

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

The Inclusive Communities Project, Inc.,	*
Plaintiff,	*
	* Civil Action No. _____
v.	*
	*
The United States Department of	*
Treasury and	*
Office of Comptroller of the Currency,	*
Defendants.	*

COMPLAINT

Introduction

1. Defendants’ administration of the Low Income Housing Tax Credit (LIHTC) program is a cause of the existing racial segregation of LIHTC units in the City of Dallas. The racial segregation disproportionately subjects minority families in the segregated units to unequal conditions of slum, blight, and distress compared to the White families residing in Dallas area tax credit units.¹ Defendants’ actions violate their duty to affirmatively further fair housing pursuant to 42 U.S.C. § 3608(d). Defendants’ actions are discriminatory housing practices that perpetuate racial segregation without legal justification and violate 42 U.S.C. § 3604(a). Defendants knowingly, consistently, and repeatedly allow and approve investments in LIHTC units that perpetuate racial segregation and unequal conditions. Defendants’ choice to pursue this course of conduct has aggravated rather than alleviated racial segregation in Dallas. This is conduct taken

¹ The racial segregation complained of is keeping LIHTC non-elderly units out of predominantly White non-Hispanic areas by disproportionately locating the LIHTC units in predominantly minority - Black or African American and Hispanic - areas. The minority population subjected to the racial segregation is Black or African American or Hispanic.

because of race that violates the U.S. Constitution and the Fair Housing Act. Plaintiff seeks injunctive relief that prevents perpetuation of racial segregation of LIHTC units in minority concentrated areas marked by conditions of slum, blight, and distress.

Summary of claims

2. The U.S. Department of Treasury (Treasury) administers the LIHTC program which is the largest existing program for the development of low income affordable rental housing in the country. The Office of the Comptroller of the Currency (OCC) administers the program that prohibits national bank ownership of LIHTC projects unless those investments are designed primarily to promote the public welfare, including the welfare of low and moderate-income communities or families (such as by providing housing, services, or jobs). 12 U.S.C. § 24 (Eleventh).

3. Both defendants have abdicated their duty under 42 U.S.C. § 3608(d) to administer and regulate these housing programs in a manner that does not perpetuate racial segregation in housing and communities and that does overcome discrimination and segregation to the point where the supply of genuinely open housing increases. Treasury does not have a single regulation relating to the perpetuation or elimination of racial segregation in the LIHTC program. OCC does not have a single regulation or other requirement to prevent the perpetuation of racial segregation by taking into account the obligation to eliminate segregation and discrimination in its approvals of bank ownership of LIHTC projects.

4. Defendants' willingness to accept and condone racial segregation in their programs is a cause of the racially segregated locations of 19,511 LIHTC non-elderly units in 50% or greater

minority census tracts in the City of Dallas (97% of such units in the City).² Many of the locations of the units are marked by conditions of slum, blight, and distress that include high crime rates, undue concentrations of persons in poverty, low median incomes, high unemployment rates, and adverse environmental conditions (slum, blight, and distress). 91% of the non-elderly LIHTC units in the City of Dallas are in predominantly minority, high distress level census tracts. The racial segregation of the LIHTC units regulated by and administered by defendants equals the extreme level of the past de jure segregation in Dallas public housing. ICP seeks injunctive relief ensuring that the current violations cease and that prevents future violations that would adversely affect ICP and ICP's clients.

Jurisdiction

5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 3613(a). Plaintiff's claims are pursuant to 5 U.S.C. § § 702, 706. Sovereign immunity is waived by 5 U.S.C. § 702 for the injunctive relief requested in this complaint.

Plaintiff

6. The plaintiff The Inclusive Communities Project, Inc. ("ICP") is a fair housing focused nonprofit organization working with families seeking access to housing in predominately non-minority areas of the Dallas metropolitan area. This is part of ICP's work to break down barriers to the creation of racially and economically inclusive communities. As part of its mission, ICP works with Black or African American families participating in the Section 8 Housing Choice Voucher ("voucher") program administered by the Dallas Housing Authority ("DHA").

² The calculation is based on non-elderly units because in White, non-Hispanic neighborhoods, elderly LIHTC housing is approved more often than non-elderly LIHTC housing, and elderly LIHTC residents are more likely to be White, non-Hispanic.

Approximately 86% of the DHA voucher participants are Black or African American. ICP assists DHA voucher families who choose to lease dwelling units in non-minority areas with counseling and financial assistance. As part of ICP's mission, it also uses its funds and other resources to encourage the development of LIHTC units for its clients' use in non-minority concentrated areas free from the adverse effects of slum, blight, and distress. ICP's office is located in the City of Dallas, Dallas County, Texas.

7. ICP is organized and operated to create and obtain affordable housing in non-minority concentrated areas within the Dallas metropolitan area for persons eligible for low rent public housing on terms substantially equivalent to the terms on which public housing is available and to provide the counseling and other forms of assistance to families seeking to utilize their housing choice voucher to move into those areas. ICP is chartered to help poor people obtain affordable housing in decent and safe conditions free from the vestiges of racial discrimination and segregation and in neighborhoods with adequate services and facilities. The non-minority areas within which ICP will assist families are the census tracts defined by the Walker Settlement Voucher Program as Walker Target Areas. Nov. 8, 2001, Settlement Stipulation and Order, page 4, *Walker v. HUD*, Civil Action No. CA-3-85-1210-O.

8. ICP focuses its housing mobility counseling and financial assistance resources on helping families find housing in High Opportunity Areas (HOAs). HOAs are a subset of the Walker Target Areas and are designed to focus ICP's resources on those higher opportunity areas where there is reason to believe DHA issued voucher holders will need additional assistance to find housing due to higher costs, lack of information about the areas, or local resistance/discrimination. ICP has defined HOAs as any location in a Walker Target Area census

tract which also has lower poverty rates, higher median family income, and is in the attendance zones of higher ranking public schools.

9. The housing mobility assistance provided by ICP to DHA voucher participants includes pre-move family counseling and related financial assistance to assist the families who want to make and sustain a desegregative housing move. The housing mobility assistance also includes negotiating with landlords as necessary to obtain units in the eligible areas at rents that are affordable by the voucher families and eligible for the voucher subsidy. The financial assistance provided to these families may include the payment of application fees, security deposits, and utility deposits to assist families moving into housing that provides desegregative housing opportunities in non-minority, non-poverty concentrated areas. ICP can also make landlord incentive bonus payments to landlords in areas that provide desegregative housing opportunities in non-minority, non-poverty concentrated areas who agree to participate in DHA's voucher program when ICP determines that such incentives are necessary to secure housing for the voucher families. For example, ICP may provide a reasonable bonus payment if it is necessary to obtain a rent concession in order for a unit to be eligible for voucher assistance at a rent affordable to the family or to convince a landlord to participate in DHA's voucher program.

10. The LIHTC units are important to ICP in its provision of integrated housing opportunities for its clients. The LIHTC projects cannot refuse to rent to an applicant based on the applicant's status as a voucher holder. 26 U.S.C. § 42(h)(6)(B)(iv); Tex. Gov't Code § 2306.269(b). A large percentage of non-tax credit projects in low poverty, non-minority concentrated areas not marked by conditions of slum, blight, and distress throughout the Dallas metropolitan areas do refuse to rent to voucher participants. The LIHTC projects are the only

form of housing in the Dallas area that is prohibited from refusing to accept vouchers.

11. Since the LIHTC projects cannot refuse to accept housing choice vouchers and the units usually rent for amounts less than housing choice voucher maximum rents, it is possible for ICP to help its clients obtain these units using less ICP time and at a lower ICP out of pocket cost. However, since LIHTC units are disproportionately located in minority areas marked by conditions of slum, blight, and distress and thus are not eligible for ICP's assistance, ICP must rely on the private market in the low poverty, non-minority concentrated areas. Many of the private market landlords in those areas refuse to accept vouchers. The refusals substantially reduce the supply of available units for voucher families and increase the ICP resources needed to assist its clients to obtain affordable units in these non-minority concentrated areas.

12. ICP is the plaintiff in a lawsuit seeking relief for the past discriminatory housing practice of the Texas Department of Housing and Community Affairs (TDHCA) disproportionately allocating LIHTCs to non-Caucasian areas that perpetuated racial segregation in the location of the LIHTC units in the Dallas area. *ICP v. TDHCA*, 2008 WL 5191935 (N.D. Tex. 2008). The District Court found that the Dallas area LIHTC units were racially segregated in its 9/28/2010 summary judgment order. *ICP v. TDHCA*, 749 F.Supp.2d 468 (N.D. Tex 2010). The Court found TDHCA liable for the racial segregation on 3/20/2012. *ICP v. TDHCA*, 860 F.Supp.2d 312 (N.D. Tex. 2012). The Court entered remedial orders on 8/7/2012 and 11/12/2012. *ICP v. TDHCA*, 2012 WL 3201401 (N.D. Tex. 2012); *ICP v. TDHCA*, 2012 WL 5458208 (N.D. Tex. 2012). The U.S. Court of Appeals for the Fifth Circuit reversed the judgment and remanded the case for the District Court to apply the FHA disparate impact standards in 24 CFR §100.500. The U.S. Department of Housing and Urban Development

adopted this disparate impact regulation while the case was on appeal. *Inclusive Communities Project, Inc. v. Texas Dept. of Housing and Community Affairs*, 747 F.3d 275, 283 (5th Cir. 2014). TDHCA filed a petition for certiorari on May 13, 2014. U.S. Supreme Court case No. 13-1371. The District Court has stayed the proceedings on remand pending the outcome of the TDHCA's petition for certiorari. *Inclusive Communities Project, Inc. v. Texas Dept. of Housing and Community Affairs*, 2014 WL 2815683 *3 (N.D. Tex., 2014). There is no injunctive or other relief in effect at this time in *ICP v. TDHCA*.

