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NEW ORLEANS



**FAIR
HOUSING
ACTION CENTER**

*Celebrating 10 years
of fighting housing
discrimination*

February 7, 2006

Louisiana Housing Finance Authority
Attention: Thomas Latour
2415 Quail Drive,
Baton Rouge, LA 70808

VIA ELECTRONIC MAIL (tlatour@lhfa.state.la.us)

Re: Public Comments On 2006 Louisiana Qualified Allocation Plan (QAP)

Dear Officials of the Louisiana Housing Finance Authority:

On behalf of the Greater New Orleans Fair Housing Action Center and national civil rights organizations (the Lawyers' Committee for Civil Rights Under Law, the National Fair Housing Alliance and the Poverty and Race Research Action Council), we submit the following comments on the Louisiana Housing Finance Authority ("LHFA")'s 2006 Louisiana Qualified Allocation Plan ("QAP") because we are concerned that the 2006 QAP must avoid exacerbating housing segregation by disproportionately siting affordable family housing opportunities in low-income minority neighborhoods. At the same time, it is crucial that preference be given to families displaced by Hurricane Katrina in all new LIHTC developments in the New Orleans region, to ensure adequate housing so that families can return to housing opportunities throughout the New Orleans metropolitan area. As noted below, seeking desegregative sites in affordable housing programs is not merely a question of good policy, but is required by the affirmative obligations of the federal Fair Housing Act. We also submit our concerns in regards to the proposed amendments to the 2006 QAP, as we believe that they do not sufficiently promote integrative reconstruction efforts in the wake of Hurricanes Katrina and Rita, and that they may inhibit the responsiveness to post-disaster needs of the Low-Income Housing Tax Credit ("LIHTC") program in the years to come. Accordingly, we urge that more consideration be taken in this and in future QAP's to ensure that they actively promote racial integration by siting affordable housing in integrated communities.

Racial Segregation and the LIHTC Program

Racial segregation continues to pervade the communities of Louisiana and the nation, posing a continuing and serious problem to race relations, education achievement, and economic disparities between white and black Americans. As the largest source of federal funding currently available for affordable housing development, the LIHTC program provides Louisiana in general – and LHFA in particular – with a strong opportunity to address such segregation by siting affordable family housing in areas that will promote integration. Indeed, since

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1987, the LIHTC program has been the de facto federal production program for low and moderate income family housing nationwide. *See, e.g.,* Jean Cummings & Denise DiPasquale, *The Low-Income Housing Tax Credit: An Analysis of the First Ten Years*, 10 Housing Policy Debate 251, 303 (1999).

In the past, LFHA's tax credit-subsidized housing stock has been disproportionately located in urban, rather than suburban, areas, and in regions of concentrated poverty and racial segregation. For example, in the New Orleans metropolitan area, there are few units in suburban jurisdictions compared to those in urban areas. Moreover, few if any units are in the highest-opportunity regions both inside and outside New Orleans. We believe this pattern would be even more stark if family developments were distinguished from elderly units. This pattern suggests that LHFA's program has not historically performed as well as it might in terms of providing family housing opportunities in the best school districts and job centers of the New Orleans region.

After a summary of LHFA's Fair Housing Act obligations, the comments below focus on ways to improve that track record and ensure that housing opportunities provide better and more equitable access to all the benefits the region has to offer as it is rebuilt. Efforts made now to provide opportunities to low-income disaster victims, particularly minorities, outside of segregated, high-poverty enclaves can and will have a lasting, positive effect on the racial and economic integration of housing in Louisiana.

LHFA's Affirmative Obligation to Promote Integration

At least since the passage of the federal Fair Housing Act in 1968, federal law has been clear: federal and state entities implementing federally-subsidized affordable housing programs have an affirmative obligation to consider the impacts of those programs on racial segregation, and to promote integration. Specifically, the Fair Housing Act requires:

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner *affirmatively to further* the purposes of [the Fair Housing Act].

42 U.S.C. § 3608(d) (emphasis added). This provision of the Fair Housing Act thus imposes "a substantive obligation to promote racial and economic integration" in administering federal housing programs. *Alschuler v. HUD*, 686 F.2d 472, 482 (7th Cir. 1982). In sum, LHFA's affirmative duty is not merely to refrain from discrimination, but also to use federal programs to actively assist in ending discrimination and segregation.¹

Notably, courts have repeatedly required agencies to consider the racial impacts of site selection procedures for affordable housing as part of compliance with their affirmative obligations. In other words, LHFA has a duty both to collect and consider data about the locations selected for tax-credit subsidized housing. For example, the *Shannon* decision, handed down just two years after the Fair Housing Act's passage, upheld a challenge to the site selection process for a subsidized housing project on the basis that "the site chosen will have the

effect of increasing the already high concentration of low income black residents.” *Shannon v. HUD*, 436 F.2d 809, 812 (3d Cir. 1970). Noting that the agency failed to consider the discriminatory effects of site locations which aggravated segregation, the Third Circuit ruled that “such color blindness is impermissible,” *id.* at 820, because

the choice of location of a given project could have the “effect of subjecting persons to discrimination because of their race”

24 C.F.R. § 1.4(b)(2)(i). That effect could arise by virtue of the undue concentration of persons of a given race, or socio-economic group, in a given neighborhood.

