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Re: [Docket No. FR—5378—N—07] Notice of Proposed Information Collection Comment Request; Economic Opportunities for Low-and Very Low Income Persons (form HUD 958 and form HUD 60002)

Dear Ms Pollard:

These comments are submitted by the below signed advocates who have worked with Section 3, many of whom are members of the Housing Justice Network. The Housing Justice Network is composed of more than 700 attorneys and housing advocates who represent or work with low income families who are tenants of or applicants for federally-assisted housing. Some HJN members represent Section 3 businesses. The comments are in response to the Department of Housing and Urban Development's (HUD) proposed changes to form HUD 958 and announcement that no changes would be made to form HUD 60002.

Comments on form HUD 958, Complaint Register

The comments on form HUD 958 have three overarching themes.

1. The form should be designed to be easy for a complainant to understand and complete.
2. The form should enhance the HUD effort to inform Section 3 individuals and Section 3 businesses of their rights under Section 3.
3. The form should be updated to be consistent with current program obligations.

Form should be easy for a complainant to fill out. Many of the recommended changes are important, but relatively discrete and self-explanatory. For example, we suggest numbering the paragraphs so that the instruction page may easily reference and explain what is requested, the word "other" is added in the event that the complaint is for reasons other than the three that are listed, a line for email if available is added, the word "Sub-Recipient" is removed as it is not a Section 3 term and is not defined in the Section 3 regulations and the information about the complainant and the entity against whom the complaint is filed is rearranged for clarity. For ease and clarity, we have made these and other changes

to the form, which is attached. In addition as noted below, HUD should improve the instructions that accompany the form to simplify the language and gear the instructions to the needs of the complainant. *The form should enhance the HUD effort to inform Section 3 individuals and Section 3 businesses of their rights under Section 3.* We recommend in the category of “What did the person you are complaining against do?” the following improvements. First, the HUD proposal to remove the check box that states “failed to meet numerical goals, as set forth in the Section 3 regulations” should be abandoned. This statement should not be removed as it is at the heart of Section 3 and is inconsistent with the statute and regulations. The purpose of Section 3 is to ensure employment and economic opportunities generated by public housing and other housing and community development assistance shall to the greatest extent feasible be directed to low and very low income persons. 12 U.S.C. § 1701u(b); 24 C.F.R. § 135.1. Compliance with the “greatest extent feasible” requirement may be demonstrated if the numerical goals set forth in 24 C.F.R. § 135.30 are met. All recipients must document actions taken to comply with the requirements of Section 3 and the results of actions taken and impediments, if any. 24 C.F.R. § 135.32(e). In evaluating compliance, a recipient has the burden of demonstrating why it was not feasible to meet the numerical goals. 24 C.F.R. § 135.30(d)(2). The regulations establish the numerical goals as the “minimum numerical target” (24 C.F.R. § 135.30(a)(4)) and other economic opportunities are also encouraged. 24 C.F.R. § 135.40.

Complainants should be informed and empowered to complain, when appropriate, that a recipient of HUD funds or a contractor did not meet the numerical goals and has not evaluated why the goals were not met or taken steps to address the problem. Removing the phrase—“failed to meet numerical goals”—implies that this is not a valid complaint. Removing this statement is inconsistent with HUD’s Strategic Plan for FY2010—2015, which includes the goal of “utilizing HUD assistance to increase economic security and self-sufficiency.” It also has the negative effect of informing the public and Section 3 advocates that HUD may be retreating from full enforcement of Section 3 or not interested in achieving the stated goals. Such mixed messages are incompatible with the statements made in the FY2010 Notice of Funding Availability (NOFA), which include that HUD is not only seeking compliance with Section 3 but also activities that are more comprehensive. HUD NOFA FY2010 Policy Requirements and General Section, page 7-8. Thus, the statement, “failed to meet numerical goals, as set forth in the Section 3 regulations,” should be retained in the form.

In addition, the subject matter and therefore the number of boxes that a complainant could check should be increased to include the core elements of the rights of Section 3 complainants, which are included in the regulations. The following statements with individual check boxes should be added to the form.¹

- a. Failed to demonstrate compliance with the “greatest extent feasible” requirement. [24 C.F.R. § 135.1 and 135.30]
- b. Failed to meet numerical goals, as set forth in Section 3 regulations. [24 C.F.R. § 135.30]
- c. Failed to select individuals for training or jobs in the order of preferences as set forth in 24 C.F.R. 135.34

¹ We strongly urge that each of the stated provisions (a.—h.) be added to the form as an additional check box. In the alternative, these additional provisions could be listed in the instructions and the form could include an additional check box with a cross reference to the instructions. For example, add “other (please specify _____) and refer to the instructions for additional guidance.” Also the information which provides the citation to the relevant regulatory provision which is contained in the [brackets] in the list above could be set forth only in the instructions.

