

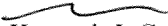


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MAR 17 2009

MEMORANDUM FOR: FHEO Region Directors and Fair Housing Assistance Program Agencies

FROM:  Kenneth J. Carroll, Director, Fair Housing Assistance Program Division

SUBJECT: Complaints processed by Fair Housing Assistance Program Agencies that Involve Low Income Housing Tax Credit Properties

The purpose of this memorandum is to reiterate procedures for complaints processed by Fair Housing Assistance Program (FHAP) agencies that involve Low Income Housing Tax Credit (LIHTC) properties.

Background

State and local housing finance agencies (HFAs) are responsible for monitoring LIHTC properties for compliance with Internal Revenue Service (IRS) regulations. Under the IRS regulations, an owner of a LIHTC property must certify to the HFA, at least annually, that no finding of discrimination under the Fair Housing Act (the Act) was issued during the preceding year. A finding of discrimination includes, but is not limited to, a cause finding made by a FHAP agency under a substantially equivalent fair housing law.¹ The HFA is charged with reporting discrimination findings to the IRS. The IRS will then send a letter to the subject property owner(s) indicating that the finding may result in the loss of LIHTCs.² The IRS will also send notification to the property owner(s) that a judgment enforcing the terms of a settlement agreement or consent decree relating to the discrimination finding may result in a loss of LIHTCs.³

In an effort to further enhance compliance of LIHTC properties with the Act, the Department of Housing and Urban Development (HUD) entered into a Memorandum of Understanding (MOU) with the IRS and the Department of Justice.⁴ Following the MOU, in 2001, Former Assistant Secretary Eva M. Plaza issued a memorandum to all FHEO region directors which required FHEO region offices and FHAP agencies to identify which HUD-filed cases and FHAP-filed cases involved LIHTC properties. When cause is found in such cases, the MOU and the Plaza memo require HUD to report those cases to the appropriate HFA.

¹ 26 C.F.R. 1.42-5(c)(V).

² *Memorandum of Understanding among the Department of the Treasury, the Department Of Housing And Urban Development, and the Department Of Justice*. August 11, 2000. Online at <http://www.hud.gov/offices/fheo/lihtcmou.cfm>

³ *Id.*

⁴ *Id.*

Procedures

The procedures set forth below should be followed for complaints processed by FHAP agencies that involve LIHTC properties.

Pre-Cause/No Cause Stage of Complaint Processing

- For all jurisdictional complaints, the FHAP agency must routinely enter into the Title Eight Automated Paperless Office Tracking System (TEAPOTS) if the subject property is a LIHTC property.⁵ It is critical that a FHAP agency ask, during an investigation, whether the owner of the property receives LIHTCs for the subject property. Another way to obtain this information is to contact the HFA that issues LIHTCs and inquire about the property. An updated HFA contact list is attached for your convenience.
- If the property named in the complaint receives LIHTCs but the owner of the property is not named as a respondent, the FHAP agency should add the owner as a respondent since the owner is potentially liable for the alleged violation.
- The FHAP agency should also notify the owner respondent that a cause determination under the substantially equivalent fair housing law will be reported to HUD and the IRS, and may result in the loss of LIHTCs.

Post-Cause Stage of Complaint Processing

- When a FHAP agency issues a cause determination in a complaint involving a LIHTC property, it must promptly alert the appropriate HUD Government Technical Representative (GTR) or Government Technical Monitor (GTM), and forward a copy of the determination to the GTR or GTM. The GTR will send a letter to the HFA alerting it to the FHAP agency cause determination. The GTR should send a copy of the letter to the FHAP Division director at the following address:

Director, Fair Housing Assistance Program Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

The *Criteria for Processing* have been revised to reflect these requirements. Therefore, complaint processing reimbursement may be withheld because of a FHAP agency's failure to comply with the requirements. If you have any questions, comments or concerns about these procedures, please contact me at (202) 402-7044.

Attachment

⁵ To enter this information in TEAPOTS:

1. Under "Intake" go to the "Who Discriminated" screen.
2. Look to the last question on the screen: "Tax Credit?"
3. Click on the drop-down menu. You will see three options: "Yes"; "No"; and "Don't Know".
4. Choose "Yes" or "No". Do not choose "Don't know"- this is only a default and should not be chosen for any complaint.

Housing Finance Agency Contacts (3/2009)

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