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February 14, 2005

TRANSMITTED VIA ELECTRONIC MAIL

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Re: Draft 2005 QAP

Dear Ms. Sylvester:

We are writing to express our concern about the lack of strong affirmative civil rights provisions in the draft 2005 Qualified Allocation Plan ("QAP") governing distribution of Low Income Housing Tax Credits ("LIHTC's") in the State of Maryland. As you are aware, the U.S. District Court in Baltimore ruled last month in *Thompson v. HUD* that the federal government has failed over several decades to promote regional housing opportunities for low income minority residents of Baltimore, a failure which has contributed to a racially and economically segregated region and deprived thousands of inner city residents of the opportunity to move to areas with lower poverty and segregation, more plentiful employment, and higher performing schools.

Like the federal government, the State of Maryland and the Maryland Department of Housing and Community Development (the "Department") have the authority to operate on a regional basis, and have the obligation, under the Fair Housing Act, to affirmatively further fair housing. *See* 42 U.S.C. § 3608.



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Patterns of Segregation in the LIHTC Program

As set out on the accompanying maps, the past pattern of LIHTC siting in Maryland reinforces patterns of metropolitan segregation by channeling LIHTC funds – and the predominantly minority and low-income families who disproportionately need such subsidized housing – into more segregated, higher poverty neighborhoods and school districts. We have looked initially at the data for 1987-2001, because that is the data, which is reported by HUD. We are in the process of obtaining address data for the more recent LIHTC developments. Note that the data presented includes both elderly and family housing combined, because the HUD data does not distinguish between these types of developments. However, we believe that the pattern of concentration will be even stronger when elderly projects are removed from the list.

Statewide: As seen in the accompanying maps, LIHTC units are spatially correlated with higher poverty areas in Maryland. This is true for both the entire inventory of LIHTC units, as well as units built between 1995 and 2001 that are 2 bedrooms or larger in size. As indicated by all maps, areas with poverty rates of less than 5% contain the lowest distribution of LIHTC units in the State. Approximately 24% of all LIHTC units were located in high poverty census tracts (with poverty rates of 20% or more). Over 5% of LIHTC units were located in concentrated poverty census tracts (with poverty rates of 40% or more). Also, the average LIHTC unit is located in a census tract which is almost 43% African American. This rate is significantly higher (50% higher) than the representation of the African American population in Maryland (in 2000 Maryland was 27.9% African American).

Baltimore region: In the Baltimore region – the site of the *Thompson* case – the pattern of project siting is even more concentrated, with over 40% of the area's LIHTC units (family and elderly combined) located in high poverty areas (with poverty rates of 20% or more). More than 1/3 of all LIHTC units in the Baltimore region were in census tracts that were substantially African American (more than 80% African American in 2000). As the accompanying maps show, the race and poverty concentration of neighborhoods selected for LIHTC projects often overlaps. This segregated siting pattern continues even in more recent developments. For LIHTC family-sized units built between 1995 and 2001 (larger than 2 bedrooms in size), nearly 40% were in high poverty areas and 38% were located in census tracts that were more than 80% African American.

The performance of the LIHTC program in metropolitan areas is of particular concern. Since such areas have the largest existing concentrations of high poverty and predominantly African American census tracts, the LIHTC program has the greatest potential to deconcentrate such areas and desegregate metropolitan areas generally. Instead, the data show that the LIHTC program is reinforcing existing segregation.

How Maryland's QAP Could Address Such Concerns

Maryland's draft QAP does little to reverse these trends, and will have the foreseeable effect of continuing to support use of these limited housing funds in segregated areas, thus limiting the ability of low income families to move to lower poverty communities. We urge the Department to go back to the drawing board and develop a QAP that addresses the concerns raised in *Thompson* and that includes affirmative measures to

promote LIHTC family development in low-poverty areas accessible to inner city neighborhoods. Such measures could include, but are not limited to:

Annual, substantial set-asides for family projects to be located in metropolitan area communities with low poverty concentration;

Requirements that all developments be open to all applicants, with strong affirmative marketing and no residency preferences;

More flexible site control and financing standards for scattered site developments, so that they are financially competitive with larger single-site developments;

Elimination of local support as a threshold requirement in communities traditionally resistant to low income housing; and,

Bonus points awarded in the QAP for housing acquisition in suburban areas where there are serious zoning obstacles.

Utilizing Other Programs to Encourage LIHTC Developments Outside Areas of Concentrated Poverty

In addition, we urge the Department to utilize its other programs to encourage development of more LIHTC housing in suburban areas. Some helpful steps could include:

Sources of financing that are earmarked for suburban use in developments that will be accessible and open to city residents;

Increased developer fees and administrative support for non-profit developers facing significant community opposition;

Efforts to persuade the IRS to permit suburban areas with serious zoning obstacles or high land costs to be designated as “difficult to develop areas”; and,

Combining tax credit programs with land write-down programs to acquire development sites in lower poverty areas.

Improved Data Collection

Finally, we urge the Department to improve its data on LIHTC developments so that it can better assess the fair housing implications of its policies. For example,

Each LIHTC development should be identified as a family development, elderly development, or other special category so that location and demographic data may be easily assessed (the absence of this basic information makes it difficult to assess the true degree of racial concentration in the program);

Race/ethnicity data should be reported for all households and applicants;

Race/ethnicity data should be reported for census block, census tract, and metropolitan statistical area ("MSA") of LIHTC projects;

The income mix of LIHTC applicants and tenants residing in the development should be reported;

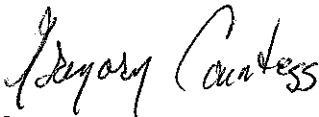
The number of section 8 voucher holders residing in each property should be reported (26 U.S.C. § 42(h)(6)(iv) prohibits discrimination against Section 8 voucher holders in LIHTC properties); and,

For family developments, the distribution of bedroom sizes in all units should be reported.

Further in accordance with *Carter v. Maryland Management*, 377 Md. 596 (2003) and IRS Revenue Ruling 2004-82, the Extended Low Income Housing Covenant should include a prohibition during the extended use period against the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit and any increase in the gross rent of any low-income unit not permitted under §42. The ELIHC should also contain a statement by the sponsor voiding the provisions of any lease that is not in compliance these prohibitions. To ensure that residents are informed, the agency should require the submission and use of a lease complying with these prohibitions to the agency for approval.

Thank you for the opportunity to present these comments. We are sorry we cannot be there in person for the public hearing, but we would be happy to meet to discuss this matter further, if that would be helpful to the Department.

Sincerely,



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