

December 18, 2002

Catherine Racer,

Associate Director

Department of Housing and Community Development

One Congress Street

Boston, MA 02114

Dear Ms. Racer,

My name is Barbara Rabin. I am an attorney at Greater Boston Legal Services. I appreciate the opportunity to talk to you today representing the Fair Housing Center of Greater Boston. (FHC). The mission of the FHC is to promote equal housing opportunities for all people in Greater Boston through education, legal enforcement actions, and public policy advocacy addressed to agencies responsible for creating and implementing local, state, or federal statutes and regulations.

The FHC applauds the good quality housing for low income people that the LIHTC program is helping to create within the central city and throughout the Boston metropolitan area. But additionally, in keeping with the FHC's mission, we strongly encourage you to administer your program, within the constraints of the IRS rules, in a way that expands the now sharply restricted opportunities for low income persons of color to make housing choices broadly throughout Greater Boston's housing market, including locations **outside** of areas characterized by high levels of poverty and by racial and ethnic segregation.

The need to expand housing choices is especially great in the Boston metropolitan area. The area as a whole is neither poor nor racially impacted. However, this comparatively affluent metropolitan area is more segregated by both race and income than are most large U.S. metropolitan areas. It is no secret to you that living in racially segregated neighborhoods of concentrated poverty compounds the severity of problems faced by poor individuals - limiting their chances to send their children to excellent schools, to find out about and have access to good jobs, to be safe in their homes, to benefit from a high level of local services that only municipalities with high residential tax bases can provide.

This is the third year that the Fair Housing Center has testified at a DHCD hearing. Mostly what I'd like to do today is to summarize what the FHC has said in the past, to state that our concerns remain basically the same as they have been, and finally in the appendix to list some of the federal and state statues, regulations, executive orders, and cases indicating DHCD's legal obligations to operate the LIHTC program in a manner that does not discriminate and that actively and affirmatively furthers fair housing.

**DATA AVAILABILITY**

It is not easy for the general interested public to evaluate the extent to which DHCD fulfills its civil rights obligations under the LIHTC program. DHCD may in fact collect and use substantial relevant data to plan and to evaluate its civil rights performance, but information concerning significant key civil rights variables is not on the web site, is not to my knowledge published, and is not meaningfully organized by Spectrum, DHCD's compliance monitoring contractor. Therefore, I acknowledge that some of my conclusions, based only on partial and circuitously developed information, may not be entirely accurate. And I very much appreciate the invitation that has again been extended to discuss some of these issues with key DHCD staff persons.

The following types of data do not appear to be tabulated by DHCD:

1. Project occupancy by race/ethnicity

Within the City of Boston this data **is** in fact largely available. It is collected pursuant to the decision in NAACP, Boston Chapter v. HUD in which the U.S. Court of Appeals for the First Circuit required in 1987 that projects located in predominantly white neighborhoods have an affirmative marketing plan to attract tenants to the project in the same proportion that members of particular race and ethnicity groups reside city-wide. Currently the goal for projects in predominantly white neighborhoods is to have a tenant population that is 23.8% Black and 10.8% Hispanic. Examination of last year's project occupancy data suggested that most projects had met the legal standard but that two projects were seriously non-compliant, and the performance of four additional projects was questionable. Moreover, last year at this time about 10 percent of the project managers, including managers of some of the largest developments in the city, had not yet submitted their tenant occupancy data to DHCD. We do not know if your currently available data is now up to date.

Managers of projects in the Boston metro outside of the City were not required last year to submit occupancy data by race and ethnicity. Yet DHCD needs such data annually to determine whether its LIHTC program is fulfilling DHCD's duty to affirmatively further fair housing. To compensate for these information gaps the Fair Housing Center prepared its own estimates by locating as many as possible of the non-Boston projects in the appropriate census block, and then ascertaining race and ethnicity data from the U.S. Census. We had then to make the assumption, sometimes accurate but probably sometimes not, that race and ethnicity data for the block and for the project were about the same.

2. Tenant Type

Last year we were able to obtain from a consultant to Citizens Housing and Planning Association (CHAPA) tenant type information for approximately 80 to 85% of the Boston area LIHTC inventory. We located no information for 15 to 20% of that inventory and so could not determine whether these served families, elderly, individuals with special needs, or others. It would be useful to be able to obtain complete information about tenant type from DHCD.

3. Each project's street address and the CT in which it is located

We believe DHCD records are organized by the name and address of the developer. While undoubtedly useful for many purposes, such records do not facilitate analysis of project-specific data. If street addresses and census tract or block numbers for each project were also collected and made publicly available, it would be helpful to organizations such as the Fair Housing Center.

4. Section 8 Mobile Vouchers

DHCD's compliance contractor, Spectrum, identifies whether or not each individual tenant is a Section 8 voucher holder. Apparently it does not aggregate the number of individual tenants with vouchers within a project. Since IRS rules require that LIHTC allocating agencies give preference to projects serving the lowest income tenants, and since very low income households who have a Section 8 voucher can afford to live in a LIHTC project which they could not otherwise afford, it would seem useful to both DHCD and the interested public if DHCD directed Spectrum to sum the number of voucher holders within each project.

