

An Advocate's Guide to the HUD Section 3 Program



*Creating Jobs
and Economic Opportunity*



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I. Introduction

The purpose of the Department of Housing and Urban Development's (HUD) Section 3 program is to provide economic and employment opportunities to low-income individuals.¹ Specifically, Section 3 requires recipients of certain forms of HUD funding to provide job training, employment, and contracting opportunities to low- and very low-income residents and eligible businesses.² There is little information available nationally to determine if public housing agencies (PHAs) or other recipients of HUD funds have met their obligations under the law. A recent HUD Inspector General Report found that HUD does not have adequate controls in place to ensure that Section 3 is meeting its purpose.³ Nevertheless, there is information available that some PHAs and local community development agencies have met or are exceeding their Section 3 hiring and contracting obligations.

The potential for jobs for low-income residents under Section 3 is extensive and continues to be so. In the past, when funding for public housing construction and rehabilitation, including HOPE VI, was nearly \$3 billion, some estimated that there should be in excess of 16,000 jobs annually for public housing residents.⁴ In the past several years, funding for all public housing and other housing and community development, such as Community Development Block Grant (CDBG) and HOME Investment Partnership Program, has been less than the historic levels. However, due to the federal government's response to

the current economic downturn, there is substantially more funding available, some of which is subject to Section 3 requirements. For example, \$3.92 billion in funding was allocated for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties through the Neighborhood Stabilization Program (NSP) in 2008.⁵ This funding is generally to be construed as CDBG funding; thus Section 3 applies. The American Recovery and Reinvestment Act of 2009 included an additional \$2 billion in NSP funds, as well as \$4 billion for public housing capital grants, \$2.25 billion for HOME, \$1 billion in CDBG funds, \$100 million for lead hazard reduction, and \$250 million for retrofits and green investment for HUD assisted multifamily housing.⁶ The combination of new and existing funds will further increase the potential of Section 3 for job creation and training and opportunities for Section 3 businesses.

The potential for jobs for low-income residents under Section 3 is extensive and continues to remain so.

Current HUD regulations establish safe-harbor presumptions requiring that the recipients of certain housing and community development funds and their contractors show that 30% of any newly hired employees each year come from the targeted low- and very low-income populations, which include public housing residents, residents (including the homeless) of the neighborhoods in which Section 3 projects are located, participants in the Youthbuild program and other low-income individuals. Recipients must also commit to allocate at

¹ 12 U.S.C.A. § 1701u(b) (2008).

² *Id.* at § 1701u(c)-(d) (2008).

³ OFFICE OF INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SURVEY OF HUD'S ADMINISTRATION OF SECTION 3 OF THE HUD ACT OF 1968 at 2 (Audit Case # 2003-KC-0001) (2003).

⁴ Presumably, the ratio of jobs created to funds expended for demolition and construction would be the same regardless of the source of the funds.

⁵ Housing and Economic Recovery Act, Pub. L. No. 110-289, 122 Stat. 2654, 2850-4 (2008).

⁶ American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat 115, 217 (2009).

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least 10% of building trade contracts and 3% of all other contracts to businesses controlled by public housing residents or other low-income individuals, or to businesses that largely employ such individuals. These safe harbor presumptions are satisfied by providing preferences in hiring, training and contracting to Section 3 residents and businesses.

The following analysis will discuss how the three branches of the federal government (legislative, executive, and judicial) have historically responded to the Section 3 program and what implications have followed. In addition, this guide briefly discusses what steps recipient agencies can take to successfully implement and/or improve upon their respective Section 3 programs and how local advocates can work with these agencies in so doing.

II. Legal Analysis

A. Legislative History

HUD's Section 3 program finds its roots in the Housing and Urban Development Act of 1968. 1968 was a turbulent year for civil rights and other social movements in the United States. For example, it was during 1968 that the country mourned the violent deaths of Martin Luther King, Jr. (April 4, 1968) and Robert F. Kennedy (June 5, 1968). In addition, the strains of the Vietnam War continued to exert pressure on the American economic, social, and moral fabric. However, it was also the year that the nation celebrated the passing of pivotal legislation such as the Civil Rights Act of 1968.⁷ In the midst of a host of societal

pressures, then-President Lyndon B. Johnson signed the Housing and Urban Development Act, which he believed to be "the most far-sighted, the most comprehensive, the most massive housing program in all American history."⁸ The overriding purpose of the Act was to provide "a decent home and a suitable living environment for every American family."⁹ However, it was widely recognized that this goal could only be accomplished through the use of dozens of programs that collectively strove to improve the quality of life for Americans and to better humanity. Section 3 of the Act is one such program.

1. Original Section 3 Statute

Section 3 of the Housing and Urban Development Act of 1968 was enacted with the objective of providing employment opportunities for lower income persons in connection with projects involving housing construction and rehabilitation. Specifically, the language of the original statute stated that the Secretary of HUD shall:

a. require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning, construction, rehabilitation; and operation of housing assisted *under such programs* [the section 235 homeownership program, the section 236 rental assistance program, and the section 221(d)(3) below-market interest rate program] be given to

panded on previous acts by prohibiting discrimination based on race, color, religion and national origin. Discrimination based on sex was added in 1974. And later when the law was comprehensively amended in 1988, it was changed to include discrimination against people because of disability and because of familial status – the presence of children under the age of 18.

⁸ JOHN WOOLLEY AND GERHARD PETERS, THE AMERICAN PRESIDENCY PROJECT [online], Santa Barbara, CA: University of California (hosted), Gerhard Peters (database), <http://www.presidency.ucsb.edu/ws/?pid=29056>.

⁹ Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 2, 82 Stat. 476, 476 (1968).

⁷ On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968, which was meant as a follow-up to the Civil Rights Act of 1964. While the Civil Rights Act of 1866 prohibited discrimination in housing, there were no federal enforcement provisions (42 U.S.C. § 1982 (originally enacted as Civil Rights Act of 1866, 14 Stat. 27-30)). The 1968 Act ex-

lower income persons residing in the area of such housing; and

b. require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed *pursuant to such programs* [the section 235 homeownership program, the section 236 rental assistance program, and the section 221(d)(3) below-market interest rate program] shall, where appropriate, be awarded to business concerns, including but not limited to individuals or firms doing business in the fields of design, architecture, building construction, rehabilitation, maintenance, or repair, located in or owned in substantial part by persons residing in the area of such housing.¹⁰

While this legislation had the potential to create an unprecedented number of new employment, training and contracting opportunities within our nation's low-income communities, the "under such programs" and "pursuant to such programs" language limited the realization potential of the original program. For example, rather than subjecting all HUD-financed projects to the employment and contracting requirements of Section 3, the original legislation applied only to privately owned housing developments associated with low-income housing programs. As a result, employment and contracting opportunities that were associated with the construction and rehabilitation of large-scale public housing developments and/or other public works projects were not subject to Section 3.

2. Legislative Amendments

Since its enactment in 1968, the statutory language that enables HUD's Section 3 regulations has been amended on four separate occasions.¹¹

¹⁰ *Id.* at § 3, 82 Stat. 476, 476 (1968).

¹¹ Housing and Urban Development Act of 1969, Pub. L. No. 91-152 (1969); Housing and Community Development

Housing and Urban Development Act of 1969

In response to the unintended limitations that were inherently embedded in the original Section 3 statute, Congress amended the original statute about a year after its enactment. The 1969 amendment contained provisions that extended the overall scope of Section 3 by placing corresponding training, employment, and contracting requirements on all HUD-financed projects involving: aid of housing; urban planning; development, redevelopment, or renewal; public or community facilities; and new community development. In so doing, Congress's stated goal was to "greatly broaden the scope of employment and business opportunity for lower income persons and aspiring minority entrepreneurs."¹²

In addition to the expansion of Section 3's overall scope, the Senate Report also set forth an explanation for the phrase "to the greatest extent feasible" as it relates to a contractor's Section 3 obligations.¹³ For Section 3 purposes, it concluded that this phrase means, to the extent that a recipient of Section 3 eligible funds needs to hire outside workers or contractors (i.e. workers not on the recipient's payroll at the time of contracting), such people should be hired, if at all possible, from persons or business establishments in that area. Therefore, when properly executed, the greatest extent feasible provision will not force a contractor to disband his organization by replacing his current employees with local workers or contractors. However, unless a particular individual or business is on the contractor's payroll, the mere fact that the recipient-contractor would prefer to subcontract with a particular individual or business is not enough to excuse contractors from their Section 3 ob-

opment Act of 1974, Pub. L. No. 93-383 (1974); Housing and Community Development Act of 1980, Pub. L. No. 96-399 (1980); and Housing and Community Development Act of 1992, Pub. L. No. 102-550 (1992).

¹² S. Rep. No. 91-392 (1969) reprinted in 1969 U.S.C.C.A.N. 1524, 1553.

¹³ *Id.* at 1969 U.S.C.C.A.N. 1553-4

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ligations. To the contrary, the Senate Report concluded that the stated purpose of Section 3 rejects the application of antiquated hiring preferences that have historically excluded minorities from countless employment and business opportunities.

Housing and Community Development Act of 1974

In 1974, Congress, recognizing the need to (1) consolidate, simplify, and improve laws relative to housing and housing assistance; and (2) provide federal assistance in support of community development activities, enacted the Housing and Community Development Act. The Act intended to address these needs by providing funding in support of activities that would eliminate or prevent slums and blight where such conditions or needs exist, provide housing for low and moderate income persons, and improve and upgrade community facilities and services where necessary.

With regard to employment opportunities for lower income persons (i.e. Section 3 type opportunities), the Senate bill¹⁴ required that community development funds provide employment opportunities for area residents. However, both the House bill and conference report went one step further.¹⁵ Specifically, they required that, to the greatest extent feasible, training, employment, and work opportunities available under the new community development programs be given to lower income residents and business concerns located in areas of program activities. This language evidences Congress's intent to link local employment/training opportunities with community development funding and to provide employment/training opportunities for the area's lower income residents. Therefore, the Com-

munity Development Act of 1974 reinforced and expanded the overall scope of Section 3 to include both projects involving housing construction/rehabilitation *and* community development.

Housing and Community Development Act of 1980

After a series of hearings held during the winter of 1979 through the spring of 1980, Congress introduced legislative amendments that slightly altered the Section 3 program. Initially, Section 3 program beneficiaries were limited to persons residing in the area in which the Section 3 eligible funds were spent. However, by 1980, Congress recognized that Section 3's residency requirement should be expanded because many HUD-funded programs were no longer site specific or included entire cities within their ambit.¹⁶ Therefore, to make the program pertinent to all low-income persons in the jurisdiction, the Community Development Act of 1980 removed Section 3's more narrowly defined residency limitation. Similarly, the Act also amended Section 3's statutory language associated with a situs requirement for business concerns seeking Section 3 program benefits. The amended provision required that, to the greatest extent feasible, such work contracts should be awarded to socially and economically disadvantaged individuals, and firms owned and controlled by such individuals.

Housing and Community Development Act of 1992

In 1992, on the heels of the Los Angeles civil unrest,¹⁷ Congress introduced legislation that

¹⁴ S. Rep. No. 93-693 (1974), reprinted in 1974 U.S.C.C.A.N. 4273.

¹⁵ H.R. Rep. No. 93-1114 (1974) and H.R. Rep. No. 93-1279 (1974) (Conf. Rep.), reprinted in 1974 U.S.C.C.A.N. 4449, 4460.

¹⁶ S. Rep. No. 96-736 at 29 (1980).

¹⁷ The 1992 Los Angeles civil unrest was sparked on April 29, 1992 when a mostly white jury acquitted four white police officers accused in the videotaped beating of black motorist Rodney King, after he fled from police. Thousands of people in Los Angeles joined in what has been characterized as a race riot, involving acts of law-breaking compounded by existing racial tensions, including looting, arson, and murder. In all,

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substantially overhauled the Section 3 program.¹⁸ The basic policy of Section 3 as originally set forth in the 1968 statute – ensuring that employment and other economic opportunities generated by federal housing and community development assistance are directed to poor people – is retained, but stated separately. The major changes come in the provisional requirements that are designed to achieve that basic policy.

First, as to the HUD programs covered, the 1992 Act reaches two new categories of programs: (1) the public and Indian housing capital fund and operating subsidy programs; and (2) rehabilitation, lead paint abatement, housing construction and other public construction projects aided by other programs that provide housing and community development assistance.¹⁹ These new provisions broadened the program coverage that was previously available under the pre-existing statutory language. For example, the specific reference to the public housing operating subsidy program makes it clear, at least with regard to public housing, that management and maintenance jobs and contracts are covered as well as construction jobs. However, in one major respect, the 1992 Act significantly narrowed the scope of the activities covered. Outside the public and Indian housing programs, the only activities that are covered are housing rehabilitation and housing and other public construction. Thus, to the extent that CDBG, HOME, ESG, or HOPWA funds create housing management, maintenance, or service jobs (e.g. daycare positions or tenant counseling), they would appear to be outside the scope of Section 3.²⁰

Second, the 1992 Act's definition of individuals who are targeted beneficiaries of Section 3 are stated more favorably for poor people than previously was the case. First, the protected class members must have either a low or very-low family income, which means an income beneath 80 percent of median for the area, with adjustments for different sized families.²¹ In contrast, HUD's earlier regulations implementing the previous statutory language set the income limit for a person's family at 90 percent of the area median income, with no specific adjustments for different sized families.²²

Further, priorities for training, employment, and contracting are established with regard to the public housing programs: first, for residents of the developments being assisted; second, for other public housing residents; third, for Youthbuild participants; and, finally, for low-income residents of the metropolitan area. Similarly, for the other housing and community development programs, priorities are created for residents of the project's service area and the neighborhood in which the project is located and for Youthbuild participants, before opportunities are offered to other low-income residents in the metropolitan area. These changes were designed to restore the

tunities for training and employment arising *in connection with the planning and carrying out of any project* assisted under any such program be given to lower income persons....”), with 12 U.S.C.A. § 1701u (c)(2)(A)(1994) (“The Secretary shall ensure that, to the greatest extent feasible...opportunities for training and employment arising *in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project* are given to low- and very low-income persons....”). Nevertheless, the Section 3 regulations encourage recipients and contractors to which Section 3 is not applicable to hire and train low income individuals and contract with Section 3 businesses. 24 C.F.R. §135.3(d) (2008).

²¹ 12 U.S.C § 1701u(e)(1) (2008).

²² Section 3 Regulations, 38 Fed. Reg. 29,221 (Oct. 23, 1973), as amended at 57 Fed. Reg. 40,111 (Sep. 2, 1992) (codified at 24 C.F.R. § 135.5(g)).

55 people were killed during the episode. See http://en.wikipedia.org/wiki/1992_Los_Angeles_riots.

¹⁸ Pub. L. No. 102-550, § 915, 106 Stat. 3672, 3878 (Oct. 28, 1992), codified at 12 U.S.C.A. § 1701u (2008).

¹⁹ 12 U.S.C.A. §§ 1701u (c)(1)(A) and 1701u (c)(2)(A) (2008).

