



614 Grand Avenue, Suite 320
Oakland, California 94610
Telephone: 510-251-9400
Fax: 510-451-2300
nhlp@nhlp.org
www.nhlp.org

April 29, 2006

Comments to Draft Annual Action Plan Update FY 2006/2007 (April 2006)

The National Housing Law Project and California Rural Legal Assistance submit these comments. The comments are limited to the issues relating compliance with Section 3 by the State of California, Department of Housing and Community Development and its sub grantees and contractors.

The Draft Annual Action Plan Update lists the program goals and objectives which include

to pursue economic development and commercial revitalization activities through public/private investments that will result in the development and expansion of job opportunities within the State

and proposes to amend those goals “to evaluate the CDBG economic development programs and to implement changes to make them more business friendly.” These are admirable goals and objectives. However, the Draft Annual Action Plan Update is deficient because it fails, as does the State’s Consolidated Plan 2005-2010, to mention Section 3 and fails to discuss how the goals and objectives could partially be effectuated through compliance with Section 3. The State by receiving and distributing certain HUD funds is subject to Section 3, as it acknowledges in its Certification.

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.¹ The Section 3 implementing regulations set forth numerical goals for hiring and training opportunities for low- and very low-income individuals (30% of new hires must be low- or very low-income individuals) by the recipient or sub grantee of the recipient of housing and community development funds and any contractors. HUD has interpreted this goal to mean that 30% of the hours worked by new hires must be low or very low income individuals.² In addition, the Section 3 regulations set forth goals for contracting with Section 3 businesses.³ The goals for contracting with Section 3 businesses are 10% of all contracts for building trades work arising from construction and rehabilitation of housing or other public works and 3% for other contracts.

¹ 12 U.S.C.A. § 1701u(b) (2006).

² [Letter from Carolyn Peoples, HUD Assistant Secretary for Fair Housing and Equal Opportunity, to Heather A. Mahood, Long Beach, CA, Deputy City Attorney \(April 26, 2004\)](#), available at

<http://www.nhlp.org/html/pubhsg/index.htm>

³ 24 C.F.R. § 135.5 (2005).

Throughout the term of the Annual Action Plan, 2006-2007, it is anticipated that over \$43 million will be spent on CDBG activities, \$62 million on HOME and \$3 million on lead elimination. Surely, there will be jobs and contracting opportunities that will arise from the expenditure of these funds for which low and very low income individuals will be qualified and for which Section 3 businesses will be qualified. The opportunities are substantial because Section 3 applies

to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.⁴

Despite these opportunities, the Draft Annual Action Plan does not mention Section 3 and therefore includes no hiring goals or contracting goals which comply with Section 3. The State must set Section 3 goals and enforce and monitor compliance. Failure to adopt at least the minimum Section 3 goals and to enforce and monitor compliance will make it impossible for the State to certify compliance and file reports regarding Section 3 with HUD, as is required.⁵

Thus, we recommend that the State revise its program goals and objectives for the coming and successive years to provide, as follows:

- To ensure that sub grantees, contractors and subcontractors for building trades work arising in connection with housing construction and rehabilitation, including lead base paint abatement, and other public works that meet the threshold requirements commit to employ low income residents of the area or neighborhood in which the funds are expended for 30% of the hours worked by new hires
- To ensure that at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing construction and rehabilitation and other public works and 3% of all other contracts are with Section 3 businesses.

Also, we urge that you amend the new program goal and objective proposed for this year, as follows:

- To evaluate the CDBG economic development programs and to implement changes to make them more business friendly, *especially for Section 3 businesses (as defined at 24 C.F.R. § 135.5)*.

Finally, the State should inform all sub grantees and contractors of the Section 3 obligations.⁶ (Note that the State also must comply with these obligations.) The obligations include:⁷

- Adopting the Section 3 goals, similar to those which are discussed above
- Notifying Section 3 residents about training and employment opportunities
- Notifying Section 3 businesses about contracting opportunities generated by the Section 3 covered assistance
- Notifying contractors of the obligations and incorporating the Section 3 clause in all solicitations and contracts
- Facilitating training and employment of very low income individuals and the awarding of contracts to Section 3 businesses so as to achieve the above listed Section 3 goals
- Document actions taken to comply with Section 3 and the results of such actions
- Document impediments and the actions taken to address the impediments.

