

March 10, 2009

Shaun Donovan, Secretary of Housing & Urban Development
Ron Sims, Deputy Secretary-Designate
U.S. Department of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Additional fair housing issues in the American Recovery and Reinvestment Act

Dear Secretary Donovan,

We are writing to follow up on the letter sent to you by several civil rights groups on February 6 regarding fair housing issues raised by the American Recovery and Reinvestment Act of 2009 (ARRA). In addition to the important issues raised in that letter (regarding provisions affecting the Public Housing Capital Fund, the HOME and CDBG programs, the Neighborhood Stabilization Program, and the Lead Hazard Abatement Program), we have identified three additional fair housing opportunities for HUD (and the Treasury Department) in the final version of the bill signed by the President.

First, the set-aside of HOME funds for stalled LIHTC projects (in Title XII of ARRA) carries with it the fair housing requirements of the HOME program – chief among them, the HOME program site and neighborhood standards (24 CFR §92.202).¹ This represents a major opportunity for HUD and the Treasury Department to finally begin to incorporate civil rights standards into the LIHTC program, continuing the process of interagency cooperation begun with the August 9, 2000 Memorandum of Understanding between HUD, Treasury and the Department of Justice. Up until now, LIHTC family developments have been concentrated in predominantly minority communities² with no federal fair housing regulation and minimal fair housing guidance on the state level.³

Second, LIHTC projects that swap tax credits for Treasury grants will now be defined as “recipients of federal financial assistance.” As you may know, the nature of tax credit funding has led to some uncertainty over the applicability of Title VI and §504 to the LIHTC program. The direct receipt of Treasury funds will resolve this ambiguity, and

¹ ARRA expressly states that the fair housing requirements of the HOME Investment Partnerships Program are **not** waived in the bill (“the Secretary may waive any provision of any statute or regulation... except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment...)

² Khadduri, Jill, Larry Buron & Carissa Climaco, “Are States Using the Low Income Housing Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?” (Abt Associates 2006), available at: http://www.prrac.org/pdf/LIHTC_report_2006.pdf.

³ Orfield, Myron, “Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit,” 58 *Vand. L. Rev.* 1747 (Nov. 2005).

lead to a new enforcement opportunity on behalf of language minorities, persons with disabilities and other protected classes.

Third, we note that ARRA includes \$1.5 billion for a Homeless Prevention Fund for the rapid rehousing of homeless families and for homelessness prevention programs, including, relocation services for renters displaced by foreclosure activities. These funds are covered by HUD's duty to affirmatively further fair housing, and we urge the department to make this clear in the implementing guidance for the Homeless Prevention Fund by requiring grantees 1) to provide relocating tenants with information about and access to a full range of housing opportunities in the metropolitan area; and 2) to remove discriminatory barriers that impede housing choice.⁴

Thank you for the opportunity to present these comments. We would also appreciate the opportunity to meet to go over these issues, and the fair housing issues raised in our February 6 letter, with you and your senior staff.

Sincerely,

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⁴ The Uniform Relocation Act regulations include similar requirements. *See*, 49 C.F.R. §24.205(c)(1) (required consistency with civil rights laws including Title VI and Title VIII) and §24.205(c)(2)(ii)(D) (displaced minority households must be offered replacement housing outside areas of racial segregation).

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