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Ms. Deborah K. Lear, Director
Office of Housing Assistance Contract Administration Oversight
United States Department of Housing and Urban Development
451 7th St., SW
Room 6151
Washington, DC 20410
deborah.k.lear@hud.gov

Re: Project-Based Contract Administration ("PBCA") contract awards

Dear Ms. Lear:

I represent the Arizona Department of Housing ("Department") and have been asked to provide you with a brief summary of the Department's legal position concerning the inadvisability of HUD appointing an out-of-state public housing authority ("PHA") to administer the Arizona based Section 8 PBCA contract. This letter does not represent the formal or informal opinion of Arizona Attorney General. The Arizona Attorney General is only authorized to provide legal advice to the State of Arizona, its Agencies and state officials acting in their official capacity, therefore, this letter is also not intended to be relied upon by third parties as legal advice. The Department believes that HUD's own codes, regulations and handbook do not permit giving a Section 8 PBCA contract to an out-of-state entity for administration within the territorial borders of Arizona.

HUD provides rental subsidies to property owners which in turn benefits low-income tenants, a program that the Department has administered in Arizona for the past decade. This subsidy is authorized by Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 ("Act"). 42 U.S.C. § 1437 et. seq. PHAs, also known as affordable housing agencies, are regulatory in nature and are creatures of both state and federal statute. 24 C.F.R. § 5.100 defines PHAs as "... any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is *authorized* to engage or assist in the development or operation of low-income housing under the 1937 Act." (emphasis added).

The Department is established by A.R.S. § 41-3952 and given the powers and duties authorized by A.R.S. § 41-3953. The Department is the only entity authorized to act as a state-wide PHA in Arizona and is also the only Arizona-based PHA permitted to accept federal money in exchange for carrying out housing assistance payment programs, including PBCA duties. In Arizona, PHAs may also be established by cities, counties or towns, as authorized by A.R.S. § 36-1404. However, all of these agencies are mandated to carry out activities that benefit the

residents of their jurisdiction.

PHAs are a means by which states, and political subdivisions of the state, remedy unsafe housing conditions and the shortage of affordable housing for low-income families, all in furtherance of the stated policy contained in Section 2 of the Act. The Public Housing Development Handbook promulgated by HUD specifies that "an eligible PHA is one that has both the *legal authority and the local cooperation* required for developing, owning and operating a public housing project under the Act, the regulation (24 C.F.R. 841), and this Handbook." (See Public Housing Development Handbook, Chapter 2, Section 2-2) (emphasis added).

Given the nature of the work that PHAs carry out on a daily basis, it is implicit in the definition of a PHA that they are *local* to the geographic area in which they operate. Many of the day to day responsibilities are more expeditiously handled by the Department because the Department is able to physically visit the housing project, which in turn expedites day to day business and operations for all parties. In *Baker v. Cincinnati Metropolitan Housing Authority*, 675 F. 2d 836, 839 (1982), the court considered the issue of tenant-based housing funds. That court found that the Act encourages local decision-making, stating: "It is the policy of the United States ... to vest in *local* public housing agencies the maximum amount of responsibility in the administration of their housing programs." (citing to 42 U.S.C. § 1437) (emphasis added).

The power of states to act, legislate or regulate has historically been limited to that state's own territorial jurisdiction. While an entity can be licensed to conduct business in its home state, that license does not automatically and lawfully allow the entity to go to another state to conduct its business without first becoming appropriately licensed in the jurisdiction that it wishes to conduct business. In *Yavapai County v. O'Neil*, 3 Ariz. 363, 377-378, 29 P. 430, 433 (1892), the Arizona Territory Supreme Court found that the power to act within the territory has no extraterritorial vitality, as there is no legal effect outside of the territorial boundaries. This finding was relied upon and further discussed by the Supreme Court of Arizona in *Maricopa County v. Norris*, 49 Ariz. 323, 236, 66 P. 2d 258, 259 (1937), when it stated "it is obvious the Legislature of Arizona has no power to extend the jurisdiction of its courts or their processes beyond the state's boundaries. The laws of the state and officers in their enforcement are confined to the state." These points of law continue to hold true today, not just for Arizona but for any state attempting to extend its authority into Arizona.

Given the regulatory nature of public housing authorities, as well as the statutory scheme under which they arise, PBCA contracts were, and are, most appropriately carried out by the PHA physically located in the state where the properties are located. If a foreign agency or entity comes in to a state to carry out such tasks it would be contrary to federal and state legislative intent, as well as local licensing requirements. The Department is not aware of any other entity, public or private, other than itself that currently has appropriate statutory authority to administer project-based rental assistance contracts for HUD within the borders of Arizona.

Yours Truly,


Pamela J. Linnins
Assistant Attorney General

Cc: Carol Ditmore, Asst. Deputy Director/Operations - Arizona Department of Housing