²⁰ Compare 12 U.S.C.A § 1701u (1) (1991) (The Secretary shall require, “to the greatest extent feasible oppor-

original goal of the 1968 Act that project area residents are the targeted beneficiaries of the jobs and economic opportunities that are created.

The requirements regarding contracting opportunities have also been amended in a fashion intended to increase the chances that low-income people will benefit from Section 3. Originally, contracts were to be awarded to business concerns located in or owned by persons residing in the project area. In 1980, that language was changed to include businesses located in the metropolitan area where the project was located, thus offering no enhanced benefit to low-income project area residents. The 1992 Act amended this by creating a contracting preference for business concerns that provide economic opportunities for low- and very low-income persons, especially for residents of the development being assisted, for other public housing residents, for Youthbuild participants, and for service area and neighborhood residents. A business qualifies as providing opportunities for low-income people if it employs or is owned by a substantial number of low-income individuals. The closer link in the contracting preference (i.e. the link between businesses and low-income employees or low-income business owners) was designed to increase the employment and training opportunities of low-income project area residents.²³

²³ In practice many issues have arisen. For example, issues arise regarding reconciling this provision with the obligation to pay Davis Bacon wages (wages prevailing in the community) for work on contracts for federally financed and assisted construction and also for public housing, maintenance laborers and mechanics employed in the operation of that housing. 42 U.S.C. § 1437j (West 2008). Also one of the preference categories for a Section 3 business - a business that hires low income individuals - has an unintended consequence of providing a preference to a business that pays very low wages, surely not the intent of Section 3.

While the Section 3 program has been in existence for more than thirty-five years, the program has historically suffered from a dearth of monitoring and compliance procedures.

3. Proposed Legislation

Despite the statutory overhaul in 1992, the Section 3 program has continued to be plagued by a host of compliance, monitoring, and enforcement issues. In light of these issues, a number of suggestions have been proposed that would improve the program's compliance and overall effectiveness. Most recently, Congresswoman Nydia Velázquez (D-NY), prepared draft language that would provide public housing authorities and community development agencies with the additional tools they need to implement the Section 3 program in a manner compatible to Congress's original intent.²⁴ Most notably, the proposed language would change the following:

Scope of the Program

The proposed language would make the Section 3 program more expansive in terms of the total amount, the variety, and the duration of training, employment, and contracting opportunities that are created through HUD-funded projects:

- Currently, HUD requires certain recipients of HUD financial assistance, to the greatest extent feasible, to provide very low- and low-income residents with *30% of the aggregate new hire positions* that arise from a particular Section 3 eligible project.²⁵ However, this seemingly straight-forward numerical goal has historically been quite problematic. Specifi-

²⁴ Earning and Living Opportunities Act, H.R. 5164, 109th Cong. (2006).

²⁵ 24 C.F.R. § 135.30 (b) (2008).

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cally, within the construction industry, the “new hire” designation has proven to be difficult to monitor and enforce because of a general lack of understanding and/or lack of clear rules regarding a contractor’s Section 3 obligations.

- The proposed legislative language would address this problem by changing the scope of Section 3 to cover *20% of all hours worked* on Section 3 eligible projects. While the proposed multiplying percentage is lower (20% vs. 30%), it is argued by some that the corresponding change to a “total labor hours” multiplier will result in more training and employment opportunities than the 30% of all new hires because the absolute number of opportunities will be derived from a much larger base. Moreover, because it is significantly easier to monitor a project’s total labor hours versus only those of new hires, it is further believed that this change will also improve HUD’s monitoring and enforcement efforts. In addition, this also means that for every Section 3 covered project, there will be corresponding training and employment opportunities because the Section 3 obligation is no longer dependent upon whether a contractor or covered entity has a need for “new hires.”
- A previously unaddressed issue that threatened the long-term employment opportunities of Section 3 residents involved whether the income earned from an existing Section 3 employment opportunity would disqualify the resident from future Section 3 employment opportunities because of the prescribed income-based qualifications. The proposed language addresses this dilemma by allowing residents to retain their Section 3 designation for five years irrespective of any increases to income. This section will also assist with the creation of long term job opportunities.

- There has been some confusion regarding the type and duration of the employment opportunities that Section 3 creates. For example, does Section 3 only relate to the temporary construction jobs that are associated with a particular project, or does the program also include permanent employment opportunities that flow from housing and community development funds (i.e. day care services, restaurants, hotels, business parks, or other related opportunities) that may be associated with a particular CDBG grant? The proposed language attempts to clarify the scope of the program by stating that Section 3 employment and contracting opportunities are also applicable to all permanent jobs generated as a result of HUD funding.²⁶

Monitoring & Compliance

While the Section 3 program has been in existence for more than thirty-five years, the program has historically suffered from a dearth of monitoring and compliance procedures.²⁷ As such, contractors are often unaware of their Section 3 obligations and are seldom subject to consequences if they fail to meet their obligations. In response to these inadequate procedures, Congresswoman Velázquez has proposed the following requirements:

- In an attempt to promote greater monitoring and compliance on a local level, the proposed statutory language would require that Section 3 committees be established within each housing authority. These committees would be composed of interested

²⁶ To meet the goal, there may have to be some adjustments, aggregation of contracts or limitations as to the type of work covered so as to account for contracts with a sole proprietorship or professional entities with jobs for which low income individuals may not be qualified.

²⁷ See, e.g., OFFICE OF INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SURVEY OF HUD’S ADMINISTRATION OF SECTION 3 OF THE HUD ACT OF 1968 at 2 (Audit Case # 2003-KC-0001) (2003).

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parties and, in the case of projects with significant economic impact, would include contractors, housing authority officials, and members of the Residents' Advisory Board (RAB) and/or other community based organizations. Each committee would maintain a registry of eligible low- and very low-income persons who have expressed an interest in Section 3 employment and/or contracting opportunities. This registry would then be made available to the respective housing authority and/or recipient of other federal housing and community development assistance to facilitate job referrals and to determine the need for job training and other support services.

- Prior to obtaining a contract, contractors would be required to submit a plan to the contracting agency and the Section 3 committee that explains how they propose to comply with Section 3's hiring requirements. Moreover, upon completion of the project, the contractor must submit evidence attesting to compliance with Section 3 requirements.
- Finally, if a contractor cannot meet the Section 3 obligations, the contractor must demonstrate that it exercised all feasible means to do so. Should contractors fail to demonstrate that they exercised all feasible means to satisfy their Section 3 obligations, they would be subject to a fine of no less than 1% of the contract value. The funds associated with these fines would be deposited into a local account that provides job training opportunities for low- or very low-income persons in the community in which the project was located.

Reporting

HUD regulations currently require recipients of Section 3 eligible financial assistance to submit annual reports to HUD explaining the

effectiveness of their particular Section 3 program.²⁸ In 2003, a HUD Inspector General (IG) Audit found that key controls to oversee the Section 3 program were missing, including a recipient reporting system.²⁹ The IG Audit noted that HUD has developed an online reporting system, "but the recipients of Section 3 are not required to use the system."³⁰ Presently, it appears that HUD still does not require its use and that relatively few recipients compile and submit this information, either electronically or in hard copy. Moreover, there is no evidence that HUD has released any reports that reflect any compilation, summary or analysis of information that is submitted. The proposed legislative changes would improve the reporting standards surrounding the Section 3 program by requiring the following:

- All housing authorities and other recipients of housing and community development funds would be required to make quarterly reports to HUD regarding the number of hours worked by Section 3 residents under their respective programs. The reports would also include information pertaining to the number and dollar amount of contracts awarded to Section 3 businesses. Moreover, in an attempt to make this information readily available to the general public, housing authorities would be required to include this information in their five-year plan, annual plan, or any alternative plan which calls for similar reporting.

²⁸ 24 C.F.R. 135.90 (2008). This information could presumably be captured through one of HUD's standardized reports. See HUD forms HUD-60002 or HUD-2516, available at:

<http://www.hud.gov/offices/adm/hudclips/>.

²⁹ OFFICE OF INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, No.2003-KC-0001, Survey of HUD's Administration of Section 3 of the HUD Act of 1968 (2003).

³⁰ *Id.* at 3.

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- In addition, the information HUD receives from the above noted quarterly field reports would be summarized and reported to Congress on an annual basis. At a minimum, these reports to Congress would include the number of jobs and training opportunities generated under the program, the number of hours worked by low- and very low-income persons under the program, and the number and amount of contracts awarded to Section 3 businesses under the program.

Collectively, the proposed legislative amendments represent a positive first step toward the revitalization of the Section 3 program. However, until the legislation provides that an aggrieved individual can independently seek judicial relief, these changes will benefit only those low-income individuals in areas with responsive agencies or in areas where HUD takes aggressive enforcement action.³¹ To obtain widespread enforcement, a private right of action must be included in the statute.³²

B. HUD Regulations & Administrative History

1. HUD Regulations

The enactment of Section 3 in 1968 held great promise of more jobs for low-income residents of impoverished neighborhoods where HUD funds were being spent. Unfortunately, that promise was never fulfilled. It took HUD

three and a half years just to publish proposed regulations to implement the statute.³³ It was not until October 1973, five years after the statute had been enacted, that HUD issued the final regulations implementing the section.³⁴ In fact, HUD had to be sued for its failure to issue regulations.³⁵

Section 3 is now applicable 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."

When the regulations were finally issued, they contained several defects that crippled the effectiveness of Section 3, remnants of which are still present today. For example, HUD exempted from Section 3's requirements any contract for less than \$500,000 and any subcontract for less than \$50,000.³⁶ As a result, Section 3 preferences did not come into play for smaller contracts. Yet it is smaller contracts that start-up businesses owned by low-income residents need initially to allow them an opportunity to acquire the necessary experience and capital required to take on the bigger jobs. Applying the Section 3 preference

³¹ For a comprehensive discussion of the use of Section 1983 of the Civil Rights Act as a tool to enforce federal laws see Jane Perkins, *Using Section 1983 to Enforce Federal Laws*, 38 CLEARINGHOUSE REV. 720 (Mar.-Apr. 2005).

³² See generally, *McQuade v. King County Hous. Auth.*, 2006 WL 3040060 (9th Cir. Oct. 25, 2006); *Williams v. HUD*, 2006 WL 2546536 (E.D.N.Y. Sept. 1, 2006) and 2008 WL 5111105 (E.D.N.Y. Dec. 4, 2008); *Nails Constr. Co. v. City of Saint Paul*, 2007 WL 423187 (D. Minn. Feb. 6, 2007) Courts have been reluctant to find a cause of action to enforce the obligations of Section 3.

³³ 36 Fed. Reg. 11,744 (June 18, 1971). The Section 3 thresholds under the current regulations have changed. Under the current regulations there is no threshold for public and Indian housing assistance (i.e. capital fund, operating subsidy, and HOPE VI assistance); however, all other housing and community development assistance is now subject to a \$200,000 recipient threshold and the corresponding contract or subcontract must exceed \$100,000.

³⁴ 38 Fed. Reg. 29,221 (Oct. 23, 1973), codified with amendments at 24 C.F.R. § 135.

³⁵ *San Francisco Minority Affirmative Action Coalition v. Romney*, No. C-72-383 (N.D. Cal. filed Mar. 6, 1972), 6 CLEARINGHOUSE REV. 268 (Aug./Sept. 1972) (Clearinghouse No. 7,535).

³⁶ Section 3 Regulations, 38 Fed. Reg. 29,221 (Oct. 23, 1973) (codified at 24 C.F.R. § 135.5(m)).

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only to the largest jobs and contracts often results in the continued exclusion of the vast majority of small contractors and would-be entrepreneurs from the community.

Congress, through the Housing and Community Development Act of 1992, attempted to partially address some of the regulatory deficiencies that had historically plagued the Section 3 program. In response to the Act of 1992, HUD, in June 1994, introduced a set of “interim” rules that comprehensively amended the Section 3 program.³⁷ Among the most significant regulatory amendments were changes to:

- *Definition of low-income persons* – Prior to the interim rule, HUD defined a low-income resident (i.e. Section 3 residents) as an individual who resides within the Section 3 project area and whose income does not exceed 90 percent of the area median income in which the Section 3 project is located.³⁸ However, the Act of 1992 specifically addressed this issue and stated that in terms of Section 3, low- and very low-income persons shall carry the same meaning as that prescribed at section 3(b) of the United States Housing Act of 1937.³⁹ As such, the interim rule defines a Section 3 resident as a public housing resident or a family whose income does not exceed 80 percent of the area median income, with adjustments for smaller or larger families.⁴⁰ This new definition addresses Congress’s stated purpose to generally provide assistance to low-income

persons, particularly to those who are recipients of government assistance for housing.

- *Definition of a Section 3 covered project* – Prior to the interim rule, HUD defined a Section 3 covered project as any non-exempt project assisted by any program administered by HUD in which loans, grants, subsidies, or other financial assistance was provided in the aid of housing, urban planning, development, redevelopment, or renewal of public or other community facilities.⁴¹ However, the Act of 1992 narrowed the type of activity to which the statute would apply, and HUD amended the regulations accordingly. As such, the interim rule states that Section 3 covered projects are only those arising in connection with the expenditure of housing assistance and community development assistance that is used for the following three types of projects: (i) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (ii) housing construction; and (iii) other public construction projects. Therefore, although all HUD allocations to PHAs (i.e. operating subsidies and capital fund allocations) trigger a Section 3 obligation, the same cannot be said for all HUD allocations made to community development agencies through the Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Emergency Shelter Grant (ESG), Housing Options for People With AIDS (HOPWA) formula grant programs or, now more recently to recipients, through the Neighborhood Stabilization Program (NSP) funds.⁴² As a re-

³⁷ 59 Fed. Reg. 33,866 (June 30, 1994). Despite the “interim” nature of these rules, they remain effective today because, as of this writing, HUD has not published the final rule.

³⁸ Section 3 Regulations, 38 Fed. Reg. 29,221 (Oct. 23, 1973), as amended at 57 Fed. Reg. 40,111 (Sept. 2, 1992) (codified at 24 C.F.R. § 135.5(g)).

³⁹ United States Housing Act of 1937, Pub. L. 75-412, 50 Stat. 888 (1937).

⁴⁰ 24 C.F.R. § 135.5 (2008).

⁴¹ Section 3 Regulations, 38 Fed. Reg. 29,221 (Oct. 23, 1973) (codified at 24 C.F.R. § 135.5(m)).

⁴² The HUD regulations governing each of these respective programs can be found at: CDBG – 24 C.F.R. part 570 (2008); HOME – 24 C.F.R. part 92 (2008); ESG – 24 C.F.R. part 576 (2008); HOPWA – 24 C.F.R. part 574 (2008); NSP—Notice of Allocations, Application

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sult, to the extent that local community development agencies spend HUD funds on projects not associated with housing rehabilitation, housing construction, or other public construction projects, there is no accompanying Section 3 obligation, regardless of the number of training, employment, or contracting opportunities that may arise from the project.

