

Housing Law Bulletin

Volume 34 • June 2004

Published by the National Housing Law Project
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Cover: East of Eaton's Head Start program. East of Eaton, located in Chico, California, is a 76-unit family residential complex operated by the Community Housing Improvement Program. *Photo courtesy of CHIP.*

The *Housing Law Bulletin* is published 10-12 times per year by the National Housing Law project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions of policy of any funding source.

A one-year subscription to the *Bulletin* is \$150.

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HUD Rules Long Beach Violated Section 3 Employment Requirements

The Department of Housing and Urban Development (HUD) has handed low-income residents and job seekers of the City of Long Beach, California, a significant victory. After a six-year wait, HUD responded to an administrative complaint filed by individual public housing residents and the Carmelitos Tenants Association, ruling in an April 26, 2004, letter that the City of Long Beach violated Section 3 of the Housing and Urban Development Act of 1968.¹

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 The Section 3 regulations provide that recipients of housing and community development funds may establish that they have met the "greatest extent feasible" requirement by committing to employ and ensuring that their contractors employ "Section 3 residents" as at least 30% of all new hires.³ A Section 3 resident is a very low-income person residing in the metropolitan area.⁴ Priority in hiring is provided to Section 3 residents of the service area or neighborhood of the project.⁵ Recipients of housing and community development funds must receive a threshold amount of assistance before they are subject to Section 3.⁶

HUD ruled that the city violated Section 3 by failing to ensure that it and its contractors met or exceeded the 30% minimum requirements of the Section 3 regulations. In reaching that conclusion, it stated that Section 3 "emphasizes results" and that numerical goals of Section 3 "represent minimum numerical targets" because "the greatest extent

¹Letter from Carolyn Peoples, HUD Assistant Secretary for Fair Housing and Equal Opportunity, to Heather A. Mahood, Long Beach, CA, Deputy City Attorney (April 26, 2004) [hereinafter HUD Letter].

²12 U.S.C.A. § 1701u(b) (West 2001).

³24 C.F.R. § 135.30(b)(3)(iii) (2003). 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. 24 C.F.R. § 135.3(a)(2) (2003). For example, the City of Long Beach hired fifteen Section 3 residents to do construction and landscape maintenance. HUD Letter, *supra* note 1, at 4.

⁴24 C.F.R. § 135.5 (2003).

⁵*Id.* at § 135.34(a)(2)(i).

⁶*Id.* at § 135.3(a)(3) (Section 3 applies for community development funds if the assistance exceed \$200,000 and the contract exceeds \$100,000).

feasible' is the standard by which a recipient's compliance with Section 3 is measured."⁷ Most significantly, HUD determined that compliance with this standard enabled it to quantify the percentage of hours worked by Long Beach Section 3 new hires and compare it to the hours worked by all new hires on the project in order to evaluate if the hours worked reflect the "greatest extent feasible."⁸

To rely solely on the number of new hires would allow a recipient to "defy the intent of Section 3 by having a 'hiring surge' on the last day(s) of a project."⁹ In addition, HUD stated that the city had to demonstrate compliance for the duration of the project, which involved "many points of view and of time to measure meaningful compliance."¹⁰ Notably, compliance was required for each year of the contract and full compliance only in the last year (or "catch up" compliance) would not satisfy the obligation of "greatest extent feasible." Finally, HUD emphasized that the appropriate beneficiaries of Section 3 were residents of the City of Long Beach.¹¹

Factual Background of the Case

The City of Long Beach received a Section 108 loan guarantee for \$40 million.¹² Section 108 authorizes HUD to guarantee the issuance of local taxable bonds to help finance community development activities. The maximum loan amount may not exceed five times the most recent Community Development Block Grant (CDBG). To assure repayment, the recipient must pledge future CDBG grants received.¹³ The application must also show how the proposed activities will meet the national objectives of the CDBG program. Recipients of Section 108 loans are obligated to comply with Section 3.¹⁴

The purpose of the loan was to construct a "commercial harbor and public esplanades in support of a high-quality, downtown waterfront project involving retail and restaurant development, entertainment facilities, commercial boat tours and charters, and a 150,000 square

foot aquarium."¹⁵ The city signed documents stating that it would comply with Section 3 and made statements in its application that the city would use resources provided under the Jobs Training Partnership Act (JTPA) to train underemployed and unemployed residents of Long Beach.¹⁶ The application also described the extreme poverty surrounding the proposed project site and asserted that "[t]hese are the census tracts which would benefit most directly from the service and construction jobs created by [the project] initiated by the loan."¹⁷

Valley Crest became the principal contractor for phase two despite the fact that only 2% of its new hires in the first phase were Section 3 residents.

