

Section 3: Job Training, Employment, and Business Opportunities Related to HUD Funding

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Section 3 of the “Housing and Urban Development Act of 1968,” titled *Economic Opportunities for Low- and Very-Low Income Persons*, requires recipients of HUD housing and community development funding to provide “to the greatest extent feasible” job training, employment, and contracting opportunities for low- and very low-income (VLI) residents, as well as eligible businesses.

The Section 3 obligation is too often ignored by the recipients of HUD funds and not enforced by HUD; therefore, Section 3’s potential benefits for low-income and VLI people and for qualified businesses is not fully realized. At the beginning of the Obama Administration in 2009, both lawmakers and HUD officials expressed interest in strengthening the program. Proposed improvements to the Section 3 regulations were published on March 27, 2015, but a final rule was not sent to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) as the Obama Administration drew to a close. On May 9, 2018, HUD’s Spring Regulatory Agenda removed the 2015 proposed rule. The new HUD Secretary, Ben Carson, has publicly expressed support for Section 3. On October 10, 2018, an OIRA webpage indicated that OIRA had received a proposed regulation for review. In the meantime, Section 3 continues to limp along with the interim regulations from 1994.

ADMINISTRATION

Oversight responsibility for Section 3 rests with HUD’s Office of Fair Housing and Equal Opportunity (FHEO). HUD is charged with monitoring and determining whether local recipients of HUD housing and community development funds are meeting their obligations.

In addition, those local recipients have the responsibility to ensure that the obligations and goals of Section 3 are met by subrecipients and contractors.

HISTORY

The Section 3 obligation was created as part of the “Housing and Urban Development Act of 1968.” The Section 3 statute has been amended four times; each time the amendments primarily sought to expand the reach of Section 3 and to better benefit low-income households. After statutory amendments in 1992, revised regulations were proposed and ultimately an interim set of regulations published on June 30, 1994. The potential of this program has largely been ignored throughout its history.

SUMMARY

Section 3 is a federal obligation that is tied to HUD funding. Section 3 states that recipients of HUD housing and community development funding must provide “to the greatest extent feasible” job training, employment, and contracting opportunities for low-income and VLI residents and “Section 3 businesses.” A “recipient” is an entity that receives Section 3-covered funds directly from HUD, such as a public housing agency, a state, city, or county.

Section 3 applies to all HUD funding for public housing and Indian housing, such as the public housing operating fund and capital fund, Resident Opportunity and Self-Sufficiency grants, Family Self-Sufficiency grants, and the Rental Assistance Demonstration (RAD) program. Section 3 also applies to other housing and community development funding including Community Development Block Grant (CDBG), HOME Investment Partnerships, National Housing Trust Fund, and Housing Opportunities for Persons with AIDS.

Section 3 Goals and Preferences

HUD regulations set numerical goals for all entities subject to Section 3. Low-income and VLI individuals should be given a preference for at least 30% of all new hires that arise from HUD funding. At least 10% of the total dollar amount of all Section 3 contracts is allocated for building trades work and 3% of all other contracts should be for Section 3 businesses. A Section 3 business is defined as a business owned by low-income individuals, or which hires a substantial number of low-income individuals, or which commits to contract at least 25% of the dollars awarded to Section 3 businesses. Low income is defined as income less than 80% of the metropolitan area median income (AMI), while VLI is defined as income less than 50% of AMI. Building trades work is not defined, but probably includes obvious professions such as bricklaying, plumbing, and painting; “other” types of contracts might be carpet installation, pest control, or bookkeeping (for the construction company).

The Section 3 regulations spell out orders of preference that should be given to residents and businesses. A preference should mean that if the Section 3 individual meets the job qualifications or a Section 3 business meets the bid requirements, the individual should be hired or the business should get the contract. The order of resident preferences for Section 3 activities at public housing is: residents of the public housing development that is assisted; residents of other public housing developments in the service area of the public housing agency (PHA); YouthBuild participants; and finally, other low-income people in the metropolitan area (or nonmetropolitan county). The order of resident preference for other housing and community development activities is: low-income people living in the service area or neighborhood where the assisted project is located; YouthBuild participants; homeless people in the service area or neighborhood of the assisted project; and finally, other low-income people in the metropolitan area (or nonmetropolitan county). There are also orders of preferences regarding

Section 3 businesses pertaining separately to public housing and to other housing and community development projects.

