

HOUSING DISCRIMINATION COMPLAINT

Baltimore Regional Housing Campaign v. State of Maryland and Raymond A. Skinner, Secretary of the Department of Housing and Community Development of the State of Maryland

Submitted: August 30, 2011

CASE NUMBER:

**(Title VIII)
(Title VI)
(Section 109)**

1. Complainant

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Pursuant to the Fair Housing Act, Title VI of the Civil Rights Act of 1964 and Section 109 of the Housing and Community Development Act of 1974, this complaint challenges the State of Maryland's policies and administration of the Low Income Housing Tax Credit program in a fashion that permits municipal governments to veto the placement of affordable housing for families in high-opportunity communities. The effect of the policies and actions described below has been to discriminate against minority families and to perpetuate racial and ethnic segregation in the Baltimore region. Without HUD intervention, this decades-long continuing pattern and practice of discrimination and segregation will continue, to the detriment of the Complainant and people of color in the Baltimore region.

The Baltimore Regional Housing Campaign (BRHC) is a Baltimore-based, non-profit coalition that works toward a common vision of the Baltimore region¹ where public policies and private investments are aligned to overcome historic divisions by race and class and where all families have the right and the means to live in high-opportunity communities² with excellent schools, economic prosperity and low rates of poverty. Its 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, the BRHC has worked to promote and implement a range of strategies for increasing affordable housing and opportunities for low-income families throughout the region. Its members have supported innovative strategies to increase housing choice, advocated policies that permit the broader use of housing vouchers to promote integrative moves throughout the region and attracted philanthropic investment in enhancements of the regional housing mobility program.

BRHC members provide a range of education, referral and advocacy services to assist low- and moderate-income home seekers to expand their housing choices and to support their ability to move to high-opportunity communities. Exhibit #1 [Map: Comprehensive Opportunity Index for the Baltimore Region] provides a visual description of high- and low-opportunity communities as of June 2005. The policies and practices complained of herein have perceptibly impaired and frustrated the ability of BRHC members to provide these services in the Baltimore metropolitan area and required them to divert 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.

2. Other Aggrieved Parties

Residents of metropolitan Baltimore, Maryland who because of their race, color or national origin have been subjected to the discriminatory effects of practices and procedures established by the Department of Housing and Community Development of the State of Maryland (“DHCD”) for the allocation of Low Income Housing Tax Credits (LIHTC) in Maryland.

¹ BRHC defines the “Baltimore region,” both for its work and for purposes of this complaint, as including the Maryland counties of Anne Arundel, Baltimore, Carroll, Harford and Howard, and Baltimore City.

² For purposes of this complaint, the term “high-opportunity communities” means those communities with high-quality housing, ready access to good schools, high-quality public services, access to employment, transportation, health care and commercial services and amenities. Such communities are also typically characterized by low crime and poverty rates. “Low-opportunity communities” are defined by the absence or dearth of these qualities.

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

Through its DHCD, the State of Maryland (State) has adopted, maintained and enforced policies and practices in the LIHTC program that have the effect of limiting the development of affordable housing for families with children in high-opportunity, majority White communities and concentrated such units in low-opportunity communities characterized by racial segregation and poverty. DHCD is also the State agency that has received and administered more than \$117 million in federal housing and community development funds since 2005. 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 Title VI, the Fair Housing Act and the obligation to affirmatively further fair housing, pursuant to 42 U.S.C. §§3608 and 5304(b) and other federal authorities.

The State's latest discriminatory housing practice occurred on January 24, 2011, when DHCD adopted its 2011 Qualified Allocation Plan ("QAP") and adopted and issued its *Multifamily Rental Financing Program Guide* ("Guide") as an attachment to the 2011 QAP. The QAP is attached hereto as Exhibit #2, and the Guide is Exhibit #3. The adoption of the QAP and the Guide also constitute the latest actions in a continuing pattern and practice of disparate impact discrimination on the basis of race, color and national origin extending back beyond 2005.

Specifically, BRHC alleges herein 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 basis of race, color and national origin, 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 FHA.

This complaint is brought to enforce the State's duty to comply with its civil rights obligations, which are a precondition to the receipt of federal funds. Specifically, this complaint challenges the "Local Government Support and Contribution" requirement. Exhibit #3, at 11-12. Pursuant to DHCD's "Project Threshold Criteria," LIHTC "[a]pplications must include...a final resolution from the governing body of the local jurisdiction in which the project is located [and] ... the application must also include evidence of a local contribution for the project." *Id.* at 11. As the State is fully aware, this policy permits local government officials and neighborhood opponents to veto

the placement of LIHTC affordable housing developments in high-opportunity communities.

