



**U. S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT**

FHEO Region V
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77 West Jackson Boulevard – Room 2101
Chicago, Illinois 60604-3507

Office of Fair Housing and Equal Opportunity

September 30, 2014

Irene McBride, Board Chair
Alexander County Housing Authority
c/o Martha Franklin, Executive Director
100 Ohio Street
Cairo, Illinois 62914-0191

Dear Ms. McBride:

SUBJECT: Letter of Findings of Noncompliance
Civil Rights Compliance Review of the Alexander County Housing Authority
Title VI Review Number: 05-14-R002-6

On May 30, 2014, the United States Department of Housing and Urban Development (“HUD”), Office of Fair Housing and Equal Opportunity (“FHEO”), initiated a compliance review of the Alexander County Housing Authority (“ACHA”). FHEO reviewed compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act,¹ and Section 3 of the Housing and Urban Development Act.² FHEO investigators from the Chicago Regional Office and the Denver Regional Office conducted an on-site review from June 24 through June 26, 2014.

In addition to the FHEO review, other HUD program offices, including the Office of Public and Indian Housing (“PIH”), the Office of Labor Relations, and the Departmental Enforcement Center simultaneously reviewed ACHA’s compliance with their offices’ respective regulations. The review was prompted by findings made under a previous PIH review, initiated on September 10, 2013.

Applicable Law

Title VI prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that “... No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The

¹ Published under separate cover as Section 504 Review Number: 05-14-R004-4.

² Published under separate cover as Section 3 Review Number: 05-14-R004-3.

implementing regulations provide specific prohibitions which include, but are not limited to the following:

A recipient under any program or activity to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color or national origin: Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity. 24 C.F.R. § 1.4(b)(1)(iii).

A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin. 24 C.F.R. §1.4(b)(2)(i).

A recipient under any program or activity to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color or national origin: Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section). 24 C.F.R. §1.4(b)(1)(vi).

Where the primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this [] part tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this [] part applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this [] part to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. 24 C.F.R. §1.4(c)(2).

In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination. 24 C.F.R. §1.4(b)(6)(i).

Under Title VI, a violation occurs if the recipient directly discriminated against an individual or group on the ground of race. It further provides that a violation occurs when a policy or method of administration has the effect of subjecting persons to discrimination. Whether a violation occurs due to the intentional actions of a recipient, or as a result of a method of administration, corrective action must be taken to prevent further discrimination and regain compliance with federal civil rights laws and regulations. Additionally, a violation will occur under Title VI based on the recipient's employment practices if the discriminatory practices have an adverse effect on the recipient's program participants. Finally, a violation will occur for failing to take affirmative action to overcome a previous finding of discrimination on the basis of race.

A recipient of Federal financial assistance is defined as follows:

[A]ny State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity. 24 C.F.R. §1.2(f).

The Civil Rights Restoration Act of 1987 amended Title VI by adding an expansive definition of "program or activity." It provides that, for purposes of Title VI the following:

[T]he term "program or activity" and the term "program" mean *all of the operations of* –

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government; *any part of which* is extended Federal financial assistance. 42 U.S.C. §2000d-4a(1)(A) and (1)(B) (emphasis added).

Generally, the entire operation of a municipal corporation such as a public housing authority is considered to be a program or activity for the purposes of Title VI. In this case, the "program or activity" subject to this Title VI review is the entirety of the operations of the ACHA, including, but not limited to the management of its low-income public housing program.

Background

The ACHA manages public housing in the Cairo, Illinois area, including the areas outside of the City of Cairo, but within Alexander County, Illinois. Based on interviews and correspondence with HUD PIH staff, local advocates, and other stakeholders, FHEO decided to focus its Title VI review on the following allegations:

- (1) That the residents of the public housing units are segregated on the basis of race; and
- (2) That there is employment discrimination by ACHA on the basis of race, that has the effect of adversely impacting the ACHA's program participants.

According to the 2012 American Community Survey, Alexander County contains a total of 8,147 people, of whom 61.7% are white and 34.8% are African-American. The median household income is \$27,248, and it is estimated that 21.1% of those households' income is below the federal poverty level.

With respect to the City of Cairo, the 2012 American Community Survey estimates that there are 2,812 residents. Of those, 26.9% are white and 69.5% are African-American. It is estimated that 50.6% of those families' incomes are below the federal poverty level.

At the time of the review, ACHA was housing individuals and families in 435 units.³ Additionally, there were 43 vacant units that could potentially be occupied by tenants, bringing the total number of units in the housing authority's control to 478. With respect to the occupied units, 129, or 29.7%, contain at least one individual who is classified as disabled.⁴ Out of the same total number of occupied units, 347, or 79.8%, contain a head-of-household who is classified as "Black." Notably, ACHA has not received HUD approval to designate any of its buildings as "senior."⁵ ACHA defines "senior" housing as a unit occupied by a person older than 50 years old, and without children under the age of 18.