The city executed the loan agreement with HUD in September 1995, and entered into a construction agreement with C.A. Rasmussen, Inc. to begin the first phase of the development on October 29, 1996.¹⁸ The contractors finished the second and final phase of the work in the spring of 2000.¹⁹ Valley Crest, a subcontractor for phase one of the project, became the principal contractor for phase two despite the fact that only one out of fifty new employees—2% of its new hires—in the first phase were Section 3 residents.²⁰ The city did not advise Valley Crest of the legal preference for Section 3 residents from Long Beach until February 5, 1998, fourteen months after the development began and five months after the commencement of the second phase of the project.²¹

Prior to the signing of the contract with Rasmussen, the complainants contacted the director of the project to "encourage compliance with Section 3."²² Also prior to the signing of the contract, they sought assistance from the director of the civil rights division of the Los Angeles HUD office who investigated and advised the city

⁷*Id.* at § 135.30(a)(4) (2003); HUD Letter, *supra* note 1, at 12 (emphasis in original).

⁸HUD Letter, *supra* note 1, at 11.

⁹*Id.* at 10. "After notice of the complaint, however, evidence shows that Valley Crest hired 18 Long Beach Section 3 new hires from June 10, 1998, to June 30, 1998. Also, from July 1, 1998 to the end of the Project, Valley Crest and its subcontractors hired most of their Long Beach Section 3 new hires." *Id.* at 8.

¹⁰HUD Letter, *supra* note 1, at 9.

¹¹HUD Letter, *supra* note 1, at 7.

¹²42 U.S.C.A. § 5308 (West, WESTLAW through P.L. 108-234, approved May 28, 2004).

¹³*Id.* at § 5308(d).

¹⁴24 C.F.R. § 135.3(a)(2) (2003) (community development assistance that is used for housing construction or rehabilitation or other public construction is subject to Section 3); 24 C.F.R. § 570.208(a)(4) (2003) (criteria for national objectives for CDBG program includes job creation or retention activities).

¹⁵HUD Letter, *supra* note 1, at 1.

¹⁶Administrative Complaint of the Carmelitos Tenants Association and individual tenants at 2 (June 9, 1998) [hereinafter Administrative Complaint]. The legal aid attorneys who filed the Administrative Complaint were Dennis Rockway, Senior Counsel and Susanne Browne, Staff Attorney. They are now with the Legal Aid Foundation of Los Angeles (LAFLA).

¹⁷*Id.* at 3.

¹⁸HUD Letter, *supra* note 1, at 3.

¹⁹*Id.* at 4.

²⁰HUD Letter, *supra* note 1, at 7.

²¹*Id.* at 6-7.

²²Administrative Complaint, *supra* note 16, at 3.

to “begin to understand and implement Section 3 as required.”²³ On June 9, 1998, after the city continued to ignore the complainants, with virtually no participation from low-income residents of Long Beach, complainants filed an administrative complaint with HUD.

Elements of the Administrative Complaint

The administrative complaint filed by the Carmelitos Tenants Association and public housing residents with HUD alleged that the city failed:

1. to undertake activities to facilitate the training and employment of Section 3 residents from the City of Long Beach and to award contracts to Section 3 businesses in violation of the regulations;²⁴
2. to notify Section 3 residents of training, employment and contracting opportunities in a manner consistent with the regulations;²⁵
3. to assist and actively cooperate with HUD to obtain compliance with Section 3 by its contractors and subcontractors;²⁶ and
4. to document actions taken to comply with Section 3 including the results of such actions and impediments encountered.²⁷

Relief Sought in Administrative Complaint

The complainants sought a comprehensive remedy for the city’s violation of Section 3 requirements.²⁸ They requested that HUD suspend financial support to the city until compliance with Section 3 was documented. The documentation sought included information regarding the hiring of Section 3 residents from the City of Long Beach

and activities undertaken to facilitate economic opportunities for Section 3 businesses. In addition, the complaint sought to impose strict monitoring and reporting requirements on the city, and a plan setting forth strategies to promote the economic benefits for Section 3 residents and businesses. The complaint further requested that the city set aside funds for the training and employment of low-income individuals who should have benefitted from the project, independent monitoring and technical assistance for local Section 3 businesses. The relief sought also included a request that the city establish a local oversight committee composed of representatives of the city, the community, legal services organizations, HUD, state and federal legislative officials and organized labor. Finally, the complainants requested that HUD assistance should be divided into smaller projects to provide maximum participation by small local businesses, that the city set aside bonding and loan guarantee funds to assist small local business participation and that the project construction contracts include language providing for penalties for failure to fulfill Section 3 employment obligations.

²³*Id.*

²⁴Administrative Complaint, *supra* note 16, at 8-9; HUD Letter, *supra* note 1, at 2. See also 24 C.F.R. § 135.32(c) (2003) (obligates recipients to undertake activities to facilitate training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by engaging in activities such as those set forth in the appendix to 24 C.F.R. Part 135). The term Section 3 business is defined at 24 C.F.R. § 135.5.

²⁵Administrative Complaint, *supra* note 16, at 4-5; HUD Letter, *supra* note 1, at 2. See also 24 C.F.R. § 135.32(a) (2003) (obligates recipients to implement procedures to notify Section 3 residents and businesses about training and employment opportunities and Section 3 businesses about contracting opportunities).

²⁶Administrative Complaint, *supra* note 16, at 6-8; HUD Letter, *supra* note 1, at 3. See also 24 C.F.R. § 135.32(d) (2003) (obligates recipients to assist and actively cooperate with the Assistant Secretary to obtain the compliance of contractors and subcontractors with Section 3 regulations).

