

Dear [Public Official or CEO/Director]:

This letter requires your attention in connection with your legal obligations regarding equal opportunity in economic stimulus spending. We seek information regarding your [government body/company's] efforts to comply with such requirements.

Recipients of federal stimulus funds under the American Recovery and Reinvestment Act (ARRA) are required to comply with all applicable federal equal opportunity statutes and regulations governing fair employment, fair housing, equal educational opportunity, equitable procurement, and non-discrimination in federally funded programs. These laws prohibit practices and activities that are discriminatory by intent or discriminatory in practice, based on race, ethnicity, gender, national origin, language ability, disability, or age. In fact, the U.S. Department of Justice, through public filings, has recently noted and clarified these obligations (including, but not limited to, Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; and the Age Discrimination Act of 1975) (see also Appendix I).

The relevant statutes, regulations, and case law require ARRA fund recipients not only to avoid discriminatory actions, but also to take proactive steps to identify and avoid potentially discriminatory effects of federally funded projects, to ensure fair employment, to further fair housing, and to promote equal access to contracting opportunities (see, for example, Appendix II).

When it accepted ARRA funds for [stimulus project], your [government body or company] agreed to fulfill these obligations and, specifically, to [any specific language in the agreements?]. An important part of that legal obligation is reporting the actions you are taking to ensure compliance with these provisions, including the information on which those actions are based (see Appendix III for an illustrative example of Department of Transportation and Department of Housing and Urban Development reporting obligations and Appendix IV for specific reporting requirements under the ARRA).

As the upcoming quarterly deadline for the reporting of your [agency's/company's] use of ARRA funds approaches, your [agency/company] must compile and prepare to report on the specific steps it has taken to fulfill those obligations, including demographic and other relevant data documenting compliance. The information provided will be used to keep affected communities and the general public apprised of positive efforts to ensure an equitable economic recovery. By contrast, upon request, failure to provide this information in a timely manner will be reported to federal enforcement bodies as potential evidence of a violation of federal law.

We hereby request that you provide a copy of demographic and other relevant information to us, at the address above by [], in a form that clearly identifies the policies you have in place and the data that documents the impact of stimulus funds on equal opportunity under applicable law.

Thank you for your cooperation. If you wish to discuss this matter further, please feel free to contact Juhu Thukral, Director of Law and Advocacy at The Opportunity Agenda, at jthukral@opportunityagenda.org, or at (212) 334-5332.

Sincerely,

[Contact Person]

[Organization or Coalition]

Appendix I

Recipients and sub-recipients of Recovery Act funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program specific statutes with nondiscrimination requirements. Other civil rights laws may impose additional requirements on recipients and sub-recipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and nonprofit agencies), and the Fair Housing Act (prohibiting discriminatory housing practices based upon race, color, religion, sex, national origin, disability, or familial status), as well as any other applicable civil rights laws." (Notice on Civil Rights Obligations Applicable to the Distribution of Funds under the American Recovery and Reinvestment Act of 2009. <http://www.usdoj.gov/crt/cor/RecoveryActNotice09.pdf>)

Appendix II

As an example, U.S. Department of Transportation regulations, 49 CFR § 21.5(b)(2), provide that federal funding recipients "in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the *effect* of subjecting persons to discrimination because of their race, color, or national origin, or have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin." (emphasis added).

In the context of housing, Section 3608(e)(5) of the Fair Housing Act (Title VIII) requires HUD to "administer [housing] programs . . . in a manner affirmatively to further the policies of [the Fair Housing Act]," 42 U.S.C. § 3608(e)(5), and imposes an "affirmative" obligation on HUD to do something "more than simply refrain from discriminating . . . or from purposely aiding discrimination by others," *N.A.A.C.P. v. Sec'y of Hous. and Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987). To the contrary, "[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated

residential housing patterns and to prevent the increase of segregation[.]” *Id.* (quoting *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973)).

Appendix III

Section 21.9(b) of Department of Transportation regulations provide:

"Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance."

To that they will abide by their statutory obligation to affirmatively further fair housing, HUD grantees must conduct an analysis of impediments to fair housing (“AI”), take appropriate actions to overcome those impediments, and maintain records reflecting the analysis and the actions taken. OFFICE OF FAIR HOUS. AND EQUAL OPPORTUNITY, U.S. DEP’T OF HOUS. AND URBAN DEV., FAIR HOUSING PLANNING GUIDE, VOL. 1, 102 (1996), *available at* <http://www.nls.gov/offices/fheo/images/fhpg.pdf>. HUD grantees must analyze any existing impediments to fair housing that their programs might encounter, which include any “actions, omissions or decisions” which would “restrict housing choices or the availability of housing choices,” or have the effect of doing so, based on “race, color, religion, sex, disability, familial status, or national origin.” *Id.* at 2-8. HUD grantees are required to document both their analyses of impediments, the “[a]ctions undertaken to eliminate any identified impediments,” and any “[t]ranscripts of public hearings and citizen comments/input,” as well as “[p]rogress reports (which should be kept available for public review).” *Id.* at 2-6.

Appendix IV

Subpart 4.15—American Recovery and Reinvestment Act—Reporting Requirements

4.1500 Scope of subpart.

This subpart implements section 1512(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), which requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The subpart also implements the data elements of the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282). Contractors that receive awards (or modifications to existing awards) funded, in whole or in part by the Recovery Act, must report information including, but not limited to—

- (a) The dollar amount of contractor invoices;
- (b) The supplies delivered and services performed;
- (c) An assessment of the completion status of the work;
 - (d) An estimate of the number of jobs created and the number of jobs retained as a result of the Recovery Act funds;
 - (e) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded; and
 - (f) Specific information on first-tier subcontractors.

4.1501 Procedures.

(a) In any contract action funded in whole or in part by the Recovery Act, the contracting officer shall indicate that the contract action is being made under the Recovery Act, and indicate which products or services are funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the contract instrument.

(b) To maximize transparency of Recovery Act funds that must be reported by the contractor, the contracting officer shall structure contract awards to allow for separately tracking Recovery Act funds. For example, the contracting officer may consider awarding dedicated separate contracts when using Recovery Act funds or establishing contract line item number (CLIN) structures to mitigate commingling of Recovery funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements. If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies.

(d) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

4.1502 Contract clause.

Insert the clause at 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ)

contracts that will be funded with Recovery Act funds. Contracting officers shall ensure that this clause is included in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing contracts and orders if the clause at 52.204-11 is not incorporated.