

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER:

1. Complainants

Baltimore Regional Housing Campaign
c/o Mel Freeman, Executive Director
Citizens Planning & Housing Association, Inc.
3355 Keswick Road, Suite 200
Baltimore, MD 21211

Representing Baltimore Regional Housing Campaign:

Michael Allen & Thomas J. Keary
Relman, Dane & Colfax, PLLC
1225 19th Street, NW, Suite 600
Washington, DC 20036
Phone: 202-728-1888 Fax: 202-728-0848

Barbara Samuels, Managing Attorney-Fair Housing
ACLU of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
Phone: 410-889-8550 Fax: 410-366-7838

2. Other Aggrieved Persons

Residents of metropolitan Baltimore, Maryland

3. The following is alleged to have occurred or is about to occur:

Discriminatory terms, conditions, privileges, or services and facilities.
Otherwise deny or make housing available.
Discriminatory acts under Section 818 (interference).
Discrimination in the provision of financial assistance for purchasing,
constructing, improving, repairing, or maintaining a dwelling.

4. The alleged violation occurred because of:

Race, color, national origin and familial status.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

The Maryland jurisdictions of Baltimore City, Anne Arundel County, Baltimore County, Carroll County, Harford County and Howard County.

6. Respondent(s)

State of Maryland
Martin O' Malley, Governor
100 State Circle
Annapolis, MD 21401

Raymond A. Skinner, Secretary
Department of Housing & Community Development of
the State of Maryland
100 Community Place
Crownsville, MD 21032

7. The following is a brief and concise statement of the facts regarding the alleged violation:

The Baltimore Regional Housing Campaign, the Complainant, alleges that the State of Maryland, et al., the Respondents, discriminate on the bases of race, color, national origin and/or familial status. The policies complained of herein have a disparate impact on the basis of race, color, national origin and/or familial status, and have the effect of perpetuating or increasing segregation. Specifically, the Complainant alleges that the Respondents discriminate in the terms and conditions of services and/or facilities, otherwise deny or make housing unavailable, interfere with the full benefits of the federal fair housing laws, engage in discrimination in the provision of financial assistance for purchasing, constructing, improving, repairing, or maintaining dwellings, and fail to affirmatively further fair housing.

The Complainant alleges that through its Department of Housing and Community Development ("DHCD"), the Respondents have adopted, maintained and enforced policies and practices in the Low Income Housing Tax Credits ("LIHTC") program that have the effect of limiting the development of affordable housing for families with children in high-opportunity, majority White communities and, instead, have concentrated such units in low-housing opportunity communities characterized by racial segregation and poverty. Adoption, maintenance and enforcement of the policies and practices described below violate the State's multiple express and implied certifications to the U.S. Department of Housing and Urban Development ("HUD") that it will comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964 and the

obligation to affirmatively further fair housing.

The Respondents latest discriminatory housing practice occurred on January 24, 2011, when DHCD adopted its 2011 Qualified Allocation Plan (“QAP”) with its Multifamily Rental Financing Program Guide. This adoption also constitute the latest actions in a continuing pattern and practice of disparate impact discrimination on the bases of race, color, national origin and/or familial status extending back beyond 2005 and continuing.

Specifically, the Complainant alleges that the State of Maryland’s “Local Government Support and Contribution” threshold requirement, contained in Section 3.3 of the Guide, has a disparate impact on the bases of race, color, national origin and/or familial status, inasmuch as it (1) is inconsistent with the local-involvement standard set out in the Internal Revenue Code for the LIHTC program, (2) establishes an institutional mechanism for local “NIMBY” opposition to LIHTC housing without regard to the worthiness of the project, (3) allows local governments a pocket veto over LIHTC allocations, (4) deters developers from even considering sites in communities resistant to affordable housing and, as a consequence, (5) constitutes an impediment to fair housing that is clearly in violation of Maryland’s certification under the Fair Housing Act that it will affirmatively further fair housing (“AFFH”) and comply with the Fair Housing Act (“FHA”).

DHCD is authorized by the Secretary of DHCD to allocate the tax credits for residential rental projects in Maryland through the Community Development Administration (“CDA”), an agency in the Division of Development Finance of DHCD. Federal law requires Maryland to adopt a QAP to allocate the tax credits to projects based upon the state’s priorities and federal mandated requirements. The QAP sets forth the selection criteria established by the CDA for allocating Tax Credits. The determination of whether a project is eligible to receive an allocation of tax credits rests solely with the CDA and is based upon the project owner’s compliance with the Code and the criteria in the QAP. Applicants for LIHTC must agree that the low-income units in the project will be rented to families with incomes and at rents that do not exceed these levels.

Among the threshold requirements in the 2011 QAP adopted by DHCD is the “Local Government Support and Contribution” requirement. This provision requires either a final resolution from the governing body of the local jurisdiction or a letter of support from the highest elected official of the local jurisdiction in which the project is located. Plus, for a project seeking competitive financing, the application must also have evidence of a local contribution or, otherwise stated, a local subsidy for the building of the affordable housing. There is no state statute or regulation that expressly imposes a local approval and/or contribution requirement on the state’s allocation of federal subsidies or LIHTC tax credits, and the QAP itself does not contain such requirements.