Id. The Seventh Circuit reiterated that “[a]s part of HUD’s duty under the Fair Housing Act, an approved housing project must not be located in an area of undue minority concentration, which would have the effect of perpetuating racial segregation.” *Alschuler v. HUD*, 686 F.2d 472, 482 (7th Cir. 1982).

Thus, as required by the Fair Housing Act’s affirmative obligation and such case law, HUD programs have been careful to implement regulations which require exacting consideration of racial segregation in site selection – whether in public housing or Section 8 subsidized housing.¹ Notably, the state agency’s obligation to consider the racial impact of sites selected for housing subsidies applies regardless of whether the agency itself selects the sites (as in public housing) or whether it chooses among sites proposed by private developers (as in subsidized housing programs). *See, e.g., Project B.A.S.I.C. v. Kemp*, 776 F. Supp. 637, 640 (D.R.I. 1991).

Of particular importance in fulfilling such obligations is the collection of data by the agency regarding the demographics of tenants and sites selected. As numerous courts have concluded, an agency cannot fulfill its obligation to affirmatively further fair housing unless it gathers and considers the site selection data necessary to fully understand the effects of its housing programs on racial segregation. *See Shannon*, 436 F.2d at 821 (“[T]he Agency must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts.”).¹

Proposed Changes to the Louisiana QAP

To promote the development of affordable housing opportunities in neighborhoods without concentrated poverty, and to fulfill the Fair Housing Act affirmative obligations described above, LHFA should amend the QAP in ways that will discourage the concentration of LIHTC family projects in areas of minority concentration, and promote the siting of projects outside such areas.

In General

To fulfill the obligations described above, LHFA should take several simple steps to collect the data necessary to analyze the success of the tax credit program in providing housing opportunities outside of segregated neighborhoods and areas with high poverty concentrations. Further, as part of its ongoing administration of the program, LHFA should

monitor the continuing effect of its subsidized stock on residential segregation and housing opportunities.

- **Data Collection/Consideration of Impact on Segregation and Housing Opportunities.** QAP Section VI.B.i (Market Study) requires that applicants submit, among other things, a population/demographic study of prospective tenants, focusing on income. In addition to the existing requirements, applicants should be required to report racial demographics of the market area/census tract in which the project is located, as well as the projected applicants/tenants of the proposed project. The existing provisions require that applicants state the “impact” of the proposed units on the market area. If the project will add affordable units to markets that currently have few or none, this should be strongly weighed in favor of the development.
- **Require Affirmative Marketing.** As a condition of participation in the program, developers should be required to undertake affirmative marketing efforts to encourage tenant applicants in ways that promote integration – specifically, developers should be required to promote their development to those groups least likely to apply (*e.g.*, minorities in predominately white communities). Such affirmative marketing steps are often crucial in encouraging minority families to make integrative moves to housing located outside minority areas. Likewise, owners should promote integrative moves by white families to projects located in minority areas. Further, as part of LHFA’s ongoing monitoring of compliance with the LIHTC program by participants, LHFA should require documentation of actual offers made by projects to those tenants least likely to apply.
- **Require Preference for New Orleans Residents Displaced by Hurricane Katrina.** To best promote opportunities for those displaced by the storm to return to the New Orleans metropolitan area – and to find housing in other areas of the state – the QAP should require all developers to give preference to such residents. If such a preference is not made mandatory, we urge LHFA to allocate up to 20 points in its Selection Criteria scoring to developers who offer such a preference.
- **Data Collection/Compliance Monitoring.** Exhibit C (Compliance Monitoring Agreement, Paragraph X and Section 2) should be amended to make clear that applicants have a continuing obligation to report on the demographic characteristics – including racial composition – of their project and the market area/census tract. LHFA should also require data to be collected reflecting the number of Section 8 voucher holders served by each development, as well as the number of Katrina-displaced families housed. (This is of particular interest if the LHFA implements and enforces a preference for such families.) Further, the section should be amended to require reporting on the steps taken by the owner/applicant to conduct affirmative marketing to encourage groups least likely to apply to utilize the housing. Such information will provide LHFA with tools to assess the impact of tax credit housing on offering housing opportunities throughout the metropolitan region.