ACHA refers to its buildings and clusters of housing by "AMP" number.⁶ AMP 1 is comprised of family public housing within the City of Cairo, that of McBride Place and Elmwood Place. These two facilities combine for 247 units, more than half of the total number of ACHA units. McBride Place consists of a mixture of 1 to 6-bedroom units, and Elmwood Place is a mixture of 1 to 4 bedroom units. These buildings were built in the 1940s and are over 70 years old.

AMP #	# of Occupied Units	% of total ACHA Units
AMP 1	247	56.8%
AMP 2	92	21.1%
AMP 3	96	22.1%

Chart 1

AMP 2 is comprised of "scattered-site" housing. This refers to individual or smaller clusters of ACHA-operated facilities throughout its service area. Two of the scattered-site facilities (40 total

³ ACHA does not currently manage a "Section 8" housing choice voucher program.

⁴ ACHA's disability classification does not distinguish between "physical" and "mental" disability.

⁵ See HUD PIH Notice 2005-2.

⁶ Asset Management Projects. This is a classification system used by HUD for funding purposes.

occupied units), Mary Alice Meadows and Sunset Terrace, are located within the town of Thebes, Illinois, which is approximately 25 miles away from the City of Cairo. The remaining scattered-site units are located within the City. Many of these units are tenanted by seniors and people with disabilities. These buildings consist of a mixture of 1, 2, 3 and 4 bedroom units.

Finally, AMP 3 is comprised of two so-called "high-rise" buildings within the City of Cairo, consisting of 96 total units. The two buildings, Connell Smith and Shuemaker, are located very close to each other, within the City of Cairo. The ACHA's administrative headquarters is located inside of Connell Smith. As with many of the scattered-site units, these buildings are occupied by seniors and people with disabilities. The units in Connell Smith are a mixture of studio, 1 and 2 bedrooms, whereas the units in Shuemaker are all 1 bedroom.

The managerial staff at ACHA includes the current Executive Director, Martha Franklin, who has worked in that capacity since early 2013. Franklin's duties include managing the day-to-day operations of the housing authority. In addition, Franklin is in charge of approving or denying reasonable accommodation requests. Prior to that, Franklin was the Finance Director, where she worked as an assistant to the former Executive Director, James Wilson. Franklin's son-in-law, James Renfrow, also works at the ACHA as a Maintenance Technician.

Donna Holman is the Chief Leasing Officer and Assistant Site Manager. Holman has been at the ACHA for 28 years. Her duties include managing the entire process of move-ins, move-outs, transfers, updating records, and lease enforcement. Holman also receives reasonable accommodation requests from residents. Holman is responsible for supervising two leasing and occupancy clerks, as well as the maintenance staff. Holman's husband John previously worked as a part-time Maintenance Technician.

The ACHA Board is comprised of five members, Irene McBride (Chairperson), who is also the resident member, Judson Childs (Vice-President), Mike Brey, John Price, and Jimmy Huffman.

Chairperson McBride has been on the ACHA board for 12 years, has lived in Cairo for 72 years, and has lived in public housing (Elmwood Place) for 40 years. When asked about her duties as board chair, McBride stated that she attends meetings. When asked what type of issues are discussed by the board, McBride did not respond. When asked what type of decisions have been made recently by the board, McBride replied that: "I really can't say." McBride offered that, as President of the Elmwood Tenant Council, McBride uses money received from HUD to purchase gifts for all the mothers at Elmwood on Mother's Day, and for all the fathers at Elmwood on Father's Day. Finally, HUD staff observed ACHA staff escorting McBride to and from the conference room where the interview took place.

Commissioner Childs (former Mayor of Cairo), when asked about race relations, said that overall relations are decent, but "there's room for improvement." Childs acknowledged that housing in town is mostly tenanted by African-Americans. Childs is related to Jeff Childs, who works as a Maintenance Technician, as well as Eric Childs, a part-time Maintenance Technician.

Allegations

Historical Context

The Cairo, Illinois region, including the ACHA, has a history of racial tension.⁷ In fact, there is a specific historical context to the two allegations at issue. Regarding the issue of residential racial segregation in public housing, the ACHA historically operated its facilities on a segregated basis.⁸ At the time that a bulk of ACHA's family public housing was designed, in the 1940's, the Federal Government actually mandated that public housing be segregated.⁹ Eventually, that policy was reversed, yet ACHA maintained its policy of segregating housing by race.¹⁰

In 1974, the U.S. Department of Justice filed a lawsuit in an effort to address this residential racial segregation.¹¹ Specifically, at the time, the two large family public housing sites within the City of Cairo were segregated; Elmwood Place was mostly or entirely comprised of white residents, and Pyramid Court was predominantly occupied by African-American residents.¹² Additionally, "Butler Homes," a building for the elderly, was also entirely African-American.¹³

The lawsuit was eventually settled in 1974, where the ACHA agreed to no longer segregate housing on the basis of race, and took affirmative steps to integrate.¹⁴ The benchmarks agreed to included prioritizing occupancy such that Pyramid Court was to have 71 white tenants (out of 237), and Elmwood Place was to have 39 black tenants (out of 159).¹⁵