13. The scope of the relief in *ICP v. TDHCA* did not include the remedies for Treasury and OCC's violations of 42 U.S.C. §3608(d) sought in this case. The remedies requested in the prayer for relief in this case that were not sought or awarded in the *ICP v. TDHCA* case include:

- limitations on future approvals for bank investments that perpetuate racial segregation without contributing to concerted community revitalization programs that will bring about non-discriminatory neighborhood conditions;
- incentives for bank investments that do not perpetuate racial segregation in areas of slum, blight, and distress;
- the provision of housing mobility counseling assistance for those already in segregated and unequal conditions; and
- prohibition of local, non-federal selection criteria that prevent affirmatively furthering fair housing whether or not the criteria are shown to violate other provisions of the law.

Defendants

14. Defendants Treasury and OCC are federal agencies that by statute have regulatory and supervisory authority over financial institutions. Defendant Treasury administers, through

regulation, supervision, and other activities, the LIHTC program which is a program and an activity relating to housing and urban development. Defendant OCC administers, through regulation, supervision, and other activities, the national banks' investments in LIHTC projects. The national banks' investments in LIHTC projects under OCC's administration is a program and an activity relating to housing and urban development.

15. Treasury is an executive agency of the United States of America. Treasury, through the Internal Revenue Service, administers and regulates the operation and disbursement of the LIHTCs through state and local housing credit agencies. 26 U.S.C. § 42; 26 CFR § 1.42-0 through 1.42-18. Treasury has no regulation that prohibits LIHTCs being used for units in racially segregated minority areas marked by conditions of slum, blight, and distress including high crime rates and adverse environmental conditions.

16. The Treasury, through the OCC, is also the federal agency responsible for approving federally regulated bank and related banking entities investments for LIHTC projects under the public welfare standard. By statute, these investments must be designed primarily to promote the public welfare, including the welfare of low and moderate income communities or families (such as by providing housing, services, or jobs). 12 U.S.C. § 24 (Eleventh). The OCC must approve all national bank investments in LIHTC units by finding that the investment is designed primarily to promote the public welfare, including the welfare of low and moderate-income communities or families (such as by providing housing, services, or jobs). 12 U.S.C. § 24 (Eleventh); 12 CFR § 24.3. This approval provides the legal authority for the regulated banks to make the investments in LIHTC real estate developments and to own the LIHTC projects under the National Banking Act, 12 U.S.C. § 24.

17. The passage of the Tax Reform Act of 1986 established the LIHTC program to provide tax credit subsidies for the development and ownership of affordable rental housing. Defendant Treasury, through the Internal Revenue Service, allocates federal tax credits to state and local housing credit agencies. The state and local agencies award tax credits to eligible affordable housing developers. Developers typically attempt to obtain funding for their projects by attracting third-party investors such as national banks. These investors contribute equity to the projects and then claim the housing tax credits. This process of providing tax credits in exchange for equity is generally referred to as “selling” the tax credits. But what is sold to the investor is not the credit but an ownership interest, typically 99.9%, in the project (through a partnership or other entity). The owners of the LIHTC project are permitted to claim the tax credits on their income tax return. The national banks that invest in housing tax credits are also acquiring the ownership of the LIHTC projects. GAO-12-869R, *Community Reinvestment Act: Challenges in Quantifying Its Effect on Low-Income Housing Tax Credit Investment*, August 28, 2012, page 1.

18. The developers use the equity capital generated from the sale of the tax credit related ownership interests to lower the debt burden on LIHTC properties. Investors, such as national banks, purchase the tax credits to lower their federal tax liability. Developers typically structure LIHTC projects as limited partnerships (LPs) or limited liability companies (LLCs), providing limited liability to bank investor-owners. This structure allows banks to be investors that receive the tax credits and other tax benefits. Banks can make direct investments in single LIHTC projects through LIHTC Project LP/LLCs and LIHTC fund investments. Larger banks make up the typical investor profile for LIHTC direct investments, which usually range between \$2 million and \$10 million per project. Smaller banks are more likely to invest in LIHTCs through

syndicated funds drawing money from multiple banks and investing in multiple tax credit projects. GAO-12-869R, page 6.

19. The Low-Income Housing Tax Credit (LIHTC) program is the federal government's primary program for encouraging the investment of private equity in the development of affordable rental housing for low-income households. Since its creation in 1986, the LIHTC program provided financing for more than 2.4 million affordable rental-housing units for low-income households. OCC, *Community Developments Insights Low-Income Housing Tax Credits: Affordable Housing Investment Opportunities for Banks*, March 2014, page 1. The federal LIHTC program regulated and administered by defendants is a program related to housing and urban development. The program, which was estimated to cost \$6.5 billion in foregone federal revenue in fiscal year 2012 alone, is the largest federal program for developing affordable rental housing units. GAO-12-869R.

20. Defendant Treasury's administration and regulation of the LIHTC program is done by engaging in activities relating to housing and urban development. Those activities include:

- regulating the federally imposed conditions and requirements governing the allocation of LIHTCs by state and local housing credit agencies and jointly administering the LIHTC program with those agencies,
- regulating and enforcing the selection criteria used by state and local housing credit agencies that include statutorily required criteria for project location, housing needs characteristics, project characteristics (including whether the project includes the use of existing housing as part of a community revitalization plan), sponsor characteristics, tenant populations with special housing needs, public housing waiting lists, tenant populations of individuals with

children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project.

21. Defendant OCC engages in activities relating to housing and urban development that involve the development of LIHTC projects. These activities include:

- actively directing the financial institutions it supervises and regulates to consider making and to make the ownership and related investments in LIHTC projects;
- expediting and conducting the supervisory approval of the ownership and related investments by providing for an approval process that includes the after-the-fact public welfare approval of the purchase of ownership interests in LIHTC projects.

22. The OCC estimates that the financial institutions it supervises and regulates are providing more than one half of the capital to fund affordable housing under the LIHTC program. OCC reports estimate that 85 percent of the \$9.5 billion in equity from corporate investors used to finance LIHTC projects in 2012 came from the banking sector. The billions of dollars channeled into these projects and units have funded the development of hundreds of thousands of units of affordable housing that perpetuate racial segregation while providing profitable investment returns to the institutions. The national banks that own many of the LIHTC projects located in predominantly minority areas marked by conditions of slum, blight, and distress could not own the projects and claim the tax credits without the express approval by OCC.

23. Defendant OCC encourages national banks to invest in LIHTCs by emphasizing the profitability of these investments. The national banks benefit from the use of the tax credits to offset profits and from the pass through of depreciation and interest expense that occur as a result of the ownership interest. LIHTC financial institution investors also receive the right to the cash

proceeds from the sale of the project.

24. Defendant OCC encourages national banks to invest in LIHTCs by stating that the investments will earn favorable regulatory consideration under the Community Reinvestment Act (CRA). 12 U.S.C. § 2901. National banks have the CRA obligation to provide services, loans, and investments to low and moderate income individuals and in low and moderate income areas. Bank actions that benefit either low and moderate income persons or low and moderate income areas contribute to meeting the regulatory tests for CRA compliance. GAO-12-869R, page 1. These actions include bank activities that provide affordable rental housing to low and moderate income individuals. OCC, Community Development Fact Sheet, June 2011, pages 1 - 2. Defendant OCC is the federal regulator for CRA for national banks.

Discriminatory effect perpetuating racial segregation

25. The racial segregation of the LIHTC units regulated by and administered by defendants exceeds the racial segregation in Dallas public housing achieved by de jure and other overt discrimination.

26. As of 2013, 97% of non-elderly LIHTC units in the City of Dallas were located in census tracts with more than 50% minority residents. This is based on the TDHCA Property Inventory January 2014 report.

27. The degree of segregation in the LIHTC program administered by defendants is the same as was produced by that history of federal involvement in public housing segregation. The overt racial segregation of public housing in the City of Dallas with federal government financing, approval, and regulatory acceptance placed 6,100 of the 6,400 non-elderly public housing units in the City of Dallas in minority concentrated areas. 95% of the non-elderly public

housing units were in census tracts with more than 50% minority residents as of 1994. The Fifth Circuit described the history of this pattern as “a sordid tale of overt and covert racial discrimination and segregation.” *Walker v. City of Mesquite*, 169 F.3d 973, 976, 976 n. 4 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000).

28. Although the pattern is the same, the scale of the segregated tax credit housing is substantially greater than the scale of the segregated public housing. There were 6,100 non-elderly public housing units in minority concentrated areas of Dallas as of 1994. There were 19,511 non-elderly tax credit units in the City of Dallas minority concentrated areas as of 2013.

29. The racial segregation of the tax credit units is shown in the map at page 49 of this complaint.

30. The Talton Report, a report of the House Committee on Urban Affairs prepared for The State of Texas House of Representatives 80th Texas Legislature, found a similar pattern of LIHTC racial segregation in the Dallas area. The racial segregation was compounded by concentration of the tax credit units in high minority areas that were also low income. The report was made public in December 2006.