In fact, this policy permits local governments in predominantly White communities in the Baltimore metropolitan area to exercise a “pocket veto” of LIHTC affordable housing proposals because the mere withholding of approval or local funding will effectively prevent an application for LIHTC from going forward. It also operates to severely chill the interest of any developer in proposing LIHTC affordable housing for families with children in most high-opportunity communities in the Counties of Anne Arundel, Baltimore, Carroll, Harford and Howard.

The effects of the DHCD policy can be seen starkly in the geographic concentration of LIHTC developments developed in the Baltimore metropolitan region from 1987 to the present. When high-opportunity, majority White communities pocket veto LIHTC affordable housing, it tends to be located in segregated and disadvantaged communities where local resistance is substantially less. BRHC has commissioned original research, using data derived from 2010 Census redistricting data, the HUD National LIHTC database (1987-2007) and Maryland DHCD LIHTC allocations data. Findings for the Baltimore metropolitan region are presented in Exhibit #4 [Abt Data Tables] and Exhibit #5 [Abt Maps]. BRHC’s research suggests that at least 56 of 99 LIHTC family projects, comprising 4,130 units, were built in census tracts with African-American populations of more than 50%, and that at least 60 of those 99 projects were built in census tracts with more than 20% of the population living below the poverty level.

Even when LIHTC family projects are located 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, BRHC alleges, on information and belief, that children living in those projects must attend elementary schools that are higher-poverty and lower-performing (as measured by FARM rates) as compared to other schools in those jurisdictions.

Prior to the State’s adoption of the QAP and Guide, BRHC members submitted formal comments to DHCD outlining the discriminatory impact of the local support and contribution requirement and specifically requested that the State rescind this requirement in order to comply with its civil rights obligations. The State affirmatively refused to do so and continues to enforce the policy, to the detriment of BRHC and people of color in the Baltimore metropolitan area. In other words, the State has, in violation of 42 U.S.C. §§ 3604(a) and 3605(a), perpetuated and will continue to perpetuate segregation on grounds of race, color or national origin by requiring local government support and contribution as a condition for receiving an allocation of Low Income Housing Tax Credits. See Exhibit #6 [Barbara Samuels/BRHC letter to Patricia Rynn Sylvester,

December 16, 2010]. Without comment or response, the State adopted the QAP and Guide five weeks later.

Since 2005, the State has received at least \$117,173,131 in grants from HUD, in the following categories:

YEAR	CDBG	HOME	ESG	HOPWA
2005	\$8,944,527	\$7,814,492	\$599,886	\$335,000
2006	8,085,834	7,357,097	600,874	348,000
2007	8,157,818	7,526,401	607,231	345,000
2008	7,932,564	7,221,328	608,847	357,000
2009	8,070,375	8,034,276	608,960	362,346
2010	8,749,767	8,046,230	608,682	401,808
2011	7,339,959	7,100,628	608,512	399,689
TOTAL	\$57,280,844	\$53,100,452	\$4,242,992	\$2,548,843

Source: HUD, Community Planning and Development Program Formula Allocations, available at <http://www.hud.gov/offices/cpd/about/budget/index.cfm> (accessed on July 11, 2011).

As a consequence of receiving those funds, it has an obligation not merely to refrain from discrimination (whether intentional or through disparate impact), but also to affirmatively further fair housing. 42 U.S.C. §§3508(e)(5), 5304(b)(2), 12705(b)(15); 24 C.F.R. §§91.425, 570.487(b). This means 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.

4. The alleged violation occurred because of:

Race, color and national origin

5. Address and location of the property in question (or if no property is involved, the County 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. Respondents:

State of Maryland

and

Raymond A. Skinner, Secretary
Department of Housing and Community Development of the State of Maryland
100 Community Place
Crownsville, MD 21032 – 2023

7. The Violations Alleged:

a. Overview

Pursuant to 42 U.S.C. § 3610 of the FHA, BRHC alleges that in enacting and enforcing a local approval and funding requirement as a condition for receiving Low Income Housing Tax Credits, 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 BRHC, its members and people of color to find Section 8 participating housing in those areas.