With respect to the issue of employment discrimination, a separate lawsuit was brought against ACHA in 1969 by the Lawyers' Committee for Civil Rights Under Law (having recently opened an office in Cairo).¹⁶ The suit alleged employment discrimination by ACHA against its employees, on the basis of race.¹⁷ At the time that the suit was filed, only 3 out of 17 ACHA employees were black.¹⁸ This lawsuit was also eventually settled in 1974 by an agreement resulting in the hiring of an additional African-American employee, as well as allowing that black employees would be considered in the future for management positions.¹⁹

⁷ See Seng, Michael P., "The Cairo Experience: Civil Rights Litigation in a Racial Powder Keg," 61 Ore L Rev 285 (1982).

⁸ *Id.* at 19.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 20.

¹² The buildings at issue in the lawsuit are still operating today; "Pyramid Court" has been renamed "McBride Place."

¹³ *Id.* at 20.

¹⁴ Seng at 20.

¹⁵ *Id.*

¹⁶ *Id.* at 16.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Segregation of Public Housing on the Basis of Race

The HUD FHEO Review examined the allegation that ACHA segregates its public housing residents on the basis of race, resulting in an adverse impact against African-American public housing residents. The examination revealed that, in fact, many of the public housing buildings are comprised almost entirely of African-American tenants, and that there is residential racial segregation that affects certain ACHA sites.

The units in AMP 1, which are family units and within the City of Cairo, are occupied almost entirely by African-American residents. Specifically, 239 out of the 247 total occupied units between McBride Place and Elmwood Place have an African-American head of household.

Other ACHA public housing buildings are similarly segregated. For example, all 16 units (studio, one-bedroom, and a single two-bedroom unit) at Butler Homes have an African-American head of household.

	Building	Units	% African-American	% White	Designation
Amp 1 (McBride and Elmood)	McBride	144	97.2%	2.8%	Family
	Elmwood	103	96.1%	3.9%	Family
Amp 2 (Thebes / Scattered-Sites)	Meadows	31	48.3%	51.7%	Family
	Butler	16	100%	0%	Senior
	Johnson	17	41.1%	58.9%	Senior / Disabled
	Sunset	9	22.2%	77.8%	Family
	Greaney	8	100%	0%	Senior
	Moreland	7	100%	0%	Family
	King	2	0%	100%	Senior / Disabled
	14 th Street	2	100%	0%	Family
Amp 3 (Connell Smith and Shuemaker)	1101 Ohio	55	40%	60%	Senior / Disabled
	1100 Halliday	41	70.7%	29.3%	Senior / Disabled

Chart 2

Certain ACHA buildings are more racially integrated. Within the City of Cairo, the buildings contained within AMP 3, Connell Smith and Shuemaker, are both relatively balanced with respect to their racial composition. Additionally, outside of Cairo in the town of Thebes, Meadows and Sunset Terrace are both integrated, and reflect the prevailing racial demographics of Alexander County. When asked why this was, Franklin explained that it has always been this way, and therefore she has not changed any policies with respect to tenanting.

With respect to the physical condition of the buildings, ACHA staff pointed out that Elmwood and McBride are very old and have plumbing problems; Franklin added that “eventually you run out of things you can do to dress it up.” HUD PIH has reported that the ACHA acknowledged to HUD officials that the properties are obsolete. Yet despite these concerns, during the month of September 2013, ACHA devoted more maintenance resources towards fixing problems in AMP 3, the racially integrated senior / disabled buildings and so-called “high-rises” that are next door to each other in Cairo, and which is also home to the ACHA administrative offices.²⁰

Elmwood and McBride also have issues with crime and security. Holman told FHEO staff that the family buildings are places where people may be doing drugs and gambling. Specifically, regarding McBride and Elmwood, Holman described gambling, shootings, and attempted rapes in those two buildings. Holman stated that she and Franklin have been threatened while on site. She added that “those tenants” often want vicious dogs for status and protection. Also regarding crime, Franklin stated that there had been a “drug ring” at Elmwood and McBride in recent years, but that it has been cleaned up.

Despite the reputation, security resources are actually centered away from Elmwood and McBride. For example, security guards are stationed only at Shuemaker and Connell Smith, both elderly buildings that are racially integrated.

Regarding electronic surveillance, there is a video camera in the Executive Director’s office and the main administrative office (both in Connell Smith), in the Shuemaker building, as well as in the maintenance office. When asked how they chose those locations, Franklin explained that while the Shuemaker and the Director’s office camera are new, the others are replacements of older cameras. Franklin added that this allows the elderly and disabled residents to feel more secure. When asked why they don’t have cameras installed anywhere else, Franklin said it is because of lack of funds.

Franklin stated that she has met with the Mayor of Cairo, as well as representatives from state and local police to discuss the issue of security at Elmwood and McBride. But Franklin explained that it would have taken a lot of funding to get security at other properties because they are so large. When asked, Franklin stated that she has not personally studied the issue of the amount of crime between different buildings.

