

DOT Requests Comments on Intersection of Federal Highway Spending and Section 3 Obligations

NLIHC's Memo to Members
April 2, 2010

The Federal Highway Administration (FHWA) of the U.S. Department of Transportation (DOT) has issued a Notice and Request for Comment relating to the Administration's Interagency Partnership on Sustainable Communities.

In the spirit of the Interagency Partnership's goal of harmonizing DOT and HUD programs, FHWA intends to use its Special Experimental Project No. 14 (SEP-14) authority to explore innovative approaches to contracting. FHWA proposes to permit, on a case-by-case basis, the use of Community Development Block Grant (CDBG) funds with federal-aid highway money. A potential roadblock in this arrangement is that while highway funding rules prohibit contracting agencies from using geographic preferences, CDBG funds used for construction activities are subject to Section 3 obligations. These obligations require jurisdictions to "ensure...that to the greatest extent feasible" lower income people from the metropolitan area are "directed to" job training and employment opportunities, and that contracts for work performed in connection with the construction be awarded to businesses that provide economic opportunities for people with lower incomes in the metro area.

FHWA proposes to allow states to experiment under SEP-14 by combining CDBG and FHWA funds for single, integrated projects procured and bid under a single contract while still complying with Section 3 to the greatest extent feasible.

In order for a joint FHWA/CDBG project to win SEP-14 approval, FHWA proposes that Section 3 apply only if CDBG amounts to at least 10% of the amount of FHWA work, or 5% of projects financed with more than \$100 million of federal funds. There is precedent for requiring a minimum CDBG investment in order to engage Section 3; existing HUD regulations trigger Section 3 for jurisdictions only when the amount of CDBG in a project is more than \$200,000, or when a contract for more than \$100,000 is let for such a project.

States applying for SEP-14 would also be required to indicate the degree to which the project enhances livability and sustainability. For example, the applicant would have to describe how the project will improve accessibility for economically disadvantaged populations or make goods and services more readily available to them.

Comments are due May 14. The March 30 notice is at <http://edocket.access.gpo.gov/2010/pdf/2010-7053.pdf>