Mandatory Elements

- **Utilizing Public Housing/Section 8 Waiting Lists to Promote Integration.** We agree that it is appropriate for LIHTC-subsidized projects to give preferential treatment to low income tenants listed on the public housing or Section 8 lists maintained by public housing authorities (“PHAs”). *See* Selection Criteria, Item R. However, in many cases, limiting the preference to the waiting list for the local PHA will have the effect of promoting segregation. Specifically, for example, the disproportionately black waiting list of an urban PHA should be given the same preference for housing in a suburban LIHTC-funded project. Therefore, we urge LHFA to specify a preference for **all** regional PHA waiting lists. In addition, we urge LHFA to work with local PHAs to use this preference to promote integrative moves, such as through programs to encourage and educate those on the waiting list as to the benefits of such moves.

Application Scoring

Given the highly competitive nature of the LIHTC program, we understand that every scoring factor in the 2006 QAP can be critical to whether an applicant is awarded tax credits by LHFA. We are particularly concerned that factors which limit the points available to multi-family projects in suburban areas outside of minority concentrations undermine the ability of the program to promote integrated housing. We urge LHFA to re-evaluate the following scoring criteria which can deprive such projects of points – or discourage developers from creating and submitting applications for such housing outside areas of minority concentration.

- **De Facto Veto By Local Government.** In particular, we believe that Selection Criteria, Item DD, which awards twenty points to applications that include record of a resolution of support from the municipal government, results in *de facto* veto power by such officials over the development of any LIHTC-funded project within its municipality. (The *de facto* veto stems from the high level of competition in the scoring process.) Given the history of opposition by officials to affordable housing in general – and initiatives which promote integration in particular – we believe offering such points undermines the ability of developers to site projects that promote integration in, for example, predominantly white areas that resist such development. We encourage LHFA to eliminate this scoring area *entirely*, as local opposition indicates nothing about the merits of LIHTC that is not already captured by the QAP’s scoring process. Alternatively, if LHFA declines to do so, it should significantly reduce the number of points available under this category. Further, if LHFA retains this category, the burden of establishing community support should be reversed. If a local government wishes to deny an applicant the benefit of such support, the QAP should require that the government provide specific reasons in writing for opposing the application. Such a requirement would place some limit on the standardless discretion under which local governments can currently withhold support – even for projects that can demonstrate local demand, meet local zoning, and so forth. Finally, for the same reasons, LHFA should also minimize the point allocation to projects that receive cost subsidies from local government entities. This has the effect of

eliminating affordable housing in those localities that do not choose to fund such projects. *See* Selection Criteria, Item EE (awarding up to 20 points).

- **Promoting Integrated Locations.** We believe the QAP should be aggressive in promoting projects that will reduce racial segregation, and should take substantial steps to promote this goal. While Selection Criteria, Item F(2) (Geographic Diversity) allocates points to this goal, we believe the number of points should be increased; in addition, a set-aside of a certain percentage of the tax credits for such areas could be more effective. Having geographically diverse sites underscores the importance of affirmative marketing and preferences (for both Section 8 voucher holders and Katrina-displaced families) in order to utilize the potential of those developments to integrate a metropolitan area.
- **Promote Family Housing.** Projects that target disabled or special needs tenants are encouraged by the QAP, but few incentives are given for family housing developments even though minority households with children have a great need for affordable housing. In Selection Criteria, Items I, J, and K, up to 50 points are awarded to projects being marketed to tenants with special needs and mobility impairments or the elderly. By contrast, in Selection Criteria, Item H, those that cater to families are awarded only 20, and that is awarded if merely 20% of the units have four or more bedrooms. LHFA should not make different groups with legitimate housing needs compete against each other (*i.e.*, people with disabilities and low-income minority families). The same number of points should be allocated to each, and LHFA should consider raising the eligibility requirement for family points to a higher percentage of three or more bedroom units.

Comments on Proposed Amendments to the Louisiana 2006 OAP

Hurricanes Katrina and Rita exerted an as yet uncalculated toll on the housing stock available to low-income Louisianans. The LIHTC program will be a vital force in reconstruction and repopulation in the coming years, and ensuring that it squarely addresses the civil rights of disaster victims and low-income and minority tenants in general is essential. In particular, given the unusually large allocation of tax credits authorized for Louisiana, it is even more important that LHFA avoid using the reconstruction tax credit subsidies in a way that recreates regional segregation in the New Orleans metropolitan area. Housing opportunities for residents seeking to return should be available in suburban and urban communities alike.

* * *

Thank you for your attention to this critical matter. We believe that these comments propose changes that are feasible and consistent with the larger policy goals of LHFA. Indeed, our proposals are, as stated above, an effort to harmonize the LIHTC subsidized housing program with the LHFA's obligations under the Fair Housing Act.

If you have questions regarding our comments, please do not hesitate to contact

me directly at (205) 276-2428. We appreciate your consideration of our comments and we look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "James Perry", with a large, sweeping flourish underneath.

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