

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

By Ed Gramlich, Senior Advisor, NLIHC

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, “particularly those who are recipients of government assistance for housing.” Another Section 3 obligation is to support businesses owned or controlled by low-income people or businesses that hire them.

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 1994 interim 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 ended. On May 9, 2018, HUD’s spring Regulatory Agenda under the Trump Administration removed the 2015 proposed rule. The new HUD Secretary, Ben Carson, had publicly expressed support for Section 3. On April 4, 2019 HUD published a proposed rule; a final rule was published on September 29, 2020 and become effective on November 30, 2020.

Public housing agencies (PHAs) and jurisdictions using Community Development Block Grant (CDBG), HOME Investment Partnerships program, and other HUD funds must comply with Section 3

and ensure that contractors and subcontractors comply.

ADMINISTRATION

Historically, Section 3 regulations had been at 24 CFR part 135 under the umbrella of the Office of Fair Housing and Equal Opportunity (FHEO). The final rule moves Section 3 regulations from part 135 to a new part 75 under the Office of the HUD Secretary. Monitoring and enforcement of Section 3 is removed from FHEO and transferred to the relevant HUD program offices.

The relevant program offices are those that provide the funds that trigger the Section 3 obligation, such as the Office of Public and Indian Housing (PIH), the Office of Community Planning and Development (CPD), and the Office of Recapitalization, ReCap (for Rental Assistance Demonstration (RAD) demolition, rehabilitation, or new construction). This is a problem because Section 3 monitoring and enforcement should be carried out by HUD staff who are independent of the HUD program offices since program staff (PIH, CPD, and ReCap staff) are too close to the PHAs, jurisdictions, and the development projects funded by their programs. According to a separate *Federal Register* notice on October 5, 2020, a separate HUD office will manage Section 3 evaluation and reporting – the Office of Field Policy and Management (FPM).

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 were published on

June 30, 1994. The potential of this program has largely been ignored throughout its history.

SUMMARY

Section 3 is a federal obligation tied to HUD funding. The Section 3 statute 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, “particularly those who are recipients of government assistance for housing.” Another Section 3 obligation is to support businesses owned or controlled by low-income people or businesses that hire them (“Section 3 businesses”). A “recipient” is an entity that receives Section 3-covered funds directly from HUD, such as a PHA, 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 (HOPWA).

HUD ELIMINATES SECTION 3 COMPLAINT PROCESS

The final rule eliminates any Section 3-specific complaint process. Instead, complaints may be reported to the relevant HUD program office or to the local HUD field office. The relevant program offices are those that provide the funds that trigger the Section 3 obligation and are too close to the development projects funded by their programs. However, the preamble to the rule causes confusion by stating that the Office of Field Policy and Management (FPM) will filter complaints to the appropriate HUD program office, instead of every HUD program office having its own complaint process.

The 1994 regulation had an entire section about complaints and compliance, including a section with details explaining how residents could submit complaints to FHEO. Other HUD program areas such as public housing, CDBG, HOME, and RAD do not have detailed provisions for residents to register a PHA’s or jurisdiction’s failure to meet a program requirement like Section 3.

Switch to “Labor Hours Worked” from “New Hires”

The final rule follows the recommendations made by advocates for many years: PHAs and jurisdictions must switch their employment opportunities compliance and reporting from “new hires” to “labor hours worked” by “Section 3 Workers.”

However, Small PHAs, those with fewer than 250 public housing units, will not be required to report the number of labor hours worked by Section 3 Workers. Instead they have the option to report “qualitative efforts,” such as holding job fairs, referring residents to services supporting work readiness, and outreach efforts to generate job applicants. Out of 2,950 PHAs, 2,250 are small PHAs. “Qualitative efforts” are discussed later in the “Reporting” section of this article.

The 1994 interim rule required PHAs and jurisdictions to have goals of 30% of “new hires” at projects be so-called Section 3 residents. However, advocates had long observed that some contractors would hire Section 3 residents for a short time so that they would “count” toward the 30% goal but lay them off in short order. Or, a Section 3 resident would only be given 20 hours or less of work per week. Some contractors would shift some of their existing workforce to a Section 3 project so that the contractor could claim that they did not need to hire anyone new for the Section 3 project.

SECTION 3 WORKER

The final rule introduces a new term, “Section 3 Worker,” someone who currently fits or when hired within the past five years fit at least one of the following criteria:

- The worker’s income for the previous or

annualized calendar year is less than the income limit set by HUD for the program triggering Section 3 (for example 80% of the area median income, AMI, for CDBG and HOME); or,

- The worker is employed by a “Section 3 business” (explained later); or
- The worker is a YouthBuild participant. (YouthBuild programs receive assistance under the “Workforce Innovation and Opportunity Act.”)

