

## **Compliance (Fair Housing MOUs)**

**Lead Office:** HUD-FHEO

**Participating Offices:** USDA-RD, HUD-FHEO, HUD-OGC, DOJ & Treasury/IRS

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### **Issue Statement:**

In 1997, the Secretaries of HUD and Agriculture signed a memorandum of understanding (MOU) between the two agencies concerning cooperation in the processing of USDA civil rights cases, joint investigations of civil rights issues, sharing of documents, and cooperation in the conciliation, informal resolution of cases, and the development of sanctions. While initially operational, the HUD-Agriculture MOU has largely not been followed and its dormancy has produced a lack of meaningful dialogue between the two agencies concerning the resolution of significant civil rights issues and proactively cooperating to address common civil rights problems in housing programs, frequently financed with both HUD and USDA financing. Little effort has been made on coordinating a common approach to the statutory requirement to affirmatively further fair housing, and how a coordinated effort by USDA, HUD, and DOJ program staff could enhance USDA efforts in the realm of affirmatively furthering fair housing its housing assistance programs.

In 2000, the Secretary of the Treasury, the Secretary of HUD, and the Attorney General of the United States signed a Fair Housing Act Memorandum of Understanding (MOU) among the three agencies seeking to improve Fair Housing Act enforcement, educational outreach, and IRS agency guidance addressing significant civil rights concerns in the low-income housing credit program. Since 2000, the Fair Housing Act MOU has been successful in leading to the resolution of dozens of civil rights cases involving low-income housing credit projects referred to the IRS by HUD and DOJ. Specifically, through a coordinated process, the IRS has sent advisory letters to project owners based on the underlying HUD or DOJ civil rights action, noting the potential loss of low-income housing credits if the project owners fail to address the underlying civil rights issue. The three agencies also engaged in significant educational outreach to project owners, syndicators, and housing credit agencies on civil rights matters, including disabled accessibility requirements. In addition, the IRS improved its guidance on civil rights issues for project owners, housing credit agencies and others based on technical assistance from HUD and DOJ.

Nevertheless, a limitation of the existing Fair Housing Act MOU is that its practical focus has been limited to improving inter-agency technical operations issues, rather than focusing on addressing substantive civil rights policy concerns. There is also a need for more robust and regular discussions among the three agencies concerning emerging civil rights issues.

The need for greater harmonization among federal agencies concerning fair housing and civil rights issues has grown significantly. For example, issues of harmonization emerge in: 1) the need for closer cooperation and more effective coordination among the Department of the Treasury, the Department of Agriculture, the Department of Housing and Urban Development, and the Department of Justice in addressing civil rights problems involving commonly funded housing projects including disabled accessible housing problems, local opposition to the development of affordable housing, patterns of discrimination by builders, lenders, property management firms, and local governments, and unified remedies when encountering developers, syndicators, lenders, with funding sources among several federal programs; 2) the need for improved and coordinated data collection about demographics about tenants and housing locations; 3) the lack of uniform guidance among the federal housing programs about discrimination against HUD and USDA voucher holders; 4) the need for

greater unified educational outreach by the federal housing agencies and the Department of Justice concerning civil rights problems and solutions to developers, project investors, property managers, lenders, syndicators, and tenants; 5) the lack of consistent application of affirmative fair housing marketing in the low-income housing credit program that are utilized in other federal housing programs; and 6) the lack of consistent site and neighborhood standards which would help avoid predominant placement of housing in highly minority and poverty concentrated areas.

### **Proposed Alignment:**

#### Alignment summary

The outline for greater fair housing and civil rights alignment includes: (1) reconstituting and restarting the coordination process established in the original 2000 Fair Housing Act Memorandum of Understanding (MOU) among Treasury, HUD, and Justice, and the 1997 HUD-Department of Agriculture MOU; alternatively, consideration should be given to making USDA a signatory to the existing operational 2000 Fair Housing Act MOU. Specific actions are listed in the approximate order in which they could be achieved, with the understanding that many of these proposals may be pursued simultaneously.

#### Specific actions to effect alignment:

##### **1. Reinvigorate the Interagency Coordination Process Set Forth in the MOUs**

- Designated Staff. Designate career staff from each agency to serve as the point person for implementing the 1997 and 2000 MOUs and to confer on key guidance and enforcement issues set out below. Establish semi-annual meetings of IRS, HUD, USDA, and DOJ personnel to discuss fair housing issues applicable to the low-income housing credit program and improvements to processes, agency guidance, and cooperation among agencies.

##### **2. Enhance Educational Outreach and Training for State Housing Credit Agencies, Syndicators, Project Managers, and Developers**

Within the existing structure of the 2000 MOU, the federal agencies should reinvigorate:

- Cooperation among HUD, USDA, IRS, and DOJ officials in conducting annual training seminars, and meetings with:
  - State and Local Housing Credit Agencies about their obligation to comply with the Fair Housing Act when allocating LIHTCs and to answer questions about Fair Housing topics.
  - Associations of developers, syndicators, property managers, and investors that receive the LIHTCs and USDA loan assistance about how they can comply with the Fair Housing Act, including training on exclusionary zoning law and practices, and accessibility requirements.