When Does Section 3 Apply?

For both public housing and other housing and community development funding, the Section 3 obligation applies to the entire project regardless of the amount of funding subject to Section 3. For example, a project may receive funds from many sources, public and private, but if there are any public housing funds in the project, the Section 3 obligation applies to the entire project.

For public and Indian housing funding, Section 3 applies to any jobs and contracting opportunities that arise in administration, management, service, maintenance, and construction. For the other housing and community development funding, Section 3 applies only to jobs that arise in connection with construction or rehabilitation, and only if the funding is more than established thresholds. Examples of eligible types of other housing and community development projects include housing construction or rehabilitation; public works projects, such as waterfront redevelopment; retail and restaurant development; development of entertainment facilities; and other related infrastructure. The way HUD has established thresholds for contractors enables recipients and contractors to avoid Section 3 by making sure that they break up all construction activities (such as housing rehabilitation) into small contracts less than the \$100,000 threshold, even if the contractor is receiving much more HUD money to do the same construction work (for example, rehabilitating many homes).

The HUD Notice implementing the public housing RAD limits Section 3 to construction, rehabilitation, and repair work that arises from the conversions of public housing and Moderate Rehabilitation units to project-based vouchers or to project-based Section 8. Once the conversion is complete, future rehabilitation or repair work is not subject to Section 3.

One HUD administrative decision regarding the program is of special note. In April 2004,

HUD issued a decision finding that the City of Long Beach, California violated Section 3 because Section 3 new hires worked significantly less than 30% of the hours worked by all new hires. This decision is important because the regulation's standard of 30% of new hires can be easily manipulated with a hiring surge at the end of the contract period, undermining the purpose of Section 3. Using a standard of 30% of the hours worked each year by the new hires would be much better and is consistent with the Section 3 goal of creating employment opportunities for low-income individuals to the "greatest extent feasible."

There is a HUD-established complaint procedure for individuals and businesses to use for violations of Section 3. Complaints are filed with FHEO Regional offices. HUD has responded favorably to some complaints that have been filed.

Summary of the Proposed Improvements Dropped by the Trump Administration

In 1994, HUD published an interim rule updating the Section 3 regulations in response to changes made by the "Housing and Community Development Act of 1992." On March 27, 2015, HUD published long-anticipated amendments to the interim Section 3 regulations. On May 9, 2018, HUD's Spring Regulatory Agenda removed the 2015 proposed rule. Three of the proposed rule's key provisions are discussed here because they illustrate the limitations of the 1994 interim rule.

1. The proposed rule would change the dollar threshold for recipients that directly receive federal housing and community development funds (remember, recipients are cities, counties, states, or PHAs). The text of the existing rule is confusing, leading some recipients to incorrectly apply the \$200,000 recipient threshold on a per-project basis rather than on a per-recipient basis. As a result, some recipients avoid Section 3 obligations on projects that have less than \$200,000 of HUD assistance. The proposed rule would have unambiguous language and would established a new

\$400,000 recipient threshold. The proposed rule clearly stated that once the \$400,000 threshold is reached, Section 3 obligations apply to all Section 3 projects and activities funded with any amount of HUD housing and community development funds. In addition, the requirements would apply to the entire project, regardless of whether the project is partially or fully funded with HUD funds.

2. The proposed rule would have eliminated the \$100,000 threshold for contractors and subcontractors. This improvement could have resulted in greater employment and subcontracting opportunities for Section 3 residents and businesses. Under the existing regulation, contractors and subcontractors do not have to comply with Section 3 if a contract for construction work on a project is less than \$100,000. Consequently, it has been HUD policy to exempt contractors and subcontractors awarded significant amounts of Section 3 covered funds in a single year spent on small, discreet activities, such as homeowner housing rehabilitation, from meeting their Section 3 obligations. Cumulatively, such contractors and subcontractors can receive far more than \$100,000 in covered funds, yet do not have to hire Section 3 residents or subcontract with Section 3 businesses because each component activity (e.g., rehabilitating a single home) costs less than \$100,000.
3. The proposed rule would have revised the definition of "new hire." The existing rule sets a goal of having 30% of new hires at a project to be "Section 3 residents." The rule has no provision concerning how long the Section 3 resident is employed. Advocates have long asserted that the rule's lack of a provision considering hours worked as well as the duration of employment is a loophole, allowing contractors to hire Section 3 residents for a short period of time. In the proposed rule HUD agreed, proposing to redefine a new hire as someone who works a minimum of 50% of the average hours worked for a specific job category for

