

Proposed Legislation Signals New Hope for HUD's Section 3 Program

At a press conference in New York, Congresswoman Nydia Velázquez (D-NY) recently announced the introduction of a bill that would offer new hope for the Section 3 program of the Department of Housing and Urban Development (HUD).¹ HUD's Section 3 program is intended to provide economic and employment opportunities to low-income individuals.² Specifically, Section 3 requires recipients of certain forms of HUD funding to provide job training, employment, and contracting opportunities to very low- and low-income residents and eligible businesses.³ Unfortunately, Section 3 has generally failed to meet these worthwhile goals. In an effort to address this deficiency, Congresswoman Velázquez, with the help of housing rights advocates, has prepared a bill that would provide public housing authorities (PHAs) and community development agencies with the additional tools they will need to implement the Section 3 program the way Congress intended.

The bill, entitled the Earning and Living Opportunities Act, proposes to make a number of key modifications to the current Section 3 program,⁴ as detailed in this article.

Scope of the Program

The proposed bill would make the Section 3 program more expansive in terms of the total amount, the variety, and the duration of employment and contracting opportunities that are created through HUD funded projects.

- Currently, HUD requires certain recipients of HUD financial assistance, to the greatest extent feasible, to provide very low- and low-income residents with 30% of the aggregate new hire positions that arise from a particular Section 3 eligible project.⁵ However, this seemingly straightforward numerical goal has historically been quite problematic. Specifically, in the context of the construction industry, the "new hire"

designation has proven to be difficult to monitor and enforce because of issues involving contractors' ability to manipulate their headcounts and thus circumvent the regulation. The bill addresses this problem by changing the scope of Section 3 to cover 20% of all hours worked on Section 3 eligible projects. While the proposed multiplying percentage is lower, it is believed that the corresponding change to an hours multiplier will result in more training and employment opportunities because the absolute number of opportunities will be derived from a much larger base. Moreover, because it is significantly easier to monitor a project's total labor hours versus only those of new hires it is further believed that this change will also improve HUD's monitoring and enforcement efforts.

- A previously unaddressed issue that threatened the long-term employment opportunities of Section 3 residents involved whether the income earned from an existing Section 3 employment opportunity would disqualify the resident from future Section 3 employment opportunities because of the prescribed income-based qualifications. The bill addresses this dilemma by allowing residents to retain their Section 3 designation for five years irrespective of any increases to their income.
- There has been some confusion regarding the type and duration of the employment opportunities that Section 3 creates. For example, does Section 3 only relate to the temporary construction jobs that are associated with a particular project or does the scope of the program also include permanent employment opportunities that flow from the receipt of housing and community development funds (i.e. restaurant, hotel, business park, or other related positions that may be associated with a particular community development block grant). The bill clarifies the scope of the Section 3 program by stating that the program is also applicable to permanent jobs generated as a result of the funding.

Monitoring and Compliance

While the Section 3 program has been in existence for more than thirty-five years, the program has historically been marked by minimal monitoring and compliance procedures. As such, contractors are often unaware of their Section 3 obligations and are seldom reprimanded if they fail to meet their obligations. In response to these inadequate procedures the bill proposes the following requirements.

- In an attempt to promote greater monitoring and compliance on the local level, the bill would require that Section 3 committees be established within each PHA. These committees would be composed of a small group of interested parties including the contractor,

¹Press Release, Congresswoman Nydia M. Velázquez, Velázquez Legislation Helps Low-Income Residents Secure Job Training and Employment (Feb. 23, 2006), available at <http://www.house.gov/velazquez/PressReleases/2006/pr022306.htm>. Congresswoman Velázquez represents the 12th District of New York, which includes parts of Brooklyn, Queens and Manhattan.

²12 U.S.C.A. § 1701u(b) (West 2001).

³*Id.* § 1701u(c)-(d).

⁴Earning and Living Opportunities Act, H.R. 5164, 109th Cong. (2006) [hereinafter Earning and Living Opportunities Act].

⁵24 C.F.R. § 135.30(b) (2006).

PHA officials, and members of the Resident Advisory Board (RAB) and/or other community-based organizations. Each committee would maintain a registry of eligible low- and very low-income persons who have expressed an interest in Section 3 employment and/or contracting opportunities. This registry would then be made available to each respective PHA and/or recipient of other federal housing and community development assistance to facilitate job referrals and to determine the need for job training and other support services.

- Additionally, contractors must submit a plan to the contracting agency and the Section 3 committee that explains how they propose to comply with Section 3 hiring requirements. Moreover, upon completion of the project, contractors must submit evidence attesting to their compliance with the Section 3 requirements.
- If contractors cannot meet their respective Section 3 obligations, they must demonstrate that they exercised all feasible means to reach their Section 3 obligation. If contractors fail to demonstrate that they exercised all feasible means to satisfy their Section 3 obligations they will be fined an amount no less than 1% of the contract value. The funds associated with these fines will be deposited into a local account that provides job training opportunities for low- or very low-income persons in the community in which the project was located.

Reporting

HUD currently requires recipients of Section 3 eligible financial assistance to submit annual reports to HUD explaining the effectiveness of their particular Section 3 program.⁶ Unfortunately, only a relatively few recipients compile and submit this information. Moreover, HUD has historically done little to compel recipients to provide this information. The bill proposes to improve the reporting standards surrounding the Section 3 program by enacting the following requirements:

- All PHAs and other recipients of housing and community development funds will be required to make quarterly reports to HUD regarding the number of hours worked by Section 3 residents under their respective programs. The reports will also include information pertaining to the number and dollar amount of contracts awarded to Section 3 businesses. Moreover, in an attempt to make this information readily available to the general public, PHAs must include information

regarding Section 3 compliance in their five-year plan, annual plan, or any alternative plan which calls for similar reporting.

- In addition, the information HUD receives from the above-noted quarterly field reports must be summarized and reported to Congress on an annual basis. At a minimum, these reports to Congress must include the number of jobs and training opportunities generated, the number of hours worked by low- and very low-income persons, and the number and amount of contracts awarded to Section 3 businesses.

Collectively the proposed amendments represent a positive first step toward the revitalization of HUD's Section 3 program. However, the proposed legislation fails to address how an aggrieved individual can seek relief and the myriad of related issues involving an individual's private right of action.⁷ Nevertheless, given the dynamics of the current administration, this bill will surely face an uphill battle as it attempts to make its way out of the House committee. ■

⁷For an interesting discussion regarding the use of Section 1983 of the Civil Rights Act as a tool to enforce federal laws, see Jane Perkins, *Using Section 1983 to Enforce Federal Laws*, CLEARINGHOUSE REV., Mar.-Apr. 2005, at 720.

⁶24 C.F.R. § 135.90 (2006). This information could presumably be captured through HUD's standardized report HUD-60002.

Save the Dates

**Housing Justice Network Meeting
October 22-23, 2006**

**National Housing Training
October 21, 2006**

Please join us for the next meeting of the Housing Justice Network (HJN) in Washington, D.C. The meeting will bring housing advocates together to discuss and review issues on which HJN working groups have been concentrating, learn about critical housing issues, and formulate new plans.

The HJN meeting will be preceded by a one-day basic federal housing training sponsored by the National Housing Law Project. Low-income housing advocates are invited to both events. Details will be made available over the next several months.

Interested in helping plan the HJN meeting? Contact Gideon Anders at ganders@nhlp.org.