The interim rule did widen the scope of the projects covered by Section 3 in one very significant manner. Section 3 is now applicable 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.”⁴³

- *Threshold amounts for Section 3 eligibility* – Prior to the interim rule, projects and contracts were exempted from the requirements of Section 3 if their estimated cost did not exceed \$500,000 and any subcontract was exempt if it was for less than \$50,000.⁴⁴ As a result, Section 3 preferences were not applicable to small projects and subcontracts. This was problematic because it is the smaller contracts that start-up businesses owned by low-income residents need initially, in order to acquire the experience and capital to take on bigger jobs. Having Section 3 preferences apply only to the largest jobs and contracts often resulted in the continued exclusion of the vast majority of small contractors and would-be entrepreneurs from the community. Under the interim rule, this would change.

Despite several commenters' pleas to retain, if not increase, Section 3's thresholds for all HUD-assistance, the interim rules state that there are no thresholds for public and Indian housing programs, and their contractors and subcontractors.⁴⁵ As such, virtually all housing authority projects and activities are covered by Section 3. HUD made this regulatory amendment because it believed that the statute called for expansive coverage of public and Indian housing projects and activities and any departmental attempts to diminish Section 3's coverage would be inconsistent with the statute.⁴⁶ With regard to other housing and community development assistance, although HUD refused to eliminate the thresholds altogether, the thresholds were lowered. Recipients of other housing and community development assistance are subject to Section 3 if the amount of assistance exceeds \$200,000.⁴⁷ Likewise, contractors and subcontractors who are performing work on a Section 3 covered project are required to comply with Section 3 if the amount of the contract or subcontract exceeds \$100,000.⁴⁸ In addition, the interim rule suggests that grant recipients and contractors should “break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.”⁴⁹ Collectively, these regulatory changes made Section 3's hiring and contracting preferences more dynamic because they significantly expanded the scope of the program's coverage.

- *Bidding documentation requirements* – Successfully and efficiently identifying significant training, employment, and contracting opportunities has historically been

Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees under the Housing and Economic Recovery Act, 2008, 73 Fed. Reg. 58,330 (Oct. 6, 2008).

⁴³ 24 C.F.R. § 135.3(b) (2008).

⁴⁴ Section 3 Regulations, 38 Fed. Reg. 29,221 (Oct. 23, 1973) (codified at 24 C.F.R. § 135.5(m)).

⁴⁵ 24 C.F.R. § 135.3 (a)(3)(i) (2008).

⁴⁶ Economic Opportunities for Low and Very Low Income Persons, Interim and Final Rules, 59 Fed. Reg. 33,866 (June 30, 1994) (to be codified at 24 C.F.R. part 135).

⁴⁷ 24 C.F.R. § 135.3 (a)(3)(ii)(A) (2008).

⁴⁸ *Id.* at (a)(3)(ii)(B).

⁴⁹ *Id.* at Appendix to Part 135, II(12).

a problem for advocates seeking to compel Section 3 compliance. And while the interim rules generally clarified and/or strengthened the effectiveness of the Section 3 program, HUD's decision to repeal the bidding and negotiations requirements has weakened the program. The bidding and negotiations requirements previously stated that, prior to signing a contract, all prospective contractors, for work in connection with Section 3 covered projects, were required to provide the recipient with a preliminary statement of work force needs (skilled, semiskilled, unskilled labor, and trainees by category) if these needs were known. When initially unknown, such information was to be subsequently provided prior to the signing of any contract between the contractors and their subcontractors.⁵⁰ This information was important to advocates of Section 3 because it represented a prospective work-force needs analysis that could be used to identify and quantify training, employment, and contracting opportunities. In addition, this information provided baseline information from which advocates and recipient agencies could measure/monitor compliance. Nevertheless, the bidding and negotiations requirements were inexplicably removed from the interim rule.⁵¹

- *Section 3's training, hiring, and contracting "safe harbor" presumptions* – Unlike earlier Section 3 provisions, the interim rules provide for numerical hiring and contracting goals to demonstrate compliance with Section 3. At least 30% of the aggregate number of new hires must be Section 3 residents; at least 10% of the to-

tal dollar amount of all Section 3 covered contracts for building trades work must be Section 3 businesses; and at least 3% of the total dollar amount of all other Section 3 covered contracts must be Section 3 businesses.⁵² Section 3 also requires that efforts must be made to hire as many low- and very low-income persons to the greatest extent feasible. Meeting the numerical goals provides a safe harbor. Nevertheless, as noted in the following section, there may be situations in which the numerical goals are met but the spirit of Section 3 is violated and hence corrective action is required.

2. HUD Opinion Letters/Determinations of Non-Compliance

If a Section 3 resident or business concern has been unfairly denied training, employment, or contracting opportunities from a Section 3 covered project, the aggrieved party acting alone or as a representative for other similarly situated persons may file a complaint with HUD's Assistant Secretary alleging noncompliance with Section 3.⁵³ Over the years, HUD's responsiveness to complaints has varied; nevertheless, significant determinations have been made through the complaint process.

a. Long Beach – The Rainbow Harbor Project

During the summer of 1995 the City of Long Beach ("City") applied for and received a Section 108 loan guarantee from HUD in the

⁵⁰ Section 3 Regulations, 38 Fed. Reg. 29,220, 29,222-3 (Oct. 23, 1973) (§ 135.25).

⁵¹ Nevertheless, the Appendix to the interim rule does retain the suggestion that recipients of HUD funds negotiate a specific number of Section 3 residents to be trained or employed. See 24 C.F.R. part 135, Appendix to Part 135 at I(19) (2008).

⁵² *Id.* at §§ 135.30 (b) and (c); see also Economic Opportunities for Low and Very Low Income Persons, Interim and Final Rules, 59 Fed. Reg. 33,866, 33,868 (June 30, 1994) (HUD considered and rejected a proposal to not set numerical goals). The contract obligation for public housing agencies also includes maintenance and repair work.

⁵³ 24 C.F.R. § 135.76 (a) (2008).

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amount of \$40 million.⁵⁴ These funds were specifically earmarked to construct the public infrastructure, including, but not limited to, the dredging of the downtown harbor, 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 1968.⁵⁵

The Rainbow Harbor project expenditures totaled \$40 million (\$32 million of construction related costs and \$8 million of non-construction related costs) and the project 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 angler's building, a fountain, a boardwalk and a lighthouse. During the course of the project, 124 new employment opportunities were created, of which 39 were awarded to Section 3 residents.

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 it ultimately determined that the City had not fulfilled its Section 3 obligations.⁵⁶ 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. HUD also found that the City's contractors, in response to LAFLA's repeated local advocacy efforts, attempted to hire more Section 3 residents during the later stages of the project, and were able to attain cumulatively a Section 3 new hire rate of 31.4% based purely on headcount. However, the overall delay in Section 3 hiring resulted in Section 3 residents working only 19% of the Section 3 eligible "total hours" expended on the project. Under the circumstances, this was not enough to comply with the spirit of Section 3, which requires recipients to make hiring opportunities available "to the greatest extent feasible."⁵⁷ 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.

After a series of exchanges the City, HUD, and the complainants were able to agree on a restitution plan. Under the proposed restitution plan, the City committed to restore the lost employment and business opportunities through the following strategies: (1) providing no less than 3,000 hours of work to low-income Long Beach residents on City funded construction projects; (2) providing pre-apprenticeship construction training to low-income individuals in the Long Beach area,

⁵⁴ 42 U.S.C.A. § 5308 (2008). Section 108 authorizes HUD to guarantee the issuance of local taxable bonds to help finance community development activities.

⁵⁵ 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 (CDBG), HOME, Emergency Shelter Grants (ESG), Housing Opportunities for Persons with AIDS (HOPWA), HOPE VI, lead-based paint remediation and now Neighborhood Stabilization (NSP) funds.

⁵⁶ For a copy of the complaint, *see* Appendix at V.D.

⁵⁷ *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 (April 26, 2004) at 11-13 (available at <http://www.nhlp.org/html/pubhsg/index.htm>).

including Carmelitos public housing residents; (3) providing placement assistance for graduates of the construction training program into the Union Building Trade apprenticeship program and providing up to \$1,500 to each participant for purchase of tools, uniforms, and other program necessities; and (4) implementing a \$3.2 million small business incentive program to encourage contractors to use Section 3 businesses in the construction of future projects. In an effort to secure compliance with the Section 3 restitution plan, the City reported to HUD on a quarterly basis, in writing, on the specific progress that it made toward the plan. In addition, while the City has indicated a general willingness to comply with the terms of the restitution plan, LAFLA continues to monitor compliance on behalf of its clients, the Carmelitos Tenants' Association. To date, the City has fulfilled the agreement, except for the small business incentive program. The City has asked to be excused from the obligation and the complainants have requested that the compliance period be extended. HUD has not responded to those requests.

While the City's restitution plan represents a landmark victory for housing and community economic development advocates,⁵⁸ unfortunately, this plan represents only one of a few victories, due to a lack of oversight by HUD and the relatively small number of complaints filed by eligible Section 3 residents and businesses. As a result, numerous similarly situated projects have failed to generate the quality and quantity of employment opportunities that were originally intended by Congress.

⁵⁸ Another significant development for the local advocates, which arose in conjunction with work on the Rainbow Harbor Project, included the City's "voluntary" commitment to apply Section 3 standards to a \$130 million development that did not have any HUD funds and hence did not carry any Section 3 obligations. See Pike Project Agreement, No. 28171 (Mar. 11, 2003) (on file at the National Housing Law Project).

b. Chapel Hill – The Airport Gardens Apartments Project

During the fall of 2003, the Town of Chapel Hill Housing Authority ("Housing Authority") announced an invitation to bid (ITB) on their Airport Gardens Apartments Project ("Airport Gardens"). Airport Gardens was advertised as a single prime contractor contract (i.e. a single general contractor would be awarded the Housing Authority contract and, in turn, that general contractor would employ a subcontractor or subcontractors to perform some or all of the work). The bid responses were to be evaluated based upon the *amount of the total bid package* that included a base bid and four alternates for the entire Airport Gardens project. Four bids were received in response to the Housing Authority's ITB. Of the four bids received, only one, Hairston Enterprises ("Hairston"), was a Section 3 business concern. However, despite Hairston's Section 3 status and despite the fact that it was the project's lowest bidder, Hairston was not awarded the contract. Rather, the Housing Authority modified the project specifications and awarded the project to a favored, non-Section 3, contractor with whom the Housing Authority was more familiar. In response to the Housing Authority's decision, Hairston filed a formal complaint with HUD's Office of Public and Indian Housing (PIH) alleging violations of HUD's procurement procedures. In addition, Hairston also filed a Section 3 administrative complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO).

HUD's PIH office concluded that the Housing Authority had in fact violated HUD's procurement standards by not awarding the contract to Hairston, the lowest bidder. To remedy the violation, HUD PIH informed the Housing Authority that it should reject all bids for the project and re-bid the procurement opportunity. In accordance with HUD's PIH guidance, the Housing Authority rejected all

bids and re-drafted the project bid documents to include a clear and accurate description of the scope of the bid for the project. The revised bid package was re-advertised in the same newspapers as the original ITB, and the contract was awarded to the lowest bidder. However, since Hairston did not submit a re-bid they were not awarded the contract.⁵⁹ And while the Housing Authority's re-bid solution appeared to satisfy HUD PIH, it did not resolve the Section 3 noncompliance issue.

To the contrary, HUD's FHEO office, the office with administrative oversight of Section 3,⁶⁰ concluded that the Housing Authority violated the Section 3 regulations when they failed to award the initial contract to Hairston as the lowest bidder and the only Section 3 business concern. Furthermore, by modifying the project's original specifications, the Housing Authority demonstrated a capacity and potential flexibility to award the contested contract to Hairston as the overall lowest bidder. Moreover, the Housing Authority's attempted remedy of re-bidding the contract was insufficient because the Section 3 regulations require that "to the greatest extent feasible," contracting opportunities be awarded to Section 3 businesses. In the instant case, the Housing Authority failed to satisfy that standard.

HUD's FHEO Hairston decision is important because it establishes the principle that once a Section 3 complainant establishes noncompliance, it may be entitled to relief even though the offending party may later attempt to remedy the problem. In addition, although Section 3 is very much associated with HUD's procurement regulations, compliance with

HUD's procurement procedures does not automatically immunize a party from its corresponding Section 3 obligations. Unfortunately, there is still a level of inadequacy in this result, as Hairston did not obtain any effective relief.

C. Judicial History

Since its enactment in 1968, Section 3 has not generated a substantial amount of case law interpreting either the statute or the supporting regulations. The following sections briefly discuss a few of the influential judicial opinions regarding Section 3 and analyze the implications that have flowed from those decisions.

1. Measuring the "Greatest Extent Feasible" in Contracting

Ramirez, Leal & Co. v. City Demonstration Agency

In *Ramirez*, a minority owned accounting firm ("Ramirez") located in San Francisco brought an action seeking to enforce the business contracting preferences of Section 3 against the City of San Francisco's City Demonstration Agency ("City").⁶¹ In 1973, upon learning that the City was accepting bids for a contract to audit various programs involved in and funded

⁵⁹ It is not clear why Hairston did not rebid, but the possible reasons why a Section 3 business might not have rebid are extensive, including lack of knowledge of the rebid, insufficient time or funds to rebid, conviction that the subsequent bid would also be denied or more dire reasons, such as the entity no longer existed.

⁶⁰ See 38 Fed. Reg. 29,222 (Oct. 23, 1973) § 135.10.

⁶¹ *Ramirez, Leal & Co. v. City Demonstration Agency*, 549 F.2d 97 (9th Cir. 1976). Note that unlike the current statute, which provides a preference for "Section 3 businesses," during the time relevant for purposes of this case, the Section 3 statute required that programs receiving direct financial assistance from HUD in aid of housing, urban planning, development, redevelopment, or renewal projects shall, to the greatest extent feasible, award contracts for work to be performed in connection with those projects to businesses which are located in or owned in substantial part by persons residing in the area of such projects. 12 U.S.C. 1701u (1969). As such, while it is unclear whether Ramirez would be eligible for a Section 3 preference under today's statutory construction, in 1973 Ramirez was eligible for a Section 3 preference because Ramirez resided in the project target area of San Francisco.

by the Mission Model Cities project (a HUD-funded project), Ramirez submitted a bid for \$30,000 which was received by the City on October 23, 1973, four days before the deadline of October 30. The City reviewed the Ramirez bid and noticed that the accountant failed to consider two small agencies that were to be included in the audit. The City notified Ramirez of this oversight and allowed him to revise his bid. Later, after the October 30 deadline, Ramirez submitted a revised bid of \$40,000, although the cost of auditing the two previously omitted agencies was estimated at \$2,600. The City ultimately rejected the revised bid, not for its tardiness, but because it was not the lowest bid. The lowest bid was \$30,000 and came from Haskins & Sells, a large national accounting firm with no office in the target area. Apparently, even though the City told Ramirez that his \$30,000 bid was too low and thereby induced him to increase his bid, the City did not express these same concerns to Haskins & Sells. More-over, the City refused to allow Ramirez to adjust his bid to “match” the Haskins & Sells bid. Ramirez filed an administrative complaint with HUD, and after receiving no response, Ramirez filed suit against the City in December 1973.⁶²

The trial court reasoned that Ramirez's \$40,000 bid was his final bid, and in light of the City's financial troubles, the City was within its discretion to reject the Ramirez bid because it exceeded the Haskins & Sells bid by \$10,000. As such, the trial court concluded that the City had met Section 3's “to the greatest extent feasible” standard by allowing Ramirez to bid on the contract and by granting

him a 5% advantage in the bidding process. On appeal, the Ninth Circuit Court of Appeals rejected the lower court's conclusion.