- d. Failed to select Section 3 businesses contracts in the order of preferences as set forth in 24 C.F.R. 135.36
- e. Failed to make public the Section 3 reports and forms that the recipient submits to HUD. [required by 24 C.F.R. § 135.90]
- f. Failed to document action taken to comply with 24 C.F.R. Part 135, the results of actions taken and impediments, if any. [required by 24 C.F.R. § 135.32(e)]
- g. Contractor failed to comply with the obligations of Section 3. [required by 24 C.F.R. § 135.38B]
- h. Contractor failed to send to each labor organization or representative of workers a notice advising the organization or representative of the commitments under Section 3. [required by 24 C.F.R. § 135.38C]
- i. Contractor failed to post notices at the work site regarding the Section 3 preference, number and job titles subject to hire, availability of apprenticeship and training positions and the name and contact information of the person taking applications. [required by 24 C.F.R. § 135.38C]
- j. Contractor failed to certify or falsely certified that all employment vacancies filled prior to contract execution were not filled to circumvent Section 3. [required by 24 C.F.R. § 135.38C]
- k. Retaliated against the complainant because complainant sought to enforce Section 3 or participated in an investigation or proceeding regarding Section 3. [24 C.F.R. § 135.76(i)]

In addition the form should be organized, as set out in the attached form, in accordance with the obligations of recipient and a contractor.

The form should be updated to be consistent with current program requirements. In addition to the above listed changes, the final box on the form, “Identify HUD assistance programs should be amended by adding the words, “*if known*” and brought up to date by adding the following programs added to the list

- a. Modify B as follows PIH/Modernization/Capital funds
- b. Add Neighborhood Stabilization Program (NSP)
- c. Add HOPE VI
- d. Add Choice Neighborhoods Initiative (CNI)
- e. Add Project-based vouchers

The instructions for the Complaint Register should provide clearer guidance to a Section 3 individual or business. The instructions should be revised to give guidance to those individuals for whom it is anticipated will be filling out the form. The instructions should be written in a manner that is more accessible to individuals with lower literacy levels. Information that is not critical for a Section 3 individual to know should be placed at the end of the instructions. For example the first paragraph of the current instructions is not important to and may be confusing for the average complainant. The next two paragraphs of the instructions repeat what is stated regarding the Privacy Act of 1974 and there is no apparent need to state the information twice.

The items listed in section 6 of the form at the minimum, should be repeated with the regulatory basis for each statement. For convenience we have added those cites in [brackets] above.

Definitions should be added to the instructions for key terms such as “Section 3 business,” “low and very-low income individual,” “recipient” and acronyms, such as, PIH, NSP, CNI and HOME. In addition the instructions should provide an explanation why certain information is requested and should be provided, if known.

Comments on form HUD 60002 Section 3 Summary Report

HUD states that it is not changing the form HUD 60002; but we believe that the form should be changed. For many years, HUD has renewed the form HUD 60002 without change, See e.g., 66 Fed. Reg. 4849 (Jan. 18, 2001). We urge HUD to make necessary changes to form HUD 60002 so that it is a more useful tool for recipients, HUD, Section 3 businesses and residents, and advocates. In general the recommendations include asking recipients to provide information that is easily accessible to them so as to help them and others to evaluate full impact of Section 3 in their communities and determine if there is compliance. In addition any instructions should clarify the time period that the form covers and that period should be no greater than a 12 month period. Subsequent reports from the same recipient and funding source should not overlap with the prior reporting period. The instructions should further provide that a recipient should submit a form separately for the activities of the recipient and for the activities of contractors and subcontractors. If for example a city is reporting on their CDBG funding, it should report on the Section 3 obligations that it has met with its CDBG funds on one form and the achievements of any contractor(s) of the city that have used CDBG funding on another form. In the event that the recipient received a large sum of money for a single purpose such as HOPE VI or the Public Housing Capital Fund, the recipient ought to further break down the Section 3 outcomes. For example a large public housing authority should report Section 3 outcomes by public housing development or by contract—such as a single contract to replace windows for several developments or city-wide.

We make the following recommendations.

1. In Part I of the form, HUD should insert a new column, after “A. Job Category” and before “B. Number of New Hires,” which should read: “B. Total Number of Hires (including “New Hires” and all others employed.)” As currently structured, the employment obligations of Section 3 apply only to “new hires.” By listing both the total number of jobs generated with or arising from the HUD revenue, for the Section 3 project or activity and the total amount of new hires for the same Section 3 project or activity, HUD would be better able to assess the efficacy of Section 3 as an employment strategy. In addition, this information will be important for policy makers, as evidenced by the recent obligation imposed by Congress on recipients of Neighborhood Stabilization Program (NSP) funds to the “maximum extent feasible, provide for the hiring of employees who reside in the vicinity... of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.”

Moreover, seeking this information may be useful in deterring contractors who may attempt to circumvent the statute by categorizing new employees as old hires. In various parts of the country, general contractors have engaged in this practice either before submitting bids, or between the time that they are orally notified of being the successful bidder, and the time the contract is signed. Such contractors will take workers who are not on payroll, but whom they have hired before, and add those

employees to payroll before the date of the contract, so they are not categorized as “new hires,” in order to avoid filling those positions with Section 3 residents. This practice is particularly common in filling journey-level (as opposed to apprenticeship) positions. By collecting information on the actual numbers of “old” and “new” hires, HUD will be better positioned to determine where this practice is taking place. Moreover, the collection of this information deters these illegal practices designed to circumvent the statute. Finally, this information is readily available to PHAs and other recipients, and so the burden to list this on Form 60002 is minimal or non-existent.