##### **3. Enhance Quality Control of Non-Compliance Reporting to IRS**

Within the existing structure of the MOU, the federal agencies should reinvigorate the process of reporting federal and state civil rights actions:

- Form 8823. Help ensure that housing credit agencies are timely and comprehensively reporting to the IRS and notifying owners when HUD has reported a charge or a reasonable cause determination by a substantially equivalent fair housing agency, regarding an LIHTC project, or when DOJ has filed a Fair Housing Act lawsuit. Establish a mechanism whereby DOJ and HUD can notify IRS directly of these events as well through a point of contact with the IRS Service Center processing the forms 8823.

#### Resource Estimate for Implementation:

The resources necessary for implementation of these recommendations is very minimal. It is anticipated that one staff FTE from each of HUD, USDA, IRS, and DOJ would need to commit to one-quarter of their time over the course of the one year implementation period in coordinating the effort to work on refining the existing Memorandum of Understandings, and in implementing the development of educational outreach programs, improved agency guidance, and operational details. The only expenditures contemplated would be for HUD and DOJ training, travel, and educational outreach efforts to stakeholders in the syndicator, lending, property management, and housing credit agency communities, which again is contemplated under the existing Fair Housing Act MOU.

Estimated cost savings for owners, operators, developers, investors and/or lenders:

The savings to owners and developers will largely result from avoiding litigation, retrofitting, and civil penalties as a result of clearer, better guidance and educational outreach which will mitigate the potential for fair housing violations. Lenders and syndicators will also save money, time, and resources in having greater knowledge and awareness about investing in proposed housing projects without adequate due diligence of the civil rights ramifications of site placement, development standards, and rental practices in a housing transaction.

Estimated cost savings for State, local, and Federal governments:

State and local governments will benefit from avoiding litigation as a result of more informed knowledge and awareness of potential civil rights violations as a result of a lack of understanding in areas such as segregated housing, failure to provide accessible housing, and disparate impact legal challenges. The Federal Government will benefit from cooperative foresight and inter-agency cooperation which will help mitigate the need for resources devoted to litigation to correct civil rights deficiencies that could have been prevented through more effective educational outreach and proactive compliance civil rights compliance monitoring.

Schedule for Alignment Implementation:

Work on the enhancements to the respective MOUs and improved guidance and educational outreach can be completed on a one year schedule. Please see the following projected schedule:

- August 2011 Convene agencies to discuss existing MOUs and suggested improvements;
- October 2011 Revise existing memorandum(s) of understanding;
- January 2012 Begin educational outreach to housing credit agencies, syndicators, developers, and project managers;
- August 2012 Reassess quality control efforts, educational outreach, and new processes developed under the MOU for effectiveness.

Challenges to effecting proposed solutions:

The challenges for adopting these proposed solutions will require inter-agency cooperation. IRS, HUD, USDA, and Justice have cooperated in the past and recognized the benefits of a unified effort to address civil rights problems in their respective housing programs. A key challenge is maintaining energy, commitment, and purpose, which was sometimes absent in past inter-agency civil rights initiatives. From past experience with the Fair Housing Act MOU among Treasury, HUD, and DOJ, the private housing industry, housing credit agencies, and developers will be somewhat reluctant to implement requirements such as affirmative fair housing requirements, or site and neighborhood standards, perhaps because of erroneously perceived conflicts with neighborhood revitalization. We believe that this initial reluctance can be overcome by active outreach to the developer, syndicator, lending, and housing credit agency organizations to fully explain the rationale and benefits of enhanced civil rights planning and compliance. Such outreach efforts occurred in 2000 in conjunction with the signing of the Fair Housing Act MOU and these outreach efforts significantly eased concerns and promoted the active partnership of key stakeholders such as the syndicator, property management, and housing credit agency communities.

### **Purpose**

This document is part of an ongoing effort to better align Federal rental policy across the Administration and is sponsored by the Rental Policy Working Group. The Rental Policy Working Group is composed of the White House Domestic Policy Council (DPC), National Economic Council (NEC), Office of Management and Budget (OMB), and the U.S. Departments of Housing and Urban Development (HUD), Agriculture (USDA), and Treasury.

The specific areas of concern identified herein emerged from July 2010 stakeholders gathering at the White House on areas of Federal rental policy inconsistency across the administration. The revised conceptual proposals for alignment articulated within this report are preliminary in nature and have not been endorsed by any Federal agency or office.

With any questions, please contact the Rental Policy Working Group Agency Alignment Leads: Larry Anderson, Director of Multi-Family Housing Preservation and Direct Loans at USDA-Rural Development, Ben Metcalf, Senior Advisor at HUD's Office of Multifamily Housing Programs; or Michael Novey, Associate Tax Legislative Counsel in Treasury's Office of Tax Policy.