Complainant has diverted its resources to identify and investigate this violation of the FHA; as a result, BRHC's mission of overcoming the historic divisions of race and ensuring that all persons have the right and means of living in areas of high opportunity in the Baltimore metropolitan area has been frustrated. The ability of BRHC's coalition members to provide services in parts of the Baltimore metropolitan area which would otherwise have assisted in the desegregation of those areas has been perceptibly impaired.

b. Background

In addition to being the state agency that administers the above-referenced federal funds for non-entitlement jurisdictions in Maryland, DHCD is also authorized to allocate the tax credits for residential rental projects in Maryland. The Secretary of DHCD has assigned this function to the Community Development Administration, an agency in the Division of Development Finance of DHCD. 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.³

Federal law requires Maryland to adopt a Qualified Allocation Plan (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 Community Development Administration for allocating Tax Credits. The determination of whether a project is eligible to receive an allocation of tax credits rests solely with the Community Development Administration and is based upon the project owner's compliance with the Code and the criteria in the QAP.⁴

Among the threshold requirements in the QAP 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.⁵ 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. To Complainant's knowledge, there is no formal or informal opinion of the Attorney General on this subject.

³ The housing units must be set aside for low- and moderate-income residents for an initial compliance period of 15 years. The Code requires the project owner to enter into an extended agreement under which the low-income housing set aside, the rent restrictions and other requirements must continue for an additional 15 years. A project owner may opt out of the restrictions after the initial 15 years if under certain circumstance provided for under the Code.

⁴ Maryland Department of Housing and Community Development, *Maryland Low Income Housing Tax Credit Program: 2011 Qualified Allocation Plan*, January 24, 2011 at 1-3.

⁵ Acceptable forms of contributions include, but are not limited to, a donation of land, waiver of local fees for permits, real estate tax abatements, or an agreement to provide services such as trash collection, without cost. Maryland Department of Housing and Community Development, *Multifamily Rental Financing Program Guide*, January 24, 2011, at pp. 11-12.

The local contribution/approval 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. The state policy permits a municipality to withhold local approval or contribution without any formal announcement. Nor does it require the locality to offer any reason, let alone a non-discriminatory reason, for withholding support.⁶

c. The State's Use Of the Local Government Support and Contribution Requirement In the Awarding of Low Income Housing Tax Credits Has Had and Predictably Will Continue To Have A Disparate Impact on Persons Protected By the FHA

i. The State's Local Contribution/Approval Requirement Discourages the Construction of Affordable Family Housing in Predominantly White Areas And Thereby Has Had and Predictably Will Continue to Have An Adverse Impact On Persons Protected By the FHA

The State's adoption and enforcement of the Local Government Support and Contribution requirement has resulted in fewer applications and approvals for proposed family developments in predominantly White areas of the Baltimore region. Although data describing the race, ethnicity and other characteristics of individual LIHTC developments has not yet been released by the state of Maryland, BRHC believes that it will show that elderly/disabled LIHTC properties likely have smaller minority populations than family LIHTC properties, which may account for their ability to locate with somewhat greater ease in higher-opportunity communities.

As BRHC has heard from many developers, the local approval and contribution requirement is, in effect, a pocket veto, easily exercised by local officials based on the exclusionary views of some citizen opponents (or merely the fear that the project will stir up exclusionary opposition), which deters developers from expending resources in areas where they know it will be futile to seek local approval based on their own past experience, or the experience of others in the industry. Even though the State has failed to do so, at least one jurisdiction that has historically resisted LIHTC housing for families

⁶ The local contribution/approval requirement also fails to provide any means by which supporters of affordable housing, and families who might benefit from it, can express their support. As the Presidential Commission on Regulatory Barriers to Affordable Housing pointed out, "Those advocating more affordable housing in a community cannot, in the same way, point to a precise location on the map where benefits of affordable housing are being deliberately withheld and particular households are being disadvantaged." *Not in My Backyard: Removing Barriers to Affordable Housing*, Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing, (1991) at 2-1

actually recognizes that these State-imposed requirements constitute impediments to fair housing choice.⁷

The State's threshold local approval/support requirement has conveyed to non-profit 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. BRHC has been in contact with a number of developers who have indicated that they have not pursued such development opportunities because they knew that their inability to secure local approval and support in higher-opportunity areas would have resulted in the rejection of their applications.