We urge the State to take action to comply with Section 3, to ensure that all sub grantees are aware of their obligations and to monitor and report on the compliance with Section 3 to both the public and to HUD, as required.

⁴ 24 C.F.R. § 135.3(b) (2005).

⁵ 24 C.F.R. §§ 91.225(a)(8), 135.32(e) and (f) and 135.90 (2005); see also HUD form 60002, Section 3 Summary Report

⁶ 24 C.F.R. § 135.32(f) (2005)

⁷ 24 C.F.R. § 135.32 (2005)

If you have any questions regarding these comments please contact, Catherine Bishop, NHLP, at 510-251-9400 ext 105 or cbishop@nhlp.org.

Cc: Kim Kendrick, Assistant Secretary Fair Housing

Section 3: Consolidated Plan Comments (New Orleans)

Employment/Community Economic Development

The Consolidated Plan discusses how the City's unemployment/underemployment has effected the overall poverty and homeownership levels, specifically referring to a lack of construction positions for low-income residents. However, the Consolidated Plan fails to discuss how these concerns could partially be addressed through employment programs like HUD's Section 3 program.

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.¹ The implementing regulations set forth numerical goals for hiring and training opportunities for low- and very low-income individuals (30% of new hires must be low- or very low-income individuals of the county) by the recipient of housing and community development funds and any contractors. In addition, the regulations set forth goals for contracting by New Orleans or by its contractors with Section 3 businesses.² The goals for contracting with Section 3 businesses are 10% of all contracts for building trades work arising from construction and rehabilitation and 3% for other contracts.

Throughout the term of this Consolidated Plan, the City and HANO will likely expend an unprecedented amount of funds towards housing and housing related issues, thus triggering a corresponding Section 3 obligation. Nevertheless, the Consolidated Plan includes no hiring goals or contracting goals which comply with Section 3. The City must set Section 3 goals and enforce and monitor compliance. Failure to adopt at least the minimum Section 3 goals and to enforce and monitor compliance will make it impossible for New Orleans to certify compliance with Section 3, as is required.³

¹ 12 U.S.C.A. § 1701u(b) (2006).

² 24 C.F.R. § 135.5 (2006).

³ 24 C.F.R. § 91.225(a)(8) (2006).

PHA Five-Year Capital Fund for Public Housing

According to the HACoLA annual plan and the funding from the stimulus package, HACoLA has between \$25 to \$28 million available for public housing capital improvement projects.⁸ These funds must be committed and spent within certain time frames or the funds will be subject to recapture by HUD. In particular, the stimulus funds must be committed by March 17, 2010 and 60% must be spent by that date.⁹ Thus we would like to know, when, how and for what these funds will be committed and spent. For what projects will funds be spent in 2009?

The current HACoLA Capital Fund Five-Year Action Plan, which is attached to the HACoLA Annual Plan list for fiscal year 2009 and for fiscal year 2010 projects worth only \$5,980,536 for each fiscal year. HUD has noted that PHAs may have to revise their Capital Fund Five-Year Action Plans so as to expend the additional stimulus funds. HACoLA is going to have to do that. HUD further states that PHA need only provide a 10 day notice for a hearing on the revised Capital Fund Five-Year Action Plan. Please provide Legal Aid Foundation of Los Angeles, attention Louis Rafti, Neighborhood Legal Services, attention Shirley Sanematsu and the National Housing Law Project, attention Catherine Bishop, with the earliest possible notice of such a revised plan and the hearing date.

The stimulus funds must be spent on a priority basis for the following purposes.

- rehabilitation of vacant units,
- contracts that may be awarded subject to bid within 120 days (i.e., “shovel ready”), and
- capital projects already underway or included in the HACoLA’s Five-Year capital fund plans.

Thus we would like to know the following information

- Number, location and estimated cost of repair of each vacant public housing unit.
- An estimate of the time to put out to bid contracts for the repair of these vacant units.
- The number, types and dollar value of contracts that may be awarded subject to bid in the next 120 days. If contracts may not be put out to bid within 120 days, what is the

⁸ HACoLA states that it had available from FY 2007 grants, \$5,665,390. HACoLA should receive approximately the same amount from FY 2009 appropriations. The Five-Year Action Plan, Part I: Summary, which is attached to the Annual Plan also states that there is a “carry over to future years” of \$15,288,464 for fiscal year 2009 and \$12,057,934 for fiscal year 2010. In addition, HACoLA was recently allocated \$7,401,512 from the stimulus package. (See attached information).

