

11-9-21 email to Julie Siegel and Thomas West

Dear Treasury Department colleagues,

Thank you again for your attention to the issue of civil rights and fair housing protections in the LIHTC program. We are writing to follow up on our September 23 meeting with some ideas for next steps, and we look forward to continuing our discussions with you soon.

1. In regard to the question of the Department's legal authority to issue regulations or equivalent directives on the elimination of local contribution and approval requirements, or the parameters of the "concerted community revitalization" requirement, we believe that you possess ample authority to take these steps, as the allocation process and the revitalization requirements are both included in the LIHTC statute, without any detail, and compliance with the Fair Housing Act is part of the general public use requirement. To the extent we can be helpful, are there specific legal questions where we might weigh in to assist the Department in its thinking?
2. Similarly, in regard to tenant selection, waitlist management, and affirmative marketing, basic fair housing regulations are required by the Fair Housing Act's AFFH provision and by LIHTC's incorporation of the Fair Housing Act and its tenant selection rules and guidebook at 26 CFR § 1.42-9. As part of its AFFH responsibilities, the Department should provide stronger guidance to states and LIHTC owners on these requirements and develop a system to monitor and ensure compliance.
3. The Fair Housing Act's AFFH provision also provides ample authority to require states to avoid increasing segregation, and to expand the siting of family LIHTC developments in low poverty, high opportunity areas. In addition, the pending petition for rulemaking filed by the Inclusive Communities Project provides a basis for adopting site selection standards (the rulemaking petition also touches on local approval and contribution, and tenant selection issues).
4. To permit enforcement of the voucher nondiscrimination requirements embedded in the LIHTC program, the first step would be to develop a complaint form that can be submitted to the state housing finance agency by individuals or advocates, and then amending IRS Form 8823 to include discrimination against families with Housing Choice Vouchers as an additional noncompliance category on the form.

5. The failure of HUD and Treasury to enforce the project-level demographic reporting requirements of 42 USC 1437z-8 makes it virtually impossible to identify developments where there may be issues with discriminatory tenant selection, weak affirmative marketing, or discriminatory screening requirements for families with Housing Choice Vouchers. We would urge your department to prioritize these reporting requirements as part of your joint fair housing engagement with HUD. However, one step that can be taken immediately, without waiting for improved reporting by state HFAs, would be for HUD to simply cross reference its HCV database with the LIHTC address database, to identify which LIHTC developments have few or no HCV families in residence – thus indicating potential problem developments for further investigation.

Thanks, and please feel free to pass this on to the other Treasury Department attendees in the meeting. We look forward to reconnecting on these important issues.

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