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November 4, 2011

Janet M. Golrick
Acting Deputy Assistant Secretary for Multifamily Housing Programs
United States Department of Housing and Urban Development (HUD)
Washington DC 20410-8000

Re: Clarification of OP-2011-2

Dear Ms. Golrick:

Your October 19, 2011 letter to Margaret S. Van Vliet, Director of the Oregon Housing and Community Services Department (OHCS) indicates that my October 4, 2011 letter to Richard Crager, Deputy Director of OHCS may not have been entirely clear as to the exclusive authority of OHCS to act as a statewide public housing agency in Oregon. I apologize for that, and write to you now for the purpose of clarifying the view my letter was intended to convey.

Succinctly, OHCS is the exclusive statewide public housing agency (PHA) authorized by Oregon law. See my letter of October 4 at 3 ("OHCS is the sole [PHA] granted statewide power by the Oregon Legislative Assembly."). As my letter also notes, authority under Oregon law is necessary in order to act as an Oregon governmental entity, including as a PHA, see pp. 1-2. Accordingly, OHCS is the only state agency authorized to act for the State of Oregon as a PHA qualified to function as a performance-based contract administrator (PBCA) with respect to the U.S. Department of Housing and Urban Development's (HUD's) §8 housing portfolio in this state.

Your letter notes the possibility that another state agency could be authorized by the Oregon Legislative Assembly as a PHA to contract with HUD as a PBCA. Although the legislature would have the authority to create or authorize a different PHA to act in this capacity (either with the Governor's approval or overriding the Governor's veto), the legislature has not done so. OHCS is the only Oregon public body currently delegated such authority by the legislature. Furthermore, the legislature is not scheduled to go into session again until February of next year. When it does convene, we see no reason at all to expect that it would change OHCS' current status as the sole statewide PHA.

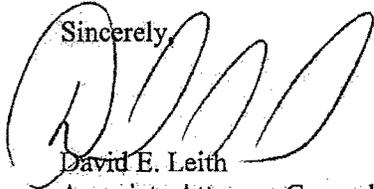
Your letter also notes that OHCS possesses exclusive authority to receive "grants, gifts, contributions, loans, credits or assistance from the federal government or any other source for housing programs except when the donor, grantor, or lender of such funds specifically directs some other agency to administer them." ORS 456.559(1)(f) (emphasis added), cited in Letter of October 19 at 1. I included the foregoing statutory reference in my previous opinion letter as an

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example of OHCS being tasked by the legislature as the central coordinating entity in Oregon for housing issues – consistent with its designation as the state’s only statewide PHA. Letter of October 4 at 3. I did not mean to suggest that this statutory provision was an exception to the opinion. The referenced statute only addresses the authority of OHCS to receive and administer federal or other housing assistance received by the state. This primary authority to receive and administer housing assistance is distinct from the exclusive authority possessed by OHCS to contract with HUD on behalf of the State of Oregon as a PBCA. *Id.*, citing, e.g., ORS 456.625 (7) and (12). As we have previously clarified, no agency other than OHCS is legislatively authorized as a statewide PHA able to contract for Oregon with HUD as a PBCA. And, given the language in 42 U.S.C. § 1437f(b)(1), it would not appear that HUD has authority to designate a different PBCA for its Oregon § 8 portfolio unless OHCS first is unwilling or unable to act in that capacity. Obviously, that is not the case given OHCS’ demonstrated ability as Oregon’s current PBCA and its expressed willingness to continue in that role.

I hope that this clarifies our opinion that OHCS is the only entity authorized by Oregon law to act as a statewide PHA and thereby qualified to act for Oregon as a PBCA.

Sincerely,



David E. Leith
Associate Attorney General and
Chief General Counsel
General Counsel Division

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c: Richard Crager, OHCS Deputy Director