⁹ PIH Notice 2009-12, Information and Procedures for Processing American Recovery and Reinvestment Act Capital Fund Formula Grants (March 18, 2009). Note also that “if a PHA fails to obligate any of its other Capital Fund grants during this time period, an extension of the obligation deadline for that grant will not be granted based solely on the justification that the PHA was engaged in obligating [the stimulus funds.]”

realistic time table for awarding contracts for the repair of public housing soon and within the next year?

- The number, types and dollar value of capital contracts underway.
- The date for the hearing on HACoLA's revised Capital Fund Five-Year Action Plan.

Finally, HUD will soon announce the competitive application process for the distribution of an additional one billion dollars of capital funds from the stimulus package. In reviewing the capital needs that HACoLA currently has and the funds available to HACoLA, does HACoLA have a need for additional capital funds? Could HACoLA spend such additional funds quickly if awarded?

All of the capital funds are subject to Section 3, which provides for employment and economic opportunities for low income persons especially recipients of federal housing assistance. In particular, Section 3 requires that 30% of all new hires by HACoLA and by contractors of HACoLA pursuant to work contracted for with HUD funds must be low income individuals. In addition, Section 3 requires that 10% of the total dollar amount of all construction and maintenance contracts must be with Section 3 businesses.

Thus, we would like to know what HACoLA is doing to ensure that in the next fiscal year and for all current contracts, the contractors for work to be performed with capital funds are complying with Section 3, the number of low income individuals who will be hired to work on those contracts and the estimated dollar amount of contracts that will be available and entered into with Section 3 businesses. In addition, we would like to know if HACoLA anticipates hiring any new staff in the coming year and what it will do to ensure that 30% are low income individuals, including program participants.



614 Grand Avenue, Suite 320
Oakland, California 94610
Telephone: 510-251-9400
Fax: 510-451-2300
nhlp@nhlp.org
www.nhlp.org

August 15, 2006

Darrell G. Tuckness
Acting Executive Director
Housing Authorities of the City and County of Fresno
1331 Fulton Mall
Fresno, California 93721

Dear Mr. Tuckness:

The National Housing Law Project and Central California Legal Services submit these comments to Fresno's City and County Housing Authorities 5-Year Plan (FY 2007-2011) and Annual Plan (FY 2007). In light of Section 3 of the Housing and Community Development Act of 1968, these comments are limited to: (1) the hiring/training of very low- and low-income residents of Fresno; and (2) the contracting opportunities afforded to businesses that are owned by very low- and low-income residents of Fresno.¹⁰

Fresno's City and County Housing Authorities (FHA) provide services to nearly 45,000 people; and while the area median income in Fresno is \$50,800, the average income for families served by FHA is a mere \$12,000 for a family of four. Certainly there are numerous interrelated issues that have led to these discomfoting statistics. Nevertheless, most will agree that the solution largely rests with the broad need to provide greater employment, contracting, and training opportunities to low-income individuals and small businesses throughout the area.

¹⁰ As defined by HUD, a very low-income resident is an individual residing within a household with a cumulative income at or below 50% of Area Median Income (AMI). Similarly, a low-income resident is an individual residing within a household with a cumulative income at or below 80% of AMI. 24 C.F.R. § 135.5 (2006).

It is our belief that HUD's Section 3 program is an ideal tool for achieving this goal. And although the proposed 5-Year Plan and 2007 Annual Plan have expressed the need to increase the number and percentage of employed persons residing in FHA assisted housing, these same plans fail to discuss what role Section 3 could play in this process.

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.¹¹ The implementing regulations set forth numerical goals for hiring and training opportunities for low- and very low-income individuals (30% of new hires must be low- or very low-income individuals of the county) by the recipient of housing and community development funds and any contractors.¹² In addition, the regulations set forth goals for contracting by FHA or by its contractors with Section 3 businesses.¹³ The goals for contracting with Section 3 businesses are 10% of all contracts for building trades work arising from construction and rehabilitation and 3% for other contracts.

