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## 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.<sup>1</sup> 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.<sup>2</sup> In addition, the Section 3 regulations set forth goals for contracting with Section 3 businesses.<sup>3</sup> 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.

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<sup>1</sup> 12 U.S.C.A. § 1701u(b) (2006).

<sup>2</sup> [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>

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> (Note that the State also must comply with these obligations.) The obligations include:<sup>7</sup>

- 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.

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<sup>4</sup> 24 C.F.R. § 135.3(b) (2005).

<sup>5</sup> 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

<sup>6</sup> 24 C.F.R. § 135.32(f) (2005)

<sup>7</sup> 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](mailto: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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

<sup>1</sup> 12 U.S.C.A. § 1701u(b) (2006).

<sup>2</sup> 24 C.F.R. § 135.5 (2006).

<sup>3</sup> 24 C.F.R. § 91.225(a)(8) (2006).