One medium-size developer involved in affordable housing development and management provided written comments following the 2011 public hearing on the State's QAP, saying, in part:

I am one of a number of developers who would seize the opportunity to create more affordable housing in the counties, in so-called areas of opportunity.... I believe it is essential to the legislative mandate of affirmatively furthering fair housing that the local resolution requirement be eliminated....Our company has a management affiliate which manages some of the Thompson units in the counties. For the most part, our residents love their new homes in areas where they have access to jobs and better schools for their children. They left City neighborhoods because they wanted to; not because they were forced to. I only think it fair that others like them should have the same opportunities.

Other developers have echoed those concerns:

- Writing in a prominent industry publication, one of Maryland's largest non-profit developers expressed frustration with the effects of the local support/contribution requirement: "The local approval and local contribution are treated as threshold requirements by the state, and applications are not accepted without them, thus giving local governments complete control over what can be considered for funding."
- A Maryland developer testified at the 2011 QAP public hearing about an affordable family project that was well-advanced in the planning process, but had to be withdrawn because opposition from neighbors convinced the municipality not to provide a letter of support.

⁷ *Analysis of Impediments to Fair Housing Choice – Baltimore Metro Area, Baltimore County*, Interim Draft #2 prepared by Mullin & Lonergan Associates (September 2010) at 52.

- Additional testimony was given at the 2011 QAP public hearing about a gentrifying neighborhood in the City of Baltimore in which neighbors were able to block LIHTC funding for affordable housing rehabilitation by convincing the City not to offer local support.
- An out-of-state developer initially secured a letter of support and a pledge of financial contribution from a municipality, only to have it withdrawn when neighbors loudly expressed their opposition to affordable rental housing.

Because their success depends on maintaining good relations with State and local officials, these developers are understandably reticent about being named in this civil rights complaint, but BRHC believes one or more would be willing to talk with HUD about their experiences.

Similarly, because these developers need to maintain good relations, none has forced the issue with respect to an attempt to develop housing in a high-opportunity community when it was made aware that such development could not garner public support or local contribution. This should not be a barrier to HUD considering the impact of the State's threshold requirement, inasmuch as the U.S. Court of Appeals for the Fourth Circuit has recognized that there are circumstances in which an injured party need not submit an application when doing so would be a "futile gesture." *See Pinchback v. Armistead Homes Corp.*, 907 F.2d 1447, 1451 (4th Cir. 1990). In similar circumstances in the employment context, the U.S. Supreme Court has recognized that such a person is "as much a victim of discrimination as is he who goes through the motions of submitting an application." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365-66 (1977).

BRHC'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.⁸

The scarcity of affordable housing in predominantly White census tracts is also starkly illustrated when the location of the LIHTC family projects are placed on a census tracts map showing the percent minority population of the census tract. Few LIHTC projects can be found in census tracts with minority populations of less than 30%. *See Exhibit #5, Map 1 -1, LIHTC Family Projects by Census Tract Percent Minority (2010) Baltimore Region.*

⁸ Exhibit #4, Table 1-3 - LIHTC Family Projects by Census Tract Percent Minority Baltimore Region.

Of equal concern are BRHC's findings that there are fewer LIHTC units in low poverty, higher opportunity areas than would be expected. While 49.7% of all rental units in the metropolitan Baltimore area are located in low poverty, higher opportunity census tracts (with fewer than 10% of the census tracts population below the poverty line) only 33.1% of the LIHTC family units are located in such areas. In the Baltimore metropolitan region, 48.03% of low- and moderate-income households eligible for LIHTC units (defined as those at or below 60% of area median income) are African-American or Latino.⁹ The relative scarcity of affordable units in predominantly White areas has a disproportionately adverse impact on minorities who seek to reside in these areas and who qualify for affordable housing.

Here the persons predictably affected by the local support requirements are those who are located in the housing market in issue and who would qualify for the affordable housing. The geographic area from which most residents would be drawn for a development is the metro Baltimore area. The maximum income cut-off for households who would qualify for affordable housing are those that meet the standard for participating in the program, namely households earning less than 60% of the area median income which in the Baltimore metro area for a family of four is \$49,260¹⁰ Approximately 28.40% of all Baltimore metro area families earn less than \$49,260 and therefore would qualify. In comparison, 48.36% of all African American families in the Baltimore metro area earn less than \$49,260 and would therefore qualify for the program.

Similarly, 40.46% of all Latino families earn less than \$49,260 and therefore would qualify.¹¹ The racial disparity is significant for both African Americans and

⁹ See nn. 11, 12.