31. The United States Department of Housing and Urban Development released several reports showing a similar pattern of increasing racial segregation of LIHTC units in the Dallas Metropolitan Area. The reports show that:

- from 1995 to 2002, 65% of the Dallas metropolitan area (PMSA) LIHTC units were in tracts with over 50% minority population. There were 14,706 total LIHTC units placed in service during these years;
- from 1995 to 2006, 69% of the Dallas PMSA LIHTC units were in tracts with over 50%

minority population. There were 24,325 total LIHTC units placed in service during these years.

- By 2012, 86% of the LIHTC units in the equivalent Dallas area were in census tracts that were 50% or more minority in population.³

32. The racial segregation in the national LIHTC units increased during these periods.

The reports show that:

- from 1995 to 2002, 41% of the U.S. total LIHTC units were in tracts with over 50% minority population. There were 693,876 total LIHTC units placed in service during these years;

- from 1995 to 2006, 44% of the U.S. total LIHTC units were in tracts with over 50% minority population. There were 1,181,435 total LIHTC units for which specific census tracts could be determined that were placed in service during these years. HUD, “Updating the Low-income Housing Tax Credit (LIHTC) Database: Projects Placed in Service Through 2006,”

January, 2009, page 44.

33. Defendant Treasury’s administration of the LIHTC program and Defendant OCC’s approval of national bank investments in the LIHTC projects are a cause of the racial segregation of LIHTC units in the City of Dallas.

The racial segregation disproportionately subjects minority families in the segregated LIHTC units to unequal conditions of slum, blight, and distress.

34. Defendants’ administration of the LIHTC program and Defendant OCC’s approval of national bank investments in the LIHTC projects disproportionately subjects Black and other minority families to racial segregation in unequal conditions of slum, blight, and distress compared to the conditions in which White non-Hispanic families occupy tax credit units.

³ This area includes the counties of Collin, Dallas, Denton, Ellis, Hunt, Kaufman, and Rockwall.

35. The Treasury developed a Distress Indicator Index for use in its 2012 Community Development Financial Institutions Fund program. The Distress Indicator Index ranked every census tract in the country from 0 to 4, with 0 indicating least distress and 4 indicating the highest level of distress. The index is based on a combination of poverty, median family income, and unemployment levels. The U.S. Census data, including more recent reports, for these distress level elements continue to track the existence and extent of distress for census tracts. These distress rankings are one measure of the degree of slum, blight, and distress in census tracts. There are other indicators and additional evidence of the degree of slum, blight, and distress in census tracts such as industrial zoning, specific environmental hazards, blighted housing, and crime rates.

36. Unless relief is granted in this case, Defendants' regulatory and supervisory administration of the LIHTC program and national bank LIHTC investments will continue to perpetuate racial segregation in predominantly minority areas marked by conditions of slum, blight, and distress. 18,398 of the non-elderly LIHTC units in the City of Dallas, 91% of the total LIHTC units, are in census tracts that have high distress levels (3 or 4) under Treasury's Distress Index and are 50% or more minority.

37. The maps at pages 49 - 50 of this complaint describe the racial segregation and distress index characteristics of the locations of the LIHTC units in Dallas.

38. The degree of racial segregation by distress levels is shown by a comparison of LIHTC units with renter occupied multifamily units.⁴ 91% of City of Dallas non-elderly LIHTC

⁴ These comparisons are based on 2005-2009 American Community Survey 5-Year Estimates (ACS 2005-2009) data for the renter occupied multifamily units because the 2012 Treasury CDFI Distress Index is based on and presents the results using that data and the

units are in 50% or greater minority census tracts with Treasury CDFI Distress Index 3 or 4. Only 59% of all City of Dallas renter occupied multifamily units are in 50% or greater minority census tracts with Treasury CDFI Distress Index 3 or 4, the highest levels of distress.

39. The racially segregated pattern of the City of Dallas LIHTC units is similar to the pattern in the Dallas area. In the Dallas seven county area, 27,632 of the LIHTC units, 73% of the total, are in census tracts that have high distress levels (3 or 4) according to Treasury's Distress Index and are 50% or more minority. This calculation is based on the data in the HUD National Low Income Housing Tax Credit (LIHTC) Database, 1987-2012 report.

40. TDHCA's reports show the allocation of \$591,384,846 in LIHTCs to non-elderly units in the City of Dallas census tracts that have high distress levels (3 or 4) according to Treasury's Distress Index and are 50% or more minority. This is 89% of the total \$661,512,325 LIHTC allocation for non-elderly developments in the City of Dallas.

41. 6,682 of the LIHTC units in the City of Dallas are located in neighborhoods marked by high poverty rates. The current poverty rates for the census tracts with these units range from 40% to 63% of the persons having incomes below poverty level.

42. The poverty rate increased in 15 of 17 total high poverty (40% and greater) tracts in the City of Dallas with LIHTC units from 2000 to 2012. In only two of these tracts with these high poverty rates has the poverty level decreased from 2000 to 2012. In U.S. Census 2000 census tract 102, with 152 tax credit units, the poverty rate decreased from 79% in 2000 to 59% in 2012 (U.S. Census 2010 census tract 205). In census tract 115, with 511 tax credit units, the poverty rate decreased from 62% in 2000 to 60% in 2012.

accompanying 2000 U.S. Census census tracts.

43. The LIHTC non-elderly units in the City of Dallas minority areas marked by conditions of slum, blight, and distress include units located adjacent to or near areas zoned for and operated as industrial uses.

44. The LIHTC non-elderly units in the City of Dallas minority areas marked by conditions of slum, blight, and distress include those located in or adjacent to areas designated by the City of Dallas Police Department as Crime Hot Spots. These are locations in which residents have a high probability of being the victim of a crime when compared to the rest of the City.

45. National bank investments in these LIHTC projects do not meet the public welfare standard. The public welfare is not satisfied by actions that perpetuate racial segregation of Blacks or African Americans or Hispanics into minority concentrated areas marked by conditions of slum, blight, and distress. “[T]he granting of federal assistance for ... housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws.” Exec. Order No. 11063, 3 CFR 652 (1959–1963 Comp.). The public welfare that justifies a federal tax credit and loss of federal revenue should provide a beneficial and stabilizing influence on individual and community life. The injuries to children and families caused by the social disorganization of racial segregation and the accompanying conditions of slum, blight, and distress violate the public welfare. The public welfare requires healthy, spacious, balanced, and safe communities.

46. By not addressing these prevailing patterns of racial segregation, defendants’ programs have continued to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of

the population and the public resources to deal with them.

47. The perpetuation of racial segregation of Blacks or African Americans and Hispanics in federally supported housing located in areas of slum, blight, and distress does not exercise a beneficial and stabilizing influence in community life. The perpetuation of racial segregation in the LIHTC program should not be encouraged by having taxpayers share in the support of segregation through the tax credits and other incentives that make the owners' investments in these projects profitable.

48. HUD explains some of the injuries to residents and to the entire community that are caused by the conditions in racially concentrated low income areas marked by slum, blight, and distress.

Racially or ethnically concentrated areas of poverty merit special attention because the costs they impose extend far beyond their residents, who suffer due to their limited access to high-quality educational opportunities, stable employment, and other prospects for economic success. Because of their high levels of unemployment, capital disinvestment, and other stressors, these neighborhoods often experience a range of negative outcomes such as exposure to poverty, heightened levels of crime, negative environmental health hazards, low educational attainment, and other challenges that require extra attention and resources from the larger communities of which they are a part. Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities. Affirmatively Furthering Fair Housing; Proposed Rule, 78 Fed Reg 43710, 43714, July 19, 2013.

49. Defendants' actions perpetuating racial segregation in minority concentrated areas marked by conditions of slum, blight, and distress ensure that a substantial portion of the children living in the tax credit units will be injured. The injuries can include:

- those that arise out of the exposure to crime as a witness, a victim, or living in fear of being a victim of crime;

- the effects of living in or near industrial or other nuisance and hazardous uses;
- the long lasting disadvantages caused by an inadequate and unequal education at one or more levels of childhood schooling; and
- the lack of basic resources for the services and facilities found in non-minority concentrated neighborhoods without the conditions of concentrated poverty, slum, and blight.

The existence of the injuries is supported by numerous government and academic studies and reports.

50. The public welfare is not served by the deliberate and considered decision to place poor families with children in neighborhoods with high poverty, heightened levels of crime, environmental hazards, substandard schools, and slum housing when there are other locations for the families not subject to those conditions.

51. The development of new LIHTC units in the areas of slum, blight, and distress does not remedy the injuries inflicted upon families living in those areas. The factors causing those injuries continue in effect.

52. The neighborhood conditions in which Black and Hispanic tax credit families live are disproportionately unequal to and worse than the neighborhood conditions in which White non-Hispanic tax credit families live.⁵

53. A disproportionate percentage of White non-Hispanic families in tax credit units live

⁵ The data on the race and ethnicity of the residents of the Dallas area LIHTC units cited in this complaint is based on those LIHTC projects for which the Texas Department of Housing and Community Affairs reports this information. These reports do not include the data for all projects. The reports do not state the number of White non-Hispanic households directly. The number of these households is an estimate based on the number of non-Black plus non-Hispanic households which will include White non-Hispanic households.

outside the areas of slum, blight, and distress compared to Black families in tax credit units. Approximately 49% of Black tax credit family tenants live in Collin, Dallas, and Denton county census tracts marked by poverty rates of 30% or more of the population while approximately 21% of White non-Hispanic tax credit family tenants live in such census tracts. 64% of Black tax credit families live in census tracts with the highest distress level while approximately 43% of White non-Hispanic tax credit families live in census tracts with the highest distress level.