**LIHTC PROJECTS: LOCATION, LOCATION, LOCATION**

I am displaying the same four maps I showed you last year. They indicate the distribution of the Boston area population by race and by income. The maps depict: Distribution of combined Black and Hispanic population in the City of Boston; Distribution of combined Black and Hispanic population in the Boston metropolitan area served by the Metropolitan Area Planning Council; Median income in census tracts in the City of Boston; Median income in census tracts throughout the Boston metropolitan area served by the Metropolitan Area Planning Council.

Superimposed on each of these maps are DHCD's LIHTC projects. The shape of each green symbol indicates whether the particular project serves elderly (cross), family (triangle), mixed family and elderly (square), or an unclassified population (circle) whose characteristics could not be determined from available public records. These likely include family, elderly, and special needs populations. Given the needed information, many projects in the unclassified category could probably be apportioned to the category in which it more appropriately belongs.

Locational Distribution of Total LIHTC Housing

**Race and Hispanic Ethnicity** As of last year, the LIHTC stock in metro Boston consisted of at least 145 separate projects. More than two-thirds (101 of 145) of these projects are in the City of Boston. Fewer than one-third are within metro Boston but outside of the city. However the analysis below is limited to those projects, 84 within the city and 34 outside the city but within the Boston metro, whose addresses the Fair Housing Center could ascertain and therefore determine the census tracts in which they were located.

The analysis indicates that almost two-thirds of LIHTC projects within Boston are very heavily concentrated in CTs whose residents are predominantly Black and Hispanic; but in the metro area outside of Boston only 6% of the LIHTC projects are located in such CTs. The two paragraphs below give further details of Black and Hispanic concentration.

Almost two-thirds of the Boston projects (52) are in census tracts (CTs) with combinedBlack and Hispanic populations exceeding 50% of the total*.* Eleven percent of the Boston projects (9) are located in CTs with combined Black and Hispanic population lower than 10%. In contrast, only 6% (2) of the metro projects outside of the city are in tracts with combined Black and Hispanic population exceeding 50% of the total. In further contrast with the City of Boston, half of the non-city projects (17) are in CTs with combined Black and Hispanic population lower than 10 percent.

Locational Distribution of Total LIHTC Housing:

**Income** Almost half (49%) of TC projects within the City of Boston are in census tracts in which the median income is below 50% of area median income (ami). Only 1% of City-located TC projects are in CTs in which the median income is over 120% of ami. TC projects outside the city again present a sharp contrast. Not a single suburban LIHTC project is located in a CT whose median income is below 50% of ami. Moreover, 17% of projects outside the city are in CTs in which the median income is over 120% of AMI.

Differencesin TC Housing Location Patterns Between Familyand ElderlyProjects and Between City and Suburban Projects

Overall, most LIHTC projects tend to be located primarily within Boston, and in Boston primarily in predominantly Black and Hispanic neighborhoods that are also very poor (median income of less than 50% of AMI). This concentration in very poor City of Boston neighborhoods of color is, unfortunately, greatest for the family part of the TC inventory. Boston's elderly TC projects are located in census tracts that are whiter and have a significantly higher median income than do the census tracts in which most family projects are located.

Outside of the city the pattern is very different, especially for families. None of the TC family projects is located in a very poor neighborhood, and less than a quarter of the family projects are in a CT in which the population is over 25% Black and Hispanic. Elderly suburban TC projects, as compared to family suburban TC projects, are located in even higher income tracts and in tracts with somewhat lower percentages of Black and Hispanic persons. Therefore, if most parents who were in a position to exercise some choice would not choose a neighbohood environment for their children that was very poor, and was also racially isolated, then the Boston component of the LIHTC family housing program, even though it often provides good housing, is not the family friendly program we would hope for. The question therefore becomes whether DHCD could develop and implement strategies that would encourage more construction of family TC projects in wealthier and less segregated neighborhoods throughout the metropolitan area. For DHCD not to do so would simply be to ignore the terrible costs of racial segregation, financial and otherwise, to society and to individuals and families.

**LIHTC PROJECTS: OCCUPANCY PATTERNS**

Data for Income of LIHTC Tenants

DHCD does publish, through its monitoring contractor, Spectrum, LIHTC project occupancy data by income. From it we can determine some good news. The LIHTC program in metro Boston apparently serves far more low income tenants than the statutorily required minimums of 20% to 40% of total units rented to households with incomes at or below 50% to 60% of ami. DHCD data shows that in the City of Boston 82% of the total units, and in the rest of the Boston metro 52% of the total units, are rented to households with these relatively low incomes.

On the other hand, the published data does not reveal how many very poor people benefit, people whose incomes are less than 50% of ami. Given today's extraordinarily tight and inflated housing market in metro Boston, and the rapidly increasing number of homeless people, it is important - and perhaps not even a lot of work- for your monitoring contractor to aggregate the tenant income information by income categories, down to zero income.

We request that you ask your monitoring contractor to assemble this information. It is hard to see how, without collecting and analyzing such information , you can determine whether or not you are in compliance with Section 42(m) of the Internal Revenue Code requirement that you give preference to projects serving the lowest income tenants.