In recent years, FHA has received a considerable amount of funds from HUD for housing rehabilitation, housing construction, and other public construction projects; consequently triggering a number of corresponding Section 3 obligations.¹⁴ Thus, while FHA's Resident Employment Program represents a positive first-step, the scope and overall effectiveness of the program must be improved upon. For example, greater strides could be made if FHA fully integrated and actively promoted Section 3 through its Family Self-Sufficiency program.¹⁵ Therefore, at a minimum, FHA should bolster its Section 3 program by expressly incorporating Section 3 monitoring and reporting procedures into its 5-Year and Annual Plan processes. In addition, we urge FHA to develop a comprehensive resident outreach strategy for its Section 3 program. The failure to adopt at least the minimum Section 3 goals and to enforce and monitor

¹¹ 12 U.S.C.A. § 1701u(b) (2006).

¹² 24 C.F.R. § 135.30(b) (2006).

¹³ 24 C.F.R. § 135.30(c) (2006).

¹⁴ Through the periods of 2004-2006 the City and County of Fresno has collectively received Capital Fund allocations from HUD in the amounts of \$3,658,702; \$4,510,243; and \$3,904,302 respectively. In addition, in 2004 the City of Fresno Housing Authority received a \$20 million HOPE VI grant for a development project at Yosemite Village.

¹⁵ For example, FHA's Family Self-Sufficiency program could expressly discuss the role Section 3 plays in its overall anti-poverty strategy.

compliance will make it impossible for FHA to certify compliance with Section 3, as is required.¹⁶

We appreciate the opportunity to submit these comments. If you have any questions, please contact Alaric Degrafinried via telephone (510-251-9400, ext. 102) or via email (adegrafinried@nhlp.org).

Sincerely,

Alaric Degrafinried
National Housing Law Project

Chris Schneider
Central California Legal Services

¹⁶ 24 C.F.R. § 91.225(a)(8) (2006).

Mr. Darrell Tuckness
Fresno Housing Authorities
P.O. Box 11985
1331 Fulton Mall
Fresno, California 93721

Dear Mr. Darrell Tuckness:

We have recently had the opportunity to review the Housing Authority City of Fresno, HOPE VI, Section 3 Action Plan (hereinafter Section 3 Action Plan). For your convenience and to avoid confusion, the copy that we reviewed is attached, as it is not dated.

It is our understanding at the joint meeting of the Housing Authorities of the City and County of Fresno, held on August 23, 2006, the Section 3 Action Plan was amended to make it applicable to the public housing capital fund for the both housing authorities. We are pleased that the Boards approved the expansion of the Section 3 Action Plan to cover the capital fund and to make it applicable to both agencies.

It is also our understanding from the minutes that the Commissioners requested other information regarding the Section 3 Action Plan. The minutes reflect that the following issues were discussed:

- Revision of the document to specify the manner in which the funds will be disbursed, whether to the residents or the program
- Review of the criteria for reviews and assessments
- A plan to make the Section 3 program on going
- A commitment to make the Section 3 Action Plan cover all programs of the Fresno Housing Authority.

In this context, we urge the housing authorities to make a number of significant amendments to the Section 3 Action Plan.

- The Section 3 Action Plan must be expanded to cover all activities of the housing authorities. Section 3 is applicable to the activities funded by the public housing operating fund as well as the capital fund and any modernization funding. 24 C.F.R. § 135.3(a)(1). Thus, Section 3 is applicable to every new hire of the housing authorities.
- The Section 3 Action Plan provides that the Employment Goal is that “at least 15% of the HOPE VI jobs created through construction and/or professional services will be reserved for HACF Section 3 eligible.” (Page 7) This goal must be increased to provide that “at least 30% of all jobs created will be reserved for Fresno Housing Authority Section 3 residents.” The goal must be at least 30% of new hires to be consistent with the Section

3 regulations. 24 C.F.R. § 135.30(b)(1). Nevertheless, we urge the housing authorities to set a higher goal where feasible. For example, we know that the San Francisco Housing Authority has set a goal of 25% of total workforce hours.

- It should be stated in the Section 3 Action Plan that the overall objective is to promote long term and permanent employment opportunities for Section 3 residents.
- The Section 3 Action Plan provides for preferences for the jobs created. (Page 7) There needs to be a slight revision to ensure that all public housing residents have priority over other low income residents of the City or the County of Fresno, as applicable. Such a preference is consistent with the regulations. 24 C.F.R. § 135.34 Thus the preference must be provided in the following order
 - First to residents of the development for which the financial assistance is expended
 - Second to other public housing residents
 - Third to other low and very low income residents of the area¹⁷

More significantly, the Section 3 Action Plan should provide information as to what is meant by a preference. A preference means that if the individual applying for the job meets the stated qualifications, that individual with the preference gets the job over all others who have no preference or who have a lower preference.¹⁸

- In the section on Background Summary—Employment, there is a statement that there must be a preference for hiring from the housing development where the work is being performed. The section then states that this hiring preference is not required if the “contractors/vendor’s workforce is adequate to do the job and no new hiring is required.” (Page 11) The term workforce is again used on page 15. The term workforce should be used with care and defined so as to avoid confusion.

