> construction, including apprenticeship positions, typically pay more than twice the minimum wage, and include health and other benefits. (4) Transportation projects provide the impetus for job training and employment opportunities for low income individuals residing in the area in which a transportation project is planned . . . . (6) The Alameda Corridor, a $2,400,000,000 transportation project, is an example of a transportation project that included a local hiring provision resulting in a full 30 percent of the project jobs being filled by locally hired and trained men and women.
>
> It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills and low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.[2]

These two paragraphs have the potential of opening up more than $200 billion in highway funding for job creation programs for low-income residents.[3]

Congress has historically endorsed a number of workforce development hiring requirements or preferences on federally funded projects. These include HUD's Section 3 program;[4] contractual set-asides under the Public Works Employment Act;[5] and the DOT's preference for Appalachian residents.[6] These workforce development programs, through the use of targeted hiring policies and apprenticeship programs, advance what is often the main function of government-assisted construction projects: to help a depressed area by increasing economic opportunities there.[7]

Consequently, workforce development programs represent an important part of the overall effort to rebuild economically depressed areas and thus suggest small but real steps the government can take towards the revitalization of some of our nation's poorest communities. Nevertheless, while these, and other similar programs, represent the promise of employment opportunities for many low-income individuals, local governments, developers, and advocates must now take the next step and identify concrete plans that will make this promise a reality.[8] ■

[2] *Id.*

[3] The President's Office of Management and Budget has identified the issue of highway and road congestion as a national problem and has proposed that the Department of Transportation (DOT) be allocated $283.9 billion to address this problem. These funds would be expended over a six-year period and would be earmarked for the development of highway and transit infrastructure projects. Office of Management and Budget, Budget of the United States Government – Fiscal Year 2006 (2005), *at* http://www.whitehouse.gov/omb/budget/fy2006/transportation.html.

[4] Housing and Urban Development (HUD) Act of 1968, Pub. L. No. 90-448, § 3 (1968) (codified at 12 U.S.C. § 1701u).

[5] Public Works Employment Act of 1977, Pub. L. No. 95-28, 91 Stat. 116 (1977) (codified at 42 U.S.C. §§ 6701-10).

[6] 23 C.F.R. pt. 633, subpt. B, app. B (2005).

[7] For a more thorough discussion of targeted hiring programs and community benefit agreements, see Julian Gross et al, Community Benefit Agreements: Making Development Projects Accountable ch. 5 (2005), *at* http://www.californiapartnership.org/downloads/CBA%20Handbook%202005%20final.pdf.

[8] Already, community organizations in New York, Louisiana, Missouri, Illinois and elsewhere have begun to strategize how to create more apprenticeship opportunities on transportation projects for residents of low-income communities. To learn more about this opportunity, contact Laura Barrett at the Gamaliel Foundation at laurabarrett@gamaliel.com.

City of Long Beach Finalizes its Section 3 Restitution Plan

After an extended six-year investigation by the Department of Housing and Urban Development (HUD), and upon the persistent urging of local advocates, the City of Long Beach (the City) has finally announced a restitution plan that complies with the directives prescribed in HUD's Section 3 Determination of Non-Compliance dated April 26, 2004.[1] The Long Beach restitution plan was deemed necessary to restore the lost Section 3 employment and business opportunities that could have been generated by the City's HUD-funded construction project.

[1] Letter from Craig Beck, Long Beach, CA, Acting Director of Community Development, to Floyd O. May, HUD General Deputy Assistant Secretary for Fair Housing (August 19, 2005); see also Letter from Melanie S. Fallon, Long Beach, CA, Director of Community Development, to Dennis Rockway, LAFLA Director of Advocacy, and Carolyn Peoples, HUD Assistant Secretary for Fair Housing (Nov. 16, 2004) [hereinafter "Restitution Plan"].

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.[2] HUD's Section 3 regulations state that recipients of housing and community development funds may establish that they have met the "greatest extent feasible" requirement by committing to employ Section 3 residents as at least 30% of all new hires.[3]

The Rainbow Harbor Project

During the summer of 1995 the City applied for and received a Section 108 loan guarantee from HUD in the amount of $40 million.[4] These funds were specifically earmarked to construct the public infrastructure, including, but not limited to, the dredging of the downtown harbor, and the construction of piers, docks, and landscaping, for the proposed "Rainbow Harbor." The terms of the loan guarantee, not unlike many other forms of HUD financial assistance, required the City to comply with Section 3 of the Housing and Urban Development Act of 1968.[5]

The Rainbow Harbor project expenditures totaled $40 million ($32 million in construction related costs and $8 million in non-construction related costs) and was completed in two phases. Phase I, which commenced on November 25, 1996, consisted generally of the dredging and other activities associated with the creation of a circular harbor located adjacent to downtown Long Beach. Phase II, which commenced on September 8, 1997, consisted generally of the construction of piers, docks, an esplanade and other improvements associated with the harbor, including an anglers building, a fountain, a boardwalk and a lighthouse. During the course of the project, 124 new employment opportunities were created, of which thirty-nine were awarded to Section 3 residents.

HUD initiated an investigation into the City's Rainbow Harbor project on July 10, 1998, and ultimately determined that the City had not fulfilled its Section 3 obligations.

HUD's Ruling

Pursuant to an administrative complaint filed by the Legal Aid Foundation of Los Angeles (LAFLA), HUD initiated an investigation into the City's Rainbow Harbor project on July 10, 1998, and HUD ultimately determined that the City had not fulfilled its Section 3 obligations. Specifically, HUD determined that when the complaint was filed on June 9, 1998, the percentage of Section 3 new hires was 5.2% for Phase I and 7.5% for Phase II of the project.