Contrary to the trial court's decision, the Ninth Circuit Court of Appeals stated that the congressional intent behind Section 3 was to “greatly broaden the scope of employment and business opportunity for lower income persons and aspiring minority entrepreneurs,”⁶³ and that Ramirez fell into the category of aspiring minority entrepreneurs that Congress no doubt had in mind.⁶⁴ Consequently, the Court stated that the statute clearly requires more than the trial court concluded. The Court went on to state:

It is not enough that Ramirez was given a chance to bid, or that defendants “chose” not to negotiate with him. It is not enough that there appears to be a rational basis for what the defendants did. They were required, to the “greatest extent feasible,” to contract with Ramirez. This is strong language. It does not give the City officials the “broad discretion” that the trial court concluded that it does. We think the “greatest extent” means what it says, the maximum, and that defendants were therefore obliged to take every affirmative action that they could properly take to make the award to Ramirez.⁶⁵

The *Ramirez* decision is important because it sets forth the principle that under the “greatest extent feasible” standard, once a Section 3 resident or business demonstrates compliance with the minimum qualifications for a position, the burden is on the recipient to demonstrate all the steps it took to award the contract to the Section 3 business and a compelling

⁶² While the original action was pending, bids for the 1974 audit were called for. Ramirez bid \$35,000; however, the bid was awarded to Haskins & Sells who bid \$25,000. Upon hearing this, Ramirez contacted the City and offered to lower the bid to \$25,000. However, the City once again refused to allow Ramirez to “match” the Haskins & Sells bid and Ramirez amended the complaint to include a claim for the auditing contracts associated with both years.

⁶³ *Ramirez*, 549 F.2d at 103.

⁶⁴ *Id.*

⁶⁵ *Id.* at 105.

reason why it chose not to hire and/or contract with the Section 3 resident or business. Therefore, the Section 3 preference should be the determining factor between two candidates.

The Ninth Circuit Court of Appeals stated that the congressional intent behind Section 3 was to “greatly broaden the scope of employment and business opportunity for lower income persons and aspiring minority entrepreneurs.”

Mannarino v. Morgan Township

In what appeared to be a case of first impression, in 1993, the U.S. Court of Appeals for the Third Circuit upheld a judgment against a Pennsylvania township that failed to award a HUD funded rehabilitation contract to a very low-income contractor that should have received a preference under Section 3.⁶⁶ As noted above, Section 3 requires HUD grantees to take affirmative steps to ensure that a percentage of the contracts funded with HUD grants are awarded to business concerns operated by low- and very low-income persons in the HUD grantee's geographic area.⁶⁷

In 1999, the plaintiffs, very low-income individuals doing business as Southwestern Community Ventures, filed a Section 1983 action against a Pennsylvania township and the chair of its board of supervisors claiming a violation of Section 3 and seeking damages. The trial court held that the plaintiffs were members of the class intended to benefit by Section 3, were qualified to be awarded the contract⁶⁸ and were thus entitled to \$16,225

for loss of income.⁶⁹ The defendants appealed. On appeal, the defendants argued that the plaintiffs were not residents of the township and hence not entitled to a preference for the contract.⁷⁰ Alternatively, defendants argued that they solicited the plaintiffs to participate in the request for proposals (RFP) and awarded points in the evaluation process for being a Section 3 business and thereby satisfied the obligations under Section 3.⁷¹ The

evidence to demonstrate the ability to complete the contract. 24 C.F.R. § 135.36(c) (2008).

⁶⁹ Section 3 places different obligations on recipients of federal housing and community development funds depending upon whether the recipient is a PHA or other entity. Here, Morgan Township (a township in Greene County, Pennsylvania with a population of 2,600 at the 2000 census) is not a PHA but a recipient of other HUD covered programs. As a non-PHA recipient of federal housing and community development funds, Morgan Township should have awarded to Section 3 businesses 10 percent of building trades work for housing rehabilitation and construction and at least 3 percent of all other Section 3 covered contracts. 24 C.F.R. § 135.30(c) (2008). In evaluating compliance with this provision, “a recipient that has not met the numerical goals . . . has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section.” *Id.* § 135.30(d).

⁷⁰ The preferences for Section 3 business concerns in contract opportunities under housing and community development programs include: category 1, those Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 project is located; category 2, applicants selected to carry out HUD Youthbuild programs; and category 3, other Section 3 businesses. 24 C.F.R. § 135.36(a)(2) (2008); 12 U.S.C.A. § 1701u(d)(2)(B) (2008).

⁷¹ 24 C.F.R. § 135.5 (2008). A Section 3 business is defined as: a business owned by 51 percent or more Section 3 residents; a business in which at least 30 percent of permanent, full-time employees are persons who are currently section 3 residents; or a business that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth above. A Section 3 resident is: a public housing resident, or an individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended, and who is defined as a low-income person (80 percent of the median income for the area) or a very low-

⁶⁶ Mannarino v. Morgan Twp., 2003 WL 1972491 (3rd Cir. Apr. 29, 2003) (unpublished). Plaintiffs also sued HUD, but HUD was dismissed from the action.

⁶⁷ 12 U.S.C.A. § 1701u (2008).

⁶⁸ The appellate decision does not indicate what showing plaintiffs made regarding qualifications. However, the Section 3 rules allow a Section 3 business to submit

United States Court of Appeals for the Third Circuit upheld the judgment against the defendants for a failure to comply with Section 3. The court reasoned that Section 3 requires to the “greatest extent feasible . . . contracts awarded for work to be performed in connection with a housing rehabilitation . . . are [to be] given to business concerns” operated by low- and very low-income persons who reside within the non-metropolitan county in which the assistance is expended.⁷² The court also noted that the Section 3 regulations provide twenty-two “Examples of Efforts to Award Contracts to Section 3 Business Concerns” and that providing notice is only one of those efforts.⁷³ Because the defendants offered no basis to conclude that their solicitation efforts, either standing alone or coupled with the award of points, satisfied the “greatest extent feasible” mandate, the district court’s decision was affirmed.⁷⁴

Although the *Mannarino* decision is unpublished and brief, it is important to note that the court found that there is a class of Section 3 beneficiaries. In addition, implicit in the opinion is a finding that once a member of that class is found to be qualified to be awarded the contract, the entity subject to Section 3 cannot claim that merely notifying the Section 3 business of the RFP and providing points in the application process to the applicant Section 3 business is sufficient to achieve the Section 3 goals. If the Section 3 business concern is qualified, more is required of the recipient

income person (50 percent of the median income for the area).

⁷² 12 U.S.C.A. § 1701u(d)(2)(A) (2008).

⁷³ 24 C.F.R. part 135, Appendix to 135 (2008).

⁷⁴ The court did not directly address the issue of whether Section 3 could be enforced through Section 1983. As noted in the next section of this Guidebook, those courts that have addressed this issue have not found that Section 3 is enforceable through Section 1983. These decisions are all unreported, but they illustrate that courts are increasingly unreceptive to Section 1983 and other related claims, specifically in terms of their “right-creating language.”

of housing and community development funds to meet the goals and priorities of Section 3.

2. Private Right of Action Considerations

After several years of judicial inactivity involving Section 3, recently three unpublished federal court opinions have addressed the issue of whether a Section 3 resident and/or business has a right to seek judicial enforcement of Section 3.⁷⁵ When the courts are asked to determine whether a particular statute confers a right of judicial enforcement, the statute is reviewed to determine if Congress intended that an individual or class of individuals are permitted to enforce the statutory provision at issue and obtain a remedy.⁷⁶ Unfortunately, each of the aforementioned three courts concluded that there is no such right under Section 3.

III. Successful Section 3 Programs: Lessons Learned

Since Section 3’s enactment in 1968, several early attempts have been made to analyze why the Section 3 program has generally failed to meet the expectations of Congress, HUD, and the low-income community.⁷⁷ Yet, balanced

⁷⁵ *McQuade v. King County Hous. Auth.*, 2006 WL 3040060 (9th Cir. Oct. 25, 2006); *Williams v. HUD*, 2006 WL 2546536 (E.D.N.Y. Sept. 1, 2006) and 2008 WL 5111105 (E.D.N.Y. Dec. 4, 2008); and *Nails Constr. Co. v. City of Saint Paul*, 2007 WL 423187 (D. Minn. Feb. 6, 2007).

⁷⁶ *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

⁷⁷ See, e.g., OFFICE OF POLICY DEVELOPMENT AND RESEARCH, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, LESSON FROM THE FIELD ON THE IMPLEMENTATION OF SECTION 3 (1996); MATTHEW J. ROSEN, PUBLIC LAW RESEARCH INSTITUTE UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW, HUD SECTION 3: EMPLOYMENT & TRAINING OPPORTUNITIES IN THE ERA OF WELFARE REFORM (1996); and OFFICE OF INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SURVEY OF HUD’S ADMINISTRATION OF SECTION 3 OF

against programs that have been deemed less effective, are reports on successful local efforts that have used Section 3 as a key threshold or element in their successful advocacy.⁷⁸ In addition, across the country, there is documentation of housing authorities and/or community development agencies with ongoing successful Section 3 programs. Therefore, rather than revisiting the findings of earlier reports, the following section will highlight and briefly discuss how three successful Section 3 programs have been organized and implemented.

A. Decatur Housing Authority

The Decatur Housing Authority (DHA), located in central Illinois about 3 hours south of Chicago, is a fairly typical small to medium sized housing authority that manages approximately 475 public housing units and 1,046 tenant-based (Section 8) vouchers. However, the success of DHA's Section 3 program is anything but typical. DHA has made Section 3 an agency-wide initiative that requires every department to accept a role and responsibility in ensuring that its Section 3 objectives are successfully pursued. DHA's Community Supportive Services (CSS) Program has lead responsibility for this effort, however, Human Resources, Maintenance, Procurement, Capital Fund Program Department, and Management also have key functional responsibilities

in the implementation of DHA's Section 3 Plan.

DHA has made Section 3 an agency-wide initiative that requires every department to accept a role and responsibility in ensuring that its Section 3 objectives are successfully pursued.

The success of DHA's Section 3 program was largely born from a \$34.9 million HOPE VI grant that DHA received in 1999. DHA's HOPE VI project was part of a \$96.7 million public-private development project involving the demolition of 386 severely distressed public housing units that would be replaced with 292 newly constructed public housing units, 64 market-rate homeownership units, and 93 affordable homeownership units. As part of the HOPE VI process, DHA established an on-site Section 3 Coordinator position that would be responsible for coordinating the communications between all DHA internal departments, contractors, Section 3 business owners, members of the community, residents and resident councils. DHA also established a Section 3 subcommittee which included DHA staff, City of Decatur staff, public housing residents, members of the NAACP, and representatives from various employment training centers. Throughout the HOPE VI process, and continuing, the Section 3 subcommittee has been directly involved in setting up Section 3 guidelines, program goals, monitoring routines, and training opportunities. The DHA Section 3 subcommittee also has representation duties on DHA's bid selection team for all contracts (i.e. including non-Section 3 eligible contracts).

In addition, while many agencies fail even to establish a meaningful Section 3 program, DHA has extended the scope of their program

THE HUD ACT OF 1968 (Audit Case # 2003-KC-0001) (2003).

⁷⁸ KATE RUBEN AND DOUG SLATER, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, WINNING CONSTRUCTION JOBS FOR LOCAL RESIDENTS: A USER'S GUIDE FOR COMMUNITY ORGANIZING CAMPAIGNS (2005); LIZA RANGHELLI, CENTER FOR COMMUNITY CHANGE, REPLICATING SUCCESS—THE ALAMEDA CORRIDOR JOB TRAINING AND EMPLOYMENT PROGRAM: A REPLICATION MANUAL FOR WINNING AND IMPLEMENTING COMMUNITY-BASED JOBS PROGRAMS ON PUBLIC CONSTRUCTION PROJECTS (2002).

to integrate employment and contracting opportunities with social services and other case management services. For example, DHA offers its program participants life skills training and guidance from an employment retention specialist and peer coach and any mental health or substance abuse treatment that may be needed.

Collectively, DHA's Section 3 plan and implementation procedures have led to results that far exceed HUD's safe harbor presumptions (i.e., Section 3 residents should receive at least 30% of all new employment opportunities, and Section 3 businesses should receive at least 10% of building trades contracting opportunities and 3% of all other Section 3 covered contracts). For example, with regard to the new hire employment opportunities that were associated with Phase I of DHA's HOPE VI project, a notable 52% went to Section 3 residents.⁷⁹ With regard to contracting opportunities, 15% of the demolition, 16% of the infrastructure, and 30% of the building and administration contracts went to Section 3 businesses.

Although DHA's Section 3 results are not only impressive, they are replicable. Rachel Joy, DHA Manager of Community and Supportive Services, suggests that three keys to DHA's successful Section 3 program are: (1) ensuring that community members (i.e. residents, developers, contractors, DHA staff, community advocates, etc.) understand the Section 3 principles and their accompanying obligations; (2) including Section 3 as a part of the housing authority/community development agency's culture; and (3) ensuring that enforcement of

Section 3 is meaningful, including contractor sanctions and suspensions when necessary.⁸⁰

B. Oakland Housing Authority

The Oakland Housing Authority (OHA), located in northern California's San Francisco Bay Area, is a large housing authority that manages approximately 3,308 public housing units and 11,142 tenant-based (Section 8) vouchers. Since 1994, OHA has received \$83.8 million in HOPE VI revitalization grants for various public housing projects in the Oakland area, and Section 3 has played a significant role throughout the HOPE VI development process.⁸¹

A critical component of OHA's Section 3 program was establishing a working relationship with a first-class apprenticeship program that offered pre-apprenticeship training opportunities.

OHA's multiple HOPE VI projects have provided a steady flow of construction training and employment opportunities for OHA program participants. Many positions have represented life-changing opportunities for OHA program participants because the construction sector remains one of the few industries in the San Francisco Bay Area where a person with

⁷⁹ Of the Section 3 residents hired during Phase I of DHA's HOPE VI project, 68% were former residents of the development and the remaining 32% were other low-income people from the area.