It is important to distinguish between the contractor’s workforce at the time the contract is signed and the workforce at the time that the work is performed. Contractors must be required to list all full time permanent employees at the time that the contract is signed. Such individuals would be considered the initial workforce. Any hires in addition to those listed as the initial workforce should be new hires.

Proof of the full time employment status should be submitted to the housing authority in

¹⁷ The regulations also state that there should be a preference for participants in HUD Youthbuild programs. It is our understanding that there is no currently funded HUD Youthbuild program in Fresno.

¹⁸ Such an explanation of a preference should also be referenced in the section on preferences for Section 3 businesses.

the form of payroll forms at the time the contract is signed. If this is not required, contractors will be able to avoid the obligation to hire public housing and other low and very low income individuals. Such an evasion—intentional or not—will be particularly pronounced in the case of construction contractors who have a team of workers who they may routinely call upon, none of whom are permanent full time employees. Significantly increasing the time of a part time worker should be considered a new hire as should the rehire of an employee that the contractor often works with. Once the work begins, the workforce may change as additional individuals are added to the workforce. The term workforce should not be defined as the workforce that the contractor shows up with when the work is ready to be performed. If that happens, there rarely will be any new hires in frustration of the goals of the Section 3 program.

- The Section 3 Action Plan sets the goal of contracting with Section 3 businesses for 30% of the total prime contracts and including within the goal contracts in the amount of \$50,000. (Page 12) These are commendable goals which we support.
- The Section 3 Action Plan does not contain a provision for review of compliance with the overall objectives. Such a provision should be included in the Section 3 Action Plan. Data should be kept regarding the number of new hires by contract, job category and the number of new hires and the number who are Section 3 residents by numbers and by hours worked. The HUD Form 60002 provides an initial basis for collecting the data and a review of the objectives. But this form could be improved upon for use at the local level. For example, the information collected at the local level should always include information about the hours worked by all new hires and each new hire that is a Section 3 resident. Such reporting will avoid problems experienced elsewhere when contractors hired Section 3 residents late in the process so as to claim compliance with the numbers of individuals hired but not the spirit of the Section 3 obligation which is to ensure employment opportunities *to the greatest extent feasible*.

If the Fresno Housing Authority collects and evaluates the data, it should help determine if the goals are being met and if Section 3 residents are being hired and Section 3 businesses contracted with. Using the data and other available information, there should be a process of on-going evaluations and adjustments to the efforts if the numbers are low and there are not many new hired and new hires who are Section 3 residents and if the goal of contracting with Section 3 businesses is not met.

- The Section 3 Action Plan provides that if a contractor fails to comply with the Section 3 Action Plan, it must provide evidence of the reasons for noncompliance. If the contractor can demonstrate that compliance is not possible, it must “support ‘other economic opportunities’ for Section 3 residents.” (Page 8). Acceptable reasons for non compliance

include: Recruitment did not produce a qualified pool or one sufficient to secure the number of residents required in the contract.

Conceptually this is a helpful provision because it sets forth a remedy for noncompliance. Nevertheless certain improvements should be made to the Section 3 Action Plan. For example, the plan currently provides that “other economic opportunities” include contributing to a scholarship fund. It is important to determine and set forth in the Section 3 Action Plan how much must be contributed or set forth a formula for determining the amount per violation or per inability to perform. The plan also provides that “other economic opportunities include” part-time work or paid job shadowing/ internships for HACF residents. The Plan further provides that “The hours of part-time work or training when converted to dollars must equal the threshold requirements established” It is not clear what the quoted language means. What is meant by “threshold requirements” and how will hours of training be converted to dollars? The final option for alternative compliance includes a Contribution to the HOPE VI Computer Tech Lab program at the Village or to the Community Supportive Services plan for HOPE VI. Again the issue is how will that amount be determined? It is important to set forth the dollar amount or the formula for determining the amount, up front. Setting forth the dollar amount or the standards for determining that amount, may lead to enhanced compliance with the goals of the Section 3 Action Plan.