As far as crime concerns at the other buildings, Holman pointed out that in Thebes, IL, by contrast, kids will do things like “egging” and throwing rocks, and ACHA will have to write letters to parents. Franklin added that several years ago, someone climbed up the balcony and on to the second floor at Connell Smith. Regardless, Franklin conceded that there is no more crime at Connell Smith than there is at the other buildings.

Finally, other HUD officials have considered the security situation in ACHA’s AMP 1. In its draft “Results and Determinations,” HUD PIH states that:

“The McBride and Elmwood developments have ongoing security issues. The review team spoke with residents, elected officials, and local law enforcement. Personal property

²⁰ See Chart 3, *infra*.

theft and gunfire were expressed as ongoing concerns and issues. The Housing Authority must improve lease enforcement and security. The Housing Authority has a security staff at the Connell Smith Building. Recommendation is that security staff be reassigned or rotated to McBride or wherever security issues exist.”

With respect to the tenanting process, ACHA maintains three separate waiting lists, one for family units, one for senior / disabled, and one for the AMP 2 units in Thebes. When asked why a separate list is maintained for Thebes, Franklin explained that it is because the units are approximately 30 miles away from Cairo, and a vehicle is therefore required, and not all tenants have transportation.

ACHA does have a preference system for prospective tenants. HUD staff was told verbally that preferences are given to county residents, the homeless, and veterans, although the preference system is not explicitly defined in writing in the ACOP.

Employment Discrimination on the Basis of Race – Allegations and Background

Some housing authority employees allege that the ACHA discriminates against its African-American employees. Specifically, it is alleged that African-American maintenance employees are paid less money for doing more work, compared to comparable white employees. It has also been alleged that black employees are disciplined more frequently and severely than comparable white employees. Finally, it has been alleged that only white employees are considered for promotions, and only white employees are in managerial and policy making positions.

By way of background, it is worth noting that there is only one African-American ACHA employee who is not on the maintenance staff, India Johnson – Leasing and Occupancy Clerk. Additionally, since 2013, four unique ACHA employees have filed EEOC / employment discrimination complaints, three of whom are African-American and one of whom is white. This is out of 10 total full-time employees,²¹ and approximately 15 combined part-time and full time employees.²²

Specifically, Joe Williams, formerly the Lease Enforcement Officer and Assistant Site Manager, alleged that he was discriminated against on the basis of race and sex when he was passed over for the Executive Director job, later given to Martha Franklin. Williams was eventually terminated for “insubordination.” This complaint resulted in a monetary settlement.

Another complaint was filed by former employee Ronald Davis (white), alleging that Joe Williams (also a former employee), then his supervisor, used racially derogatory terms. That complaint was also settled.

Yet another complaint was filed by Delbert Irish (black), a part-time Maintenance Technician, alleging that he was harassed by other employees, and reprimanded for misconduct because of

²¹ This includes Joe Williams, one of the EEOC Complainants but who no longer is employed by ACHA.

²² Given that each one of these former or current ACHA employees has sought redress through a separate administrative process, this FHEO review did not focus on the specifics of each allegation. Rather, this information is provided for context.

his race. He also alleges that he has not received the benefits of being a full-time employee, despite the fact that a comparable white employee received these benefits.

Finally, Rodney Houston (black), a full-time Maintenance Technician, alleges that he receives unequal pay compared to comparable white employees.²³

While not all of these complaints may be meritorious, taken together they certainly indicate a pattern of racial tension among ACHA employees.

Another concern raised during the FHEO review is that ACHA does not comply with equal opportunity hiring practices. The review showed that two full-time positions were filled within the relevant scope of time, that of the Executive Director position, and that of a Leasing and Occupancy Clerk.

Martha Franklin (white), who previously worked as (James) Wilson's assistant, was promoted to fill the Executive Director position. The evidence shows that the position was never actually made available to other employees or to the public, rather the former Executive Director, James Wilson, promoted her. Franklin explained that she was Wilson's "right hand person;" she took phone calls for him, typed up his letters, and made contacts for him. She further explained that only Wilson (and not her) was in charge of policy decisions. Joe Williams, former employee and someone who had acted in a management capacity at ACHA, was denied the promotion (and eventually terminated).

The Leasing and Occupancy Clerk job was filled by India Johnson (black). As with the Executive Director position, this position was apparently not made available to the public. Johnson was originally hired to work part-time, and was then promoted to full-time. According to Johnson, she was a public housing program participant and needed to visit the rental office. As she had recently been laid off, she jokingly asked about a job as she heard that a staff member was leaving. Donna Holman arranged for an interview with Franklin, and Johnson was hired.

The two recent hiring decisions present a limited sample size, and of course the two employees are of different races. A general concern, however, is that the jobs are not posted to the public, and there does not appear to be any transparency to the process. Even assuming the best intentions, it is possible to draw a negative inference from this practice.