⁸⁰ For a description of the action that Decatur Housing Authority took to obtain contractor compliance with Section 3, see <http://www.hud.gov/offices/fheo/section3/compliance.cfm>

⁸¹ Since 1994, the Oakland Housing Authority has received four HOPE VI revitalization grants in support of redevelopment projects associated with Lockwood Gardens/Lower Fruitvale in 1994 (\$26.5 million); Chestnut Court in 1998 (\$12.7 million); Westwood Gardens in 1999 (\$10.1 million); and Coliseum Gardens in 2000 (\$34.5 million).

only a high school level of education can advance rapidly in a well-paid career. However, before these opportunities could be realized, many program participants often needed to acquire the basic skills and training to compete for the relatively limited number of union-regulated apprenticeship positions. To satisfy this need, OHA established a working relationship with the Bay Area Construction Sector Intervention Collaborative (BACSIC). BACSIC is an umbrella organization for a small cadre of pre-construction training programs and is recognized by many local construction unions as the primary source for recruiting low-income Oakland residents into the trades. Through the OHA-BACSIC collaboration, OHA program participants have been provided with valuable pre-apprenticeship training and placement services for various construction sector jobs. Over the multi-year process, 177 OHA program participants have been placed in union construction jobs that pay living wages.⁸²

The pre-apprenticeship training that OHA's program participants received was critically important to their long-term success. However, OHA, like most other housing and community development agencies, does not have in-house resources to provide trade-oriented training. Therefore, a critical component of OHA's Section 3 program was to establish a working relationship with a first-class program that could provide the pre-apprenticeship training opportunities. While apprenticeship programs focus on training workers in a particular skilled trade, pre-apprenticeship programs lay the groundwork for such specialization.⁸³

⁸² Of the 177, 62 were OHA public housing or Section 8 residents; 89 were non-OHA low-income individuals; and 26 were Youthbuild participants.

⁸³ KATE RUBEN AND DOUG SLATER, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, WINNING CONSTRUCTION JOBS FOR LOCAL RESIDENTS: A USER'S GUIDE FOR COMMUNITY ORGANIZING CAMPAIGNS (2005).

C. City of Kansas City, Missouri

As previously noted, Section 3 obligations are not only applicable to public and Indian housing programs, but also to municipal agencies that receive HUD funds for housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, and other public construction projects. Despite the fact that HUD distributed nearly \$6 billion toward state and local housing and community development programs in 2008, relatively few municipalities have fully embraced the Section 3 program as a meaningful economic development tool that facilitates the creation of local training, employment, and contracting opportunities for low-income residents. The City of Kansas City, Missouri is an exception and is one of the few municipalities that have embraced the Section 3 program.

During 2006, the City awarded \$2,130,935 in contracts to Section 3 certified business concerns.

In a partial response to a negative HUD finding in a February 2006 audit, the City acted to better define the organizational structure and operational results of its Section 3 program. For example, program responsibility for Section 3 moved from the City's Planning and Development Department and was placed within the City's Human Relations Department as a stand-alone office. As a result, the City's Section 3 program receives greater focus and is operating alongside other mission-comparable divisions such as the Affirmative Action/Disadvantaged Minority and Women Business Enterprise (DMWBE) Certification Division; the Civil Rights Enforcement Division; and the Contract Compliance/Prevailing Wage Division. Under this new organizational structure, the City's Section 3 program is ad-

An Advocate's Guide to the HUD Section 3 Program

ministered by two full-time employees who comprise the Section 3 Office. Contract compliance and enforcement duties have been delegated to the Human Relations Department's Contract Compliance Division.⁸⁴ The new structure appears to be quite successful. For example, in 2006 when the city was handling a number of construction and public works projects, the Section 3 Office established an aggressive goal to place 50 Section 3 residents into full-time employment positions and subsequently exceeded its goal. Likewise, during 2006, the City awarded over \$2 million in contracts to Section 3 certified business concerns. In addition, the new procedures streamlined the Section 3 certification process from an average of 180 days to less than 30 days.

Sandra Walker, Section 3 Administrator for the City of Kansas City, attributes much of the program's success to three factors. First, Kansas City's Section 3 Office operates within a very supportive and knowledgeable management structure where compliance with Section 3 is the consummate operating principle for both regulatory and ethical decision-making processes. Second, the City developed a comprehensive Section 3 Guidebook that clearly defines the City's policies, procedures, and expectations as they relate to the City, developers, contractors, and Section 3 residents/businesses.⁸⁵ Third, the organizational changes that were made to the program, were supplemented by concentrated outreach efforts to Section 3 residents, businesses, and other

like-minded organizations in the area. These outreach efforts significantly increased the public awareness around the City's Section 3 program. For example, an open house and job fair for the Section 3 Office drew more than 200 participants, including developers and Section 3 residents, from the greater Kansas City area.

Kansas City's Section 3 Office operates within a very supportive and knowledgeable management structure where compliance with Section 3 is the consummate operating principle for both regulatory and ethical decision-making processes.

While the City of Kansas City's Section 3 program has recently enjoyed a considerable amount of success, there is still room for improvement. For example, as in many other jurisdictions, both the local housing authority and the City administer programs subject to Section 3. Although each entity is trying to serve the same resident population, the two entities seek compliance with Section 3 relatively independent of one another. This lack of inter-agency collaboration undercuts the ability of Section 3 residents and businesses to stay fully informed regarding Section 3 training, hiring, and contracting opportunities within a given area and may adversely impact long term employment and business opportunities. As such, advocates are encouraged to work with their respective PHAs and community development agencies to establish a process within which these agencies collaborate on activities associated with outreach, education, implementation, monitoring, and enforcement of Section 3.

⁸⁴ The City's Section 3 Office consists of two full-time employees: (1) The Section 3 Administrator, who leads the City's review of Section 3 Utilization Plans, provides technical assistance as needed to developers, contractors, and Section 3 residents, and Section 3 businesses; and (2) The Section 3 Trainer/Coordinator, who through a contractual arrangement with the Full Employment Council, is responsible for the certification of low- and very low-income persons/businesses.

⁸⁵ The Section 3 Guidebook is available at: <http://www.kcmo.org/humrel/Section3/Section%203%20Guidebook%20revised%206-26-08.pdf>.

IV. Tips for Advocates

A. Advocating for and Influencing Section 3 Programs

Recipients of public housing funds and other HUD housing and community development funds should develop a Section 3 plan. The Section 3 plan should include a discussion of how the recipient will achieve its minimum Section 3 responsibilities. These responsibilities include 1) outreach to Section 3 residents and businesses concerning Section 3 opportunities; 2) notification to contractors of the Section 3 obligations and inclusion of the appropriate Section 3-related language in each contract; 3) facilitation of training and employment of Section 3 residents; 4) cooperation with HUD in obtaining compliance of contractors and subcontractors with Section 3; and 5) provision of documentation to show compliance with Section 3, including the actions taken and impediments.⁸⁶ An Appendix to the Section 3 regulations provides examples of efforts that recipients may undertake to offer training and employment opportunities to Section 3 residents; to award contracts to Section 3 business concerns; and to establish procurement procedures that include preferences for Section 3 businesses. The Section 3 plan should highlight the recipient's planned activities. Recipients must also submit annual reports to HUD for its evaluation of the effectiveness of the reported Section 3 program.⁸⁷ Advocates should obtain copies of the recipient's reports and should urge recipients to adopt coherent Section 3 plans.⁸⁸

⁸⁶ 24 C.F.R. § 135.34 (2008).

⁸⁷ *Id.* at § 135.90.

⁸⁸ HUD has posted on its website an example of a Section 3 plan. *See* <http://www.hud.gov/offices/fheo/section3/section3.cfm> (Section 3 Plan). The Section 3 plans for the City of Kansas City, Missouri, is available at: <http://www.kcmo.org/humrel.nsf/web/section3office>

If a development project has begun and initial agreements have already been made, it may be too late for community groups to have significant impact on the project, and thus it is crucial to learn the basic facts about new development plans early in the process. Advocates can identify and influence development plans, subject to Section 3, through the Public Housing Agency (PHA) Plan and the Consolidated Plan processes. In addition, advocates should also review the Neighborhood Stabilization Program plans and quarterly reports. The plan processes described in the following sections may also be used to urge recipients of public housing funds and other federally assisted housing and community development funds to develop a Section 3 plan.

PHA Plan Process

Section 511 of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 created the Public Housing Agency Five-Year and Annual Plan requirement.⁸⁹ The PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. There are two parts to the PHA Plan: the Five-Year Plan, which each PHA submits to HUD once every 5th PHA fiscal year, and the Annual Plan, which is submitted to HUD every year.⁹⁰ The Five-Year Plan describes the mission of the agency, the agency's long-range goals and objectives for achieving its mission over a five-year period, and its approach to managing programs and providing services for the upcoming year. The PHA Plan also serves as the annual application for grants which support

and the Section 3 plans for the Housing Authority of Kansas City, and Holyoke, MA, are available for members only on the NHLP website, www.nhlp.org.

⁸⁹ The Quality Housing and Work Responsibility Act of 1998 (QHWRA) was signed by President Clinton on October 21, 1998 and is found in Title V of HUD's FY1999 appropriations act (P.L. 105-276). For more information about QHWRA, *see generally* <http://www.hud.gov/offices/pih/phr/about/index.cfm>.

⁹⁰ 24 C.F.R. part 903 (2008).

improvements to public housing buildings (Capital Fund Program).

Advocates can identify and influence development plans, subject to Section 3, through the PHA Plan and the Consolidated Plan processes.

The PHA Plan is Congress's strategy to ensure that the PHA is transparent in its efforts and accountable to the local community for the choices it makes. With the creation of the PHA Plan requirement, the law articulates the types of information that should be included in the plan and the steps that a PHA must take to ensure resident and public engagement in the plan processes.⁹¹ In addition, the law requires that the plan be consistent with the housing and community development plans of the community (as described in the jurisdiction's Consolidated Plan).⁹² Section 3 is not captured specifically in the current PHA Plan Template. Nevertheless, the instructions to the Template provide that a PHA must have readily available to the public "any policies or programs of the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs under Section 3"⁹³

To ensure public participation in the process, PHA Plans, including attachments and supporting documents, must be available to the public.⁹⁴ As such, the PHA Plan process provides advocates with an opportunity to review and comment on agency plans and/or to meet

with local PHAs to discuss whether they have met their respective Section 3 obligations historically; to obtain information on the number of low- and very low-income individuals trained and hired pursuant to Section 3; and to create or improve upon future plans to fully implement Section 3.⁹⁵ Participation in the PHA Plan process may also provide advocates with an opportunity to learn about a PHA's capital fund plans which include modernization efforts, proposed demolition/disposition plans, and proposed HOPE VI projects. All of these planned projects may lead to future training, employment and contracting opportunities for low-income persons. Advocates interested in learning more about the PHA Plan process should visit HUD's PHA Plan website⁹⁶ as it is a key source for more information regarding the status of submitted, received, reviewed, and approved PHA Plans as well as the PHA Plan process. In addition, Chapter 12 of NHLP's *HUD Housing Programs: Tenant's Rights* manual provides a comprehensive discussion on the PHA Plan process and opportunities for resident and advocate participation.⁹⁷

Consolidated Plan Process

HUD requires state and local governments to produce a five-year Consolidated Plan and annual action plan prior to the receipt of funds from the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Options for People With AIDS (HOPWA) formula grant programs.⁹⁸ The five-year plan must include an analysis of low-income housing needs and data related to the needs of homeless persons, special needs populations and the local hous-

⁹¹ *Id.* at §§ 903.6, 903.7, and 903.17.

⁹² *Id.* at § 903.15.

⁹³ PHA 5-Year and Annual Plan, HUD Form 50075, (4/2008) available at www.hud.gov/hudclips. In the event that the PHA does not make available information regarding Section 3, included in the Appendix at V.B. is a copy of a public records act request based upon California law. This records request could potentially be adapted for use in other jurisdictions.

⁹⁴ 24 C.F.R. § 903.17 (2008).

⁹⁵ A copy of comments submitted to a public housing agency are included in the Appendix at V.A.

⁹⁶ HUD's PHA Plan Website can be accessed at: <http://www.hud.gov/offices/pih/pha/>.

⁹⁷ NHLP, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, Ch. 12 (3d ed. 2004).

⁹⁸ 24 C.F.R. part 91 (2008).

ing market. The Consolidated Plan represents a concerted effort to combine the planning, application, and performance reporting requirements of four HUD programs (CDBG, HOME, ESG, and HOPWA) into a single process and one final document.⁹⁹ In short, the Consolidated Plan requires a municipality to identify and prioritize all of its housing and community development needs and subsequently develop a long-term strategy for meeting those needs.¹⁰⁰ As such, similar to the PHA Plan process discussed above, the Consolidated Plan process provides advocates with an opportunity to review and comment on municipality plans and/or meet with local officials to review historical performance and provide input on future plans to improve Section 3 implementation. Advocates interested in learning more about the Consolidated Plans for municipalities in their respective area should contact their local housing and community development agency or visit HUD's Consolidated Planning website.¹⁰¹

Neighborhood Stabilization Program (NSP) Plan and Reports

The NSP was newly created in 2008 as part of the Housing and Economic Recovery Act.¹⁰² Jurisdictions that receive NSP funds were required to submit a plan for use of the funds by December 1, 2008.¹⁰³ Amendments to the plans were due February 13, 2009. (These plans may have to be revised because of the

additional funding for NSP provided for in the 2009 American Recovery and Reinvestment Act.¹⁰⁴) The existing plans should describe how the grantee will use the funds, including appropriate performance measures. Grantees may use the funds for a variety of purposes, including rehabilitation or demolition of units.¹⁰⁵ Recipients are required to certify that they will comply with Section 3.¹⁰⁶ Grantees must submit quarterly reports, which they must post prominently on their websites.¹⁰⁷ The quarterly reports must contain information on the use of the funds, including the numbers of low and moderate income persons or households benefited. The quarterly reports must continue until all NSP funds are expended. Advocates should review these reports and determine if the grantee is complying with Section 3 and raise questions if there is no compliance or if compliance is not clear.

B. Identifying Section 3 Opportunities

As discussed above, it is important for advocates to identify and influence development plans through the PHA Plan and Consolidated Plan processes, because these plans often offer a first glimpse at the long-term strategic plans of a particular PHA or municipality. In addition, advocates should review the quarterly reports required as a condition of the NSP funds. Another way in which advocates may identify Section 3 opportunities in their respective communities is to follow the flow of funds through the HUD allocation processes. Each year HUD allocates billions of dollars to local public housing agencies and municipalities in support of a variety of housing and community development programs. For ex-

⁹⁹ ED GRAMLICH, CENTER FOR COMMUNITY CHANGE, CDBG: AN ACTION GUIDE TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (1998).

¹⁰⁰ *Id.*

¹⁰¹ See HUD's Consolidated Planning website at: <http://www.hud.gov/offices/cpd/about/conplan/#guidelines>.

¹⁰² See Introduction, *supra*, for additional information about the stimulus package and funding levels.

¹⁰³ Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008; Notice, 73 Fed. Reg. 58,330, 58,332 (Oct. 6. 2008).