- For large contracts, such as those associated with HOPE VI developments, the housing authorities should create a monitoring committee that meets periodically to review compliance. Such a committee might meet monthly at the beginning of the contracting process and taper off as the work subsides.
- The Section 3 Action Plan ought to contain a provision in the event that the contractor completely fails to comply with the contractual terms. Such a provision would be a liquidated damages clause. There are various examples of such clauses used by housing authorities that we could share if there is interest.

Please provide us with a copy of the reporting documents referenced on page 11, item 2 and a copy of the Community and Supportive Services Plan for HOPE VI referenced on page 9.

If you have any questions about this letter or wish to speak to us about additional issues related to Section 3 please contact Jess Negrete, _____ or Catherine Bishop, NHLP, 510-251-9400 x 105.

We look forward to working with you as you implement and revise the Section 3 Action Plan.

Cordially,

February 16, 2005

Rosemary Griffin
Oakland Housing Authority
1619 Harrison Street
Oakland, CA 94612

Dear: Rosemary

Thank you for the informative meeting regarding OHAs implementation of Section 3. As promised, the following are comments on the Economic Opportunities Implementation Procedure (EOIP) and the Oakland Housing Authority Economic Opportunities Policy. In addition, I have added a general comment and would also like to renew my request for additional information. If you have any questions about this letter or if you would like any additional information or assistance please feel free to contact me.

In general missing from the EOIP and the Policy is a requirement that contractors have a Section 3 plan. If contractors are to meet their Section 3 hiring goals and subcontracting goals for Section 3 businesses, it would be appropriate to require that a contractor submit to a plan for achieving those goals.

Economic Opportunities Implementation Procedure (EOIP):

Page 10 (2. III. Compliance and Documentation of "To the Greatest Extent Feasible/good Faith Effort")

This section ought to cross reference the Appendix to the Section 3 regulations as that Appendix lists other activities that could be engaged in to promote Section 3.

Missing from this section is any reference to promoting contracting with Section 3 businesses. The Appendix to the Section 3 regulations notes many efforts that can be undertaken to facilitate contracting with Section 3 businesses. Some of these, if not all, should be listed or modified and adopted for the EOIP. If the problem is identifying Section 3 businesses, perhaps, OHA could do more out reach with the business community including groups that represent minority, women and small business.

Rosemary Griffin
February 16, 2005

The EOIP suggests ways in which OHA may conduct outreach to Section 3 residents. Outreach to resident organizations and the Resident Advisory Board (RAB) is not mentioned. Does OHA use the RAB and active resident organizations to advertise the priorities for employment and Section 3 contracting? If OHA has used the RAB and tenant organizations, how effective has that outreach been? Are there other activities that OHA may engage in that will make that outreach more effective? The public housing operating subsidy formula provides for \$25 per unit per year for resident participation activities. 24 C.F.R. § 990.108(e). Having the RAB and resident organizations engage in Section 3 outreach would be an activity that could be supported by these funds. Is OHA using the funds in this manner? (This reference to the \$25 per unit per year assumes that OHA under the moving to work contract continues to provide funding for resident participation. Is that true?)

The following activities would also help promote Section 3. OHA could use its web site more effectively to promote Section 3 goals and objectives. For example, the EOIP ought to be posted. In addition, currently there is no reference to Section 3 in the employment section of the web site. On the OHA web site in the section regarding employment, the preference for Section 3 residents should be stated. In addition, the web site should be used to advertise job openings and training opportunities related to large contracts. Because many of those contracts are on going and presumably the hiring is also on going, the hiring goals should also be listed for the length of the contract. The information provided should be for Section 3 residents as well as Section 3 businesses. Finally the web site ought to provide information on how Section 3 businesses and Section 3 residents may file a complaint.

Page 11 (3. Department Responsibilities)

The Section 3 regulations provide that a recipient of funds subject to Section 3, such as OHA, must comply with Section 3 and assure that its contractors and sub contractors also comply. Significantly the regulations require recipients to not only document compliance but also document impediments, if any. 24 C.F.R. § 135.32(e) This regulation assumes that the recipient would not only seek documentation of compliance and notify parties of non compliance, but also, in the event of non compliance, document the impediments so as to facilitate compliance. Thus, it would be beneficial and appropriate to add to this section a provision that states that the Executive Office, or another appropriate OHA office will

- Evaluate the compliance with Section 3, identifying impediments, if any, and recommend and implement changes to address any impediments. OHA will conduct the evaluation annually or more frequently, if necessary.