¹⁰http://www.business.com/bdciframe.asp?website=http%3A%2F%2Fwww%2Ehuduser%2Eorg%2F&bdcf=A3B86EC5-6E15-4559-8FE0-1A263831A28B&numFeatured=1&numCategories=12&pagepath=%2Fdirectory%2Freal_estate_and_construction%2Fresidential_real_estate%2FAffordable_housing&prettyname=Affordable+Housing

¹¹ http://factfinder.census.gov/servlet/DTable?_bm=y&-context=dt&-ds_name=ACS_2009_1YR_G00_-CONTEXT=dt&-mt_name=ACS_2009_1YR_G2000_B19101&-mt_name=ACS_2009_1YR_G2000_C20005I&-mt_name=ACS_2009_1YR_G2000_B19101B&-mt_name=ACS_2009_1YR_G2000_B20005&-mt_name=ACS_2009_1YR_G2000_B20005B&-mt_name=ACS_2009_1YR_G2000_C19101I&-tree_id=309&-redoLog=true&-_caller=geoselect&-geo_id=05000US24003&-geo_id=05000US24005&-geo_id=05000US24013&-geo_id=05000US24025&-geo_id=05000US24027&-geo_id=05000US24510&-geo_id=16000US2404000&-parsed=true&-search_results=01000US&-format=&-_lang=en&-SubjectID=18600387

Latinos.¹²

The State’s Local Contribution/Approval Requirement Perpetuates Segregation.

By the most commonly used measure of residential segregation between two groups, the dissimilarity index, which reflects the relative distributions across neighborhoods within a city or metropolitan area, the White/ African-American dissimilarity index for metropolitan Baltimore, at 71.8%, is high.¹³

This high level of residential segregation is the result of a historic pattern of the greatest concentration of 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. This historic residential racial segregation has been brought about by the deliberate policies of government at the local, state and federal levels, which has been reproduced in the housing market.¹⁴

Despite this historical pattern of racial segregation, BRHC’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.¹⁵ 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.¹⁶

¹² The disparate impact is no less if looked at on a county-by-county basis within metropolitan Baltimore. Table 1: Percent of families with income below \$49,999 by county (median income is \$49,260)

	Anne Arundel	Baltimore City	Baltimore County	Carroll	Harford	Howard
Total	20.83%	43.85%	28.98%	20.19%	22.73%	13.77%
African-American	35.32%	62.46%	41.04%	N/A	N/A	23.65%
Hispanic	37.68%	48.54%	43.81%	N/A	N/A	37.58%

¹³ <http://www.census.gov/hhes/wh/white/black.html> Baltimore has the 44th highest dissimilarity index among the 318 metropolitan areas measured by the United States Census.

¹⁴ See Pietila, *Not in My Neighborhood: How Bigotry Shaped a Great American City*, Ivan R. Dee, 2010; and *Thompson v. HUD* 348 F. Supp. 2d 398 (N. D. Maryland, 2005).

¹⁵ Exhibit #4, Table 1-9 LIHTC Family and Elderly Projects by Census Tract Percent Minority Baltimore Region.

¹⁶ Exhibit #4, Table 1-3 LIHTC Family Projects by Census Tract Percent Minority Baltimore Region.

The role that DHCD's placement of LIHTC projects has played in perpetuating segregation is not unknown to the State. In 2005, the Kirwan Institute of Ohio State University analyzed the location of Maryland LIHTC projects placed in service in prior years. Their findings are summarized in the comments submitted by the Maryland Legal Aid Bureau, the Lawyers' Committee for Civil Rights Under Law, and the Poverty and Race Research Action Council on Maryland's 2005 Draft QAP:

As set out in the accompanying maps, the past pattern of LIHTC siting in Maryland reinforces patterns of metropolitan segregation by channeling LIHTC funds --- and the predominantly minority and low and moderate income families who disproportionately need such subsidized housing --- into more segregated, higher poverty neighborhoods and school districts.¹⁷

Again in 2009, a HUD study of LIHTC project placement in metro Baltimore showed pronounced placement of LIHTC units in areas that were 50% or greater minority. The HUD Report said that 48% of the LIHTC units in the Baltimore metro area were in areas that were 50% or greater minority as compared to only 35% of the rental units overall.¹⁸ A 2006 report done by Abt Associates for the Poverty & Race Research Action Council determined that only 24.7% of LIHTC family units were located in low-poverty Census tracts in the Baltimore region, and only 34.4% of LIHTC family units were located in areas where the "percent minority" was below the regional average minority population.¹⁹

¹⁷ Maryland Legal Aid Bureau, Lawyers' Committee for Civil Rights, and Poverty & Race Research Action Council to Patricia Rynn Sylvester, February 14, 2005, available at <http://www.prrac.org/pdf/MD2005LegalAid.pdf>. (last visited 12/12/10).