Employment Discrimination on the Basis of Race – Disciplinary Actions

Since Martha Franklin became the Executive Director, in early 2013, the ACHA has taken adverse personnel action against several employees:

- (1) Joe Williams (black) was terminated for insubordination. Franklin explained that Williams refused to follow directions and would come into her office and yell at her. Franklin is unaware of any other ACHA employees who have acted similarly.

²³ Houston's EEOC complaint remained open at the time that these findings were published.

- (2) Delbert Irish (black) was suspended from work for one day for a traffic infraction involving a school bus. Allegedly, Irish, while driving an ACHA vehicle, drove around a bus while it had its stop-sign extended. Franklin is unaware of any other ACHA employees who have been involved in similar traffic violations.
- (3) James Renfrow (white), full-time Maintenance Technician, was suspended for a day without pay after Franklin received word that he had slammed his fist into a refrigerator in the maintenance facility.
- (4) Anthony Copeland (white), part-time Maintenance Technician, apparently became belligerent with Franklin in an expression of his disappointment after receiving a \$25 gift card for his Christmas bonus. He quickly apologized and was allowed to come back to work.
- (5) There was an incident in 2013 where a disciplinary action was recorded. The notation states that: "On Tuesday, January 7th, 2013 between 8:23 AM and 8:33 AM the following people were in the office of the Connell Smith Bldg – Those present were: India Johnson, Rodney Houston, Jeff Childs, Eric Childs and Joe Williams. Discussion of working hours and call back employees thru capital fund [space] creating hostility in the work place [space] threatening language." All of the aforementioned employees are African-American.
- (6) Rodney Houston (black), in July 2014 for "Harassment – Discourteous Language – Creating Hostility." Attached to the notice is a narrative written by India Johnson, describing a heated conversation about whether or not they spoke with HUD officials on their on-site review.

The FHEO review of these disciplinary actions did not reveal any clear pattern of discrimination on the part of ACHA management against its African-American employees.

Employment Discrimination on the Basis of Race – Pay and Workload Disparity

Another area of focus for the FHEO review was alleged disparities in pay and workload among ACHA maintenance staff.

Name	race	years	title	Rate / hour	Total Hrs Paid	net pay	A 1	A 2	A 3	Total Hours Worked
E. Childs	AA	3	p/t maintenance	\$12	115	\$1380.00			1560	26
J. Childs	AA	4	maintenance tech 1	\$17.75	191	\$3390.25	946			15.77
A Copeland	white	10	p/t maintenance	\$15	128	\$1920.00	130		2345	41.25
R. Fitzgerald	white	8	maintenance tech 1	\$19.74	0	\$0.00			540	5
R. Greenley	white	0	retired / contract	\$20.6	32	\$659.20	90	180	30	5
R. Houston	AA	28	maintenance tech 1	\$17.75	144	\$2556.00	2280	170	15	41.08
J. Renfrow	white	4	maintenance tech 1	\$17.75	106	\$1881.50	90	855	60	16.75
B. Tatum	white	0	retired / contract	\$20.37	32	\$651.84				0

Chart 3

In the course of its review, FHEO studied two sources of information: The actual maintenance work orders for all ACHA units during the month of September 2013, as well as what each of those employees was paid during that same time.²⁴

On an hourly basis, the top three highest paid maintenance employees are white. Billy Tatum and Ronald Greenley are retired and work part-time on a contract basis, and Robert Fitzgerald is full-time.

Regarding the retired, part-time maintenance technicians, the two white retirees receive the highest hourly salary, at \$20.37 per hour. They have contracts with ACHA to perform their work. There is also a third retired part-time maintenance technician, Henry Wade, who is African-American, yet does not have a contract to perform work with ACHA. He is only paid at a rate of \$15.93 per hour, much less than the comparable white retired part-time employees.

In September 2013, there were four full-time maintenance employees, three of whom were able to work the entire month.²⁵ In order of seniority, Rodney Houston, African-American, has 28 years of experience and is paid a \$17.75 per hour. After that, Robert Fitzgerald, white, has 8 years of experience and is paid \$19.74 per hour. Finally, James Renfrow, white, has 4 years of experience and is paid \$17.75 per hour; Eric Childs, who is African-American, also has 4 years of experience and is paid the same as Renfrow.²⁶

Upon further analysis, according to work-orders and paystubs, Houston worked substantially more “billable hours” than Renfrow. At the same time, Houston has an extra 24 years of experience compared to Renfrow, yet gets paid the same rate. Finally, Houston has an extra 20 years of experience compared to Fitzgerald, yet gets paid less than he does.

There may also be a disparity with respect to the part-time maintenance technicians. Anthony Copeland, who is white, earns \$15 per hour, compared to Eric Childs, who earns \$12 per hour. On the other hand, Copeland has 10 years of experience, whereas Childs has only 3 years.

Another consideration are the particular units that the maintenance technicians are assigned. As previously discussed, AMP 1 refers to McBride and Elmwood, which are the oldest buildings, and have the reputation for being crime-ridden. Most of the maintenance requests for AMP 1 were fulfilled by African-American employees, by Rodney Houston and Jeff Childs. On the other hand, AMP 2 (scattered-sites) and AMP 3 (senior / disabled buildings) are more racially integrated and do not have the same reputation with respect to crime, yet the majority of maintenance work performed in those buildings is by white maintenance technicians.