54. The U.S. Constitution, federal law, and national policy require that Black and other minority families receiving federal housing assistance cannot be provided that housing in conditions unequal to the conditions in which White families receive that assistance. Fifth Amendment to the United States Constitution; 42 U.S.C. § 1982; 42 U.S.C. § 3608(d); Executive Order 12892.

The national legacy of racial segregation with unequal conditions is also present in the City of Dallas.

55. The 42 U.S.C. § 3608(d) obligation is designed to overcome the effects of the national legacy of racial segregation.

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) outlawed discrimination and set out steps that needed to be taken proactively to overcome the legacy of segregation through the obligation of affirmatively furthering fair housing (AFFH). Affirmatively Furthering Fair Housing; Proposed Rule, 78 Fed. Reg. 43710, July 19, 2013.

56. The historical patterns of racial segregation and unequal conditions continue to exist in the City of Dallas. The racial segregation expanded to include additional housing and new neighborhoods in the City of Dallas. Judicial fact findings in several federal lawsuits publicly summarize the history of this segregation and the attendant injuries. De jure racial codes

authorized by state law up through the 1950s divided the City of Dallas into racially separate neighborhoods. Once the codes became unenforceable, a variety of other official and unofficial practices continued the segregation and unequal conditions. Violence to stop attempts by Black families to move out of the designated ghettos was one such practice. *Walker v. HUD*, 734 F.Supp. 1289, 1293 - 1308 (N.D. Tex. 1989) (housing); *Williams v. City of Dallas*, 734 F.Supp. 1317, 1320 - 1321, 1332 - 1339, 1401 - 1408 (N.D. Tex. 1990) (voting); *Miller v. City of Dallas*, 2002 WL 230834, *4 - *10 (N.D. Tex. 2002) (zoning and municipal services); *Tasby v. Woolery*, 869 F. Supp. 454, 456-57 (N.D. Tex. 1994) (school segregation).

57. The known historical racial segregation and unequal conditions in Dallas still existed when the LIHTC program began in Texas. The LIHTC projects were disproportionately placed in the predominantly minority neighborhoods.

58. The conditions of slum, blight, and distress remain despite the infusion of hundreds of millions of dollars of federal LIHTCs allocated and used in those predominantly minority and low income areas of the City of Dallas. The tax credit units and the national bank investments in the tax credit units have not resulted in neighborhood conditions, services, and facilities that are not marked by conditions of slum, blight, and distress. In many of the tax credit neighborhoods conditions have deteriorated as shown by measures such as increased poverty rates, increased racial concentrations, increased low income housing concentrations, and decreases in population. The LIHTC units in these neighborhoods have not contributed to or been accompanied by community revitalization.

59. OCC approved all of the national bank or related banking entities investments in the Dallas area LIHTC projects as meeting the public welfare requirement. OCC approved the

investments despite the existence of current and historical racially segregated and unequal conditions affecting Dallas' predominantly minority neighborhoods. These conditions, like the national legacy of racial segregation, are open and obvious.

60. OCC approved all of the LIHTC projects in the paragraphs 61-64 that were national bank investments in minority concentrated areas marked by conditions of slum, blight, and distress.⁶ Ten or more years after the LIHTC units were developed, the neighborhood indicators of slum, blight and distress have not improved. The neighborhoods remained blighted, distressed, and minority concentrated low income areas.

61. Census tract 16 contains the following four LIHTC projects listed by name, year of LIHTC allocation, and total LIHTCs: Bryan Place (1993) (\$294,410), Treymore at Cityplace (1995) (\$4,205,050), Roseland Townhomes (1999) (\$7,765,650), and Roseland Estates (2002) (\$6,384,880). The tract is 38% White not Hispanic. The poverty rate for this tract increased from 28% in U.S. Census 2000 to over 40% in ACS 2005-09 through 2008-2012 American Community Survey 5-Year Estimates (ACS 2008-2012) , with a high of 46% in 2006-2010 American Community Survey 5-Year Estimates (ACS 2006-2010). Housing choice vouchers are 34% of renter occupied units in this tract. The LIHTC units are 39% of renter occupied units in this tract. The CDFI Distress Indicator Index for the tract is the most distressed, level 4. The City of Dallas blight indicator⁷ shows that 80% or more of the housing units in the census tract

⁶ Bryan Place, one of the four LIHTC projects in census tract 16, was not a national bank investment.

⁷ The City of Dallas established several criteria to determine the extent of adverse neighborhood characteristics such as the percent of blighted units, crime levels, and tax foreclosed properties. The City applied these criteria to the Community Development Block Grant eligible census tracts as of October 2012. City of Dallas, "LIHTC & Neighborhood

are blighted. The UNT composite Blight indicator⁸ for the census tract is 4, Blighted.

62. Census tract 27.01 contains three properties that received LIHTC allocations: Frazier Fellowship (2004) (\$5,537,800), Wahoo Frazier Townhomes (2005) (\$9,259,600), and Mill City Parc (2006) (\$5,300,000). The percent White not Hispanic population remained the same, 1%, from Census 2000 to Census 2010. The population of the tract decreased by 25% from Census 2000 to Census 2010. The percent below poverty fluctuated between 54% in Census 2000 to 63% in ACS 2008-12, with a high of 71% in ACS 2006-10. Housing choice vouchers are 50% of renter occupied units, and the LIHTC units are 43% of renter occupied units in the tract. The CDFI Distress Index is level 4. The UNT composite Blight indicator for the census tract is 4, Blighted.

63. Census tract 93.04 contains four LIHTCs: Las Lomas (1996) (\$3,853,040), Rosemont at Pemberton Hill (2001) (\$8,373,640), Grove Village (2004) (\$4,023,290), and Pleasant Village (2004) (\$3,701,520). The percent White not Hispanic for the tract decreased by 1%, from 3% in

Investment Program Updates, A Briefing to the Housing Committee,” Housing Community Services Department, October 15, 2012, page 35. The rankings for various characteristics for specific census tracts referred to as City of Dallas blight indicators are from this City of Dallas report and underlying data analysis.

⁸ The Dallas Area Habitat for Humanity commissioned a report by the University of North Texas Department of Public Administration to determine the impact of blight on neighborhoods in the City of Dallas. The report was released on July 12, 2013. Department of Public Administration University of North Texas, From Blight to Light Assessing Blight in the City of Dallas Final Report 07/12/2013. The report collected and analyzed data on a variety of blight related characteristics and calculated an overall blight Composite Index indicator for each census tract in the City of Dallas. This indicator ranged from 1 if no blight to 3 if “Moderate Blight” and 4 if “Blighted”. The indicators included factors such as conditions of structures, foreclosures, demolitions, crime, tax delinquencies, and demographic factors of each census tract. The data used was local or national government data. Blight, pages 22-40. The UNT Blight indicators cited in this complaint are taken from this report.

Census 2000 to 2% in Census 2010. The poverty rate for the tract was 43% in Census 2000 and increased to a high of 61% in 2007-2011 American Community Survey 5-Year Estimates (ACS 2007-11). Housing choice vouchers are 43% of renter occupied units, and the LIHTC units are 64% of renter occupied units in the tract. The CDFI Distress Index is level 4. The City of Dallas blight indicator shows that 70% to 79% of the structures are blighted. The UNT Composite Blight indicator for the census tract is 4, Blighted.

64. Census tract 166.05 contains five LIHTCs: Greens of Hickory Trail (1998) (\$6,342,040), Rosemont at Timbercreek (2001) (\$5,557,570), Hickory Trace (2002) (\$7,627,500), Rose Court at Thorntree (2002) (\$11,112,760), and West Virginia Apartments (2003) (\$6,869,610). The percent White not Hispanic population in the tract declined by 19%, from 27% in Census 2000 to 8% in Census 2010. The poverty rate increased from 20% in Census 2000 to 37% in ACS 2006-10, with a high of 39% in ACS 2007-11. Housing choice vouchers are 32% of renter occupied units, and the LIHTC units are 45% of renter occupied units. The CDFI Distress Indicator Index is level 4. The City of Dallas blight indicator shows that 70% to 79% of the structures are blighted. The UNT Composite Blight indicator for the census tract is 4, Blighted.

65. The residents of the LIHTC projects and census tracts described in paragraphs 61-64 are predominantly Black or Hispanic. The residents of the LIHTC projects located in the City of Dallas predominantly minority and low income areas marked by conditions of slum, blight, and distress are predominantly Black or Hispanic.

66. The White non-Hispanic residents of LIHTC projects in the Dallas area are disproportionately located in majority White, non-Hispanic areas not marked by conditions of

slum, blight, and distress.

67. The racial segregation of the LIHTC projects by occupants and locations in the City of Dallas and the Dallas area is a direct result of past and ongoing racial segregation in housing and neighborhoods. The perpetuation of racial segregation by continuing to use LIHTCs to provide affordable rental housing pursuant to policies and practices that disproportionately result in the location of the LIHTC assisted units in predominantly minority areas is and has been both reasonably foreseeable and the observed effect of these policies and practices.

Historical background of the current public welfare regulation

68. The public welfare provision allowing national banks to own tax credit projects and make other tax credit ownership investments became law in 1992. In 1993, OCC promulgated the initial regulations setting the standards for the determination of public welfare. OCC did not promulgate any regulation prohibiting the perpetuation of racial segregation under the public welfare standard at this time.

