

Daniel & Beshara, P.C.
3301 Elm Street
Dallas, TX 75226
214 939-9230
danbesh@danielbesharalawfirm.com
fax 214 741-3596 or 214 939-9229

February 9, 2017

by email to Notice.Comments@irs.counsel.treas.gov.

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-77)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2016-77: ICP comment on contents of guidance on concerted community revitalization plan.

We represent the Inclusive Communities Project, Inc. (ICP). ICP is a fair housing focused nonprofit organization working with households seeking access to housing in predominately non-minority locations in the Dallas area. As part of its mission, ICP provides counseling, financial assistance, and other services to Black or African American households participating in the Section 8 Housing Choice Voucher (HCV or voucher) Program administered by the Dallas Housing Authority (DHA).

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. The LIHTC projects are concentrated in low income, minority concentrated areas of Dallas. Many of the areas are marked by conditions of slum and blight caused by public and private racial segregation and other forms of racial discrimination. If the standard set for a concerted community revitalization plan does not require effective and enforceable actions and funding, the preference will perpetuate racial segregation and be a pretext for discrimination.

A "community revitalization plan" must include more than the construction of the

proposed project as the sole activity in the plan. A "community revitalization plan" must include other elements for neighborhood improvements with goals such as increasing levels of private investment, and reducing levels of poverty and racial segregation.

The attached community revitalization plan requirements contained in the 2014 Texas Department of Housing and Community Affairs Qualified Allocation Plan provide an example of the criteria for the elements and processes needed for a concerted community revitalization plan in an urban area when the only consideration is the presence of conditions that should be corrected in order to offset the risk of exacerbating poverty. If the existing conditions needing revitalization and the existing concentrations of poverty have been created and exacerbated by public and private racial discrimination, more is required. In these situations, the plan must be designed to achieve and actually achieve conditions that also eliminate the existing effects of the racial discrimination. If the conditions are left unequal, the racial segregation and the accompanying unequal neighborhood conditions will be perpetuated.

The concerted community revitalization plans in racially segregated locations should include the following standards for equal conditions.

- The LIHTC housing in the neighborhood is accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods in neighborhoods outside areas of minority and poverty concentrations.
- The neighborhood crime rates, industrial uses, and environmental nuisances do not exceed those typically found in neighborhoods outside areas of minority and poverty concentrations.

There are several objective indicators that support at least a presumption the unequal conditions were caused by or exacerbated by public and private racial discrimination. If the conditions are those that have likely been in existence for a substantial period of time during which the area was predominantly minority, the inequality raises at least a presumption of discrimination. If the area was once a de jure racial ghetto or adjacent to an historical racial ghetto, the area is still minority, and the conditions are still unequal, discrimination is a likely factor. A similar indicator is whether there is publicly assisted housing in the area that was subject to overt racial segregation that sent minority tenants to live in the area. If the unequal conditions are permanent or semi-permanent and have existed along with the historical minority population, discrimination is a likely factor. For example, if a lead smelter or other hazardous and noxious use was allowed into the neighborhood and similar uses were not present in White non-Hispanic areas, discrimination is a likely factor affecting the community.

These objective indicators are compelling circumstantial evidence of purposeful racial segregation in the provision of municipal and private services and facilities.

To establish discriminatory intent does not require proof that discrimination is the sole purpose behind each failure to equalize services. See *id.* "It is, rather, the cumulative evidence of action and inaction which objectively manifests discriminatory intent." *Id.*

“There must be a ‘correlation between municipal service disparities and racially tainted purposiveness to mandate a finding of discriminatory intent. *Miller v. City of Dallas*, 2002 WL 230834, at *3 (N.D. Tex. Feb. 14, 2002)

If these or other objective indicators of unequal conditions caused by or exacerbated by public and private racial discrimination are present, the equal conditions standard should be applied to the results expected from the concerted community revitalization plan.

Respectfully submitted

s/Michael M. Daniel

s/Laura B. Beshara

attachment: CRP excerpt TDHCA GovApprvdQAP.pdf

cc w attachment: Ms. Demetria L. McCain, President ICP

Ms. Elizabeth K. Julian, Founder and Senior Council, ICP

Texas Department of Housing & Community Affairs



2014 Qualified Allocation Plan

Multifamily Rental Housing Programs



TDHCA will, upon request, provide reasonable accommodations for persons with disabilities and language assistance for persons with limited English proficiency.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) - (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following eight (8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g. not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education;

(-g-) the lack of local business providing employment opportunities; or

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a

city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and

(III) Applications may receive (2) points in addition to those under subclause (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.