¹⁰⁴ Pub. L. No. 111-5, 123 Stat 115, 217 (2009). See Introduction, *supra*, for additional information about the Act and the funding levels.

¹⁰⁵ *Id.* at 58,338.

¹⁰⁶ *Id.* at 58,342-58,343.

¹⁰⁷ *Id.* at 58,341.

An Advocate's Guide to the HUD Section 3 Program

ample, in 2008, HUD allocated \$4.2 billion in public housing operating funds, \$2.4 billion in public housing capital funds, and approximately \$6 billion in community development and related funds. In addition, Congress has appropriated nearly \$6 billion for NSP in 2008 and 2009 and, in 2009, increased the public housing capital fund, HOME funds and CDBG fund by substantial amounts.¹⁰⁸ These allocations represent a significant number of potential Section 3 training, employment, and contracting opportunities. As such, advocates are urged to identify HUD funds that are allocated to their respective community development programs and to determine the extent to which Section 3 opportunities are associated with the funds. Additional information related to each of the above referenced funding sources, including funding amounts received by each public housing agency and/or municipality can be found at HUD Capital Funds, HUD Operating Funds, HUD Community Development Funds and HUD Neighborhood Stabilization Program Funds websites.¹⁰⁹

C. The Administrative Complaint Process

A Section 3 resident or business concern that has been unfairly denied training, employment, or contracting opportunities from a Section 3 covered project may file a written com-

plaint with HUD's Assistant Secretary alleging noncompliance with Section 3.¹¹⁰ It is advisable to include additional information and attach it to the complaint form.¹¹¹ This written complaint may be filed at the corresponding local HUD Field Office or mailed to:

The Assistant Secretary for Fair Housing and
Equal Opportunity
Attn: Office of Economic Opportunity
U.S. Department of Housing and Urban
Development
451 Seventh Street, S.W., Room 5100
Washington, D.C. 20410-2000

The written complaint should contain:

- Name and address of the person filing the complaint;
- Name and address of the subject of the complaint (HUD recipient, contractor or subcontractor);
- Description of the acts or omissions in the alleged violation of Section 3; and
- Statement of the corrective action sought (for example, training, employment or contracts).¹¹²

History has shown that even though HUD's administrative complaint process may be one of the only viable options remaining for aggrieved Section 3 residents or businesses seeking redress, the process is far from ideal. For example, after reviewing a number of Section 3 administrative complaints, it appears that aggrieved parties generally have to wait at least one year before HUD can process, investigate, and reach an initial decision regarding a Section 3 complaint. And should an initial finding of noncompliance be contested, the adminis-

¹⁰⁸ See Introduction, *supra*, for additional information about the stimulus package and funding levels.

¹⁰⁹ See HUD Capital Funds website:

<http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>

See HUD Operating Funds website:

<http://www.hud.gov/offices/pih/programs/ph/am/of/index.cfm>

See HUD Community Development Funds website:

<http://www.hud.gov/offices/cpd/communitydevelopment/budget/index.cfm>

See HUD Neighborhood Stabilization Program Funds website:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>.

¹¹⁰ 24 C.F.R. § 135.76 (2008). See also the Complaint Register Under Section 3 of the Housing and Urban Development Act of 1968, HUD-958 (Nov.2010) available at www.hudclips.gov.

¹¹¹ For the complaint filed in the Long Beach case and a complaint filed by an individual worker, see Appendix at V.C. and V.D.

¹¹² *Id.*

An Advocate's Guide to the HUD Section 3 Program

trative complaint process can extend for years.¹¹³ In light of this shortcoming, some advocates have pursued alternative dispute resolution strategies that have yielded favorable Section 3 remedies for their clients. For example, in Massachusetts, after a Section 3 resident was denied a position with the Brockton Housing Authority, Amy Copperman of the Massachusetts Law Reform Institute, with the assistance of a supportive HUD investigator, secured a favorable Section 3 settlement agreement between her client and the housing authority.¹¹⁴ And while the nature of the settlement agreement did not establish binding precedent, it did result in an employment opportunity where one had previously been denied.

¹¹³ In *Carmelitos Tenants Association v. City of Long Beach* (Section 3 Case # 09-98-07-002-720), the administrative complaint was filed in 1998, HUD's Letter of Determination was issued in 2004, and the final Restitution Plan was not approved until 2005. Likewise, in *McQuade v. King County Housing Authority* (Section 3 Case # 10-01-04-002-710), the administrative complaint was filed in 2001, HUD's Finding of Noncompliance was issued in 2004, and as of this writing, the matter is still under appeal.

¹¹⁴ Amy Copperman is a Staff Attorney in the Housing Unit at Massachusetts Law Reform Institute in Boston, MA. She provides advocacy to tenants about their rights to access, live in, and preserve public and subsidized housing. In this particular case, Ms. Copperman's advocacy resulted in her client receiving monetary damages and a full-time job offer from the Brockton Housing Authority.

**Appendix A:
Annual Plan Comments Regarding Section 3**



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

mm/dd/yyyy

Dear _____:

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 low- and very low-income residents of Fresno; and (2) the contracting opportunities afforded to businesses that are owned by low- and very low-income residents of Fresno.¹

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. 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.

¹ 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).

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 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.³ In addition, the regulations set forth goals for contracting by FHA or by its contractors with Section 3 businesses.⁴ 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.⁵ 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.⁶ 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 compliance will make it impossible for FHA to certify compliance with Section 3, as is required.⁷

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

Central California Legal Service

² 12 U.S.C.A. § 1701u(b) (2006).

³ 24 C.F.R. § 135.30(b) (2006).

⁴ 24 C.F.R. § 135.30(c) (2006).

⁵ 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.

⁶ For example, FHA's Family Self-Sufficiency program could expressly discuss the role Section 3 plays in its overall anti-poverty strategy.

⁷ 24 C.F.R. § 91.225(a)(8) (2006).

**Appendix B:
Public Records Act Request**



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

mm/dd/yyyy

Attn: Custodian of Records

Dear _____:

This letter constitutes a Public Records Act Request under the California Public Records Act, Government Code §§ 6250, et seq.

Please provide to the undersigned the following records in your possession, custody or control regarding the Sacramento Housing and Redevelopment Agency. The requested information is for both the City and County and for the housing authority and the redevelopment agency.

1. The current Section 3 policy or policies regarding employment, training and contracting for "Section 3 residents" and "Section 3 businesses" developed pursuant to 12 U.S.C.A. § 1701u and 24 C.F.R. Part 135.
2. The current Section 3 plan(s) regarding employment, training and contracting for "Section 3 residents" and "Section 3 businesses" developed pursuant to 12 U.S.C.A. § 1701u and 24 C.F.R. Part 135.
3. Documents that show the total amount of money received, each year, from the Department of Housing and Urban Development (HUD), that is subject to "Section 3," for the period beginning January 2000 to the present."
4. Documents implementing procedures designed to notify "Section 3 residents" of training and employment opportunities and "Section 3 Businesses" of contracting opportunities pursuant to 24 C.F.R. § 135.32(a).

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5. Documents issued/used between the present and January 2000 that provide notice to "Section 3 residents" of training and employment opportunities and "Section 3 Businesses" of contracting opportunities.
6. Documents issued/used between the present and January 2000 that provide notice to potential contractors for "Section 3 covered projects" of the requirements of 24 C.F.R. Part 135. See 24 C.F.R. § 135.32(b).
7. Documents reflecting the actions taken to comply with Section 3, including the identification of impediments and the results of actions taken, if any, for the period of January 2000 to the present. See 24 C.F.R. § 135.32(e).
8. Copies of reports and/or documentation, including HUD form 60002, *Section 3 Summary Report Economic Opportunities for Low- and Very Low-Income Persons*, submitted to the Department of Housing and Urban Development (HUD) regarding compliance with 24 C.F.R. Part 135, for each year, for the period of January 2000 to the present.
9. Copies of reports and/or documentation, including HUD form 2516, *Contracting and Subcontracting Activity*, submitted to HUD, for the period of January 2000 to the present.
10. Copies of reports and/or documentation that show for each year the number of "Section 3 residents" trained and/or hired for the period from January 2000 to the present in accordance with 12 U.S.C.A. § 1701u and 24 C.F.R. Part 135.
11. Copies of reports and/or documentation that show by contract or by project the number of "Section 3 residents" trained and/or hired for the period from January 2000 to the present in accordance with 12 U.S.C.A. § 1701u and 24 C.F.R. Part 135.
12. Copies of reports and/or documentation that show the number of "Section 3 businesses" contracted with for each year for the period from January 2000 to the present.
13. Copies of reports and/or documentation that show the dollar amount of "Section 3 businesses" contracts, for each year, for the period from the January 2000 to the present.

By law, you have ten (10) calendar days in which to comply with this Request. If you have any questions, please contact Catherine Bishop, 510-252-9400 x 105.

Cordially,

Catherine Bishop

cc _____

Appendix C: Sample Complaint on Behalf of an Individual

mmm, dd, yyyy

The Assistant Secretary for Fair Housing and Equal Opportunity
Attn: Office of Economic Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 5100
Washington, D.C. 20410-2000

Re: Section 3 Administrative Complaint

To Whom It May Concern:

XXXX has been a resident of the YYYY Housing Authority since 1995. In approximately April, 1999, Mr. XXX received a job listing and application in the mail from the YYYY Housing Authority, announcing that it had openings for the position of ZZZZ. Mr. XXXX completed the application and in approximately June, 1999, he had an interview with the YYYY Housing Authority Board of Commissioners. Upon information and belief, Mr. XXXX was considered for all open positions, of which there were three.

The ZZZZ positions are entry level, and no specific skills or work experience were listed as prerequisites for employment. On information and belief, the only qualification listed in the job opening as being necessary was a high school diploma. Mr. XXXX satisfies this listed qualification, since he graduated from YYYY High School in 1992 and has completed one semester of community college. He is 28 years old and in good physical condition. Mr. XXXX has worked in positions as a stock person and doing maintenance, and for several years worked as a security guard. He left these jobs in good standing, and has good references.

At his interview, Mr. XXXX was never asked about his previous work experience, although he provided it on his written application. In the interview, Mr. XXXX was told that the job would entail basic maintenance work, such as cleaning, trash removal, and building upkeep. Mr. XXXX is qualified to do these tasks.

Even though work experience did not appear to be critical either in the job listing or the interview, that appears to be the largest factor which the YYYY Housing Authority used to distinguish between the candidates. On information and belief, the YYYY Housing Authority hired three people to fill these positions, two in 1999 and a third in approximately March, 2000. None of the three individuals hired are YYYY Housing Authority residents. One who was hired was a

temporary YYYY employee already doing maintenance work, the second had some maintenance experience, and the third was certified in some trades.

The purposed of Section 3 is to ensure that HUD financial assistance be spent to promote job and training opportunities for public housing and other low income residents. The legal standard that HUD grantees, including public housing authorities, must meet is that they must comply to the “greatest extent feasible” with this mandate. By not hiring Mr. XXXX, the YYYY has not taken “every affirmative action that they could properly take” to ensure that they hire as many residents as feasible. *Ramirez, Leal & Co. v. City Demonstration Agency*, 549 F.2d 97, 105 (9th Cir. 1976). In interpreting the National Environmental Policy Act of 1969 (NEPA), which mandated federal agencies to consider environmental issues “to the fullest extent possible,” the D.C. Court of Appeals found that:

We must stress as forcefully as possible that this language does not provide an escape hatch for footdragging agencies; it does not make NEPA’s procedural requirements somehow discretionary. Congress did not intend the Act to be such a paper tiger. Indeed, the requirement of environmental consideration “to the fullest extent possible” sets a high standard for the agencies, a standard which must be rigorously enforced by the reviewing courts.... Thus the [Section 102] duties are not inherently flexible. They must be complied with to the fullest extent, unless there is a clear conflict of *statutory* authority. Considerations of administrative difficulty, delay or economic costs will not suffice to strip the section of its fundamental importance.

Calvert Cliffs’ Coord. Com. V. United States A. E. Com’n, 440 F.2d 1109, 1114-1115 (D.C. Cir. 1971). *Flint Ridge Development v. Scenic Rivers Association*, 426 U.S. 776, 787-788 (1976) (statutory requirement to act “to the fullest extent possible” is neither “accidental nor hyperbolic. Rather, the phrase is a deliberate command that the duty NEPA imposes upon the agencies to consider environmental factors not be shunted aside in the bureaucratic shuffle.”); *Southeast Alaska Conservation Council v. James Watson*, 697 F.2d 1305, 1310 (9th Cir. 1983) (statutory requirement to act to the “maximum extent feasible” demands strict compliance).

Under the “greatest extent feasible” standard, it logically follows that once a resident demonstrates that he meets the minimum qualifications for a position, the burden shifts to a PHA to provide a compelling reason why it chose not to hire the resident job candidate. In this instance, where no special skills or work experience were required, the Section 3 preference means more than simply a “tie breaker” between two candidates. Although the three individuals hired may have had more related work experience than Mr. XXXX, Mr. XXXX still met the basic job qualifications as specified by the YYYY Housing Authority. Under the listed qualifications, the applicants were equal, and in that case, the YYYY Housing Authority should have deferred to Section 3 and hired Mr. XXXX.

Moreover, an entry level position provides an ideal opportunity for a public housing authority to seek to satisfy its obligations under Section 3 to train residents. This is especially true when there are three positions open, rather than just one, since the YYYY Housing Authority could have hired experienced workers who can then work to train the resident employee. In this in-

stance, the YYYY Housing Authority did not use this opportunity, but instead hired three non-residents.

The complainant maintains that the YYYY Housing Authority's failure to hire him constitutes a violation of Section 3 of the Housing and Community Development Act of 1968, 12 U.S.C. § 1701u, and HUD's regulations under this law, 24 C.F.R. Part 135. Mr. XXXX therefore requests that HUD investigate whether the YYYY Housing Authority did not comply with Section 3 by not offering him a maintenance position. If HUD determines that the YYYY Housing Authority did not comply, Mr. XXXX requests that HUD require the YYYY Housing Authority to remedy this situation appropriately. Mr. XXXX asks he be compensated for lost wages, and that the next available job for which he qualifies be awarded to him. If, upon investigation, HUD discovers that the YYYY Housing Authority has not complied with Section 3 in all of its hiring, Mr. XXXX asks for systemic relief as well, including a program set up to monitor compliance and to help link residents to needed services. Finally, Mr. XXXX asks that HUD award any other form of relief it deems proper.

Respectfully submitted,

Massachusetts Law Reform Institute
99 Chauncy Street, Suite 500
Boston, MA 02111

Appendix D:
Letter of Complaint Regarding Long Beach

**LEGAL • AID
FOUNDATION
OF • LONG • BEACH**

110 Pine Avenue, Suite 420 • Long Beach, CA 90802-4421 • Tel: (562) 435-3501, Ext 211 • Fax: (562) 435-7118

Dennis L. Rockway
Senior Counsel

June 9, 1998

Ms. Eva Plaza
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Washington, DC 20410

RE: Queensway Bay Project
Project/Grant Number #B-95-MC-06-0522
Long Beach, California

Dear Assistant Secretary Plaza:

Please accept the enclosed Complaints regarding the Queensway Bay Project in Long Beach, California, filed by the Legal Aid Foundation of Long Beach on behalf of the Carmelitos Tenants Association.