69. The 1993 regulation included a public welfare-based requirement that the profits, dividends, tax credits and other distributions from equity investments or interest income from debt investments received by the bank from the public welfare investment be devoted to activities that primarily promote the public welfare as determined by the OCC. 12 CFR § 24.4(a)(4). 58 FR 68464. OCC based this restriction on its past practice restricting a bank's use of profits, dividends, and other distributions from such investments to activities and programs that fulfill public purposes. The OCC believed these bank investments, not normally permissible under law, are permissible only because they meet the public welfare test of 12 U.S.C. 24 (Eleventh). Consequently, profits, dividends, tax credits and other distributions from these

investments are not for general bank use like those from other private, entrepreneurial banking activities, but are restricted for qualifying public purposes. The OCC said it believed that reinvesting profits and dividends into public welfare activities is one way to ensure a bank's long-term commitment to address the ongoing needs of its communities and provide benefits to low- and moderate-income persons and families and small businesses, including minority-owned small businesses. In addition, a bank benefits from these reinvestments because a strong economic environment increases the opportunity and customer base for banks to provide bankable loans.

70. In 1993 the U.S. Government Accounting Office studied public housing authorities that had developed public housing and LIHTC projects. The GAO found that the federal LIHTC units were more likely than traditional public housing to be developed on sites in predominantly minority neighborhoods. GAO/RCED-93-31, "Public Housing Low-Income Housing Tax Credit as an Alternative Development Method," July 1993, pages 2-3, 8.

71. GAO found that in the early 1970s HUD had placed restrictions on the location of public housing units to prevent the perpetuation of racial segregation for low income and minority households but no such restrictions existed in the LIHTC program.

The tax credit program, however, contains no similar restrictions. Accordingly, seven of the nine tax credit projects we reviewed were developed on one site, while seven of the nine public housing projects were developed on multiple sites. In addition, more tax credit projects than public housing projects were developed in predominantly low-income neighborhoods, and more were located in predominantly minority neighborhoods. GAO, Public Housing Low-Income Housing Tax Credit as an Alternative Development Method, GAO/RCED-93-31, July, 1993, Page 3.

Neither Treasury nor OCC ever promulgated a regulation or took any other action to

prohibit the perpetuation of racial segregation under the public welfare standard after this report was published.

72. From 1995 through 2000, OCC began eliminating the non-financial regulatory requirements for public welfare eligibility. OCC removed the reinvestment provision, 12 CFR 24.4(a)(4), in 1995. 60 FR 67049, December 28, 1995. At the end of 1999, OCC eliminated the community benefit and support elements of the regulation by referring the decision on those factors of the public welfare requirements to the states. 64 FR 70988, December 20, 1999. For this period between 1995 and the end of 1999, HUD publicly reported that the concentration by race in central cities had increased from 48% of the central city tax credit units in tracts with greater than 50% minority population to 57% of the units in those tracts. HUD reported that all tax credit units in tracts with greater than 50% minority population had increased from 33% of all tax credits to 40%. Even though racial segregation continued to increase in the LIHTC program, OCC did not promulgate a regulation or take any other action to prohibit the perpetuation of racial segregation under the public welfare standard during this period.

73. OCC eliminated the remaining non-financial regulatory requirements for public welfare eligibility in the 2003 amendments. 68 FR 1394, January 10, 2003; 68 FR 48771, August 15, 2003. As of 2007, HUD publicly reported that the concentration by race in central cities had increased from 59% (2003) to 61.5% (2007) of the central city tax credit units in tracts with greater than 50% minority population. HUD reported that the tax credit units in tracts with greater than 50% minority population had increased from 42% to 45%. The percentage of all rental units in 50% minority or greater tracts remained around 32% nationally and 45% in central cities. OCC still did not promulgate a regulation or take any other action to prohibit the

perpetuation of racial segregation under the public welfare standard.

74. Defendant OCC, in its approval of LIHTC investments under the public welfare standard, does not make any determination whether a national bank or related banking entity investment or other involvement in the ownership of LIHTC units will perpetuate racial segregation and subject low income minority persons to conditions of slum, blight, and distress. Defendant OCC approves many of the investment arrangements after a national bank has already committed to and made the investment for the LIHTC project.

75. Defendant OCC does not take the site and neighborhood conditions into account in its consideration of specific LIHTC projects in which a regulated bank or related banking entity is going to invest or has invested. Defendants' form for submission of the request for the public welfare approval of an investment in a LIHTC project does not require any information from which it could be determined whether the location will subject residents to racial segregation in minority areas marked by conditions of slum, blight, and distress. Defendant OCC's only public welfare requirement inquiry is a "Check at least one . . ." multiple choice question on page 3 of the OCC CD-1 form. 12 CFR § 24.3; 12 CFR § Part 24, Appendix 1, CD-1. The question simply asks for a checkmark next to the appropriate element of the four examples contained in 24 CFR § 24.3. The entire content of the form on this issue is:

The investment primarily benefits low- and moderate income individuals;

The investment primarily benefits low- and moderate income areas;

The investment primarily benefits other areas targeted by a governmental entity for redevelopment;

The investment would receive consideration under 12 CFR 25.23 as a "qualified

investment” for purposes of the Community Reinvestment Act. □

76. Neither Treasury nor OCC have any standards for the site and neighborhood conditions for a specific LIHTC project that would prevent racial segregation in low income minority areas marked by conditions of slum, blight, and distress.

Defendants’ lack of any regulations to prevent racial segregation in the tax credit program contrasts with their extensive regulation to prevent racial segregation in schools.

77. Defendant Treasury has a formidable array of regulations, reports, and audits to further the national nondiscrimination policy in its decisions to grant, deny, or revoke charitable status to private schools. The thorough Treasury process to prevent granting federal tax exempt status to schools that would perpetuate racial segregation is detailed in Internal Revenue Manual 4.76.8.3. A comparable process existed well before the regulation was enacted. Rev. Rul. 71-447, 1971-2 C.B. 230; Rev. Proc. 72-54, 1972-2 C.B. 834; Rev. Proc. 75-50, 1975-2 C.B. 587. Neither Treasury nor OCC have any such regulations, reports, guidelines, audits or other program elements to further the national nondiscrimination policy and legal duty to overcome historic patterns of racial segregation in housing.

78. Neither Treasury nor OCC has a single regulation, guideline, or process to prevent the use of federal tax credits for housing units to be located in racially concentrated, high poverty, low income areas marked by conditions of slum, blight, and distress that will thereby perpetuate the national legacy of racial segregation. Neither defendant has any regulation, guideline, or process setting standards for site and neighborhood conditions in general or in connection with public welfare investment approval for LIHTC projects.

79. Defendant OCC’s public welfare approval process does not include any assessment of

whether the proposed national bank or related banking entity's investment will use federal tax credits for housing units to be located in racially concentrated, high poverty, low income areas marked by conditions of slum, blight, and distress that will thereby perpetuate the national legacy of racial segregation.

Defendants' willingness to find racial segregation acceptable in their programs affecting housing and urban development is shown by their violations of the Executive Order 12892 duty to refer information suggesting a Fair Housing Act violation to HUD or to the Attorney General.

80. Executive Order 12892 requires Defendants to forward any information suggesting a violation of the Fair Housing Act in a program under their authority to the Secretary of Housing and Urban Development for processing under the Act. Where such facts or information indicate a possible pattern or practice of discrimination in violation of the Act, these facts shall also be forwarded to the Attorney General. Executive Order 12892, § 2-204. Defendants have received information suggesting a violation of the Fair Housing Act involving the LIHTC program.

81. ICP submitted a petition for rule-making concerning the LIHTC program to Defendant Treasury on March 12, 2008. The petition contained information that the LIHTC program was being operated in a manner that violated the Fair Housing Act. The petition also contained information that Treasury was violating its legal obligation to eliminate racial segregation and discrimination in the LIHTC projects. Defendant Treasury did not forward this information to the Secretary of Housing and Urban Development or to the U.S. Attorney General for processing under the Fair Housing Act.

82. The Poverty & Race Research Action Council submitted evidence that the LIHTC program was being administered in a manner that perpetuated racial segregation to Defendant

Treasury on October 26, 2010. Defendant Treasury did not forward this information to the Secretary of Housing and Urban Development or to the U.S. Attorney General for processing under the Fair Housing Act.

83. Racial segregation increased in LIHTC units located in the entire Dallas area after ICP notified Treasury that the Texas tax credit program violated the Fair Housing Act. As of 2006, 69% of the Dallas PMSA LIHTC units were in tracts with over 50% minority population. By 2012, 86% of the LIHTC units in the Dallas area were in census tracts that were 50% or more minority in population.⁹

Neither the public welfare requirement nor the availability of CRA credit require or explain the disproportionate locations of tax credit units in minority areas marked by conditions of slum, blight, and distress.

84. The public welfare standard does not require LIHTC units to be located in low or moderate income areas. Bank investments designed primarily for the welfare of low and moderate income families satisfy the public welfare standard no matter where the assistance to those families is provided. The public welfare standard can be satisfied whether or not the activity benefitting those families is in low and moderate income communities. 12 U.S.C. § 24 (Eleventh); 12 CFR § 24.3.

85. CRA credit is available for qualified investments providing affordable housing for low and moderate income persons whether or not the housing is located in a low or moderate income census tract.

(g) Community development means:

(1) Affordable housing (including multifamily rental housing) for low- or

⁹ This includes all units in the Dallas Metropolitan Division and is based on the HUD LIHTC data base.

moderate-income individuals; . . . 12 CFR § 25.12(g).

. . .