Significantly, however, HUD also found that while the City's contractors did attempt to hire more Section 3 residents during the later stages of the project, and were able to cumulatively attain a Section 3 new hire rate of 31.4%, the overall delay in Section 3 hiring resulted in Section 3 residents working only 19% of the "total hours" expended on the project to be allocated to Section 3 residents. This was not enough to comply with Section 3 regulations.[6] Consequently, through its Determination of Non-Compliance letter, HUD ordered the City to submit a plan which in "clear and convincing" detail specified how it would restore all Section 3 employment and business opportunities within the next three years.

The City's Plan

After a series of exchanges between the interested parties, the City, HUD, and the complainants were able to agree on a restitution plan. Under the proposed restitution plan, the City intends to restore the lost employment and business opportunities through the following strategies: (1) provide no less than 3000 hours of work to low-income Long Beach residents on City-funded construction projects; (2) provide pre-apprenticeship construction training to low-income individuals in the Long Beach area, including Carmelitos public housing residents; (3) provide placement assistance for graduates of the construction

[2] 12 U.S.C.A. § 1701u(b) (West 2005).

[3] 24 C.F.R. § 135.30(b)(3)(iii) (2005). For recipients of community development assistance, Section 3 is applicable to work (including administrative and management) arising from housing rehabilitation, construction and other public works. A Section 3 resident is a very low-income person residing in the metropolitan area in which the financial assistance was expended. 24 C.F.R. § 135.5 (2005).

[4] 42 U.S.C.A. § 5308 (2005). Section 108 authorizes HUD to guarantee the issuance of local taxable bonds to help finance community development activities.

[5] Agencies that receive federal housing and community development funds are required to provide "to the greatest extent feasible" employment, contracting, and training opportunities for low-income people. Thus, housing and community development funding carries the Section 3 obligation. HUD funding streams that often trigger a corresponding Section 3 obligation include: Community Development Block Grant, HOME, Emergency Shelter Grants, Housing Opportunities for Persons with AIDS, and HOPE VI.

[6] See generally, Letter from Carolyn Peoples, HUD Assistant Secretary for Fair Housing and Equal Opportunity, to Heather A. Mahood, Long Beach, CA, Deputy City Attorney, at 11-13 (Apr. 26, 2004).

training program into the Union Building Trade apprenticeship program and provide up $1,500 to each participant for purchase of tools, uniforms, and other program necessities; and (4) implement a $3.2 million small business incentive program to encourage contractors to use Section 3 businesses in the construction of future projects.[7] In an effort to secure compliance with the Section 3 restitution plan, the City, over the next three years, will report to HUD on a quarterly basis, in writing, on the specific progress it has made towards the plan. In addition, while the City has indicated a general willingness to comply with the terms of the restitution plan, LAFLA will also continue to monitor compliance on behalf of its clients, the Carmelitos Tenants' Association.

Conclusion

While the City's restitution plan represents a landmark victory for housing and community economic development advocates, unfortunately this plan also represents only one of a few victories that advocates have seen in this area. As a result, numerous similarly situated projects have failed to generate the employment opportunities that were originally intended by Congress. Over the coming months look for additional articles in the *Housing Law Bulletin* or for materials posted on the NHLP website addressing this issue in greater detail. ■

[7]Restitution Plan, *supra* note 1.

HUD Publishes the Final Public Housing Operating Fund Rule

In September 2005, the Department of Housing and Urban Development (HUD) published the final rule revising the formula for determining the operating subsidy for public housing.[1] In general, the formula relies upon a 2003 Harvard University Graduate School of Design study on the costs incurred in operating well-run public housing;[2] disappointingly, the authors studied data from the Federal Housing Administration multifamily database rather than public housing data.

The purpose of the new final rule is to create a new formula for distributing operating subsidies. The formula set forth in the new rule is comprised of a Project Expense Level (PEL) plus a Utility Expense Level (UEL) and certain add-ons. In addition, the final rule also establishes the requirements for public housing agencies (PHAs) to convert to asset management, which includes concepts of project-based management and long-term and strategic planning. Although the rule is final, there are many gaps and issues to be resolved that will substantially affect the funding levels of individual PHAs and their administration of public housing. The details of how individual PHAs will transition to an asset management have not yet been determined.

Background

The final rule was preceded by a negotiated rulemaking process that was marked by significant flaws and unfairness. In 2004, during the final phase of the negotiated rulemaking process, HUD diminished substantially the participation and representation of tenants, tenant organizations and advocacy groups representing interests of residents and applicants for public housing. The committee was reconstituted in early 2004 and the result was to diminish the role of residents. The reconstituted committee had twenty PHAs and their trade groups, two resident representatives, two HUD representatives and four other interested parties. The balance of interests was 20-2-2-4.

[1]79 Fed. Reg. 54,984 (Sept. 19, 2005) (effective Nov. 1, 2005) amended 79 Fed. Reg. 61,366 (Oct. 24, 2005) (changed some dates to reflect a grace period); see also *Information Regarding Implementation of the Final Rule to the Public Housing Operating Fund Program*, 24 CFR Part 990, PIH 2005-34, Nov. 2, 2005, available at www.hudclips.org.

[2]H. Rep. No. 106-379 (1999), 91, *see also* Pub. L. No 106-71 (Oct. 20, 1999) (HUD Appropriations Act for FY 2000); Harvard University Graduate School of Design, Public Housing Operating Cost Study, Final Report (2003), available at http://www.gsd.harvard.edu/research/research_centers/phocs/ (click on closing message and then on final report).