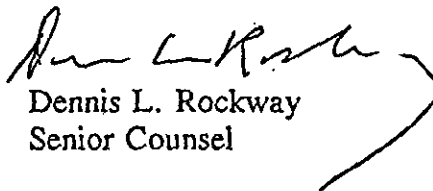
Complainants contend that the City of Long Beach and its contractors have failed to comply with Section 3 of the Housing and Urban Development Act of 1968. Complainants base their contentions on the enclosed nine individual Complaint Register forms (HUD-958) and common Attachment.

Complainants ask that HUD suspend financial support for commercial development in Long Beach, including the Queensway Bay Project and Orchard's Supply Hardware, both of which are backed by Section 108 loans, pending a showing of genuine compliance with Section 3. Complainants further ask that HUD impose special monitoring and reporting conditions on the City of Long Beach's participation in all other HUD programs.

Ms. Eva Plaza
Assistant Secretary for Fair Housing and Equal Opportunity
June 9, 1998
Page Two

Please acknowledge and mark receipt of the extra copy of this cover letter enclosed herewith, and return it to our office in the envelope provided. We would be happy to supply any additional information per your request.

Sincerely,



Dennis L. Rockway
Senior Counsel

DLR/bb

enclosures

cc: Tom Honoré, Director, Civil Rights Division, HUD Los Angeles Area Office
Art Agnos, Secretary Representative, HUD
George Williams, Director, Fair Housing HUB Office, HUD
James C. Hankla, City Manager, City of Long Beach
Robert Paternoster, Director, Queensway Bay Project, City of Long Beach
Heather Mahood, Esq., Principal Deputy City Attorney, City of Long Beach

D:\DLR\LETTER\ASS-SCTY.001

Complaint Register
Under Section 3 of the Housing
and Urban Development Act of 1968

U.S. Department of Housing
 and Urban Development
 Office of Fair Housing
 and Equal Opportunity

OMB Approval No. 2529-0043 (Exp. 04/30/97)

Use type or print.

The Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3000 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0043), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Instructions: Read this form and the instructions on reverse. Try to answer all questions, but if you don't know the answer or if a question isn't applicable, leave it blank. Fill out as much of the form as you can. Sign and date your complaint. If more than one person or organization is filing the same complaint, and all information is the same, each party must complete a separate form and attach it to the original. Mail the complaint to the address (listed on the reverse) for the state in which the complaint arose, to a HUD Field Office, or to the Office of Fair Housing and Equal Opportunity, HUD, Washington, D.C. 20410. Or present the written complaint in person at any HUD office. Note: HUD furnishes a copy of the complaint to the person or organization named in the complaint.

Name of Complainant (person or organization)

Carmelitos Tenants Association

Home Phone:

()

Business Phone: C/O.

Street Address (city, county, State and zip code)

851 Via Carmelitos, Long Beach CA 90805

Against whom (person or company) is this complaint being filed? (name of person or organization)

Phone Number:

City of Long Beach

Street Address (city, county, State and zip code) Also, if you named an individual above who appeared to be acting for a company, write the address here:

33 West Ocean Boulevard
 Long Beach CA 90802-4664

Describe the status of the aggrieved (check one or more boxes)

- ☐ Low/very low income
☐ Public Housing resident(s)
☒ Representative of a or b
☐ Section 3 business concern(s)
☐ Representative of d

4. Describe the status of the party about which the complaint is being filed (check one or more boxes)

- a. ☐ Applicant
 b. ☒ Recipient
 c. ☐ Sub-recipient
 d. ☐ Contractor
 e. ☐ Subcontractor
 f. ☐ Other

Name and identify others (if any) you believe violated the law in this case

5. Basis for noncompliance under Section 3

a. ☒ Training Opportunities Denied

b. ☒ Employment Opportunities Denied

c. ☒ Contracting Opportunities Denied

6. What did the person you are complaining against do? Check all that apply and give the most recent date these act(s) occurred below.

- a. ☒ Failed to recruit Section 3 area residents as trainees (continuing) e. ☒ Failed to utilize Section 3 area residents as trainees (continuing)
 b. ☒ Failed to recruit Section 3 area residents as employees (continuing) f. ☒ Failed to utilize Section 3 area residents as employees (continuing)
 c. ☒ Failed to solicit bids or proposals from Section 3 business concerns (continuing) g. ☐ Failed to incorporate Section 3 contract clause in procurement documents
 d. ☐ Failed to award contracts to Section 3 business concerns

7. When did the act(s) checked above occur? (include the most recent date if several dates are involved)

The above acts continue through the present time.

8. Identify HUD assistance program(s). (Check all that apply)

- a. ☐ PIH/DEV e. ☐ 202/811 I. ☐ Homeless
 b. ☐ PIH/MOD f. ☐ Other/Housing J. ☐ Other/CPD
 c. ☐ PIH/OPER g. ☒ CDBG K. ☐ Lead-Based Paint
 d. ☐ Other/PIH h. ☐ HOME L. ☐ Other

9. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Attach additional information if necessary.

The City of Long Beach has obtained financing through the Section 108 Loan Guarantee Program for construction of the Queensway Bay Project. The City and its Contractors have failed to provide notification to and opportunities for Section 3 beneficiaries, have failed to monitor the workforce and have failed to comply with reporting obligations.

See Attachment to form HUD-958, submitted by Legal Aid Foundation of Long Beach on behalf of Carmelitos Tenants Association,

LEGAL AID FOUNDATION OF LONG BEACH
 ATTORNEY FOR COMPLAINANT

10. I declare under penalty of perjury that I have read this complaint (including Signature and Date):

Ann C. Rishy
 ANN C. RISHY

Attachment to form HUD-958, submitted by
Legal Aid Foundation of Long Beach on
behalf of Carmelitos Tenants Association,

I

Introduction

This is a complaint brought pursuant to 24 C.F.R. §135.76 and Section 3 of the Housing and Urban Development Act of 1968. Complainants are Section 3 residents seeking employment, training and other economic opportunities at the Queensway Bay Project ("Project") and other HUD assisted projects on behalf of themselves and as representatives of persons similarly situated. The complaint addresses acts and omissions of a continuing nature by the City of Long Beach ("City") and C.A. Rasmussen and Valley Crest ("Contractor"(s)). This complaint is an attachment to form HUD-958 filed herewith.

Despite the City's assurance that substantial economic benefits would flow to the low-income community surrounding the Project if financing for construction were made available by the U.S. Department of Housing and Urban Development ("HUD"), the Project nears completion with virtually no participation from low-income residents of Long Beach. Therefore, Complainants ask that HUD suspend financial support for all HUD assisted commercial development in Long Beach pending the City's showing of genuine compliance with the Section 3 program. Complainants further ask that HUD impose special monitoring and reporting conditions on the City's participation in all HUD programs.

II

The City Promised Compliance With Section 3 Objectives In Its Application For Federal Assistance.

On or about August 8, 1995, the City filed an Application for Federal Assistance ("Application") with HUD in connection with the Queensway Bay Project. (See Exhibit A). The Application sought \$40 million under the Section 108 Loan Guarantee Program for "construction of 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." (See Exhibit A).

In support of its Application, the City indicated that the activities to be funded by the Section 108 loan would "comply with national objectives as specified in §570.208 (a)(4), job creation and retention activities directly benefiting low-income and moderate income persons." (See Exhibit A).

The Application also indicated that the City would use resources provided under the Jobs Training Partnerships Act (JTPA) "to train unemployed and underemployed Long Beach residents to fill the jobs created by the Queensway Bay Project." (See Exhibit A). In addition, the Application assured that the City would utilize certain state programs "to insure that the City's low-income residents and small entrepreneurs have maximum opportunity to benefit from Queensway Bay development." (See Exhibit A).

Finally, the Application described the extreme poverty surrounding the Project site and how low-income residents in the immediate vicinity of the Queensway Bay Project would

directly benefit from construction jobs created by the Section 108 loan:

The 17 census tracts contiguous to the Queensway Bay Project have poverty rates over 21 % and represent the highest concentration of high poverty census tracts with (sic) the South Bay portion of Los Angeles County. (See Attachment C, Specified Low-Income Census Tracts). Fifteen of these tracts have poverty rates over 25 %. Nearly 85 % of the renter households and 53 % of the owner households are paying in excess of 50 % of their income for housing. These are the census tracts which would benefit most directly from the service and construction jobs created by the Queensway Bay Project initiated by the Section 108 Loan. (emphasis added) (See Exhibit A).

Based upon the representations made by the City in its Application, HUD approved the City's request for a \$40 million Section 108 loan on August 14, 1995.¹

On July 30, 1996, Complainants contacted Mr. Robert Paternoster, Director of the Queensway Bay Project, to encourage compliance with Section 3 and requested to meet with him regarding Section 3 employment opportunities during the construction phase of the Project. (See Exhibit B). On August 5, 1996, Mr. Paternoster declined the opportunity to conduct such a timely meeting. (See Exhibit C). On October 17, 1996, Complainants sought intervention by HUD to assure the City's participation in the Section 3 Program. (See Exhibit D). On October 31, 1996, Thomas F. Honoré, Director of the Civil Rights Division of the Los Angeles HUD office, advised the City of an urgent need to "begin to understand and implement Section 3 as required." (See Exhibit E). Despite such admonition, the City's understanding and implementation of Section 3 has been less than adequate. Frustrated in their desire to obtain economic opportunities to the greatest extent feasible for their community under the Section 3

¹HUD no doubt also considered the City's Program Year Action Plans, which were submitted to HUD annually in support of its 1995-2000 Consolidated Plan. The Action Plans included Certifications indicating the City's intention to comply with Section 3. (See Exhibit G).

Program, Complainants again seek HUD's assistance with this administrative complaint.

III

The City Has Failed To Implement Procedures To Notify Section 3 Residents about Training and Employment Opportunities On The Project And Has Also Failed To Notify Section 3 Businesses About Contracting Opportunities.

A. Notification Regarding Training And Employment Opportunities Has Been Insufficient.

Title 24 CFR §135.32(a) assigns the City the responsibility of implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance. The City, however, has failed to implement meaningful notification procedures regarding Section 3 opportunities at the Project. Complainants requested information regarding the City's procedures on January 16, 1997. (See Exhibit F). In response, over two months later on March 20, 1997, the City provided Complainants with the "City of Long Beach Section 3 Compliance Strategy" (hereinafter "Compliance Strategy"). (See Exhibit G). Complainants suspect that the Compliance Strategy was not formulated prior to the time of their request, despite the fact that construction on the Project had already begun.

The Compliance Strategy notification procedure was set out as follows:

Based on the labor force needs and apprenticeship opportunities, City staff will develop (sic) a community outreach strategy to recruit low-income residents for employment/apprenticeship opportunities.

Outreach will include:

- Federally designated low-income and moderate-income neighborhoods
- Tenant organizations in the two HUD support (sic) housing projects: The Carmelitos Tenants Association and the Southern California Resident and Management Initiative Corporation.

The City has failed entirely to develop and implement an effective Compliance Strategy.

The City has failed even to implement the Compliance Strategy's targeted outreach through the Carmelitos Tenants Association and the Southern California Resident and Management Initiative Corporation. A sincere effort to work with those tenant groups would have been consistent with one of the purposes of Section 3, as it would have ensured that opportunities were particularly directed to recipients of government assistance for housing. See §135.1(a). Despite the City's promise to utilize the Private Industry Council (PIC) to notify Section 3 residents about "opportunities generated by the Queensway Bay Project," the City has taken no such steps to notify Section 3 residents via the PIC. (See Exhibit H). Such omissions have continued through the present time.

B. Notification Regarding Contracting Opportunities Has Been Insufficient.

Title 24 C.F.R. §135.32(a) assigns the City the responsibility of implementing procedures designed to notify Section 3 businesses about contracting opportunities generated by Section 3 covered assistance. The City, however, has failed to provide any notification to Section 3 business concerns about contracting opportunities generated by the Project. The Compliance Strategy contains no provision for such responsibility. (See Exhibit G). Instead, the City limited "potential Queensway Bay Contractors" to those attending pre-bid and pre-construction conferences and, apparently, abdicated all responsibility to notify Section 3 business concerns pursuant to 24 C.F.R. §135.32(a) & (c) and §135.36. (See Exhibit H). Such omissions have continued through the present time.

IV

The City Has Failed To Assist And Actively Cooperate
With The Assistant Secretary To Obtain Compliance
Of Contractors And Subcontractors.

Although §135.32(d) requires the City to assist and actively cooperate with the Assistant Secretary to obtain the compliance of contractors and subcontractors with Section 3 regulations, the City has failed to do so. Indeed, when questioned as to the Compliance Strategy's lack of procedures to "assist and actively cooperate" with the Assistant Secretary, the City responded that its procedure was limited to declining to make awards to contractors debarred or suspended by HUD. (See Exhibits H and I).

The City is in a position to enforce Section 3 compliance by its Contractors by exercising its prerogative to withhold progress payments. The Compliance Strategy, however, includes no such provision. (See Exhibit G). The City declined to respond to Complainants' inquiry as to whether the Contractors' compliance with Section 3 would be a condition of progress payments for work performed. (See Exhibits R, S and U). By continuing to fund construction despite the Contractors' failure to honor their Section 3 contract commitments, the City has frustrated HUD's efforts to obtain compliance.

In a letter dated November 21, 1996, to Thomas Honoré, Director of the Civil Rights Division of the Los Angeles Area office of HUD, City Manager James Hankla advised HUD that the City intended to "assist the contractor in outreach to our unemployed, low-income residents and to offer customized construction training services funded by the Job Training Partnership Act (JTPA)." (See Exhibit J). In fact, the City provided no such assistance to any Queensway Bay Project Contractor, nor did it offer customized construction training services

to Section 3 residents for employment opportunities on the Project. Such a failure by the City to comply with its representations to HUD is indicative of a failure to assist and actively cooperate with HUD.

On November 12 and 13, 1996, HUD conducted an on-site Fair Housing and Equal Opportunity monitoring review in Long Beach in which it assessed implementation of the Section 3 Program. The HUD review indicated that the City had no mechanism in place to collect data pertinent to Section 3 compliance. (See Exhibit K). At a meeting with Complainants' counsel on January 10, 1997, Long Beach Neighborhood Services Bureau Manager Dennis Thys acknowledged that the City still had no data on the Queensway Bay Project workforce. The Compliance Strategy indicated the City's commitment at some unspecified future time to "[d]evelop a system to monitor labor force information and jobs created." (See Exhibit G). Apparently, the City has yet to develop such a system. In sum, the City does not collect sufficient and timely data to provide for any meaningful monitoring of Section 3 compliance.

