



NATIONAL LOW INCOME HOUSING COALITION

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Regulations Division

Office of General Counsel

Department of Housing and Urban Development

451 7th Street SW

Room 10276

Washington, DC 20410-0500

Via regulations.gov

Re: FR-4893-P-01

Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Through Strengthened "Section 3" Requirements

I submit these comments on behalf of the National Low Income Housing Coalition (NLIHC), an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people.

NLIHC commends HUD for updating and clarifying the Section 3 regulations. The spirit of the 1968 act that created the Section 3 employment, training, and contracting obligations have not been fully realized, in part due to some of the specific provisions of the 1994 interim regulations, as well as some ambiguous language. The proposed improvements to the Section 3 regulations are welcome.

NLIHC has signed on to a comment letter submitted by the Housing Justice Network. We worked closely with the various advocates who composed that letter. NLIHC writes separately to highlight some of the items in the Housing Justice Network letter, and to add a few additional comments. NLIHC's comment letter expressly supports several proposed improvements, while offering recommendations that would further strengthen a final rule.

PROVISIONS THAT NLIHC SUPPORTS

NLIHC Supports the Proposed \$400,000 Threshold.

The proposed rule would change the dollar threshold for recipients that directly receive federal housing and community development funds.

The text of the current rule is confusing, leading some recipients to incorrectly apply the \$200,000 threshold on a per-project basis rather than on a per-recipient basis. As a result, some recipients avoid Section 3 obligations at projects that have less than \$200,000 of HUD assistance.

NLIHC supports the proposed rule, which would have unambiguous language and establish a new \$400,000 threshold. The proposed rule clearly states 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.

HUD asks for comments regarding the level of the proposed threshold, stating that HUD would not consider a threshold below \$400,000 but would consider a threshold as high as \$1 million. While NLIHC would prefer a threshold lower than \$400,000, we conclude that \$400,000 is an acceptable compromise. A \$1 million dollar threshold would exclude 816 cities and counties (59%), enabling too many local governments to avoid meeting the spirit of the Section 3 law. Therefore, NLIHC accepts the \$400,000 threshold and urges HUD not to erode Section 3 opportunities any further by instituting a higher threshold.

NLIHC Endorses Elimination of the \$100,000 Threshold for Contractors and Subcontractors.

The proposed rule would eliminate the \$100,000 threshold for contractors and subcontractors. NLIHC commends HUD for proposing this improvement, which can result in greater employment and subcontracting opportunities for Section 3 residents and businesses.

Under the current 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 to expend on small, discreet activities such as homeowner housing rehabilitation from meeting their Section 3 obligations. Cumulatively, such contractors and subcontractors can expend 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 costs less than \$100,000.

NLIHC Endorses the Proposed New Requirement Calling for Recipients to Develop and Adopt Official Section 3 Policies and Procedures.

Having such a document will help residents and advocates to better understand a recipient's Section 3 obligations and how the recipient intends to work to achieve Section 3 goals.

NLIHC offers three suggestions for improving the provisions regarding the official Section 3 policies and procedures.

1. NLIHC reiterates the recommendation in the Housing Justice Network comment letter regarding one of the eight recipient responsibilities that must be addressed in the official Section 3 policies and procedures document. The proposed rule would only require recipients to notify Section 3 residents and businesses that have asked to receive priority consideration. This places the onus on Section 3 residents and businesses. NLIHC encourages HUD to include the six minimum efforts presented in the Housing Justice Network letter, emphasizing outreach and recruitment to identify potential Section 3 residents and businesses.
2. NLIHC suggests that the final rule more explicitly require that a recipient's official Section 3 policies and procedures be updated "as appropriate," adding "at a minimum, every five years when a Consolidated Plan or a PHA Plan must be updated." Specifically, NLIHC suggests that the last line of §135.9(a)(1) be modified to read, "Official policies and procedures shall be updated as appropriate, at a minimum when required HUD program strategic plans (such as the Consolidated Plan or Public Housing Agency Plan) must be updated."