HUD explains that the addition of “or when hired within the past five years” is intended to encourage an employer to keep Section 3 Workers.

The definition of Section 3 Worker states that someone’s status as a Section 3 Worker shall not be negatively affected if they have had a prior arrest or conviction. In addition, the rule clearly states that an employer is not required to hire someone just because they meet the definition of a Section 3 Worker, and the Section 3 Worker must be qualified for the job.

NLIHC comment: Retention is good, but does a five-year look-back period unduly reward a business that hired a low-income person at low wages five years ago and still pays low wages? Even if a person’s income grows over five years as HUD assumes, is that a realistic assumption and is that too long to look back?

NLIHC comment: The definition is not written to clearly state that a low-income person hired today could still be counted for five years going forward, but the preamble to the final rule shows that HUD intends a business to also have a five-year forward option. The rule’s section on “Recordkeeping” makes it clear that a business can look forward or backward five years.

NLIHC comment: Option ii, a worker “employed by a Section 3 business,” is a potential dead end because one option in the definition of a “Section 3 business” (option ii) uses the definition of Section 3 Worker (discussed next).

SECTION 3 BUSINESS

Section 3 is not just about employment and training opportunities – there is also an obligation to make “best efforts” to give preference in awarding contracts to businesses owned and controlled by low-income people, or to businesses that hire a substantial number of low-income people.

A “Section 3 Business” is one that meets one of the following criteria documented within the last six-month period:

- Is at least 51% owned and controlled by low- or very low-income persons;
- Over 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 Workers; or
- Is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

The final rule states that the status of a Section 3 business shall not be negatively affected by a prior arrest or conviction of the owners or employees. In addition, the rule clearly states that there is no requirement to contract or subcontract with a Section 3 business, and any Section 3 business must meet the specifications of a contract.

SECTION 3 EMPLOYMENT PRIORITIES

The final rule reflects the statute’s requirements for giving priority to certain categories of Section 3 Workers.

PHAs

PHAs and their contractors and subcontractors must make “best efforts” to provide employment and training opportunities to Section 3 Workers in the following order of priority:

- Residents of the public housing project funded with public housing money;
- Residents of a PHA’s other public housing projects, or residents with Section 8 vouchers

- or project-based rental assistance;
- YouthBuild participants; and,
- People in the metro area (or non-metro county) with income less than 80% of the area median income (AMI).

Jurisdictions

The final rule states that jurisdictions and their contractors and subcontractors must “to the greatest extent feasible” ensure that employment and training opportunities “arising in connection with” Section 3 projects are provided to Section 3 Workers who live in the metro area (or non-metro county).

The final rule adds that “where feasible” jurisdictions “should” give priority to providing employment and training opportunities to Section 3 Workers who live in a project’s “service area or neighborhood” and to YouthBuild participants.

HUD defines the “service area or neighborhood” of a project as an area within one mile of the Section 3 project. If there are fewer than 5,000 people within one mile, then within a circle centered on the Section 3 project that includes at least 5,000 people.

While the final rule repeats the language in the statute, it strays from the old rule’s priorities, which gave first priority to residents of the service area or neighborhood of a project, (second priority to YouthBuild participants), third priority to homeless people, and only as a last priority other Section 3 residents in the metro area or non-metro county.

SECTION 3 CONTRACTING PRIORITIES

PHAs

PHAs and their contractors and subcontractors must make “best efforts” to award contracts and subcontracts to businesses that provide economic opportunities to Section 3 Workers in the following order of priority:

- Section 3 businesses that provide economic opportunity for residents of the public

housing project funded with public housing money;

- Section 3 businesses that provide economic opportunity for residents of the PHA’s other public housing projects, or residents assisted with Section 8 vouchers or project-based rental assistance;
- YouthBuild participants; *and*,
- Section 3 businesses that provide economic opportunity to low-income people living in the metro area (or non-metro county).

Jurisdictions

Jurisdictions and their contractors and subcontractors must “to the greatest extent feasible” ensure that contracts for work awarded “in connection with” Section 3 projects are provided to Section 3 businesses that provide economic opportunities to Section 3 Workers in the metro area (or non-metro county).

Where “feasible” jurisdictions “should” give priority to:

- Section 3 businesses that provide economic opportunities to Section 3 Workers living in the service area or neighborhood of the project; and
- YouthBuild participants.

HUD defines the “service area or neighborhood” of a project as an area within one mile of the Section 3 project. If there are fewer than 5,000 people within one mile, then within a circle centered on the Section 3 project that includes at least 5,000 people.

TARGETED SECTION 3 WORKER

This is a new idea HUD intends as an incentive to PHAs and jurisdictions to focus on reaching workers given priority in the statute and workers at Section 3 businesses. Targeted Section 3 Workers are a subset of all Section 3 Workers.