²⁷Administrative Complaint, *supra* note 16, 10-13; HUD Letter, *supra* note 1, at 3. See also 24 C.F.R. § 135.32(e) (2003) (requires recipients to document action taken to comply with Section 3 requirements, the results of such actions taken and impediments encountered, if any).

²⁸Administrative Complaint, *supra* note 16, at 15-18.

SAVE THE DATES

2004 Housing Justice Network Meeting

October 3-4

Housing Training October 2

The next meeting of the Housing Justice Network (HJN) is October 3 and 4 in Washington, D.C. HJN is a national association of attorneys and other advocates focusing on federal low-income housing programs. The 2004 HJN meeting will give members of the various HJN working groups—which address issues from public housing to federal relocation requirements to civil rights—an opportunity to meet in person and work on issues of concern to housing advocates and their clients.

A one-day training session will be held on October 2, immediately preceding the HJN meeting to address recent judicial, legislative and administrative changes affecting the federal housing programs. The training and meeting are separate events, although many participants attend both.

A more detailed announcement about the 2004 HJN meeting and the training event will appear in a future issue of the *Housing Law Bulletin*. To be added to the HJN mailing list, contact Amy Siemens at NHLP, 510-251-9400 ext. 111, asiemens@nhlp.org.

HUD Analysis, Conclusions and Relief

In addition to the key findings mentioned above, HUD determined in its review that when the complaint was filed on June 9, 1998, the percentage of new hires of residents from the City of Long Beach was 5.19% for Phase I which was completed on February 20, 1998, and 7.5% for Phase II of the project which began on September 8, 1997, and was completed in the spring of 2000. HUD therefore concluded that the 30% minimum requirement had not been met.²⁹ After the complaint was filed, the contractor did attempt to hire more Section 3 residents from the City of Long Beach. Eventually, HUD found that cumulatively for the period of the project, 31.4% of the new hires were Section 3 residents. Significantly, however, HUD also found that level of compliance was not sufficient because “[r]ecipient’s new Section 3 employee hiring, however, resulted in them working 19% of the ‘total hours’ by all new hires.”³⁰ In addition, HUD found that no Section 3 businesses benefitted from the project.³¹

HUD also found other examples that demonstrated that the city and its contractors did not attempt “to the greatest extent feasible” to comply with Section 3. These included:

- The city did not as promised provide to the carpenters’ and laborers’ unions names of qualified Section 3 residents who had received pre-employment training under the JTPA.
- During the construction stage, the city had no mechanism to collect data regarding Section 3 compliance and its community outreach strategy was never fully developed.
- The city failed to direct the Section 3 opportunities to residents of government assisted housing, including public housing residents and tenant-based Section 8 program participants.³²
- There was no evidence that the city notified Section 3 businesses about contracting opportunities available at the project.³³

Having found the city in violation in its April 26 letter, HUD ordered the city to submit a plan within ninety days which in “clear and convincing” detail specifies how it will restore all Section 3 employment and business opportunities within the next three years. The opinion is clear that the opportunities set forth “must *not* duplicate existing

obligations or commitments.”³⁴ The city must file quarterly reports. If within the next five years HUD determines that the city is not in compliance, the letter states that the city’s “eligibility for continued HUD federal funding will be evaluated in relation to the amount of Section 3 requirements remaining to be restored.”³⁵

Conclusion

The results obtained by the Carmelitos complainants are significant. Advocates have been urging HUD for many years to adopt standards and measure compliance with Section 3 based on the number of hours worked by Section 3 residents, rather than simply counting new hires. Failure to count the actual hours worked has resulted in the manipulation of the process and a surge of new hires at the end of a contract period. HUD has now formally recognized the critical importance of this concept.

The decision is also significant because it measures compliance by year and not cumulatively at the end of the contract term, which may span several years. In addition, the letter opinion is important as it recognizes another issue emphasized by advocates: with the expenditure of housing and community development funds, cities and other entities have a special duty to reach out to public housing residents and voucher participants.³⁶ The HUD opinion leaves some gaps, the most glaring of which is that, although it states that the city did not meet the contracting goals for Section 3 businesses, it does not expressly cite the Section 3 business contracting goals: 10% of all contracts for public construction and 3% of all other contracts.³⁷

These favorable determinations, if widely publicized by HUD and advocates and applied nationwide, will go a long way in ensuring that Section 3 residents benefit from long-term employment opportunities generated by federal financial assistance for housing and community development. ■

²⁹HUD Letter, *supra* note 1, at 3 and 11.

³⁰*Id.* at 11.

³¹*Id.* at 13.

³²*Id.* at 13; 24 C.F.R. § 135.1(a) (2003).

³³HUD Letter, *supra* note 1, at 13. *See also* 24 C.F.R. pt 135 app. (2003).

³⁴HUD Letter, *supra* note 1, at 13.

³⁵*Id.* at 14.

³⁶HUD noted that the city operates a voucher program for approximately 5,500 families and the Carmelitos public housing development has 565 family units. HUD Letter, *supra* note 1, at 13.

³⁷24 C.F.R. § 135.30(c) (2003).