Furthermore, in an interview with FHEO staff, Fitzgerald explained that there is a “big difference” with regard to the maintenance needs between AMP 1 and AMP 3. He stated that

²⁴ Robert Fitzgerald, the highest paid full-time Maintenance Technician, became injured while working in September 2013 and has been out of work up through the date that this Letter was published.

²⁵ ACHA did not provide FHEO with any information to distinguish any one maintenance technician’s background, skill set or training, beyond what is apparent here.

²⁶ As previously mentioned, Renfrow is related to the Executive Director, and Childs to one of the Commissioners.

AMP 3 houses elderly tenants who “don’t do much damage to their units,” whereas AMP 1 has “younger families with kids,” and there is a constant need for repairs.

When asked why the system for assignments and pay is the way that it is, Franklin stated that the system pre-dated her tenure as Executive Director, and she saw no need to change it. When asked if anyone had complained about the system, or asked for a raise, Franklin mentioned that Rodney Houston had asked for a raise, but she refused it.

Fitzgerald added that he too has asked for a raise every year, and that sometimes it is approved and sometimes it is denied. Most recently, in late 2012, he asked Franklin for a raise and was denied due to lack of funds. When asked if he knew of any other ACHA maintenance technicians who had requested a raise, Fitzgerald replied that: “I’m pretty sure Rodney Houston asked for a raise, and he deserved it because he carried the load for AMP 1.”

To summarize, there is a disparity with respect to the rate of pay among ACHA maintenance technicians, on the basis of race. The African-American employees are paid less, however, they are more likely to be assigned to AMP 1, the buildings that are in poorer physical condition and more prone to crime, compared to similarly situated white employees. At the same time, ACHA assigns more maintenance staff resources to AMP 3, buildings that are newer, closer together, and happen to be more racially integrated.

Analysis

Title VI of the Civil Rights Act of 1964²⁷ and its implementing regulations at 24 C.F.R. Part 1 prohibit discrimination in federally funded programs on the basis of race, color or national origin. The implementing regulations, specifically 24 C.F.R. §1.4(b)(2)(i), state that a recipient of federal financial assistance, in determining the types of housing which will be provided under a program or activity, may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race. In addition, 24 C.F.R. §1.4(b)(1)(i) makes it illegal for a recipient to deny a person any housing or other benefits provided under the a program or activity on the grounds of race. Furthermore, 24 C.F.R. §1.4(b)(1)(vi) makes it illegal for a recipient to deny a person the opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity, including the opportunity to participate in the program or activity as an employee. Finally, 24 C.F.R. §1.4(b)(6)(i) requires a recipient, given a previous finding of discrimination, to take affirmative action to overcome that prior discrimination. The ACHA, as a public housing authority, is a recipient of federal financial assistance.²⁸

As previously stated, there exists residential segregation among ACHA’s family public housing units. There are 247 occupied units in AMP 1, McBride and Elmwood, and of those units, 239, or 96.8%, are occupied by African-American heads of household. This is striking considering that the City of Cairo is 69.5% African-American, and that the entirety of Alexander County, which corresponds with the ACHA service area, is only 34.8% African-American. Also

²⁷ 42 U.S.C. §2000(d) *et seq.*

²⁸ See 24 C.F.R. §1.2(f).

important is the disparity between AMP 1 compared to AMP 2 and AMP 3, many of the units of which are “designated” as senior and disabled. In AMP 2 and AMP 3, 108 out of 188 total units, or 57.4%, are occupied by African-American heads of household, a percentage that is more in line with the surrounding demographics.

Additionally, the segregated AMP 1 facilities are much older, and considered to be more poorly maintained than the ACHA’s other properties, although it appears as though ACHA devotes fewer maintenance resources to its upkeep. Furthermore, the AMP 1 buildings have a reputation, shared among ACHA and HUD PIH staff, for having more crime and being less secure, despite the fact that ACHA has not committed any of its security resources to AMP 1. As a result, it is clear that ACHA’s actions and policies have adversely and disproportionately impacted African-American families and residents of ACHA public housing while having the effect of residential segregation.

On the subject of labor, the FHEO review revealed that the ACHA has a documented history of discriminating against African-American employees. Furthermore, it is relevant that a number of EEOC complaints have recently been filed alleging racial discrimination, and that none of the supervisory employees are African-American. The ACHA had an opportunity to affect diversity when the position of Executive Director became available, yet it chose to promote the former Executive Director’s assistant, Martha Franklin, over an African-American manager, Joe Williams.²⁹ Not to mention, the ACHA failed to open the hiring process up to external candidates. Beyond that, only one non-maintenance employee at ACHA is African-American.