PHAs

A Targeted Section 3 Worker for PHAs is:

1. A worker employed by a Section 3 business; or,

2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. A resident of any of the PHA's public housing or any resident assisted by Section 8, whether a voucher or project-based rental assistance; or,
 - b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is using public housing assistance; or,
 - c. A YouthBuild participant.

The five-year look-back is HUD's intent to encourage long-term employment.

NLIHC comment: A worker employed by a Section 3 business might be an acceptable but not entirely accurate substitute for an actual low-income person when defining "Section 3 Worker" (someone employed at a Section 3 business is merely assumed to be low income, documentation is not needed). However, it is not acceptable for the definition of "Targeted Section 3 Worker" when that definition is "a worker employed by a Section 3 business concern." Repeating a "worker employed by a Section 3 business" as one option in the definition of a "Targeted Section 3 Worker" dilutes HUD's targeting idea for benchmarking (see next section).

Jurisdictions

A Targeted Section 3 Worker for jurisdictions is:

1. A worker employed by a Section 3 business; or,
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living in the service area or neighborhood of a project; or,
 - b. A YouthBuild participant.

The problems are the same as those regarding PHAs (explained above), compounded by the geographic limitations of the rule's definition of service area, which HUD defines as an area within one mile of the Section 3 project. If there

are fewer than 5,000 people within one mile, then within a circle centered on the Section 3 project that includes at least 5,000 people.

SECTION 3 BENCHMARKS

The final rule establishes Section 3 "benchmarks" to replace the old rule's "goals."

The benchmarks will be used to monitor a PHA's and a jurisdiction's accomplishments toward directing job opportunities to Section 3 Workers and the new subcategory of Section 3 Worker called "Targeted Section 3 Worker." The benchmarks are the same for PHAs and jurisdictions:

1. Section 3 Workers make up 25% of the total number of labor hours worked by all workers; and
2. Targeted Section 3 Workers make up 5% of the total number of labor hours worked by all workers.

In other words, 30% of all labor hours worked are by Section 3 Workers (25%) and Targeted Section 3 Workers (5%).

NLIHC and other advocates commented that the benchmark of 5% for Targeted Section 3 Workers was far too low; at least 15% was recommended. HUD indicates that it will review benchmarks every three years and adjust if appropriate.

SAFE HARBOR

If a PHA or jurisdiction certifies (pledges) that it has met the priorities for job and contract opportunities and has met the jobs benchmark, then HUD presumes the PHA or jurisdiction is complying with Section 3 – unless residents or advocates tell HUD about evidence that contradicts the PHA or jurisdiction. HUD calls this the "safe harbor." At this stage, a PHA or jurisdiction would not have to continue reporting any additional Section 3 employment or contracting activities. If a PHA or jurisdiction cannot certify that it has met the job and contract priorities and jobs benchmark, then it will have to send "qualitative efforts" reports to HUD describing those efforts

(discussed in “Reporting” next). Residents and advocates should monitor and report to HUD any evidence that contradicts a PHA or jurisdiction’s certifications or qualitative efforts.

REPORTING

The reporting requirements are the same for PHAs and jurisdictions, requiring them to report to HUD each year their benchmark data:

- Total number of labor hours worked;
- Total number of labor hours worked by Section 3 Workers; and,
- Total number of labor hours worked by Targeted Section 3 Workers.

This includes labor hours worked by contractors and subcontractors.

Section 3 Workers’ and Targeted Section 3 Workers’ labor hours may be counted for five years from when their status as a Section 3 Worker or Targeted Section 3 Worker is established following the “Recordkeeping” section of the rule. HUD states that this five-year period is there to “ensure that workers meet the definition of a Section 3 Worker or Targeted Section 3 Worker at the time of hire or the first reporting period...” This means a PHA or jurisdiction can count back five years or count forward for five years.

The final rule does not require professional services be included in the benchmark. Professional services are defined as non-construction services that require an advanced degree or professional licensing such as contracts for legal services, financial consulting, accounting, environmental assessments, and architectural and engineering services. PHAs and jurisdictions may include labor hours worked by people in professional services when counting Section 3 Workers and Targeted Section 3 Workers for their benchmark, without including them in the total number of hours worked. This could increase a PHA’s or jurisdiction’s benchmark number.

If a contractor or subcontractor does not track

labor hours, a PHA or jurisdiction “may” accept the contractor’s or subcontractor’s “good faith assessment” of the labor hours of full-time or part-time employees.

If the benchmark is not met, a PHA or jurisdiction will be required to use a HUD form to report on the “qualitative” nature of its activities or the activities of contractors and subcontractors. Small PHAs may choose to only report their qualitative efforts. The final rule lists 14 examples of possible qualitative efforts, such as reaching out to generate job applicants, holding job fairs, connecting people with entities that help draft resumes and prepare for job interviews, referring people to job placement services, and reaching out to identify bids from Section 3 businesses.

