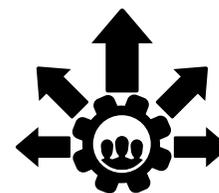


Section 3: Job Training, Employment, and Business Opportunities Related to HUD Funding



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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 residents and eligible businesses.

The Section 3 obligation is too often ignored by the recipients of HUD funds and not enforced by HUD or the local recipients; therefore, the potential of the program is unrecognized or underused by low and very low income people, qualified businesses, and their advocates. However, in recent years, both lawmakers and current HUD officials have expressed interest in strengthening the program.

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, which, at the time, was described as “the most farsighted, the most comprehensive, the most massive housing program in all American history.” Section 3 was a component of the Act that strove to improve the quality of life of all. 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.

Nevertheless, 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 and very low income residents and “Section 3 businesses.”

It 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 (ROSS) grants, Family Self-Sufficiency (FSS) grants, HOPE VI, 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 Program, Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization Program (NSP) funds.

HUD regulations set numerical goals for all entities subject to Section 3. Low and very low income individuals should be given a preference for at least 30% of all new hires that arise from the HUD funding. At least 10% of the total dollar amount of all Section 3 contracts 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 area median income (AMI), while very low income is defined as income below 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 non-metropolitan 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, other low income people in the metropolitan area (or non-metropolitan county). There are also orders of preferences regarding Section 3 businesses pertaining separately to public housing and to other housing and community development projects.

For both public housing and the other housing and community development funding, the Section 3 obligation is applicable 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 is applicable 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 is applicable only to jobs that arise in connection with construction or rehabilitation, and only if the funding is more than the established threshold. 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).

One HUD administrative decision regarding the program is of special note. In April 2004, HUD issued a decision that the City of Long Beach, CA, 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 standard of 30% of new hires can be easily manipulated with a hiring surge at the end of the contract period and therefore frustrate the purpose of Section 3. Using the standard of 30% of the hours worked each year by the new hires is much better and is consistent with the Section 3 goal of creating employment opportunities for low income individuals to the “greatest extent feasible.”

Section 3 complaint procedure. There is a HUD-established complaint procedure for individuals and businesses to use for violations of Section 3. Complaints are filed with the FHEO Regional offices. HUD has responded favorably to some complaints that have been filed. There is no publicly available data on the number of complaints that have been filed or their resolution, but HUD could make such information available.

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 2015

On August 12, 2014, HUD sent proposed revisions to the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). The proposed revisions would: “(1) Reflect certain changes in the design and implementation of HUD programs that are subject to the section 3 regulations; (2) clarify the obligations of covered recipient agencies; and (3) simplify the Department’s section 3 complaint processing procedures.” Advocates should support policies that obligate recipients and their contractors subject to Section 3 to have

a workforce that is 30% low and very low income at the time that Section 3 work commences, and that 10% of the total dollars contracted are with Section 3 businesses.

HUD stated that, pursuant to the RAD, Section 3 applies 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. Jobs and contracting opportunities at these converting developments should benefit public housing residents and low and very low income workers.

For the past several years, HUD has increased its efforts to get recipients of HUD funds that are subject to Section 3 to report their compliance on form HUD 60002. HUD reported that nearly 80% of all recipients currently file 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, 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 intended to make mandatory, the requirement to explain efforts taken when the statutory and regulatory goals were not met. FHEO also 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; as of January 15, 2015, the system is still not operational.

The issues for advocates include resolution of the technical difficulties, as well as how HUD will respond 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 be interested in how HUD works to get those local agencies that have completely ignored the prior reporting requirements to comply. 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?

In accordance with the HUD Strategic Plan for 2010-2015, HUD's Notices of Funding Availability (NOFA) process was improved by informing applicants that HUD was interested in proposals that focus on skills training and partnerships with community-based organizations to develop pathways to career ladders for low income populations. The FY13 NOFA continued that emphasis and stated that HUD is interested in activities that are more comprehensive than Section 3 and outcomes “beyond just the number of jobs created.” The FY14 NOFA no longer contained such emphasis.

In 2011, HUD selected five pilot locations to determine the feasibility of HUD monitoring a registry of self-certified Section 3 businesses. There is no information as to whether HUD will expand the pilot program.

Legislation to Improve Section 3. Representative Nydia Velazquez (D-NY) has repeatedly sought to improve Section 3. In prior years, she has held hearings and proposed or introduced legislation. But these efforts have not been supported by many of her colleagues. It is not likely that things will change in the coming year.

TIPS FOR LOCAL SUCCESS

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

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 and very low income 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. Seek information on the number of low and

very low income individuals trained and hired in accordance with Section 3, and the dollar amounts contracted with Section 3 businesses. Because of the continuing initiative to get recipients to submit the form HUD 60002, advocates should ask local recipients of HUD funds or HUD for copies of the submitted forms and take the necessary action. Compliance with Section 3 could be addressed in the annual PHA plan process or the Consolidated Plan (ConPlan) 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. They should also encourage Ms. Velazquez to reintroduce a bill, such as the Earnings and Living Opportunities

Act that would reform Section 3 and addresses some of its weaknesses. They should also encourage their Member of Congress to inform Ms. Velazquez of their interest in Section 3 and to inform her of the member's willingness to cosponsor such a bill and to support it when introduced. Advocates should recommend that the Section 3 requirements that currently apply to PHAs should be extended to properties that convert to RAD beyond any initial rehabilitation or construction. In addition, advocates should urge Ms. Velazquez to reintroduce the Together We Care Act and request their Member of Congress to support it. ■

FOR MORE INFORMATION

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

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

"An Advocate's Guide to the HUD Section 3 Program: Creating Jobs and Economic Opportunity," from the National Housing Law Project is at <http://nhlp.mayfirst.org/files/03%20Sec.%203%20Guide.pdf>