The HUD review further indicated that the City had not submitted a Section 3 Report for fiscal year 1995-1996 and recommended that the report be sent as soon as possible. (See Exhibit K). To this date, the City has failed to submit such a report. Indeed, the City has acknowledged that the only report it ever filed with HUD regarding the Queensway Bay Project was submitted on February 18, 1998. (See Exhibit L). This submission, however, covered the period from July 1, 1996 to January 31, 1998 and was not filed until some four weeks after complainants' counsel requested copies of all relevant annual reports and the dates of their filings. (See Exhibits V and M). Title 24 C.F.R. §135.90 requires submission of an annual report. The City's submission was clearly not timely. Its aggregate figures spread over three

calendar years, thus precluding any assessment of annual performance. By failing to comply with mandatory reporting procedures, the City violated 24 C.F.R. §135.90 and, therefore, failed to assist and actively cooperate with the Assistant Secretary as required by §135.32(d).

The City in its Compliance Strategy, moreover, indicated its commitment to "[c]ollect Section 3 data, as required by HUD, and prepare and submit quarterly reports to HUD." (See Exhibit G). The City has neither prepared nor submitted such quarterly reports. Its failure to comply with its own Compliance Strategy for providing information to HUD further establishes the City's failure to assist and actively cooperate with the Assistant Secretary per §135.32(d). Such omissions have continued through the present time.

V

The City Has Failed To Undertake Activities To Facilitate The Training And Employment Of Section 3 Residents And The Award Of Contracts To Section 3 Business Concerns.

Title 24 C.F.R. §135.32(c) obligates the City to undertake activities to facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as those set forth in the Appendix to 24 C.F.R. §135. The City, however, has failed to seriously engage in any activities to promote the achievement of Section 3 goals. For example, the City has failed to undertake virtually all of the 20 strategies set forth in the Appendix as "Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents," nor has the City undertaken any other similar activities.

Complainants have tried to assist the City by making recommendations regarding activities that would facilitate training and employment. Complainants suggested, for example, that the

City utilize those strategies enumerated in the Appendix, distribute them to contractors and unions and incorporate them into its Compliance Strategy. (See Exhibit I). In addition, Complainants provided materials to the City regarding efforts made in other jurisdictions. Complainants suggested that meetings be conducted with contractors and union representatives to address enforcement mechanisms for Section 3 compliance, including monitoring procedures, preferences on future bids per §135.9(c) and penalties on future bids per §135.72(b). (See Exhibit I). Complainants suggested that monitoring be undertaken regarding such factors as how long Section 3 beneficiaries remain on jobs and the reasons cited for any terminations (See Exhibit I). Complainants' suggestions have been in vain.

The City could have promoted participation of Section 3 residents by facilitating outreach and referrals through appropriate community organizations. Unfortunately, however, resources such as Women In Non-Traditional Employment Roles ("WINTER"), which is based in Long Beach, were not offered opportunities to assist in recruiting Section 3 beneficiaries for the Project. (See Exhibit N). Indeed, such failure to work with community based organizations to encourage participation by Section 3 residents indicates efforts substantially less than the greatest extent feasible, even if the 30% goal per §135.30(b)(3) had been achieved.

The City has declined to implement any of the above strategies. It has declined to conduct meaningful community outreach. Such omissions have continued through the present time.

VI

The City Has Failed To Document Any Actions Taken To Comply With Section 3 Requirements, The Results Of Such Actions Taken And Impediments Encountered, If Any.

Title 24 C.F.R. §135.32(e) requires the City to document actions taken to comply with Section 3 requirements, the results of such actions taken and impediments encountered, if any. The City, however, has apparently either declined to monitor workforce data pertinent to Section 3 compliance, or has inexplicably refused to release such data. Meanwhile, the number of construction jobs on the site has remained a mystery. The City's Application for Federal Assistance projected 2,291 construction jobs for an unspecified "fully developed project". (See Exhibit A).

In a letter dated March 20, 1997, addressed to counsel for Complainants, the City indicated a total Queensway Bay Project workforce of 109 for the second phase, with a 20% increase in the third phase. (See Exhibit G). On May 16, 1997, in a subsequent letter to counsel for Complainants, the City adjusted its numbers to indicate a total Queensway Bay workforce of 31 for the first phase, with an estimated 58 for the second phase.² (See Exhibit H). The number of new hires for Phase 1 was presented as 6, with the estimated number of new hires for Phase 2 of 14. (See Exhibit H). The combined 30% Section 3 goal for the Project was presented as 6.2 new hires. (See Exhibit H). This figure suggests an urgent need for

²In the midst of the Project, the City renumbered the Project's phases. The Project was reduced from 3 phases to 2 phases. Exhibit H references this reduction in the number of Project phases. Accordingly, the workforce for the initial phase was reduced from 109 to 31. The renumbering of the Project's phases has rendered monitoring the City's compliance with Section 3 very difficult.

monitoring. The number of Section 3 workers benefitted appears to be much too low for a Project funded by a \$40 million federal loan.³

On May 30, 1997, in an effort to determine Section 3 compliance on the Project, Complainants requested information as to the residence and income of each individual employed on the Project. Complainants additionally requested that the City designate those employees considered new hires and those considered Section 3 beneficiaries. (See Exhibit O). The City provided certain information purporting to be based on on-site interviews conducted on April 28, 1997. (See Exhibit P). Such information indicated a total on-site workforce of 20, including nine new hires, with only one new hire residing in Long Beach. That Long Beach resident, however, was not a low or very low-income individual. (Exhibit R).

On June 6, 1997, Complainants asked the City to indicate those employees it considered Section 3 beneficiaries. (See Exhibit Q). The City declined to respond. Complainants have also made a continuing request for subsequent monitoring reports addressing Section 3 compliance on the Project site. (See Exhibit Q). The City has either failed to prepare such reports, or has declined to release them to Complainants.

On October 31, 1997, in yet another effort to monitor the City's compliance with Section 3 on the subject Project, Complainants submitted a number of informational requests to the City.

³Lessons From the Field on the Implementation of Section 3, prepared November 1996 for the U.S. Department of Housing and Urban Development Office of Policy Development and Research by Manpower Demonstration Research Corporation, concluded that vigorous enforcement of Section 3 would yield a range between 1.9 and 3.1 Section 3 jobs per \$1 million spent on construction and rehabilitation projects. The conclusion was based upon experiences of seven Public Housing Authorities, including Los Angeles. As applied to the Queensway Bay Project, it would be expected that the \$40 million spent in federal funds would have yielded between 76 and 124 Section 3 jobs.

Complainants requested information regarding the following: 1) workforce data; 2) whether Section 3 compliance was a precondition of progress payments to the Contractors; 3) the frequency with which work force evaluations were conducted; 4) the extent of the City's correspondence with Contractors regarding Section 3 compliance; and 5) the existence of the City's "community outreach strategy" that was described in its Compliance Strategy. (See Exhibit R). Unfortunately, the City failed to provide Complainants with information regarding any of the above topics. Complainants made further requests for such information on December 19, 1997, and again on January 23, 1998. (See Exhibits S & M). The City has refused to provide Complainants with the information requested.

On January 12, 1998, the City indicated to Complainants that it would verify an assertion by the Contractor that it had only one new hire on site who was a Section 3 beneficiary. (See Exhibit T). The City has failed to verify such information.

As of January 12, 1998, the City was improperly identifying eligible Section 3 beneficiaries as low-income residents residing anywhere in Los Angeles or Orange Counties. (See Exhibit T). Complainants, citing §135.34(2)(i), advised the City on January 23, 1998, of the Section 3 mandatory training and employment preference for service area or neighborhood residents. (See Exhibit U). It is unclear whether the City has adopted the appropriate definition to date. Any assessment of Section 3 compliance must rest upon a valid definition of legally designated beneficiaries.

The only report filed by the City with HUD indicates a total of eleven Section 3 employees and trainees during the period of July 1, 1996 through January 31, 1998. (See Exhibit V). This information, however, is not helpful in assessing the City's compliance with

Section 3 for a number of reasons. First, the numerical goals set forth in §135.30(b)(3) are based upon a "one year period." The City's sole report, unfortunately, is based upon a 3 year period of time. Second, as of at least January 12, 1998, the City was improperly counting residents from the entirety of Los Angeles and Orange Counties as Section 3 beneficiaries, without regards to the preferences set out in §135.34(a)(2)(i). (See Exhibit T). Thus, it remains unclear whether eligibility standards were properly applied, who the alleged Section 3 beneficiaries were, whether they were hired over those with legitimate preferences based on residency and for what period of time they actually worked.

Title 24 C.F.R. §135.32(e) requires the City to document actions taken to comply with Section 3 requirements, the results of such actions taken and impediments encountered, if any. The City's Compliance Strategy sets forth no such responsibilities. (See Exhibit G). The City's commitment to documentation has been limited to noting the placement of a contractor on the HUD debarred/suspended list. (See Exhibits I and H). The City's failure to produce basic workforce information after several written requests from Complainants has made meaningful monitoring and enforcement of the applicable Section 3 regulations impossible and indicates the City's failure to comply with §135.32(e). Such omissions have continued through the present time.

VII

Conclusion

The HUD regulations issued to effectuate the Section 3 program explicitly enumerate the responsibilities of any entity receiving Section 3 covered assistance. The City of Long Beach has not complied with such responsibilities on the Queensway Bay Project. The City has fallen

far short of directing economic opportunities to the greatest extent feasible to low-income and very low-income people in the service area and neighborhood in which the Project is located. Indeed, it is not apparent how the applicability of Section 3 to the Queensway Bay Project has provided any particular benefit to the surrounding low-income community.

In summary, the City failed to notify the low-income community of economic opportunities on the Project and failed to provide basic information to the community regarding who was working on the Project and what was being done to promote Section 3 compliance. In addition, the City failed to comply with its legal obligation to provide HUD with annual reports and its own explicit written commitment to supply HUD with quarterly reports. The only report provided by the City of Long Beach to HUD is highly suspect in that it appears to disregard legally defined geographic preferences for hiring Section 3 beneficiaries and, further, it does not indicate compliance with goals on an annual basis as provided by law. The City has been unable to show that even a single low-income Long Beach resident was employed at the construction site. Finally, even if the City's very limited hiring of Section 3 beneficiaries had satisfied the required percentage goal for each fiscal year, the City's failure to conduct adequate outreach, communication with community groups and notification to Section 3 businesses indicates efforts far less than the greatest extent feasible.

In inducing HUD to provide \$40 million to finance the Queensway Bay Project, the City promised to provide construction jobs to residents of the surrounding poverty-stricken neighborhoods. The City failed to keep that promise.

VIII

Relief Requested

HUD should suspend financial support for the Queensway Bay Project, Orchard's Supply Hardware and any and all other HUD assisted commercial development in Long Beach pending the City's sufficient submission to Complainants and HUD of the following:

1. A comprehensive analysis of the Project workforce to date, including all information previously requested by Complainants in Exhibit R attached hereto;
2. The addresses and incomes of all individuals claimed by the City to be Section 3 beneficiaries who have worked on the Project to date;
3. Documentation of total Project workforce data on an annual basis beginning in Fiscal Year 1996 and addressing factors such as Section 3 eligibility and preferences, with such data presented quarterly for the current fiscal year;
4. Annual reports pursuant to 24 C.F.R. §135.90, commencing in 1996 (i.e. form HUD-60002, "Economic Opportunities for Low-income and Very Low-Income Persons in Connection with Assisted Projects");
5. Documentation of adequate notice procedures, if any, to potential Section 3 residents and businesses regarding employment opportunities at the Project;
6. Documentation of actual assistance and active cooperation, if any, by the City with the Assistant Secretary with regards to Section 3 implementation at the Project;
7. Documentation of the undertaking of appropriate activities, if any, to facilitate economic opportunities for Section 3 residents and businesses at the Project;
8. Documentation indicating the hiring of Section 3 beneficiaries at the Project

to the greatest extent feasible, on an annual basis beginning Fiscal Year 1996 and continuing thereafter, with such data presented quarterly for the current fiscal year;

9. Any other documentation or information HUD deems appropriate.

Complainants additionally request that HUD enforce the following prospective, preventative measures upon the City as a precondition to the City's receipt of future HUD grants or assistance, including, but not limited to, future projects funded by Section 108 Loans and the City's potential designation as an Empowerment Zone:

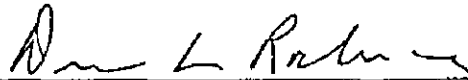
1. The City must agree to stringent monitoring and reporting requirements to ensure its compliance with Section 3 and all other HUD mandates. Failure to comply with Section 3 and all other HUD mandates should result in immediate and severe sanctions against the City. This requirement should apply to all current and future HUD assisted projects.
2. The City must immediately draft an Amended Section 3 Compliance Strategy that sets forth an effective plan to promote economic benefits to Section 3 residents and businesses to the greatest extent feasible. The Amended Section 3 Compliance Strategy must address issues such as: (a) effective notification procedures for training, employment and contracting opportunities created by the project; (b) effective measures to ensure compliance by contractors and subcontractors with Section 3 (e.g., suspension of progress payments for failure to comply); (c) effective measures to facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 businesses; (d) effective means of documenting all actions taken to comply with Section 3, the results of such actions

and impediments encountered, if any; (e) a commitment by the City to cooperate with individuals or groups who would like to monitor the City's compliance with Section 3 and/or who would like to work with the City to assure creation of the maximum number of Section 3 opportunities.

3. The City must produce regular and periodic documents illustrating its compliance with the Amended Section 3 Compliance Strategy. These documents must provide detailed workforce data regarding factors such as Section 3 eligibility criteria, Section 3 preferences and the identities of Section 3 individuals employed by the project. Such documents must be readily available to the public upon request.
4. The City must set-aside funds for the training and employment of low-income individuals residing in the impacted neighborhoods that should have benefitted from the Queensway Bay Project over the last three years.
5. The City must commit to a minimum annual employment goal of 30% for each Section 3 covered occupational classification, with exemptions for management positions.
6. The City must set-aside funds for an independent monitoring and compliance entity to provide local monitoring and enforcement for future HUD assisted or funded projects.
7. The City must establish a local oversight committee to review the documentation requested herein. The oversight committee should be comprised of representatives from: the City, the community, Legal Aid Foundation of Long Beach, HUD, congressional and/or state representatives and labor.

8. The City must set-aside funds for technical assistance to assure opportunities are created for local Section 3 businesses on future HUD assisted projects.
9. Future City projects receiving HUD assistance should be divided into smaller projects where feasible, to provide maximum participation by small local businesses.
10. The City must set-aside bonding and loan guarantee funds to assist small local business participation.
11. Future project construction contracts must include language providing for penalties against contractors for failing to fulfill their employment obligations, including reporting responsibilities.
12. Any other remedy HUD deems appropriate.

DATED: JUNE 9, 1998


Dennis L. Rockway, Senior Counsel
Susanne Browne, Staff Attorney
LEGAL AID FOUNDATION OF LONG BEACH

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attachment(s)

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