(t) Qualified investment means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development. 12 CFR § 25.12(t).

. . .

§25.23 Investment test.

(a) Scope of test. The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s). 12 CFR § 25.23.

Providing federal assistance to affordable housing for poor people does not justify placing that housing in racially segregated areas marked by conditions of slum, blight, and distress because that is where poor people already live.

86. The presence of large numbers of poor families in the low income, minority concentrated areas marked by slum, blight, and distress does not justify meeting the demand for affordable housing only by building units in those areas. The number of poor families in those areas is already the result, in part, of Defendants' prior and current discrimination in the administration of the LIHTC program.

87. The need and demand by poor people for affordable rental housing is not restricted to areas of minority and poverty concentrated areas. The need and demand for LIHTC units in predominantly White non-Hispanic, non-poverty concentrated Dallas areas is shown by the substantial number of Black families choosing to live in the limited number of tax credit units in those areas. Black families occupy approximately one third of the total occupied LIHTC units in 50% or greater White non-Hispanic census tracts in Collin, Dallas, and Denton counties according to the TDHCA Housing Sponsor Report for 2012.

88. The effect of using LIHTCs to develop units in predominantly minority, low income

concentrated areas marked by slum and blight extends beyond the neighborhood boundaries. The units developed in these areas are marketed to and used by low income minority families living not in the neighborhood but in the much larger market area for these units. These market areas in Dallas are often 40 to 70 or more square miles in area and frequently include hundreds of thousands of persons and tens of thousands of households. Because of the lack of affordable rental housing for poor families, the LIHTC units will be occupied by minority families from throughout the market area and from outside the market area.

89. The provision of federally assisted low income housing in locations marked by conditions of slum, blight, and distress violates national policy. Federal law does not justify limiting LIHTC assistance to areas of concentrated minority and poverty population.

90. HUD has set specific standards consistent with national policy and law to prevent the federal low income housing programs it administers from being used in racially segregated locations marked by slum, blight, and distress. One standard is the public housing site selection regulation that includes the following standards.

The neighborhood shall not be seriously detrimental to family life. It shall not be filled with substandard dwellings nor shall other undesirable elements predominate, unless there is a concerted program in progress to remedy the undesirable conditions. 24 CFR § 905.602(d)(7).

91. There are other HUD site and neighborhood standards to prevent the provision of federally assisted low income housing programs in conditions marked by slum, blight, and distress. *See e.g.*, HOME housing program, 24 CFR § 92.202(b); non-elderly handicapped housing, 24 CFR § 891.680; supportive housing, 24 CFR § 891.840; project based Section 8 housing, 24 CFR § 983.57(d), (e); housing choice vouchers, 24 CFR § 982.401(l).

92. National policy and law requires that federal agencies involved in housing and urban development related activities must take action to further the national goal of open, racially integrated residential housing patterns and to prevent the increase of segregation of racial groups into ghettos. 78 Fed. Reg. 43712, July 19, 2013.

93. Neither defendant follows or uses these HUD standards in their administration and regulation of the LIHTC program. Neither defendant uses comparable neighborhood standards to prevent the federally supported housing they regulate from contributing to the perpetuation of racial segregation in areas marked by conditions of slum, blight, and distress. Neither defendant takes any action in the administration of the LIHTC program to further the national goal of open, racially integrated residential housing patterns and to prevent the increase of segregation of racial groups into ghettos. 78 Fed. Reg. 43712, July 19, 2013.

Defendants' failure to affirmatively further fair housing allowed the State of Texas to impose statutory requirements that will perpetuate racial segregation of tax credit units in areas of slum, blight, and distress.

94. Local governments frequently oppose the location of tax credit or other low income affordable units outside of predominantly minority areas marked by conditions of slum, blight, and distress. *Inclusive Communities Project, Inc. v. City of McKinney, Tex.*, 2009 WL 2590121, E.D. Tex., August 18, 2009 (No. 4:08-CV-434); *Inclusive Communities Project, Inc. v. Town of Flower Mound, Tex.*, Slip Copy, 2009 WL 2591176, E.D. Tex., August 18, 2009 (No. 4:08-CV-433); *Inclusive Communities Project, Inc. v. Town of Flower Mound, Tex.*, 2009 WL 2145909, E.D. Tex., July 15, 2009 (No. 4:08-CV-433); *Dews v. Town of Sunnyvale*, 109 F.Supp.2d 526 (N.D. Tex. 2000); 78 Fed. Reg. 11467, February 15, 2013, HUD statement of Fair Housing Act legislative history.

95. In 2013 the State of Texas Legislature enacted two statutes that give substantial control over the location of LIHTC projects to local municipal and county government instead of the state housing credit agency, TDHCA. One statute requires TDHCA to provide a high number of points in favor of allocating 9% tax credits to applications that receive the explicit approval of the relevant municipal or local government. Tex. Gov't Code § 2306.6710(b)(1), (B). Another statute requires local municipal or county government approval before an application for 4% tax credits can be submitted to TDHCA. Tex. Gov't Code §67071(c).

96. The statutes are having the discriminatory effect of perpetuating racial segregation. In 2014, the first LIHTC application round after enactment, the developer of the proposed Art at Elysium non-elderly apartment complex applied for LIHTC units in a predominantly White non-Hispanic location in the City of Denton, Texas. The City of Denton refused to even put the developer's request for municipal approval of the LIHTC application on the City Council agenda. The application will not receive the LIHTC allocation for which it is otherwise eligible.

97. These local government restrictions are subjects that the LIHTC statute gives Defendant Treasury the authority to regulate. 26 U.S.C. § 42(m)(1) (subjects in the required allocation plan); 26 U.S.C. § 42(n)(3) (authority to regulate to prevent avoidance of rules). Defendant Treasury's violation of its obligation to affirmatively further fair housing includes its failure to promulgate any regulations to prevent state actions that will contribute to the perpetuation of racial segregation of tax credit units in predominantly minority areas marked by conditions of slum, blight, and distress. The regulation section governing state decisions on such matters is set out in full below. It is empty except for the section headings.

26 CFR § 1.42-17 Qualified Allocation Plan

(a) Requirements--(1) In general. [Reserved]

(2) Selection criteria. [Reserved]

...

98. Defendant Treasury's violation of its obligation to affirmatively further fair housing allowed the State of Texas to enact statutes governing the allocation of LIHTCs that will continue to perpetuate racial segregation of tax credit units into predominantly minority areas marked by conditions of slum, blight, and distress.

National banks are a substantial source of funding for tax credit units in the Dallas area.

99. OCC has approved all of the national bank or related national banking entities investments and related involvement in Dallas area LIHTC units as national bank public welfare investments.

100. National banks or related national banking entities providing investments, sponsorship, or guarantees for City of Dallas LIHTC units in racially segregated minority areas marked by slum, blight, and distress that OCC approved include, among others, JPMorgan Chase, Bank of America, Hudson Housing Capital, Wells Fargo, SunAmerica, PNC Bank, and the Royal Bank of Canada (RBC). Defendant OCC also approved national bank investments and related involvement in City of Dallas LIHTC units in racially segregated minority areas marked by slum, blight, and distress that included former national bank entities Nations Bank, Bank One, and Wachovia.

101. Defendants' actions approving national bank or related national banking entities investments and related involvement in LIHTC units in racially segregated minority locations

subject to slum, blight, and distress steers LIHTCs into those areas. Defendants' actions make the LIHTCs used to perpetuate racial segregation in areas subject to slum, blight, and distress unavailable in other, non-minority concentrated areas without slum, blight, and distress. Absent Defendants continuing to approve national bank or related national banking entities' investments and related involvement in LIHTC units in racially segregated minority locations subject to slum, blight, and distress, there would be more LIHTC units available for future use outside those areas by ICP's clients and other housing voucher participants.

102. Defendant Treasury's and Defendant OCC's continued application of policies for the regulation of the LIHTC program and national bank or related national banking entities investments and related involvement including ownership of LIHTC units directly affects the disproportionate distribution of those units by approving the use of LIHTC for units in locations that perpetuate racial segregation in areas marked by slum, blight, and distress. But for the defendants' actions, there is at least a reasonable probability that there would be a substantial increase in LIHTC units outside of these areas. Defendants' actions injure ICP and ICP's clients.

Instances of the Defendants' continued exercise of their supervisory and regulatory authority to approve continued investment in racially segregated minority locations marked by slum, blight, and distress.

Parks at Wynnewood, Dallas, Texas.

103. Bank of America, N.A. is providing \$19.2 million in 9% Housing Tax Credit equity to Wynnewood Family Housing, LP for Parks at Wynnewood. This investment was submitted for OCC approval in 2013. The defendants previously approved LIHTC investments at this development as meeting the public welfare requirement in 2012.

104. A previous allocation of LIHTCs for these units occurred in 1995 when the Parks at

Wynnewood received allocations of housing tax credits for the rehabilitation of the 50+ year old housing. Currently, Banc of America CDC, the current co-General Partner and a Limited Partner, is redeveloping the entire LIHTC development in several phases.

105. The location of Parks at Wynnewood in census tract 62 is in a Distress Indicator Index Level 4 location, the most distressed ranking under the U.S. Treasury 0 - 4 Distress Indicator Index.

