

August 9, 2010

Thomas E. Perez
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Assistant Secretary Perez:

We are writing to follow up on a recent meeting with Deputy Assistant Attorney General Victoria Schultz and other staff of the Civil Rights Division regarding our concerns, as representatives of a coalition of fair housing advocates, about the lack of fair housing guidance and compliance in the Low Income Housing Tax Credit program (LIHTC). As you know, the LIHTC program remains the most significant source of low-income housing production in the country, and the absence of clear direction by the Internal Revenue Service regarding how the program should be operated to comply with Title VI and with the Fair Housing Act, 42 U.S.C. 3601 (especially the mandate to affirmatively further fair housing under 42 U.S.C. 3608) is a source of significant concern.

Especially since we understand that the Department of Justice is engaged in looking into this issue, we write to reiterate several areas discussed at our meeting that we believe are worthy of further attention. These include:

1. The need for Affirmatively Furthering Fair Housing (AFFH) guidance for the LIHTC program: As you know, the AFFH obligation extends not just to HUD programs but to "programs and activities related to housing and urban development" undertaken by "all executive departments and agencies." 42 U.S.C. 3608(d). See also Executive Order 12892 (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing). As such, it is important, and given DOJ's role in enforcing the Fair Housing Act, appropriate to encourage IRS to take steps to realize this obligation. One way to do so might be through follow-up to the Memorandum of Understanding (MOU) between the Department of Treasury, DOJ, and HUD regarding fair housing compliance in the LIHTC. Given the commitment evidenced in this MOU for the federal agencies to work together, and pursuant to DOJ's general authority under Executive Order 12250, it would seem appropriate for DOJ to engage Treasury and the IRS as soon as possible regarding the AFFH obligation and how best to promote it.
2. Data collection and analysis: the required collection of data on race, ethnicity, disability, and other information about occupants and applicants at LIHTC developments should be expedited so that timely civil rights analyses can be completed. It is also important that this data be made publicly available so that the civil rights compliance of individual LIHTC properties can be assessed by advocates in the field.
3. The need for Title VI regulations and guidance for the LIHTC: Especially given the Department of Justice's role as the lead agency regarding promulgation of regulations needed to comply with Title VI, and pursuant to the Department's authority under Executive Order 12250, it is appropriate and important for such rules to be developed for the LIHTC program. In doing

so, we understand that it is necessary to address the issue of whether the LIHTC program constitutes federal financial assistance. As we explained in detail at our recent meeting with your staff, we believe that it is appropriately so considered – and even if there is still dispute about the legal provenance of tax credits themselves, newer federal programs based on the LIHTC are clearly federal financial assistance.¹ The continuing absence of Title VI regulations at the Department of Treasury is an anomaly that leaves victims of discrimination in programs like the LIHTC without an effective administrative remedy.²

4. We also referenced a number of state and local agency practices – such as the exclusionary “local approval” process in some states – that are not authorized by the tax credit statute and are a serious impediment to fair housing in the LIHTC program.³ We think it would be valuable for the Department to investigate some of these practices, both to inform the regulation development process, and also to identify potential areas for fair housing enforcement.

We appreciate the Department’s commitment to moving forward with this issue, and please let us know how we can be helpful to your efforts.

Sincerely,



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cc: Victoria Schultz, Deputy Assistant Attorney General

¹ Specifically, 1602 credit exchange funds administered by Treasury as a cash grant to states and the Capital Magnet Fund are unquestionably subject to Title VI.

² The LIHTC program should also develop regulations and guidance for compliance with Section 504 and the Age Discrimination Act.

³ See Sarah Bookbinder et al, *Building Opportunity: Civil Rights Best Practices in the Low Income Housing Tax Credit Program* (Poverty & Race Research Action Council and Lawyer’s Committee for Civil Rights Under Law, 2008), available at www.prrac.org/pdf/2008-Best-Practices-final.pdf.