, Sandra Nolden, Kathleen Heintz, and Julie Stewart, Abt & Associates, "Assessment of the Economic and Social Characteristics of LIHTC Residents and Their Neighborhoods." (February 28, 2000). Available at www.abtassociates.com/reports/ES-20008744902172.pdf (last visited May 29, 2006).

38. Internal Revenue Code § 42(d)(5)(c)(ii),(iii) (2005).

39. In January 2005, President George W. Bush created a bipartisan panel on tax reform to develop proposals on how to create a more simple, fair, and pro-growth tax system. Executive Order: President's Advisory Panel on Federal Tax Reform. (January 7, 2005). Available at taxreformpanel.gov (last visited May 29, 2006).

40. See Ballard, Megan,. "Profiting from Poverty: The Competition Between For-Profit and Nonprofit Developers for Low Income Housing Tax Credits," *Hastings Law Journal* 55, 211 (2003).

41. See Roisman, Florence Wagman, "The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration," *Iowa Law Review* 81, 479, p. 521 (asserting the compatibility of the tax credit and inclusionary zoning).

42. See Schofield, J. Hunter, and Anita R. Brown-Graham, *Locally Initiated Inclusionary Zoning Programs: A Guide for Local Governments in North Carolina and Beyond*, p. 3 (June 2004, UNC Institute of Government) (providing examples of communities with successful inclusionary zoning ordinances such as: Boulder, Colorado; Burlington, Vermont; Chapel Hill, North Carolina; Davidson, North Carolina; Fairfax County, Virginia; Longmont, Colorado; Montgomery County, Maryland; and Santa Fe, New Mexico).

43. See, e.g., Poverty, Race and Research Action Council, "Civil Rights Mandates in the Low Income Housing Tax Credit (LIHTC) Program (An Advocate's Guide)," at www.prrac.org/pdf/crmandates.pdf (last visited May 29, 2006).

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