which the person was hired, throughout the duration of time that the work is performed on the project. The preamble to the proposed rule offered an example: If a typical painter works 40 hours per week, then a Section 3 new hire must work a minimum of 20 hours per week for as long as a typical painter would work at the project.

Although advocates welcomed HUD's attempt to address the concern about the duration of employment, the proposed rule insufficiently addressed the first problem (hours worked) and did not address a second concern (duration). For years, advocates have suggested to HUD that the Section 3 employment goal obligation should not be measured by counting the number of Section 3 workers who are "new hires." Using "new hire" as a measure allows contractors and subcontractors to place any new hires on their non-Section 3 covered projects and thus evade Section 3. Instead of "new hire," compliance should be assessed by the number of hours worked by Section 3 residents as a percentage of total hours worked by all employees of a given job category. In other words, to meet Section 3 goals, Section 3 residents for each job category should be working at least 30% of the total number of hours worked by all employees in that job category.

Advocates commented that if HUD was not willing to accept the above recommendation, HUD's definition of a "new hire" should at least increase from 50% to 100%, the average number hours worked for a specific job category for which the Section 3 resident was hired. The 50% standard would encourage hiring Section 3 residents for part-time work and render Section 3 employees as second-class employees. In addition, this would likely hinder skill building because an employer could rationalize that a Section 3 employee will not be around long enough.

Performance Reporting

Starting in 2009, HUD increased its efforts to get recipients of HUD funds subject to Section 3

to report compliance on form HUD 60002. HUD later reported that nearly 80% of all recipients filed these reporting forms. However as noted by a June 2013 HUD Office of Inspector General (OIG) report, HUD did not verify the accuracy of the forms or follow up on clearly non-compliant information, leading OIG to conclude that for 2011, some 1,650 PHAs "could be falsely certifying compliance."

In December 2013, FHEO announced in a webinar that it had revised the HUD 60002 form to address these problems for PHAs and all HUD grant recipients. FHEO stated that it had created a system that would prevent the submission of clearly non-compliant or inaccurate information. Unfortunately, HUD suspended the roll out in January 2014 due to unforeseen technical difficulties. On August 24, 2015, FHEO announced the relaunch of the Section 3 Performance Evaluation and Registry System (SPEARS) for the submission of form HUD 60002 annual summary reports, requiring retroactive reporting for the 2013 and 2014 reporting periods by December 15, 2015.

Regarding HUD 60002 reports from PHAs and jurisdictions, advocates should monitor how HUD responds to local agency reports that do not reasonably explain why there were no or too few new Section 3 hires, or no or too few dollars under contract with Section 3 businesses. In addition, advocates should monitor how HUD works to secure compliance from those local agencies that have completely ignored prior reporting requirements. Will HUD establish, as recommended by the OIG, a system of remedies and sanctions for PHAs (and presumably other HUD grant recipients) that do not submit HUD-60002 forms?

Legislation to Improve Section 3

Representative Nydia Velazquez (D-NY) repeatedly sought to improve Section 3, but these efforts were not supported by many of her colleagues. It is not likely that things will change in the coming year. In prior years, she held hearings and proposed legislation, such as the Section 3 "Modernization and Improvement Act of 2015" (H.R. 3697), would

ensure that recipients of HUD funding are held accountable for not meeting their Section 3 responsibilities when they fail to spend federal resources in a manner that creates jobs and economic opportunities for low-income and VLI residents. The bill would also expand Section 3 requirements to PHAs and owners of multifamily properties assisted under the RAD program. Moreover, H.R. 3697 would require HUD to report to Congress each year on Section 3 compliance and provide specific solutions for situations where funding recipients have failed to meet their Section 3 obligations.