The requirement makes it easy for local governments, including those responding to citizen opposition to the placement of low- and moderate income housing for racial reasons, to block such housing. In effect, the requirement acts like a “pocket veto” of LIHTC proposals because the mere withholding of approval or local funding will effectively prevent an application for LIHTC from going forward. The policy permits a municipality to withhold local approval or contribution without any formal announcement and there is no requirement that the locality offer any reason, let alone a nondiscriminatory reason, for withholding support.

The Complainant alleges that in enacting and enforcing the requirement, the State of Maryland has made it more difficult for developers to locate low-income housing in predominantly White neighborhoods and thus more difficult for the Complainant, its members, people of color and families with children to find affordable rental housing, including Section 8 participating housing, in those areas. As a result, there have been fewer applications and approvals for proposed family developments in predominantly White areas of the Baltimore region, including the Counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard.¹ Even when LIHTC family projects are located in the higher-opportunity, suburban jurisdictions of Anne Arundel, Baltimore, Carroll and Harford counties, they are often located in pockets of racial and ethnic segregation and pockets of poverty. As a consequence, the Complainant alleges that children living in those projects must attend elementary schools that are higher-poverty and lower-performing as compared to other schools in those jurisdictions.

This threshold requirement has conveyed to nonprofit and for-profit developers alike that it would be futile to propose building affordable LIHTC family housing in many high-opportunity neighborhoods in the Baltimore metropolitan area. A number of developers have indicated to the Complainant that they have not pursued such development opportunities because they knew their inability to secure local approval and support in higher-opportunity areas would result in their application’s rejection.

By the most commonly used measure of residential segregation between two groups, the dissimilarity index,² the White/ African-American index for metropolitan Baltimore, at 71.8%, is high. This high level of residential segregation is the result of a historic pattern of concentrating African Americans in Baltimore City and extending outward in Baltimore County in a northwesterly direction towards Randallstown and westerly toward Woodlawn. The outer areas of Metropolitan Baltimore, where LIHTC housing is limited, has far lower percentages of African Americans living there.

¹ The Complainant’s analysis demonstrates that LIHTC units are disproportionately unavailable in White areas, which often have higher performing schools. A mere 13.5% of the total LIHTC family units in the Baltimore region (1,345 apartments) are found in predominantly White (70% to 100%) census tracts.

² The dissimilarity index reflects the relative distributions across neighborhoods within a city or metropolitan area.

Despite this historical pattern of racial segregation, the Complainant's analysis shows that 47% of the total LIHTC family and elderly units in the entire Baltimore metropolitan area have been sited in overwhelmingly minority (70% to 100%) census tracts. Separating out LIHTC family units shows a similar result that 43.7% of the total of the family units in metropolitan Baltimore are in the already highly concentrated, minority (70% to 100%) census tracts.

The Complainant alleges that the State has disregarded its affirmative obligations to identify and analyze all existing impediments to fair housing choice experienced by the people of Maryland because of race, color, national origin and or familial status. The 2010 AI is substantially incomplete because it fails to conduct a thorough identification and analysis of the local approval and contribution requirements as impediments existing in the state.

As its title suggests, the state's April 2010 Analysis of Impediments to Fair Housing In Maryland's Non-Entitlement Communities looks only at the location of LIHTC projects in relation to areas of minority concentration in the non-metro counties. Only 10% of the LIHTC units in Maryland are located in non-metro areas. The remaining 90% of LIHTC units, as well as the bulk of the state's minority population and areas of minority concentration, are located in the Washington, D.C. and Baltimore-Towson metropolitan areas. They should have been, but were not, included in this analysis. Had DHCD conducted an appropriate analysis of the location of LIHTC units, the data would have supported the conclusion that the State is perpetuating racial segregation and discrimination through the allocation of low income housing tax credits.

Therefore, the Complainant alleges that DHCD should have identified racial segregation in the metropolitan Baltimore market as an impediment to fair housing, collected information about the impact of the local approval and local contribution requirements on such segregation, and taken steps to ameliorate any discriminatory effects to fulfill its affirmative fair housing obligations.

The policies and practices complained of herein have perceptibly impaired and frustrated the ability of the Complainant and its members to provide services in the Baltimore metropolitan area and have required the diversion of their limited resources to investigate and counteract the discriminatory and segregative effects those policies and practices have had on the housing choice of minority families. The Complainant is a Baltimore-based, nonprofit coalition, whose members include the Citizens Planning and Housing Association, Inc., BRIDGE, Inc., the Greater Baltimore Urban League, Innovative Housing Institute, Poverty & Race Research Action Council and the Maryland American Civil Liberties Union. Since 2005 and continuing, the Complainant and its members have worked to promote and implement a range of strategies for increasing affordable housing and opportunities for low-income families throughout the region. Specifically, they have supported innovative strategies to increase housing choice, advocated

policies that permit the broader use of housing vouchers to promote integrative moves, attracted philanthropic investment in enhancements of the regional housing mobility program, and have provided a range of education, referral and advocacy services to assist low- and moderate-income home seekers to expand their housing choices.

8. The most recent date on which the alleged discrimination occurred:

January 24, 2011, and is continuing.

9. Types of Federal Funds identified:

Community Development Block Grant.
Home Investment Partnership.
ESG/HOPWA/LIHTC

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804(a), 804(b), 805 and 818 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988.

Title VI of the 1964 Civil Rights Act.

Section 109 of the Housing and Community Development Act of 1974.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Melvin Z. Turner 10/31/11
For Baltimore Regional Housing Campaign (Date)

NOTE : HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.