

August 25, 2011

Derek Douglas  
Coordinator, Rental Housing Policy Group  
Domestic Policy Council  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Re: Civil Rights and “Compliance Harmonization”

Dear Mr. Douglas,

We are writing to provide input to the new Rental Housing Policy Group, that we understand is developing recommendations for the OMB “Compliance Harmonization” initiative to reconcile various housing development rules across several federal agencies. ([http://www.huduser.org/portal/aff\\_rental\\_hsg/Compliance\\_Fair\\_Housing\\_MOUs.pdf](http://www.huduser.org/portal/aff_rental_hsg/Compliance_Fair_Housing_MOUs.pdf)).

Specifically, we have reviewed a memorandum drafted by Jack Malgeri at HUD recommending certain followup to the 2000 Memorandum of Understanding among HUD, Treasury, and the Department of Justice, and a research paper on the Low Income Housing Tax Credit (LIHTC) by Keren Horn and Kathryn O’Regan.

Our initial reaction to these two documents is disappointment. It is extraordinary that the federal government is continuing to look for ways to avoid imposing basic civil rights requirements on our largest low income housing development program, the LIHTC. Both Title VI and Title VIII apply fully to the Department of Treasury and its housing programs, and yet after more than 40 years, the Department has no Title VI or Title VIII rules in place.<sup>1</sup>

Mr. Malgeri’s memorandum acknowledges the lack of civil rights rules for the LIHTC program, particularly in the area of affirmative fair housing marketing and site selection, but none of the specific recommendations in the memorandum contemplate development of such rules. Instead, Mr. Malgeri recommends a lengthy dialogue and outreach process with industry representatives, whom he acknowledges may be opposed to stronger rules. Of course, we have no objection to continuing dialogue with our friends in the housing and community development industry, but this is hardly a model for federal leadership on these issues.

Similarly, the Horn/O’Regan paper reads as a lengthy “apologia” for LIHTC program siting policies that have perpetuated segregation and failed to affirmatively further fair housing. The methodology of the paper – and the questions it asks – appear to be designed to show that the program is not as bad as previous studies have made it look.<sup>2</sup>

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<sup>1</sup> We have commented in detail on these issues in the past, most recently in an October 26, 2010 letter to the Department of Treasury, see [www.prrac.org/pdf/civil\\_rights\\_letter\\_to\\_Michael\\_Barr\\_10-26-10.pdf](http://www.prrac.org/pdf/civil_rights_letter_to_Michael_Barr_10-26-10.pdf).

<sup>2</sup> See, e.g., Buron, Larry, Sandra Nolden, Kathleen Heintz and Julie Stewart, *Assessment of the Economic and Social Characteristics of LIHTC Residents and Neighborhoods* (Abt Associates, Inc., February 28, 2000); Freeman, Lance, “Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s,” *Census 2000 Survey Series* (The Brookings Institution,

For example, the paper asks “where would poor people have lived if they weren’t living in a segregated LIHTC property?” and the answer, unsurprisingly, is “in a similarly segregated neighborhood.”<sup>3</sup> This is an extremely low hurdle for a federal housing program that is required to affirmatively promote integration.<sup>4</sup> Similarly, the paper makes the obvious point that the degree of segregation in the program depends upon the demographics of the residents of each building, in relation to neighborhood demographics. But the examples given, from three states, demonstrate how the program perpetuates existing segregation – and actually make the case for strong affirmative marketing rules (which are currently non-existent in the program). Finally, the paper looks at overall declines in metropolitan segregation and somehow links these declines to LIHTC investments, though it disclaims any causal relationship. We agree that in certain gentrifying neighborhoods, and in the case of carefully targeted comprehensive community development, LIHTC developments can be an important ingredient in promoting stable economic and racial integration in a neighborhood – but there are no rules, guidelines, or incentives in the LIHTC program to ensure that this will happen. Overall, in spite of its efforts to deflect criticism of the program, the Horn/O’Regan paper confirms much of the prior research and supports the need for greater civil rights intervention in the LIHTC program.

In addition to the basic need for civil rights rules in the LIHTC program, we encourage the Rental Housing Policy Group to examine broader incentives and program structures in low income housing development programs that continue to perpetuate segregated outcomes. We have previously catalogued some of these mechanisms in a December 2009 memorandum to Secretary Donovan titled “Analysis of Impediments to Fair Housing in HUD’s Affordable Housing Programs.”<sup>5</sup> We are also developing some of our own recommendations on LIHTC site selection and affirmative marketing, which we would be happy to share at the appropriate time.

We hope that these comments are helpful, and we welcome the opportunity to meet with members of the Rental Housing Policy Group in the near future.

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2004); Jill Khadduri, Larry Buron, and Carissa Climaco, *Are States Using the Low Income Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?* (Abt Associates, 2006); Oakley, Deidre, “Locational Patterns of Low-Income Housing Tax Credit Developments: A Sociospatial Analysis of Four Metropolitan Areas,” *Urban Affairs Review* (2008); Pfeiffer, Deidre, *The Opportunity Illusion: Subsidized Housing and Failing Schools in California* (The Civil Rights Project 2009); Williamson, Anne R., Marc T. Smith, and Marta Strambi-Kramer, “Housing Choice Vouchers, the Low Income Housing Tax Credit, and the Federal Poverty Deconcentration Goal,” *Urban Affairs Review* (2009); *Updating the Low-Income Housing Tax Credit Database: Projects Placed in Service Through 2001* (U.S. Department of Housing and Urban Development, Office of Policy Development and Research, December 2003). See also Callison, William, “Achieving Our Country: Geographic Desegregation and the Low-Income Housing Tax Credit”, 19 *S. Cal. J. Law & Social Justice* (2010); Orfield, Myron, “Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit,” 58 *Vand. L. Rev.* 1747 (Nov. 2005); Roisman, Florence, “Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws,” 52 *Miami L. Rev.* 1011 (1998); Sarah Bookbinder et al, *Building Opportunity: Civil Rights Best Practices in the Low Income Housing Tax Credit Program* (PRRAC and Lawyers Committee for Civil Rights, 2008).

<sup>3</sup> This part of the paper’s analysis relies on tax credit units built between 1987 and 1999 – only about half of the total units in the program, and a sample that is likely less segregated than units built after 1999.

<sup>4</sup> It should be noted that Horn and O’Regan expressly decline to assess the LIHTC program’s affirmatively furthering fair housing obligations – page 7, fn 8.

<sup>5</sup> [http://www.prrac.org/pdf/HUD\\_Impediments\\_Memo.pdf](http://www.prrac.org/pdf/HUD_Impediments_Memo.pdf)

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