FUNDING

There is no independent funding for Section 3. The number of jobs created or contracts provided to Section 3 individuals or businesses depends upon the level of funding for the applicable public housing or housing or community development program.

FORECAST FOR 2019

At the beginning of the Trump Administration, the new HUD Secretary, Ben Carson, publicly expressed support for Section 3. After announcing on May 9, 2018 that the 2015 proposed rule was removed from HUD's Spring Regulatory Agenda, an OIRA webpage indicated that OIRA had received a proposed regulation for review October 10, 2018. The new proposed rule is titled, *Enhancing and Streamlining the Implementation of 'Section 3' Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses*.

Although the term "streamlining" is a cause for concern given the current Administration's emphasis on perceived regulatory burden, the OIRA summary offers a glimpse of actual improvement. It states that the 1994 interim rule's reliance on "new hires" has led to employers "churn," which involves employers creating a series of short-term jobs and hiring and firing employees in order to meet their Section 3 numeric goals. To prevent this, the proposed rule would change to percentage of hours worked, as advocates have long suggested.

It is notable that three HUD officials are listed on the OIRA notice: the Deputy Director of the Office of Policy, Programs, and Legislative Initiatives; the Director of the Office of Recapitalization in the Office of Housing; and the Director of the Office of Affordable Housing Programs in the Office of Community Planning and Development. No HUD official from FHEO or the Office of Public and Indian Housing are listed as being involved in the re-drafting of the proposed Section 3 rule.

As of the date this *Advocates' Guide* went to press, a proposed rule had not been published in the *Federal Register*. It is likely that a proposed rule has been published by the time readers have access to this *Advocates' Guide*.

TIPS FOR LOCAL SUCCESS

The successes of Section 3 are almost exclusively attributed to oversight, monitoring, and advocacy by local advocates and community groups, as well as some local staff of recipient agencies implementing the goals.

Advocates should contact resident organizations, local unions, minority and women-owned businesses, community development corporations, and employment and training organizations to discuss how they and their members or clients can use the Section 3 goals and preferences to increase employment and contracting opportunities for the targeted low-income and VLI individuals and Section 3 businesses.

In addition, advocates should meet with local PHAs and other local recipients of housing and community development dollars (generally cities and counties) to discuss whether they are meeting their Section 3 obligations with respect to public housing funds, or the CDBG, HOME, and RAD programs. Advocates should create or improve upon a local plan to fully implement Section 3 and seek information on the number of low-income and VLI individuals trained and hired in accordance with Section 3 and the dollar amounts contracted with Section 3 businesses. Advocates should ask local recipients of HUD funds or HUD for copies of the submitted form HUD 60002 and take any necessary action.

Compliance with Section 3 should be addressed in the annual PHA plan process or the Annual Action Plan updates to the Consolidated Plan process.

If compliance is a problem, urge HUD to monitor and conduct a compliance review of the non-complying recipients of federal dollars for public housing or housing and community development. Low-income persons and businesses with a complaint about recipients of HUD funds or contractors' failure to comply with or meet Section 3 goals should consider filing an official complaint with HUD.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to legislators about the connection between HUD funding and jobs. Advocates should recommend that the Section 3 requirements that currently apply to PHAs be extended to properties that convert to RAD beyond any initial rehabilitation or construction.

FOR MORE INFORMATION

HUD's FHEO Section 3 website,
<http://1.usa.gov/YJPOIi>.

HUD's Section 3 Frequently Asked Questions,
<http://portal.hud.gov/hudportal/documents/huddoc?id=11secfaqs.pdf>.

NLIHC's Outline of Section 3 Obligations,
https://nlihc.org/sites/default/files/Sec3-Outline-2011-Streamlined_REV_0614.pdf.

National Housing Law Project, <http://bit.ly/2j0oSLs>, especially *An Advocate's Guide to the HUD Section 3 Program: Creating Jobs and Economic Opportunity* from the National Housing Law Project at <https://www.nhlp.org/wp-content/uploads/2018/04/3-NHLP-Advocates-Guide-to-Section-3.pdf>.