Specifically with respect to the maintenance technicians, the highest paid (on an hourly basis) maintenance technicians at ACHA are white, yet that does not appear to track with seniority. The technicians who are assigned to the oldest buildings in the poorest physical condition and without any security personnel or surveillance equipment are African-American, whereas much of the work being done in the newer facilities is performed by white technicians. Finally, the part-time white retirees have a contract and are paid at a higher hourly rate than the part-time retired African-American employee.

Based on this evidence, it is clear that ACHA’s actions and policies, with respect to the assignments and pay rate of its maintenance technicians, have adversely impacted African-American maintenance employees, compared to comparable white employees. Furthermore, failing to provide opportunities for African-Americans to work in management and policy making capacities have contributed to a failure to examine or disturb the status quo with respect to tenanting policies, which has the effect of maintaining and even furthering racial segregation in family public housing, and adversely affecting program participants.

Defenses

It is next necessary to consider whether ACHA’s actions regarding residential segregation and employment, when viewed in its entirety, serve a legitimate public purpose sufficient to justify the resulting disparate impact on the African-American households and employees.

²⁹ This review did not assess Williams’ specific qualifications for the position.

ACHA staff point to the fact that they have three separate waiting lists separated by AMP: One for people who wish to reside in family public housing, one for “Thebes,” which is approximately 25 miles outside of town, and one for “seniors / disabled.” When asked, ACHA staff explained that the separate lists serve a purpose given that people who live in Thebes, Illinois need a car, and not every applicant has one. As a result, it is possible that applicants can “self-select.” Another issue is that many of its units are restricted to those over the age of 50, and without children under the age of 18, yet none of those units have been “designated” as senior with HUD. Franklin added that basically, the waiting lists have been maintained the same way for as long as she has been at ACHA.

With respect to managing the crime and security situation, the defenses take a similar tone. Franklin points out that despite the reputation for a propensity of violent crime in Elmwood and McBride, Franklin has not actually studied the issue, and didn’t feel compelled to prioritize security and surveillance resources at those properties. She also stated that there is a lack of funding to expand security resources, and the security stationed at the elderly and disabled buildings helps the residents there “feel more secure.” Yet HUD PIH was able to interview local elected and law enforcement officials, as well as residents, who believe that the threat of violent crime is real. And even ACHA staff, in interviews with FHEO, described a much more serious category of crime, such as rape, murder and drug dealing, in the context of the AMP 1 properties compared to others.

Furthermore, ACHA has admitted that the McBride and Elmwood facilities are obsolete. ACHA maintenance technician Fitzgerald explained it succinctly: AMP 1 has mostly families with children, and there is a constant need of repairs, whereas AMP 3 is mostly elderly tenants who are less likely to cause wear and tear to their units. Franklin pointed out that “eventually you run out of things you can do to dress it up.” Yet despite the relatively nicer physical condition, the FHEO review showed that ACHA devoted more maintenance resources to a smaller number of units in AMP 3, at least during the month of September 2013.

While ACHA has basically pled ignorance and a preference for the status quo, none of these defenses qualify as a legitimate public purpose, or justification for policies and practices that have a disparate impact on African-American households. This is especially true in context, in light of the fact that there is no obvious reason, aside from bedroom size, to “designate” certain units as set-aside for people over 50 without children under 18, and “disabled,” rather than allow families, many of whom are African-American, to live there.

The defense with respect to the hiring practices and maintenance technician assignments and pay is similar: Franklin pointed out that the assignment system predated her involvement as Executive Director, and she felt no need to change it, notwithstanding the fact that an African-American employee, Rodney Houston, asked for a raise and was denied, whereas a white employee, Robert Fitzgerald, has previously been given a raise. And it’s true that Franklin, in her term as Executive Director, has not been in a position to make a hiring decision for any managerial or policy-making vacancies.

Nonetheless, this defense does not qualify as a legitimate public purpose, insofar that the policies and practices have the effect of maintaining a status quo. That inertia then has the effect of

imposing segregation in housing on program participants, and has the effect of creating a disparity in workload and pay among maintenance technicians.

Based on the foregoing analysis, the residential segregation apparent in ACHA's family public housing in AMP 1 perpetuated segregation, with in adverse impact against African-American public housing residents, in violation of 24 C.F.R. §1.4(b)(1)(iii) and 24 C.F.R. §1.4(b)(2)(i).

Furthermore, the employment discrimination described above, insofar as it subjects program participants to discrimination on the basis of race, supports the finding that 24 C.F.R. §1.4(b)(vi) has been violated.

