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VIA FASCIMILIE & EMAIL

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Re: Comments to the 2006 QAP

Dear Mark:

This comment letter serves to follow up with our previous discussions regarding NCHFA's compliance with civil rights laws. The comments here reiterate comments made by Legal Aid of North Carolina, North Carolina Housing Coalition, and the North Carolina Justice Center in a letter dated November 15, 2004. Both letters focus on the collection of demographic data of tenants in LIHTC units.

On July 18, 2005, a working group of state housing advocates met to discuss priorities for the 2006 QAP and Consolidated Plan. At a subsequent meeting with you on July 28, 2005, we communicated our priorities to you. We are glad to see that the current draft of the QAP incorporates some of our concerns, including the prohibition of preferences for tenants residing in a development's local government jurisdiction.

With regard to the collection of racial data, you asked that we provide feedback on the question of whether imposing the mandatory collection of racial data would violate any federal or state fair housing law. Based on our research, it is clear that collection of such data has never been held to be illegal. In fact, pursuant to Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq., we believe that the data collection is requisite to NCHFA's duties as a public agency and that failure to collect the data may violate Title VIII.

Title VIII prohibits discrimination against individuals who are members of the Act's protected class. Title VIII also imposes a duty to affirmatively further fair housing. As applied to the Department of Housing and Urban Development, this affirmative duty has been interpreted as requiring the collection of data of tenants' racial characteristics. This requirement currently exists in several of HUD's housing

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programs such as HOME, Section 8, CDBG, and Public Housing. As explained in the 2004 letter: "Armed with reliable demographic data, NCFHA could give an applicant a more favorable review for demonstrating 'the extent to which the proposed development will expand housing opportunities outside low income, minority areas.' This language also derives from the HUD NOFA, which specifically references HUD Site and Neighborhood Standards, 24 U.S.C. § 891.125(b) and (c)." Furthermore, other states have imposed such a requirement. For example, the Texas Department of Housing and Community Affairs require the collection of data about the racial characteristics of tenants in LIHTC-funded units, see 10 Tex. Admin. Code § 60.1 (h)(10).

Collecting the data fits within the purposes of NCHFA's enabling statute. One objective of Chapter 122A is to increase the supply of residential housing for lower income persons and families, see 122A-A2. Without collecting the data, there is no way to tell whether NCHFA is carrying out its statutory function to increase the supply of affordable rental housing for all low income individuals. We do not know and cannot monitor the extent to which racial discriminatory practices may be occurring in LIHTC-funded units.

It is important to distinguish the collection of racial data regarding existing tenants from a property manager's inquiry regarding the racial characteristics of housing applicants. Certainly we agree that the latter practice raises fair housing concerns, but the former, occurring at an entirely different stage in the rental process, is completely consistent with the duty to affirmatively further fair housing. We also recognize that the Agency has more technical concerns, apart from the legal issue we address here, about the capacity of your computer systems to report such information in a useful manner. We are hopeful that you can also make progress in addressing those concerns.

Thank you for the opportunity to explore ways in which NCHFA can improve its administration of the LIHTC program. Please let me know if you have any further questions.

Sincerely yours,



Anita S. Earls
Director of Advocacy