Rosemary Griffin
February 16, 2005

Page 12 (3. Department Responsibilities, Resident and Community Services)

Is the Resident and Community Services department or another OHA department keeping track of those public housing residents, who express an interest in job readiness programs, job training or apprenticeship programs or applied for a Section 3 job or a training opportunity, to determine what happened to that individual? Was the tenant trained, hired, rejected, etc.? If the tenant was not hired, is OHA informed of the rejection and the reasons for the rejection and does OHA follow up and evaluate whether the rejection was permissible? The same questions can be asked about Section 3 businesses, is there follow up to determine what happened? Did the Section 3 business get the contract with OHA or with the contractor and if so with what result? If the Section 3 business did not get the contract with OHA or with the contractor, why not?

Missing from the listed activities of OHA is out reach to the community at large regarding Section 3. (It may be that OHA engages in the activity but does not list it.) That outreach should include to the Chamber of Commerce, organizations representing minority, women and small businesses, job training schools and to the welfare department. There is mention of "providing a list of State approved apprenticeship programs that have graduated apprentices." Page 12 But it is not clear to whom this list is provided and it is also unclear what follow up is conducted to ensure that and to track whether recently graduated apprentices who are Section 3 residents are informed of the job opportunities, informed of the preferences and are provided with a preference.

Also, OHA should maintain a list of public housing residents with their job skills and training. When jobs are available, OHA should provide that list to the OHA department, which is hiring, or the contractor, which is hiring, and notify the residents of the possible job opportunity.

New Hire Section 3 Information Forms--Contractor Version and OHA Employees

Attached is a proposed revised version of the form. Added to the form are a certification and a line for a California driver's license or identification card number and/or social security number. The purpose of these additions is to add gravity to the form. The certification should ensure that the individual, to the best of his or her knowledge, is providing accurate information. The Section 3 regulations provide that if a Section 3 resident is seeking a preference, he or she should certify or provide evidence of eligibility. 24 C.F.R. § 135.34(b). The California Civil Code sets forth the manner in which an individual may certify compliance with a rule. That certification language is included the revised form. An additional, reason for requesting the driver's license and social security numbers is to facilitate verification in the event that OHA

Rosemary Griffin
February 16, 2005

deems it necessary. Also, added to the form is a question regarding receipt of public assistance. The Section 3 regulations provide that evidence of receipt of welfare is evidence of eligibility for a preference under Section 3. 24 C.F.R. § 135.34(b).

To determine household income for purposes of eligibility for a preference and to meet the Section 3 goals, it is sufficient to ask the new hire what is the total annual gross income for the family. OHA staff could easily compare the income information provided by the new hire with the current HUD published income limits. It is not necessary to include the income ranges, but the income ranges are retained in the event that OHA believes that it would be useful.

Oakland Housing Authority Economic Opportunities Policy:

The Policy should reference the EOIP. The Policy is bare bones and the EOIP provides substantially more detail. The overall comments on the Policy are limited.

The Background section could be revised to recognize that the effective date of the Section 3 regulations was extended by removing the end date. 60 Fed. Reg. 28,325 (May 31, 1995). Thus, the Section 3 regulations continue to be in effect. There appears to be a typographical problem reflected in consistent numbering. The policy begins using numbered paragraphs on page 3. There are two paragraphs numbered 2, one under the caption Small Purchase and another under the caption Competitive bids. There is no number 1 under Competitive bids. As a result, the reference to numbered paragraphs in paragraph number 3, page 4, is confusing.

Miscellaneous

In our meeting, you stated that you would be able to provide me with the following

- a copy of the Section 3 language from the bid and Request for Proposal documents,
- a copy of the Section 3 contract language,
- a copy of the flyers that contractors and OHA use to notify Section 3 residents and Section 3 businesses of the job and contracting opportunities, and
- a copies of several consecutive months of the monthly summary reports submitted by a construction contractor

I have not received those documents. I would appreciate it if you could please send them to me.

As stated above, if I can be of any further assistance, please let me know. I will follow

Rosemary Griffin
February 16, 2005

up with you on these issues some time in mid March or earlier, if you so desire.

Sincerely,

Staff Attorney

Attachment