SECTION 3 PROJECT

The final rule defines a “Section 3 project” as one that is not funded with the public housing Capital and Operating Funds, but instead receives at least \$200,000 in funds from other HUD programs, such as CDBG and HOME, for housing rehab or new housing construction or for other public construction projects (such as road repair). The per-project threshold is \$100,000 for various Lead Hazard and Healthy Homes programs. NLIHC had long raised concerns about the old rule’s \$100,000 per project threshold. The new rule makes things even worse by going up to \$200,000.

A “project” is defined as “the site or sites together with any buildings and improvements located on the site(s) that are under common ownership, management, and financing.” With this definition of “project” and a \$200,000 per project threshold, many contractors would not have to comply with Section 3. Contractors awarded significant amounts of Section 3 covered funds in a single year to spend, all together, on a number of small, discreet activities (such as homeowner housing rehabilitation) would not have to hire Section 3 Workers or subcontract with Section 3 businesses because each component activity costs less than \$200,000. For example, if a contractor receives \$1 million in CDBG funds to rehab seven single-family homes and the contractor spends

\$130,000 per home, that contractor would not have to comply with Section 3 because each home is considered a single project and not one of the seven rehabs had a contract for more than \$200,000.

RENTAL ASSISTANCE DEMONSTRATION (RAD)

The Notices that govern the Rental Assistance Demonstration (RAD) program limit Section 3 to the construction- or rehabilitation-related activities identified in the RAD Financing Plan and RAD Conversion Commitment. After the conversion, Section 3 no longer applies unless additional federal financial assistance is later used for rehabilitation. NLIHC has long urged HUD to extend Section 3 obligations post-conversion because application of Section 3 obligations that apply to permanent PHA staff – a potential source of Section 3 training and employment – can greatly shrink if a significant portion of the public housing portfolio is converted, or can be totally lost if an entire portfolio is converted.

The public housing portion of the Section 3 statute that applies to the operating assistance provided by the public housing program does not extend to public housing converted to Project-Based Rental Assistance. PHAs will continue, however, to “manage” or have a controlling interest in public housing converted to Project-Based Vouchers (PBVs). Therefore, NLIHC has urged that the RAD Notice be modified to state that Section 3 will still apply to the permanent staff slots of the entities owning or managing a development converted to PBVs. This would extend some Section 3 training and employment opportunities post-conversion, rather than reduce them. Without such a change in the RAD Notice, economic opportunities shrink for residents of RAD-converted properties because only new construction or rehabilitation will trigger Section 3 after RAD conversion; as with public housing, Section 3 obligations should continue to apply to non-professional services staff involved in project operations.

MULTIPLE FUNDING SOURCES

When a project is funded with public housing funds and also meets the Section 3 project criteria (receiving additional HUD funds such as CDBG), the project must follow the public housing Section 3 requirements for the public housing portion of the funds, and may follow the public housing Section 3 requirements or the Section 3 project requirements for the community development funds. When a Section 3 project receives housing and community development funds from two different HUD programs (for example CDBG and HOME), HUD will tell the jurisdiction which HUD program office to report to. This *Advocates’ Guide* does not summarize this section of the final rule.

FUNDING

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

FORECAST FOR 2021

NLIHC has recommended that the Biden Administration review the Section 3 proposed rule published by the Obama Administration, identify acceptable provisions of the final rule, meet with advocates and residents, and issue a new Section 3 rule.

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 Section 3.

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 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 labor hours worked by low-income and VLI individuals in accordance with Section 3 and the number of contracts with Section 3 businesses. 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 their Section 3 obligations 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, and work with the Biden Administration as it reviews the Section 3 proposed rule published by the Obama Administration, identifies acceptable provisions of the final rule, meets with advocates and residents, and assess any new Section 3 rule issued by the new HUD. Advocates should recommend that the Section 3 requirements that currently apply to PHA staff involved in the PHA's day-to-day operations be extended to properties that convert to RAD beyond post-conversion rehabilitation or construction.

FOR MORE INFORMATION

HUD's FHEO Section 3 website, <https://bit.ly/2pSnTR1>.

The *Federal Register* version of the final Section 3 rule is at: <https://bit.ly/33e0Vos>.

An easier to read version of the final rule is at: <https://bit.ly/30mPLf7>.

The benchmark *Federal Register* notice is at: <https://bit.ly/3520zko>.

An easier to read version of the benchmark notice is at: <https://bit.ly/3j2PbKc>.

An NLIHC detailed Summary and Analysis of the final Section 3 rule is at: <https://bit.ly/2W6Ef58>.

A shorter outline summarizing the final Section 3 rule from NLIHC is at: <https://bit.ly/2KeDwfu>.