Intentional Discrimination and Affirmative Action to Overcome Prior Discrimination

The Title VI implementing regulation found at 24 C.F.R. §1.4(b)(1)(i) prohibits a recipient of federal financial assistance from directly, or through contractual or other arrangements, denying a person any housing on the grounds of race. The Title VI Legal Manual³⁰ recognizes that federal agencies may enforce regulations promulgated under Title VI using a theory of intentional discrimination.³¹ Here, the agency must show that "a challenged action was motivated by an intent to discriminate." This requires a showing that the decisionmaker was not only aware of the complainant's race... but that the recipient acted, at least in part, because of the complainant's race..."³² A successful intentional discrimination claim does not require "evidence of 'bad faith, ill will or any evil motive on the part of the recipient.'" ³³ Furthermore, "[e]vidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by decisionmakers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure (e.g. failure to consider factors normally considered), legislative or administrative history (e.g. minutes of meetings)...and evidence of a substantial disparate impact on a protected group."³⁴ In addition, evidence that a decisionmaker is aware that a discriminatory effect is likely to result from a practice or decision may also support a claim of intentional discrimination.³⁵

In this case, there is evidence that ACHA engaged in intentional discrimination on the basis of race, in violation of Title VI and HUD's regulations promulgated under Title VI, insofar as it has created segregated housing conditions, and an environment of unequal employment on the basis of race.

Here, this claim of intentional discrimination is based almost entirely on the historical context of civil rights concerns with the ACHA. As previously discussed, there is a documented history of litigation and consent decrees with respect to both of these Title VI allegations.

³⁰ Retrieved at <http://www.justice.gov/crt/about/cor/coord/vimmanual.pdf>.

³¹ *Id* at 43.

³² *Id* at 43, citing *Elston v. Talladega County Bd. Of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993).

³³ *Id* at 43, citing *Elston* at 1406.

³⁴ *Id* at 44, citing *Elston* at 1406.

³⁵ See *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 n.25 (1979) ("When the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences of [the statute], a strong inference that the adverse effects were desired can reasonably be drawn").

In the context of residential segregation, in the 1970's the ACHA had agreed to integrate Butler Homes and the Pyramid Courts (now known as McBride Place). Yet now, approximately 40 years later, these buildings remain essentially just as segregated as ever. Furthermore, it appears that ACHA staff is aware of the security and maintenance challenges of McBride and Elmwood, yet has failed to redeploy resources to address those concerns. As a result, ACHA was aware of the racial segregation, as well as the adverse impact that this segregation could have on the AMP 1 tenants, yet failed to take steps to remedy the situation.

The same is true on the topic of employment discrimination, where the ACHA had previously agreed to open its hiring process up to African-American employees. And again, 40 years later, the hiring process remains closed, and no African-American employees are in management or policy-making positions. What is especially pernicious about this practice is that failing to open the door to diversity in management similarly fails to create incentive for management to challenge the status quo and the policies that have and still contribute to residential segregation on the basis of race. And it is the ACHA residents, particularly the African-American families who live in AMP 1, who suffer.

Along the same lines, the series of EEOC complaints that have been filed in the last year or two do not seem to have prompted the ACHA to reexamine any of its hiring or management practices. As a result, while there is good reason to believe that ACHA had knowledge of both historical and recent adverse employment practices, it failed to address that status quo.

This evidence taken together supports a finding of intentional discrimination. While there is no evidence that Executive Director Franklin or any of the Commissioners acted with any evil motive or bad faith, in light of the historical context, and the likelihood that the decision makers were aware of this context, there is evidence that ACHA engaged in intentional discrimination in violation of Title VI and its implementing regulation found at 24 C.F.R. §1.4(b)(1)(i).

Furthermore, the Title VI implementing regulations require ACHA to take affirmative action to overcome the effects of prior discrimination. Given that the segregation in its public housing has returned to levels similar to or worse than that during the litigation that occurred approximately 40 years ago, it is clear that ACHA is no longer taking adequate steps to overcome the effects of prior discrimination. This supports a finding that ACHA has violated 24 C.F.R. §1.4(b)(6)(i).

Conclusion

The Department finds the Recipient in violation of Title VI. This letter addresses only the issues discussed herein and should not be interpreted as a determination of the Alexander County Housing Authority's compliance or noncompliance with Section 504, Section 3, or in any other respect.

HUD's regulations discuss the issuance of a Letter of Findings ("LOF") under Title VI at 24 C.F.R. §1.7. Under Title VI it is HUD's policy to resolve all matters by informal means whenever possible. Informal resolution is usually achieved through the execution of a Voluntary

Compliance Agreement ("VCA") between HUD and the recipient. We invite the Alexander County Housing Authority to enter into a VCA.

HUD prefers to achieve an informal voluntary resolution to this matter through a written VCA. See 24 C.F.R. §1.7(d). If the noncompliance cannot be corrected by informal means, compliance may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. See 24 C.F.R. §1.8(a).

Within the next 30 days, someone on my staff will be in contact with suggestions for the terms of a VCA. You may also contact me directly at (312) 913-8400.

Sincerely,


Maurice J. McGough
FHEO Region V Director
Office of Fair Housing and
Equal Opportunity

cc: Martha Franklin
Executive Director, Alexander County Housing Authority

Antonio Riley
Regional Administrator, Region V

James Cunningham
Deputy Regional Administrator, Region V

William E. Wilkins
Director, Chicago Office of Public Housing

Harold McNally
Chairman, Alexander County Board of Commissioners

Illinois Department of Human Rights
Director, Marion Office