If the rule does not specify a minimum synchronicity with a five-year Consolidated Plan or five-year PHA Plan, there is a danger of a recipient failing to review and perhaps update its official Section 3 policies and procedures for much longer periods of time. Many jurisdictions did not update their affirmatively furthering fair housing Analysis of Impediments (AIs) to fair housing choice because there were no rules and only weak guidance suggesting updating in concert with Consolidated Plans.

Specifically stating that an official Section 3 statement of policies and procedures must be updated at least in concert with a Consolidated Plan or PHA Plan is reasonable because proposed Section 9(a)(3) would require:

(3) Section 3 official policies and procedures shall be incorporated into any strategic and annual plans required of recipients of HUD covered assistance by HUD program regulations.

In addition, for recipients that are not required to submit a Consolidated Plan or PHA Plan, proposed Section 9(a)(3)(ii) would require:

"...the recipients' official section 3 policies and procedures shall be developed as an independent document at the time that Section 3 covered financial assistance is awarded and updated every 5 years thereafter."

3. The proposed rule would require official Section 3 policies and procedures to be “available for review by HUD, Section 3 residents and businesses, and the general public upon request.”

NLIHC recommends reinforcing this provision by adding that the official Section 3 policies and procedures:

1. Be posted on a recipient’s website on a relevant, easy to find webpage.
2. Be provided without charging for copying to a reasonable number of Section 3 residents and businesses, upon request.

In a related vein, the proposed regulations would require “All Section 3 annual reports submitted to HUD...be made available to the public upon request.”

NLIHC recommends reinforcing this provision by adding that Section 3 annual reports:

1. Be posted on a recipient’s website on a relevant, easy to find webpage.
2. Be provided without charge for copying to a reasonable number of Section 3 residents and businesses, upon request.

NLIHC also urges HUD to post every recipient’s Section 3 annual report on a webpage of HUD’s Office of Housing and Economic Opportunity.

NLIHC Supports the Proposal to Replace the 3% Goal with a 10% Goal for Non-Construction Contracts. NLIHC endorses this proposal because it could increase opportunities for Section 3 businesses.

ADDITIONAL RECOMMENDATIONS TO FURTHER STRENGTHEN A FINAL RULE

NLIHC Urges HUD to Refine the Order of Priority for Community Development and Housing Projects and for PHAs.

The Section 3 statute declares, “It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic activities...shall, to the greatest extent feasible, be directed toward low- and very low-income persons, *particularly those who are recipients of government assistance for housing.*” The proposed Section 3 rule at §135.1(a)(1) is a statement of purpose reiterating that Section 3 is “particularly [for] those that receive assistance from the Federal government for housing.”

However, as proposed, the first priority for employment at community development and housing projects could be people with moderate income (by CDBG definition) just shy of 80% of the area median income (one of four examples of a Section 3 resident) living in the service area or neighborhood where the assisted project is located.

The proposed rule adds at §135.57(b)(2):

Recipients of housing and community development financial assistance may, at their own discretion, provide priority consideration specifically to residents of public housing *or recipients of other Federal assistance for housing, including individuals or families receiving Section 8 housing choice vouchers* within the neighborhood where work on the Section 3 covered project or activity is located.

Rather than favor moderate income residents, *NLIHC urges HUD to give first priority to public housing residents, voucher residents, and residents of privately owned Section 8 housing living in the service area or neighborhood of an assisted project.* These households have much lower incomes and are in far greater need of employment and training opportunities. The second priority can be for “other Section 3 residents” living in the neighborhood or service area where the project is located.

HUD’s proposed fourth priority would be Section 3 residents living in a neighborhood or service area within the Section 3 local area that has been “officially identified by HUD.” NLIHC proposes eliminating this preference because there are relatively few such “officially identified” areas.

In place of the “officially identified” areas, we proposed substituting the jurisdiction. Preference for residents of the jurisdiction receiving the federal assistance should be afforded priority over those from elsewhere in a vast metropolitan statistical area. If St. Louis expends federal assistance, for instance in the neighborhood where the Pruitt-Igoe public housing development once stood, a St. Louis resident should have preference over a moderate income resident of Wentzville in St. Charles County 46 miles away.