Data for Race and Ethnicity of LIHTC Tenants City of Boston

Unfortunately, the percent of combined Black and Hispanic population in a Census Tract in which a LIHTC project is located turns out to be the best predictor of the race and ethnicity of the occupants of that project. Generally, the higher the percentage of Black and Hispanic persons living in a particular tract, the higher is that percentage within the LIHTC project. Over 60% of LIHTC projects within the city have 90% or more Black and Hispanic households. Over 30% of the all projects in the city have 100% Black and Hispanic households.Virtually all of these projects closely parallel the race and ethnicity characteristics of the census tracts in which they are located. From these facts one might conclude that to a significant extent the operation of DHCD's Tax Credit program is reinforcing segregated living patterns within Boston. The Fair Housing Center recommends that DHCD examine its legal obligations under numerous statutes identified in the appendix to these comments and consider whether your disproportionately large funding of racially segregated TC projects in racially segregated urban areas risks violating any of these statutes.

In predominantly white tracts in Boston there are thirty LIHTC projects. The court decision in NAACP, Boston Chapter, v. HUD established in 1987 an affirmative marketing goal for low income projects in these neighborhoods. That goal is for 34% of such units to be occupied by Black and Hispanic tenants. Appropriately, DHCD has expressly incorporated this court mandate in the Qualified Allocation Plan. Most projects in predominantly white neighborhoods are close to meeting the goal. However, at least five LIHTC projects so located are falling far short of achieving it. These five projects may pose a legal hazard for DHCD.Metro Outside Boston. DHCD does not collect race and ethnicity data for LIHTC projects located outside of the City of Boston. Failure to do so is a grave error. The Fair Housing Center, as noted above, attempted as best it could to estimate race and ethnicity of a project based on census block race and ethnicity data. We believe this produced quite accurate estimates where a project and a census block were coterminous, and produced less reliable estimates where a block contained housing units in addition to those in tax credit project.

The results were ambiguous. Thirteen non-Boston projects appear to have about the same percentage of Black and Hispanic tenants as do their census tracts. Sixteen projects have higher percentages of Black and Hispanic tenants than do their census tracts, but in only half of these 16 is the difference significant. Nine projects have a smaller percentage of Black and Hispanic tenants than does the tract, and in five of these the difference is substantial, including one set in which the tract's Hispanic and Black population is 55% while the project's comparable figure is 0%.

Puzzles like these could be resolved if DHCD collected data about the race and ethnicity outcomes of its LIHTC program in the metro area beyond the City of Boston. Such data would provide clues about the presence or absence of discriminatory results of LIHTC activity in the suburbs. Such data would enable the agency to identify suburban projects whose tenants are virtually all white. It could suggest to you which mandated marketing studies by tax credit applicants are deficient, as well as which affirmative marketing plans need to be examined and perhaps changed or more earnestly implemented. Similarly, if DHCD constructed an appropriate data base it could identify which developers and project managers in white areas, even areas with reasonably high incomes, have managed to develop quite integrated projects. Perhaps, if asked, these developers and managers could share with you their strategies for success, and perhaps those strategies, with your leadership, could be replicated in additional communities. By apparently failing to do these tasks DHCD may be promoting a perception that this agency is indifferent to its duty to know about and to address the racial impacts of its programs.

The Fair Housing Center hopes that you will give these matters your creative attention. It would be pleased to participate with you in this process. Thank you.

Sincerely,

Barbara Rabin, on behalf of the Fair Housing Center of Greater Boston

**APPENDIX OF KEY CIVIL RIGHTS STATUTES, REGULATIONS, EXECUTIVE ORDERS, CASES APPLICABLE TO THE LIHTC PROGRAM**.

- REQUIREMENT NOT TO DISCRIMINATE ON BASIS OF RACE, ETHNICITY

-42 U.S.C. 1981

-42 U.S.C. 1982

-42 U.S.C. 3601 et seq.

-42 U.S.C. 5301 et seq.

-26 C.F.R. 1.41-9(a)

-M.G.L.ch. 93

-M.G.L.ch. 151B

-M.G.L.ch. 93A

- REQUIRMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING

-42 U.S.C. 3808(d)

-24 C.F.R. 91.325(a)(1)

-24 C.F.R. 941.202

-Executive Order 11063, as amended

- See also, United States v. City of Yonkers, 96 F.3d 600, 622 (2d Cir. 1996),cert. denied, 521 U.S. 1104(1997); United States v. Yonkers Board of Education, 30 F.Supp.2d.,652-3 (SDNY 1998); Shannon v. HUD, 436 F.2d 809, 814 (3rd Cir. 1970).

- REQUIREMENT NOT TO DISCRIMINATE ON BASIS KOF SECTION 8

-M.G.L. ch. 151B(4)(10)

-26 U.S.C. 42(H)(6)(b)(4)

- REQUIREMENT THAT STATE HOUSING CREDIT AGENCY REVIEW ALL OWNER CERTIFICATIONS FOR ACCURACY AND VERACITY

-26 U.S.C. 1.42-45(c)

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