2. In Part I of the form, HUD should insert a new column “H. Number of Section 3 Applicants Not Hired.” Again, this information is instrumental to assessing the effectiveness of Section 3 and the recipient’s commitment to its implementation. A large number of applicants not hired may signal that the recipient is not adhering to the “greatest extent feasible” standard in HUD’s regulations. A low proportion of applicants not hired may indicate that the recipient and its contractors are vigorously enforcing the law or that more outreach to the low and very low income community is necessary.

3. In Part I of the form, HUD should insert a new column “I. Number of Public Housing Residents Hired (For PHAs only).” This information is easily available to the PHA and will help HUD assess whether the agency is correctly implementing the Section 3 regulations. These rules require PHAs to hire public housing tenants before other Section 3 residents. The current form is not useful for monitoring PHA compliance because a PHA might be disregarding HUD regulations in hiring Section 3 tenants who are not public housing tenants over Section 3 residents who are public housing tenants. An additional benefit to changing the form is that it may then be used by the PHA in reporting on Section 3 compliance for the purposes of the PHA planning process. Finally, this information will also help HUD assess Section 3 as a job development strategy for PHA residents.

4. In Part I, columns D and E ought to be more clearly labeled. One column ought to request information regarding the percentage of hours worked by all new hires who are Section 3 individuals and the other column ought to request information about the percentage of hours worked by all new hires including Section 3 individuals and non Section 3 individuals. The term “staff” is not necessary in either column.

We also urge HUD to require that the information requested in “D” and “E,” be mandatory. This data is important because its collection deters the practice of “churning,” i.e., hiring and shortly thereafter terminating Section 3 employees in order to inflate artificially the number of Section 3 hires. It is critical to look beyond the gross number of new hires to meaningfully assess the extent of actual Section 3 participation. HUD found such information critical in determining compliance with Section 3 by the City of Long Beach. See [*Carmelitos Tenants Association v. City of Long Beach, \(Section 3 Case # 09-98-07-002-720\) \(June 9, 1998\)*](#).

5. In Part II, Contracts awarded Items 1.B-D and 2.B-D should be repeated with a public housing only provision to determine how many contracting opportunities are awarded to Section 3 businesses which are owned by public housing tenants. For example, after line 1.B two new lines should be added that states as follows. “1.B(1) *For PHAs only*, total dollar amount of contracts awarded to Section 3 businesses owned by public housing residents” and 1.B.(2) *For other recipients of HUD housing and community development funds*, total dollar amount of contracts awarded to Section 3 business concerns located in the service area or neighborhood.” And after line 1.C, two new lines should be added that states as follows: “1.C.(1) *For PHAs only*, percentage of the total dollar amount that was awarded to

Section 3 businesses owned by public housing residents” and “1.C.(2) *For other recipients of HUD housing and community development funds*, total dollar amount of contracts awarded to Section 3 business concerns located in the service area or neighborhood.” This type of change should be repeated for the remainder of the items, 1.D and 2.B-D. Such provisions will help HUD assess whether the recipient or contractor is correctly implementing the Section 3 regulations. These rules require PHAs to hire Section 3 businesses owned by public housing residents before other Section 3 businesses. The current form is not useful for monitoring PHA compliance because PHAs might be disregarding HUD regulations in contracting with Section 3 businesses which are not owned by public housing residents over those which are owned by public housing residents. The same distinctions must be made with respect to the obligations of other recipients of housing and community development funds.

6. In Part III of the form, after the first paragraph and the words “(Check all that apply),” HUD should insert the following instruction in italics: *See Appendix D in 24 C.F.R. Part 135 for examples of efforts to foster economic opportunities for low-income persons.* Appendix D has many useful examples of specific employment strategies and can provide guidance to recipients. As it is currently written, Part III just includes conclusory check-offs which do not provide any meaningful details and which, without further elaboration, signal to PHAs and municipalities that HUD is not concerned with zealous enforcement. After the check-off sentences, HUD should also ask the recipient to “*Describe briefly their efforts to enforce Section 3, referring, where possible, to examples set forth in Appendix D to 24 C.F.R. Part 135, or to other job development strategies for Section 3 residents.*”

7. Line 9 Program Code. The list of Program codes should be expanded to include NSP, CNI, and HOPE VI and Project/based Vouchers.

Thank you for the opportunity to submit comments. We look forward to discussing with you proposed changes to the form HUD 60002 and form HUD 958. If you have any questions regarding this letter, please contact Catherine Bishop at 415-546-7000 ext 3105 or cbishop@nhlp.org or feel free to contact any of the below listed individuals.

Sincerely,

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Attachment: Draft revisions to form HUD 958

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