Here again, *NLIHC recommends that the fourth priority be for public housing residents, voucher residents, and residents of privately owned Section 8 housing residing in the jurisdiction that is the recipient of housing and community development assistance, or where the housing and community development assistance is spent.* We propose the addition of “or where the housing and community development assistance is spent” to address situations involving property owners investing funds in rehabilitation or construction through RAD, CNI, etc. The fifth priority would then be for “other Section 3 residents” residing in the jurisdiction that is the recipient of housing and community development assistance, or where the housing and community development assistance is spent.

NLIHC recommends as a sixth level of priority, public housing residents, voucher residents, and residents of privately owned Section 8 housing residing in living in the Section 3 local area. The seventh priority would consequently be other Section 3 residents living in the Section 3 local area.

To reiterate, our recommended order of priority for employment and training opportunities for recipients of housing and community development financial assistance, §135.57(b)(1) is as follows:

- (i) Public housing residents, voucher residents, and residents of privately owned Section 8 housing residing in the service area or neighborhood where the housing and community development financial assistance is spent;
- (ii) Other Section 3 residents residing in the service area or neighborhood where the housing and community development financial assistance is spent;
- (iii) Section 3 residents participating in DOL YouthBuild programs;
- (iv) Public housing residents, voucher residents, and residents of privately owned Section 8 housing residing in the jurisdiction that is the recipient of housing and community development assistance, or where the housing and community development assistance is spent;

- (v) Other Section 3 residents residing in the jurisdiction that is the recipient of housing and community development assistance, or where the housing and community development assistance is spent;
- (vi) Public housing residents, voucher residents, and residents of privately owned Section 8 housing residing in the Section 3 local area, or where the housing and community development assistance is spent; and
- (vii) Other Section 3 residents residing in the Section 3 local area.

For public housing, the fourth priority at §135.37(4) should be voucher residents and residents of privately owned Section 8 housing living in the Section 3 local area. A fifth priority could be “other Section 3 residents.”

NLIHC Recommends Language to Cover Former Public Housing Residents In Units Converted By RAD.

In order for residents of public housing units converted under the Rental Assistance Demonstration (RAD) to benefit from economic opportunities generated by RAD conversion, NLIHC recommends:

- a. Revising the definition of “Section 3 covered project or activity” by adding, “including all initial repairs of, or construction to replace, public housing properties identified in the Rental Assistance Demonstration Financing Plan to convert the properties to Section 8 assistance under the Project-Based Voucher (PBV) or Project-Based Rental Assistance (PBRA) programs.”
- b. Including PBVs in the definition of “rehabilitation.”

NLIHC Recommends an Alternative to “New Hires”

The current rule sets a goal of having 30% of “new hires” at a project to be “Section 3 residents,” but is silent regarding how long a Section 3 resident ought to be employed. Advocates assert that the rule’s lack of a provision considering duration of employment is a loophole, allowing contractors to hire Section 3 residents for a short period of time.

In the preamble to the proposed rule HUD agrees with advocates, proposing to redefine a “new hire” to be someone who works a minimum of 50% of the average number of 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. While we welcome HUD’s attempt to address the concern about the duration of employment, the proposed rule insufficiently addresses the first problem and does not address a second concern.

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.

If HUD is not willing to accept this 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, it is likely to hinder skill building because the employer could rationalize that a Section 3 employee will not be around long enough.

Finally, **NLIHC recommends that the National Housing Trust Fund be added to the list of programs subject to the requirements of Section 3 within the definition of “housing and community development financial assistance.”** The interim HTF regulations at 24 CFR 93.407 regarding recordkeeping requires grantees to have records documenting actions undertaken to meet the requirements of 24 CFR part 135.

Section 3 has been among NLIHC’s policy priority for many years. Public and assisted housing residents who serve on the NLIHC Board of Directors consider the full implementation of Section 3 to be among HUD’s most important obligations. NLIHC looks forward to continuing to work with HUD to make Section 3 more effective.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Crowley". The signature is written in black ink and is positioned above a vertical line that serves as a separator between the signature and the typed name below.

Sheila Crowley, President and CEO