

will be assured and what penalties the city may incur for noncompliance. For example, the agreement states that HUD will monitor the city's implementation and will be given access to the city's premises, records and personnel for this purpose.²² In addition, should any acts or omissions by the city and its representatives violate the terms of the agreement, HUD may then seek specific performance and/or enforce the provisions of the agreement in federal court.²³ Also, should HUD determine after 24 months of the effective date of the agreement that the city is unwilling or unable to comply with the requirements of Section 3 and the agreement, HUD may require the city to employ the services of a consultant or contractor to perform these duties on the city's behalf.²⁴ Finally, the agreement stipulates that the city must not only submit the HUD-60002 form annually as required by law, but must also submit semi-annual reports to HUD detailing the activities it has undertaken pursuant to the Agreement.²⁵

Transparency

The agreement also provides for greater transparency in several ways. First, a copy of the agreement must be made available to any person for his/her review pursuant to the Freedom of Information Act or any other law.²⁶ Second, within 180 days of the execution of the agreement, the city must provide notice of upcoming contracting opportunities on its website, on the Contract Analysis Services bulletin board, and directly to the city's certified Section 3 business concerns.²⁷ In addition, the city must annually provide Section 3 training events for contractors, sub-contractors, grantees, sub-recipients and residents.²⁸

Conclusion

HUD's agreement with the city of Saint Paul takes important steps towards remedying the city's noncompliance with Section 3 and may serve as a watermark as to what future agreements with other cities could entail. The agreement takes significant steps to enhance transparency by increasing the reporting requirements in both frequency and depth. It also aims to create accountability by giving HUD access to the city's records, requiring the city to appoint an individual to oversee compliance, and allowing HUD to require the city to hire an outside contractor to aid the implementation of the agreement should HUD find compliance lacking. In the event that similar agreements are made with other cities, HUD could further increase transparency by making all reports that the cities provide to HUD available to the public and by announcing major steps that the cities take to correct

noncompliance.²⁹ In addition, HUD should post all compliance agreements and determinations of noncompliance on its website. Posting such agreements, assuming that they are favorable to the beneficiaries of Section 3, would help advocates secure local compliance with Section 3. ■

²⁹See NHLP, *supra* note 2, at 291.

Highway Funds Could Be Subject to Section 3 Requirements

The Department of Transportation (DOT) recently published a notice seeking comments on a proposal to create an experimental project which would allow states to use Community Development Block Grant (CDBG) funds with their Federal Highway Administration Funds.¹ This would trigger requirements under Section 3 of the Housing and Urban Development Act to provide geographic and income-based preferences in hiring and contracting. The proposal seeks to implement the federal government's efforts to coordinate DOT, Department of Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) policies to create sustainable and livable communities.

The National Housing Law Project (NHLP) and the National Low Income Housing Coalition (NLIHC) submitted comments on the DOT notice.² The comments focused on the interface between HUD and DOT policies and practices, with an emphasis on the implications for the CDBG program and Section 3. NHLP and NLIHC generally supported the proposal, but asked that the CDBG program's primary objectives be preserved, including developing viable urban communities, providing decent housing and a suitable living environment, and expanding economic opportunities for persons of low and moderate. The comments also urged that the experimental project advance Section 3's purpose of creating employment and other economic opportunities for low- and very low-income individuals. ■

¹Livability Initiative under Special Experimental Project No. 14, 75 Fed. Reg. 15,767 (March 30, 2010).

²The comments, which were submitted May 14, 2010, are available on NHLP's homepage at <http://www.nhlp.org/>. They will be archived at NHLP's Attorney/Advocate Resource Center webpage on Section 3, <http://nhlp.org/resourcecenter?tid=115>.

²²*Id.* at 10.

²³*Id.* at 17.

²⁴*Id.*

²⁵*Id.* at 16.

²⁶*Id.* at 9.

²⁷*Id.* at 13.

²⁸*Id.* at 12.