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**Big Results for D/FW from *ICP v. TDHCA* Litigation:
Increase in Housing Access Outside Racially Segregated Areas
& Reformed 9% LIHTC Allocation Process**

ICP's litigation, which sought a remedy for the racial segregation caused by the allocation of low income housing tax credits (LIHTC) in the Dallas metropolitan area, produced a substantial number of LIHTC units outside racially segregated areas and reform of the 9% LIHTC allocation process. The case, *ICP v. Texas Department of Housing and Community Affairs*,¹ was filed in 2008 and ended in 2016. There were numerous district court opinions, a Court of Appeals for the Fifth Circuit opinion, and a U.S. Supreme Court ruling in the case.² Before the case was dismissed on remand from the U.S. Supreme Court, the interim liability decisions and the interim remedial order resulted in increased housing opportunities for ICP's clients, other voucher families and other low income residents of the Dallas metro area.³

Two decades of racially discriminatory allocation decisions had placed 94% of the 18,710 9% and 4% LIHTC family units in the City of Dallas in predominantly minority locations as of

¹ 3:08-cv-00546-D Northern District of Texas, Judge Fitzwater.

² *Inclusive Communities Project, Inc. v. Texas Dept. of Housing and Community Affairs*, 2008 WL 5191935, N.D.Tex., Dec. 11, 2008 (denying motion to dismiss, granting ICP standing); *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 749 F.Supp.2d 486, 499-500 (N.D. Tex. 2010) (partial summary judgment for ICP) ; *Inclusive Communities Project, Inc. v. Texas Dep't of Hous. & Cmty. Affairs*, 860 F. Supp. 2d 312 (N.D. Tex. 2012) (liability); *Inclusive Cmty. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs*, 747 F.3d 275, 276 (5th Cir. 2014) (liability), *aff'd and remanded*, ___ U.S. ___, 135 S.Ct. 2507 (2015). The remedial order opinions are *Inclusive Communities Project, Inc. v. Texas Dep't of Hous. & Cmty. Affairs*, No. 3:08-CV-0546-D, 2012 WL 3201401, at *1 (N.D. Tex. Aug. 7, 2012), amended in part, No. 3:08-CV-0546-D, 2012 WL 5458208 (N.D. Tex. Nov. 8, 2012), *rev'd and remanded*, 747 F.3d 275 (5th Cir. 2014), *aff'd and remanded*, 135 S. Ct. 2507 (2015); *Inclusive Communities Project, Inc. v. Texas Dep't of Hous. & Cmty. Affairs*, No. 3:08-CV-0546-D, 2016 WL 4494322 (N.D. Tex. Aug. 26, 2016) (judgment for defendants, case dismissed).

³ The Dallas metro area for the litigation included Collin, Dallas, Denton, Ellis, Hunt, Kaufman, and Rockwall counties.

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2008.⁴ Many of the complexes were located in racially segregated areas marked by conditions of slum and blight. 74% of all the family units in the Dallas metro area were in predominantly minority areas.

During the case, TDHCA allocated 9% LIHTCs to 13 projects with 1,825 units in low poverty, predominantly White non-Hispanic areas.

Allocation year	Family Project	Units	City	County
2011	North Court Villas	150	Frisco	Collin
2012	Riverstone Trails	96	Sunnyvale	Dallas
2012	Apple Grove Villas	213	Mesquite	Dallas
2013	KRON Aubrey	150	Aubrey	Denton
2013	Summit Parque	98	Dallas	Dallas
2013	McKinney Millennium	164	McKinney	Collin
2014	M2 Apartments (Post Oak)	182	McKinney	Collin
2014	Bishop Gardens	72	Justin	Denton
2014	Cypress Creek Apartments	220	Royce City	Rockwall
2016	The Veranda Townhomes	40	Plano	Collin
2016	Provision at Melissa	120	Melissa	Collin
2016	Palladium Garland	140	Garland	Dallas
2016	Palladium Anna	180	Anna	Collin

ICP was also directly involved through making loans and grants, other litigation, and arranging for the use of Walker project based vouchers in obtaining the allocations for the North Court Villas, Riverstone Trails, Summit Parque⁵, McKinney Millennium, and M2 Apartments (Post Oak). ICP's clients and other voucher families reside in all of the projects that have opened for occupancy. They will reside in the others as the projects open.

These allocations resulted from policy changes made:

- after the initial summary judgment for ICP in 2010;
- as a result of the remedial order in effect for 2013 and 2014; and
- the remedial order provisions that TDHCA continued to implement through the recently passed 2017 Qualified Allocation Plan.

None of the remedial provisions or the related policy changes were race conscious. The major remedial elements were:

⁴ ICP 2016 EXH No. 65.

⁵ Between 1995 and the 2013 allocation to Summit Parque, there were no other LIHTC allocations to any project in a predominantly White non-Hispanic area in the City of Dallas.

- the Opportunity Index selection criteria points and eligibility for the 130% basis boost for applications in locations in higher income, lower poverty areas with good schools;
- making applications ineligible for locations in areas marked by adverse site and area conditions high crime rates, low performing schools, industrial uses and other noxious facilities, and environmental hazards;
- the elimination of the discretionary forward commitment policy; and
- the cessation of the practice invoking discretion to make 9% allocations based on factors other than the selection criteria points awarded.⁶

The QAP Opportunity Index selection criteria provisions for the higher income, lower poverty areas with good schools rate each location by those criteria. Q1 locations receive the highest number of selection criteria points with the second tier Q2 locations receiving a lower number. The applications in the lower income, higher poverty, lower school rating Q3 and Q4 locations receive no selection criteria points under this criterion. The applications for Q1 and Q2 locations are eligible for a 130% basis boost that is equal to the basis boost for applications with locations in Qualified Census Tracts. The Opportunity Index selection criteria element began with the remedial order and is still in the 2017 QAP.

The threshold area eligibility requirement began in the remedial order and continues in the 2017 QAP. The applicant must disclose the presence of the listed adverse conditions that would affect the proposed development. The conditions include high crime rates, industrial uses, blight, adverse environmental conditions, high poverty, and low performing schools.

While the *ICP v. TDHCA* lawsuit challenged racial segregation only in the Dallas area, TDHCA voluntarily applied the Opportunity Index, the Threshold area eligibility requirement, and other provisions of the remedy on a statewide basis. These elements have caused the location of many more LIHTC units in higher income, lower poverty locations with better schools throughout the state. The most recent 9% allocation in 2016 awarded LIHTCs to 64 applications. 59 of the applications awarded an allocation were in higher income, low poverty, locations with good schools ranked as either Q1 or Q2 Opportunity Index locations.

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⁶ These results and policy changes focus on the 9% LIHTC allocation process. The 4% LIHTC projects and program remains racially segregated.