106. HUD's Housing Choice Voucher Marketing Opportunity Index identifies census tract 62 as having no potential opportunity for housing choice voucher families seeking improved housing and neighborhood conditions. The HUD Opportunity Index is based on the existence of relatively low poverty rates, a stock of available affordable rental housing, economic opportunities, and a relatively low density of subsidized housing. HUD, "Housing Choice Voucher Marketing Opportunity Index: Analysis of Data at the Tract and Block Group Level," Office of Policy Development and Research, page 12, February 2011. The census tract for Parks at Wynnewood has a 0 Opportunity Index ranking under the HUD Opportunity Index, the lowest ranking available under that 0 - 100 index.

107. The census tract for the Parks at Wynnewood is 10% White non-Hispanic in population.

108. There is an existing concentration of tax credit units in census tract 62 caused by the large number of units in the Parks at Wynnewood. There is one LIHTC unit for every 18 persons in the census tract. The comparable ratio for the City of Dallas is one tax credit unit for every 65 persons according to the Texas Department of Housing and Community Affairs (TDHCA). The tax credit units were 48% of the total renter occupied units in the tract.

109. There are other federal housing assisted units in tract 62. As of December 31, 2012 there were 184 vouchers already in the census tract, 27% of the renter occupied units in the tract. There were 630 housing choice vouchers in the same Zip Code, 75224, as the Wynnewood project.

110. The City of Dallas Police Beat containing the project had a 2012 violent crime rate of 7.97 per 1,000 persons. This is higher than the violent crime rates during approximately the same time period for local areas such as the City of Allen, 0.62 violent crime rate, City of Frisco, 0.8 violent crime rate, City of Plano violent crime rate 1.31, City of McKinney violent crime rate 1.66, City of Richardson violent crime rate 1.66, and the City of Dallas, violent crime rate 6.75.

111. The Parks at Wynnewood is not currently covered by a community revitalization plan. The development's request for preference points under the community revitalization plan scoring item for the 9% tax credits was denied by TDHCA in 2013. TDHCA found that there was no community revitalization plan in place because the only revitalization proposed was the project itself. The project received the tax credit allocation without these points. The national bank is investing in the ownership of this project even though the area is not the subject of a comprehensive revitalization plan.

112. The City of Dallas blight indicator shows that 70% to 79% of the housing units in the census tract are blighted. The City of Dallas blight indicator places the census tract in the highest crime quartile, 4.

113. The UNT composite Blight indicator for the census tract is 3, Moderate Blight.

Bruton Apartments

114. Bank of America is providing \$16,719,921 in a LIHTC investment in the Bruton

Apartments located in City of Dallas census tract 120. The CDFI Distress Index ranking for tract 120 is 4, the highest distress level. The UNT composite Blight indicator for the tract is 4, the highest indicator value. The City of Dallas blight indicator shows that 80% or more of the housing units in the tract are blighted. The tract ranks in the 3rd quartile for crime, the second highest quartile. The tract was 8% White non-Hispanic in the ACS 2008 - 2012. OCC approved the investment under the public welfare standard in 2013.

1400 Belleview

115. The national bank related entity Hudson 1400 Belleview, LLC of Hudson Housing Capital committed the \$15,000,000 LIHTC investment capital for the 1400 Belleview project in December, 2012. Hudson Housing Capital is a LIHTC national investment fund making regulated public welfare investments in LIHTC units. The project is located in City of Dallas predominantly minority 2000 census tract 33. This location is a CDFI distress level 4 tract. The UNT Blight composite indicator for the location is 3, Moderate Blight.

Taylor Farms

116. Boston Capital, an institution regulated by Defendant OCC, invested in the Taylor Farms LIHTC project in Dallas, Texas. The Boston Capital investment that is for Taylor Farms is included on the OCC list of approved public welfare investments.

117. Taylor Farms is located in census tract 107.01. This tract is a Distress Indicator Index Level 4 location, the most distressed ranking under the U.S. Treasury 0 - 4 Distress Indicator Index.

118. HUD's Housing Choice Voucher Marketing Opportunity Index identifies the Taylor Farms' census tract as having no potential opportunity for housing choice voucher families

seeking improved housing and neighborhood conditions. The census tract has a 0 Opportunity Index ranking under the HUD Opportunity Index, the lowest ranking available under that 0 - 100 index.

119. The tract is 9% White non-Hispanic.

120. There were 360 tax credit units in the tract, 42% of the renter occupied units in the tract. There were 66 vouchers in the tract, 8% of the renter occupied units in the tract.

121. The Dallas Police Department Beat containing the project had a 2012 violent crime rate of 9.55. This is higher than the violent crime rates during approximately the same time period for local areas such as the City of Allen, 0.62 violent crime rate, City of Frisco, 0.8 violent crime rate, City of Plano violent crime rate 1.31, City of McKinney violent crime rate 1.66, City of Richardson violent crime rate 1.66, and the City of Dallas, violent crime rate 6.75.

122. This LIHTC project is located in an industrially zoned area adjacent to a Superfund site for lead contamination and other environmental hazards from the operation of a cement factory.

123. 70% to 79% of the housing units in the census tract are blighted according to the City of Dallas blight indicator.

Woodglen Park Apartments

124. City Real Estate Advisors, Inc., a LIHTC national investment fund making regulated public welfare investments in LIHTC units, made a 2012 investment of \$5.5 million in the Woodglen Parks Apartments LIHTC project.

125. The Woodglen Park Apartments is in the City of Dallas, census tract 109.03. This tract is a Distress Indicator Index Level 4 location, the most distressed ranking under the U.S.

Treasury 0 - 4 Distress Indicator Index.

126. HUD's Housing Choice Voucher Marketing Opportunity Index identifies Woodglen Park's census tract as having no potential opportunity for housing choice voucher families seeking improved housing and neighborhood conditions. The census tract has a 0 Opportunity Index ranking under the HUD Opportunity Index, the lowest ranking available under that 0 - 100 index.

127. The census tract is 4% White non-Hispanic.

128. There were 232 tax credit units in the tract, 30% of the renter occupied units in the tract. There were 174 vouchers in the tract, 23% of the renter occupied units in the tract. The overall condition of the tract is ranked Moderate Blight according to the UNT composite Blight Indicator.

129. There are 13 affordable housing projects with 2,885 units in a 3 mile radius from the Woodglen Park Apartments.

130. The Woodglen Park Apartments project is located in a City of Dallas community labeled by the Dallas Police Department as one of the locations in which a resident is most likely to be a victim of crime, a City of Dallas designated Crime Hot Spot.

131. The Dallas Police Beat containing the Woodglen Park Apartments project had a 2012 violent crime rate of 13.86. This is higher than the violent crime rates during approximately the same time period for local areas such as the City of Allen, 0.62 violent crime rate, City of Frisco, 0.8 violent crime rate, City of Plano violent crime rate 1.31, City of McKinney violent crime rate 1.66, City of Richardson violent crime rate 1.66, and the City of Dallas, violent crime rate 6.75.

Claims for relief

132. 42 U.S.C. § 3608(d) specifically provides that any federal agency having regulatory or supervisory authority over financial institutions shall administer its programs and activities relating to housing and urban development in a manner to affirmatively further the purposes of the Fair Housing Act. Treasury and OCC are federal agencies by statute that have regulatory and supervisory authority over financial institutions. Treasury's and OCC's actions regulating the LIHTC program and approving financial institutions' investments in LIHTC units are programs and activities relating to housing and urban development. Treasury and OCC violate 42 U.S.C. § 3608(d) by:

- continuing to approve investments in Dallas area LIHTC units located in racially segregated minority areas marked by conditions of slum, blight, and distress,
- refusing to take any action to consider the effect of either the allocation of the LIHTCs or the approval of the investment in LIHTC projects on the racial and socio-economic composition of the surrounding area,
- refusing to adopt any affirmatively further fair housing standards relating to improving integrated living patterns, overcoming historic patterns of segregation, and reducing racial and ethnic concentrations of poverty in the LIHTC program.

133. Treasury's actions regulating the LIHTC program and OCC's actions approving national bank investments subject low income minority families to conditions of racial segregation marked by slum, blight, and distress and make dwellings unavailable in low poverty, non-minority concentrated areas without slum, blight, and distress because of race, color, and national origin (Hispanic). This violates 42 U.S.C. § 3604(a). Treasury and OCC's policies and

practices for regulating and approving investments in LIHTC projects are discriminatory housing practices that perpetuate racial segregation by making dwellings unavailable in predominantly White, non-Hispanic areas without slum, blight, and distress. Treasury's policy and practice refusing to regulate the LIHTC program to prevent racial segregation and to accomplish affirmatively furthering fair housing is the Treasury's discriminatory housing practice challenged in this complaint. OCC's policy and practice approving national bank investments in minority concentrated areas marked by conditions of slum, blight, and distress is the OCC discriminatory housing practice challenged in this complaint. OCC's approval process is conducted without standards that would prevent racial segregation and accomplish affirmatively furthering fair housing.

134. There are no legitimate interests served by Treasury's and OCC's actions regulating the LIHTC program and approving national bank investments in LIHTC units in locations which subject low income minority families to conditions of racial segregation in predominantly minority areas marked by slum, blight, and distress and that do not contribute to a concerted community revitalization plan for the neighborhood in which the units would be located.

135. Any legitimate public welfare interests or Community Reinvestment Act interests served by national bank investments in LIHTC units located in predominantly minority areas marked by slum, blight, and distress in the City of Dallas can be served by less discriminatory alternatives. One such less discriminatory alternative is encouraging and approving national bank investments in LIHTC units in neighborhoods that do not subject low income minority families to conditions of racial segregation in predominantly minority areas marked by slum, blight, and distress. This would satisfy both the public welfare and the CRA standards without the

discriminatory effect of perpetuating racial segregation.

