

Memorandum of Understanding Among The Department of the Treasury, the Department of Housing and Urban Development and the Department of Justice

Preamble

The United States Departments of the Treasury, Housing and Urban Development and Justice enter into this memorandum of understanding (MOU) in a cooperative effort to promote enhanced compliance with the Fair Housing Act (Act), 42 U.S.C. Sections 3601 et seq. for the benefit of residents of low-income housing tax credit properties and the general public.

It is recognized that the Department of the Treasury's (Treasury) Internal Revenue Service (IRS) is responsible for administering and enforcing the tax laws in the low-income housing tax credit program under Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42. In accordance with Section 1.42-9 of the Income Tax Regulations, 26 C.F.R. Section 1.42-9, low-income housing tax credit properties are to be rented in a manner consistent with the Act. Noncompliance of these properties with the low-income housing tax credit provisions is required to be reported to the IRS by state housing finance agencies under 26 U.S.C. Section 42 (m)(1)(B)(iii).

It is recognized that the Department of Housing and Urban Development (HUD) is responsible for enforcing the Act, 42 U.S.C Sections 3601 et. seq. In doing so, HUD is required to investigate allegations of housing discrimination, attempt conciliation of the complaint, and determine whether there is reasonable cause to believe discrimination has occurred under the Act. Upon finding reasonable cause, HUD must bring the case before an administrative law judge, or if either party elects to have claims or complaints decided in a civil action, HUD must refer the complaint to the Department of Justice for prosecution in the United States District Court.

It is recognized that the Department of Justice (Justice) is responsible for enforcing the Act, 42 U.S.C. Sections 3601 et seq. Pursuant to section 3614 of the Act, Justice may file a lawsuit whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or denial of rights to a group of persons where such a denial raises an issue of general public importance. Justice also may file a lawsuit upon referral of matters from HUD involving the legality of any state or local zoning or other land use law or ordinance and after receiving a referral from HUD following an election by a party to a HUD complaint to have the matter decided in a civil action. Justice may enter into settlement agreements and consent decrees with property owners to obtain compliance with the Act. In the event a property owner fails to comply with the terms of the settlement agreement or consent decree, Justice may seek a court judgement to enforce the terms of the settlement agreement or consent decree.

The parties to this MOU agree to the following:

1. Coordination on Notifying Low-Income Housing Tax Credit Property Owners about Charges, Lawsuits and Other Actions

HUD and Justice will identify low-income housing tax credit properties for which there is: 1) a charge by the Secretary of HUD for a violation of the Act; 2) a probable cause finding under a substantially equivalent fair housing state law or local ordinance by a substantially equivalent state or local agency; 3) a lawsuit under the Act filed by Justice; or 4) a settlement agreement or consent decree entered into between HUD or Justice and the owner of a low-income housing tax credit property. HUD or Justice will then transmit the address of the property and a summary of these actions to the appropriate state housing finance agency, using a current list of contacts and addresses of state housing finance agencies provided by the IRS.

Upon the state housing finance agencies reporting this information to the IRS (using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance), the IRS will send a letter to involved property owners notifying them that a finding of discrimination, including an adverse final decision by the Secretary of HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgement by a federal court, could result in the loss of low-income housing tax credits. Similarly, the IRS will also send notification to property owners that a judgement enforcing the terms of a settlement agreement or consent decree could result in the loss in low-income housing tax credits. The IRS, HUD and Justice will collaboratively develop the model letters addressed to property owners and other entities. HUD and Justice will also send to the IRS and the appropriate state housing finance agency a summary of the above referenced actions, describing relevant information such as the precise nature of the violation, the dates of the violation and proposed corrective actions.

2. Designating Contacts and Interagency Technical Assistance and Training

HUD and justice will designate personnel to provide the IRS upon request with technical assistance and problem resolution concerning emerging civil rights and discrimination matters involving the administration of the low-income housing tax credit program (e.g., accessibility issues, Section 8 vouchers, civil rights interpretive issues and published guidance). In addition, HUD and Justice will provide training upon request to a few designated IRS personnel about the Act. The IRS will designate personnel to provide technical assistance and training upon request to HUD and Justice personnel on general tax administration issues under the low-income housing tax credit program, in a manner consistent with the IRS's disclosure limitations contained in section 6103 of the Internal Revenue Code.

3. Training for State Housing Finance Agencies and Others

HUD and Justice will make training available upon request to state housing finance agencies and other entities (e.g., developers, property management companies, syndicators) on the Act, including training on inspecting for Act accessibility criteria referenced in the uniform physical condition standards in 24 CFR 5.703. HUD will also encourage substantially equivalent state and local fair housing agencies to invite state housing finance agencies and other entities to participate in civil rights training developed by the substantially equivalent agencies.

4. HUD's Pilot Program to Train Architects on the Act's Accessibility Requirements

HUD has begun the process of developing a pilot program in one region of the country to provide training and technical assistance to architects and others on the accessible design and construction requirements of the Act. HUD has also proposed expanding this program to four regions in FY 2001. HUD will promote participation in the program by members of the American Institute of Architects, including those involved with the design and construction of low-income housing tax credit properties.

5. Cooperation in Research Concerning Low-Income Housing Tax Credit Properties

HUD and Treasury will cooperate in research sponsored by either department concerning low-income housing tax credit properties.

6. Cooperation to Identify and Remove Unlawful Barriers to Section 8 Tenants

In consultation with the state housing finance agencies, HUD, Justice and the IRS will cooperate in identifying and removing unlawful barriers to occupancy low-income housing tax credit properties by individuals holding Section 8 vouchers.

7. Cooperation in Assisting Syndicators of Low-Income Housing Tax Credits

HUD, Justice and the IRS will cooperate in helping the national associations of investment syndicators of low-income housing tax credit properties to enhance practices by syndicators in monitoring and promoting compliance with the Act and the low-income housing tax credit program.

8. Annual Civil Rights Meeting Among Federal Agencies and Participation in National Conference of State Housing Finance Agencies

HUD, Justice, Treasury and other interested federal agencies will meet annually to discuss emerging civil rights issues and new methods and programs to increase civil rights compliance in the low-income housing tax credit program. IRS will encourage the state housing finance agencies to invite HUD and Justice to the annual national conference of state housing finance agencies. HUD and Justice agree to designate personnel to conduct training and discuss emerging civil rights issues at the national conference.

Implementation

This MOU will become effective 30 days from the date of the last signature on this document.

The parties agree to confer on the interpretation and application of the memorandum as necessary and to conduct a mutual annual review of its operation.

Nothing in this MOU shall be construed to impair or affect i) HUD's or Justice's authority to enforce the Act, ii) the IRS's authority to administer the low-income housing tax credit program, including complete administrative discretion to deny low-income housing tax credits in the event of a violation of the Act, or iii) the IRS's disclosure limitations under section 6103 of the Internal Revenue Code.

Lawrence H. Summers
Secretary of the Treasury
August 9, 2000

Andrew Cuomo
Secretary, U.S. Department of Housing and Urban Development
August 11, 2000

Janet Reno
Attorney General
August 11, 2000