

March 10, 2016

Deputy Secretary Sarah Bloom Raskin  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

*Re: LIHTC regulatory reform and the President's Budget Proposal*

Dear Deputy Secretary Raskin:

It has been several months since we met with you and your staff in November 2015 to discuss fair housing issues related to the Low Income Housing Tax Credit (LIHTC) program and the Department of the Treasury's (Department) fair housing obligations. We appreciated your interest and engagement at that meeting and hoped to have further conversations with your staff to discuss the issues in more detail. We are disappointed that there appears to have been little progress made on addressing the issues we raised at the meeting. As we wrote in our November 25, 2015 letter<sup>1</sup> to you, the absence of civil rights guidance, oversight and enforcement by the Department is a glaring hole in the nation's largest program for the production of affordable housing. We write to request again that the Department make important, substantive changes to ensure that the LIHTC program will further the Administration's goals of promoting racial and socioeconomic integration and provide ladders of opportunity to low-income families – particularly Black and Latino families who have faced and continue to confront housing discrimination. Our concerns are heightened in light of the very short time left in this Administration to accomplish these critical changes.

We note that the President's Budget Proposal contains some provisions that touch on several of the issues we outlined to you in our previous letter. However, we are concerned that budget language is not a viable means of accomplishing change in the near term. In fact, the inclusion of such language in the budget proposal could lead to negative consequences for fair housing. Given the opposition any legislation involving fair housing would assuredly face in the current Congress, we believe that the budget language is not the most efficient or effective way to affirmatively further fair housing.

We believe that the Department must instead use its existing regulatory powers to issue guidance to improve access to affordable fair housing in the absence of any likely legislative action in the near future. Specifically, we encourage the Department to issue guidance that would ensure greater balance in the siting of affordable housing locations outside of high poverty areas and areas of minority concentration, including requiring states to make changes to their Qualified Allocation Plans (QAPs). This path could provide significant improvements to the LIHTC

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<sup>1</sup> Letter archived at [www.prrac.org/pdf/LIHTC\\_followup\\_letter\\_to\\_DS\\_Raskin\\_et\\_al\\_11-25-15.pdf](http://www.prrac.org/pdf/LIHTC_followup_letter_to_DS_Raskin_et_al_11-25-15.pdf).

program in the near future that would expand opportunities for hundreds of thousands of families.

This guidance would also represent an important capstone to this Administration's already-impressive civil rights legacy by building on recent significant fair housing achievements, especially the successful promulgation of HUD's Affirmatively Furthering Fair Housing regulation and the protection of disparate impact claims in the recent U.S. Supreme Court decision.

As outlined in our previous letter to you, we believe the Department also has the authority to immediately begin improving the LIHTC program by addressing five additional areas: eliminating local approval points or requirements for LIHTC developments, requiring concerted community revitalization plans for LIHTC-funded programs in impoverished areas, eliminating discrimination faced by persons with disabilities, implementing new affirmative marketing rules, and ensuring that persons with federal housing vouchers do not face discrimination.

### **Local approval**

When deciding where to allocate LIHTC, many states' QAPs give substantial weight to local support of particular housing projects. This unwarranted deference allows wealthy suburban communities across the country to further concentrate poverty by effectively vetoing proposals to expand access to high-opportunity areas for low-income populations. To the extent that local approval or contribution requirements (or point preferences) at the state level exceed the requirements of the LIHTC statute, the Department should issue guidance barring this practice.

### **Concerted community revitalization plans**

LIHTC credits should be allocated to high-poverty areas only when there is a bona fide "concerted community revitalization plan" consistent with the LIHTC statute. 26 U.S.C. § 42(m)(1)(B)(ii)(III). The Department has never promulgated regulations that would allow effective enforcement of this provision, which would ensure that LIHTC-funded projects in high-poverty communities expand opportunities rather than further concentrating poverty. We call upon the Department to issue such regulations now.

### **Disability discrimination**

Outmoded policies expressed in the 8823 Compliance Guide and the Section 42 Audit Guide continue to impede the ability to utilize LIHTC to create permanent supportive housing for people with disabilities consistent with the mandates of the Americans with Disabilities Act and the Supreme Court decision in *Olmstead v. L.C.* This situation can be remedied through the issuance of IRS guidance implementing the clarification to the general public use rule enacted in the Housing and Economic Recovery Act of 2008. Moreover, the Department should explicitly require state QAPs to assess the distribution of LIHTC-funded housing units to ensure that

people with disabilities, particularly in metropolitan areas, are equitably served by this program. Specifically, state QAPs should be required to determine whether LIHTC-funding units for those with disabilities are over-concentrated in racially segregated, high-poverty areas. Where over-concentration has occurred, states should be required to demonstrate how future distribution of LIHTC will be used to remedy these inequities. This will ensure that the LIHTC program provides significant opportunities for this vulnerable population, allow people with intellectual and physical disabilities to live in close proximity to families and friends, and promotes the integration of people with disabilities into the fabric of their communities.

### **Affirmative marketing**

Recognizing that affirmative marketing is a key aspect of successful fair housing implementation, the Department of Housing and Urban Development (HUD) currently has requirements intended to assist prospective tenants in overcoming informational disparities and making integrative moves 24 C.F.R. § 200.610. These requirements are intended to ensure that individuals of similar income levels in the same housing market area have a range of housing choices available to them, regardless of their race, color, religious, sex, handicap, familial status, or national origin. *Id.* The Department should issue guidance that is at least comparable to HUD's – possibly using HUD's regulations as a template. LIHTC-funded projects should be required to submit marketing and tenant-selection plans to ensure that this important federal housing program provides similar benefits.

### **Voucher nondiscrimination**

To fully implement the 2000 Memorandum of Understanding between the Department, HUD, and the Department of Justice that pledges cooperation in the fight against unlawful discrimination against individuals holding Section 8 vouchers, the Department should provide additional guidance to owners and state agencies. This guidance should clarify owners' responsibilities to protect the rights of Section 8 voucher holders to access housing opportunities, including that non-compliance is reportable to the IRS, and should reaffirm that states are responsible for monitoring owners' substantial compliance with the statutory nondiscrimination provision as part of their review and monitoring processes.

We remain grateful for the Administration's continued leadership on expanding opportunities for low-income Americans, especially for racial and ethnic minorities who continue to face housing discrimination. We urge you to take the necessary steps to ensure that the Department does all it can to contribute to those efforts. We believe the approach we have outlined would build on the Administration's successes and cement its legacy as one of the most important forces for the promotion of fair housing since the Civil Rights era. We would like to set up a meeting as soon as possible to get an update on your staff's progress on the issues we have outlined and to discuss the Department's plan on fair housing.

Thank you for your continued time and attention on this crucial matter.

Sincerely,

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