136. Treasury's and OCC's actions regulating the LIHTC program and approving national bank investments in LIHTC units in predominantly minority locations which subject low income minority families to conditions of racial segregation marked by slum, blight, and distress discriminate against persons because of race, color, and national origin (Hispanic) by making dwellings unavailable in low poverty, non-minority concentrated areas without conditions of slum, blight, and distress and violates 42 U.S.C. § 3604(a). This allegation of actions making dwellings unavailable because of race is based on the evidence showing that defendants would not have completely refused to promulgate regulations to prevent the perpetuation of racial segregation for so long unless defendants held the view that segregation and discrimination were acceptable. This allegation of actions making dwellings unavailable because of race is based on the evidence that defendants would not have so frequently acted to approve national bank investments using LIHTCs in locations that perpetuated racial segregation unless defendants held the view that racial segregation and discrimination were acceptable. Defendants did not attempt to use their administrative and regulatory authority to eliminate or otherwise address the legacy of racial segregation in federally supported low income affordable housing. The record compels a conclusion that Defendants acted at least in part because of a willingness to accept racial segregation in the LIHTC program.

137. The allegation that defendants' actions are consistent with a willingness to accept racial segregation is based on the facts pleaded in this complaint including:

- the discriminatory effects of Treasury's and OCC's actions;
- the historical background of the use of government assisted housing to perpetuate racial

segregation;

- the sequence of the continued use of the policy and practices despite the evidence of discriminatory impact;

- the failure to take into account factors usually considered important to the welfare of low and moderate income families and communities;

- evidence of a subjective decision making process, and the failure to take the obligation to affirmatively further fair housing into account in that decision making process;

- the failure to monitor for evidence of racial discrimination in the geographic distribution and occupancy characteristics of the LIHTC units acquired as a result of OCC's public welfare determinations compared to the monitoring done by Treasury to enforce the national policy against racial discrimination in schools supported by non-profit organizations regulated by Treasury;

- the failure to make inquiries into the neighborhood and site conditions of the locations of the banks' LIHTC investments proposed for public welfare approval; and

- the failure to set standards for the neighborhood and site conditions of the locations of the banks' LIHTC investments proposed for public welfare approval.

138. Treasury's and OCC's actions regulating the LIHTC program and approving national bank investments in LIHTC units in locations which subject low income minority families to conditions of racial segregation in minority communities marked by slum, blight, and distress make housing opportunities in low poverty, non-minority concentrated areas unavailable because of race, color, and national origin (Hispanic) in violation of the Fifth Amendment to the Constitution of the United States and 42 U.S.C. § 1982.

139. The allegations of racial segregation are based on the combined factors of race and ethnicity of:

- the majority White non-Hispanic population in the areas from which the LIHTC units are disproportionately excluded;
- the predominantly Black or African American or Hispanic or Latino minority areas in which the tax credit units are disproportionately located; and
- the disproportionately Black or African American or Hispanic or Latino minority characteristics of the population that is eligible for and that is actually occupying LIHTC non-elderly units in the Dallas area.

Prayer for relief

140. ICP requests the Court to provide the following injunctive relief that accomplishes the remedial goals ensuring that the current violations cease and that prevent future violations that adversely effect ICP and ICP's clients:

1) enjoin Treasury's and OCC's approval of investments in LIHTC projects by regulated national bank entities if such investments will make dwelling units available in racially concentrated minority areas marked by conditions of slum, blight, and distress unless the development of the units will contribute to a concerted community revitalization plan and program. The plan and program must provide for the actual revitalization of the neighborhood in a substantive and meaningful way that addresses the factors causing the conditions of slum, blight, and distress and results in housing and neighborhood conditions similar to those in non-minority concentrated neighborhoods located in Dallas area census tracts that would be ranked from 0 through 2 under Treasury's 2012 Community Development Financial Institutions Fund

Distress Indicator Index;

2) enjoin Treasury and OCC to require that the profits, dividends, and other distributions from tax credit investments or interest income from debt investments received by banks from their public welfare investments in LIHTC projects be devoted in part to housing mobility counseling services. These services should be provided to the voucher families residing in City of Dallas LIHTC units located in predominantly minority and low income concentrated areas marked by conditions of slum, blight, and distress. The assistance should include the housing mobility counseling and financial assistance to obtain units not located in such areas. This requirement is similar to the OCC's long standing but now repealed requirement that the benefits of bank investments permissible only because they meet the public welfare test of 12 U.S.C. 24 (Eleventh) be restricted for qualifying public purposes. 12 CFR § 24.4(a) (4). 58 FR 68464. See paragraphs 69, 72 above;

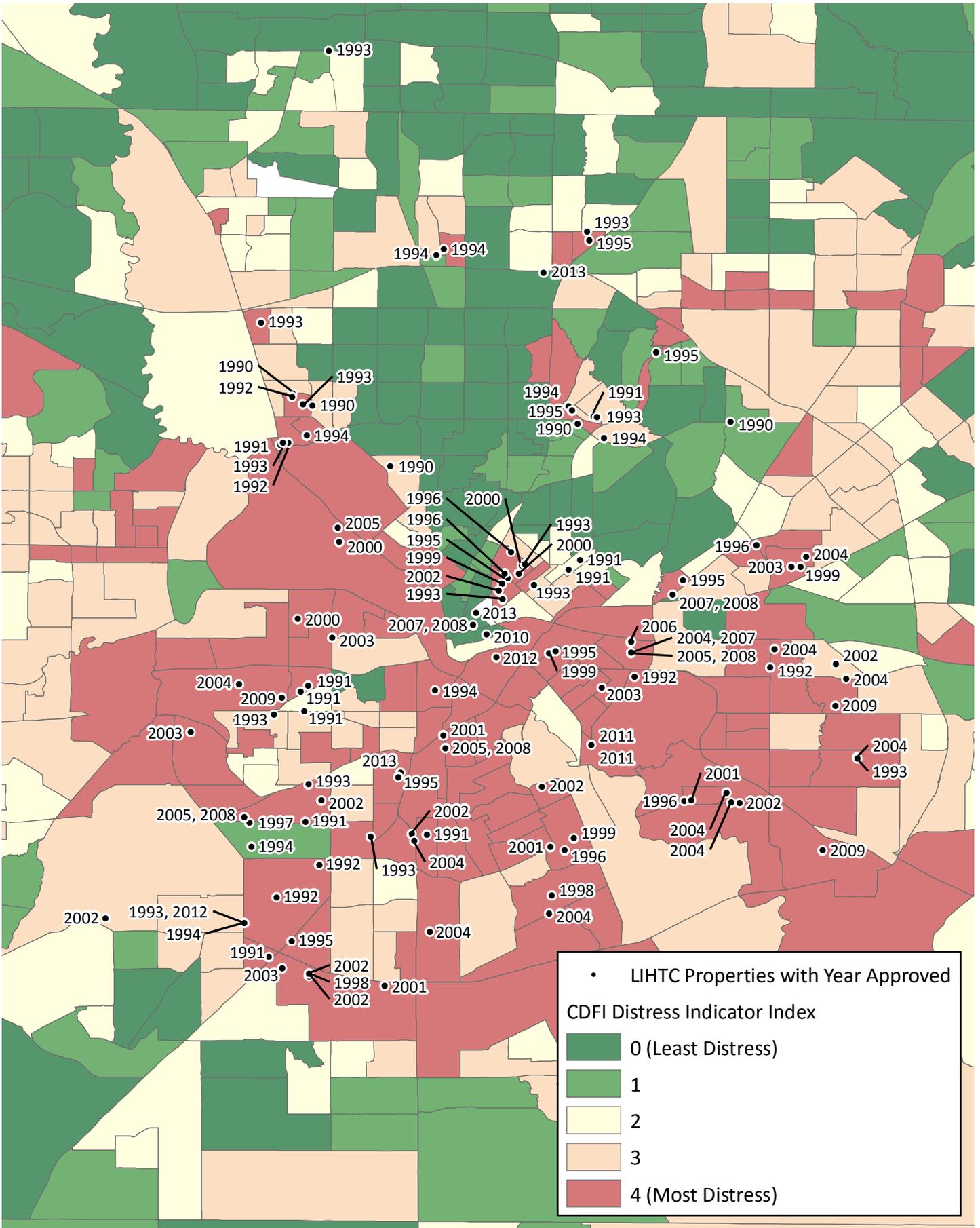
3) enjoin Treasury to provide guidelines and incentives that will focus on providing national bank investments in LIHTC units in locations that do not subject low income minority families to conditions of racial segregation in minority areas marked by slum, blight, and distress and that expands the supply of LIHTC units outside of those areas;

4) enjoin Treasury to prohibit the use of non-federal eligibility and selection criteria for LIHTC allocations in the Dallas area which criteria interfere with tax credit allocation decisions that affirmatively further fair housing whether or not those criteria violate 42 U.S.C. § 3604. This includes prohibiting the use of non-federal eligibility and selection criteria for LIHTC allocations in the Dallas area which criteria interfere with tax credit allocations that would affirmatively further fair housing whether or not those criteria violate 42 U.S.C. § 3604;

5) award any other appropriate relief;

6) award attorney fees, litigation expenses, and costs.

City of Dallas LIHTC Properties and CDFI Distress Indicator Index



Sources: CDFI Distress Indicator Index, Census 2000 Tracts, TDHCA 2014 LIHTC Inventory.

Respectfully Submitted,

/s/ Michael M. Daniel

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