¹⁸ Climaco, Finkel, Kaul, Lam and Rodger, *Updating the Low-Income Housing Tax Credit (LIHTC) Database: Projects Placed in Service Through 2006*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research (2009) at 149.

¹⁹ Jill Khadduri, Larry Buron, and Carissa Climaco, *Are States Using the Low Income Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?* (Abt Associates, 2006) (Appendices A & B), available at http://www.prrac.org/pdf/LIHTC_report_2006.pdf

d. The State's Analysis of Impediments Does Not Comply With Federal Law.

i. The State's Civil Rights Obligations as an Administrator of Federal Funds

Before receiving CDBG and related funding, the State must certify that it "will affirmatively further fair housing." Under federal regulations, this means that the State must truthfully certify that it (1) has or will "conduct an analysis to identify impediments to fair housing choice within the [area]"; (2) "take appropriate actions to overcome the effects of any impediments identified through that analysis"; and (3) "maintain records reflecting the analysis and actions in this regard." 24 C.F.R. §§ 91.225(a)(1), 570.601(a)(2). These required action steps are clear mandatory obligations of any entitlement jurisdiction once it completes the AFFH certification.

ii. The State Has Failed to Identify and Analyze the Local Approval Requirements as Impediments to Fair Housing.

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 and national origin. 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.

Despite the starkly racial conclusions reached in the 2005 by Kirwan Institute and in 2009 by HUD's study of the State's placement of LIHTC units DHCD has never publicly released a similar analysis of the results of its QAP policies and project selection decisions. In particular, there is no evidence that a meaningful analysis of LIHTC project selection and placement has been conducted as part of the state's fair housing planning responsibilities pursuant to 24 C.F.R. 570.487(b).²⁰

²⁰ It does not appear that the state has ever examined state level policies or produced a state level Analysis of Impediments to Fair Housing (AI) as required by 24 C.F.R. 570.487(b). A document identified as an AI for the rural non-entitlement jurisdictions of the state is posted on the Departments website. It is not clear whether this is a draft or final document. *Analysis of Impediments to Fair Housing Choice for Maryland Non-Entitlement Communities* (April 2010). http://www.dhcd.maryland.gov/Website/About/PublicInfo/Publications/documents/Fair_Housing_Choice_Impediments.pdf (last accessed August 1, 2011).

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.²¹ 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, as has the Complainant, 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 and that DHCD alter or eliminate these requirements as has been recommended by Governor O'Malley and Lt. Governor Brown's transition team.²²

Conclusion

Under all applicable laws and regulations, the Secretary has the authority to review the claim of discriminatory impacts of the state's LIHTC Local Government Support and Contribution requirement. The Secretary also has the obligation and responsibility to review the State of Maryland's submissions and certifications in application for funds and to enforce compliance with CDBG program requirements and the intent of Congress.

For the reasons set out above, the Complainant asks HUD to find the respondents Local Support and Approval requirement in violation of 42 USC §3604, and to deem the State of Maryland's affirmatively furthering fair housing certification insufficient to support obligation of CDBG funds at this time, and require revision of the AI and certifications in accordance with applicable federal laws and regulations. Complainant seeks declaratory and injunctive relief with respect to the State's violations of 42 U.S.C. §§ 3604(a) and 3605(a), together with all other relief that may be available pursuant to the Fair Housing Act, including reasonable attorneys' fees and costs.

²¹ Supra fn. 18 at Exhibit A3.

²² O'Malley/Brown Transition Workgroup, *Department of Housing and Community Development*, (February 2007), available at <http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000113/003000/003318/unrestricted/20070090e.pdf> at 22.

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

Ongoing as of the date this Complaint was submitted.

9. Types of Federal Funds identified:

Community Development Block Grant, HOME Investment Partnership,
Emergency Shelter Grants, Housing Opportunities for People with AIDS

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

Fair Housing Act of 1988.
Title VI of the Civil Rights Act of 1964.
Section 109 of Title I of the Housing and Community Development Act of 1974.

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Respectfully submitted,

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