

# PROPOSED SECTION 3 REGULATION PUBLIC HOUSING PARTS

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# WHAT IS SECTION 3?



- Section 3 refers to Housing and Urban Development Act of 1968.
- When HUD funds are used to assist housing and community development projects,
  - preference for some of the jobs, training, and contracting opportunities created
  - should go to low-income people,
  - “particularly recipients of housing assistance” and
  - businesses owned or controlled by low-income people, or to businesses that hire them
  - “to the greatest extent feasible”.

# WHAT IS SECTION 3?

*slide 2*



- Public housing agencies (PHAs) and jurisdictions using CDBG (Community Development Block Grant), HOME, and other HUD funds
- must comply with Section 3
  - and ensure that contractors and subcontractors comply.

# PROPOSED UPDATE TO THE RULE



NATIONAL LOW INCOME  
HOUSING COALITION

- On April 4, 2019, HUD published proposed updates to 1994 interim Section 3 rule.
- Comments are due June 3.

# HUD REMOVES SECTION 3 from FHEO



- Section 3 has been at 24 CFR part 135, under Office of Fair Housing and Equal Opportunity(FHEO).
- Section 3 will be at a new part 75, under Office of Field Management and Policy, more directly under Office of the HUD Secretary.

# HUD REMOVES SECTION 3 from FHEO

*slide 2*



Monitoring and enforcement will be moved from FHEO to:

- Office of Public and Indian Housing (PIH),
- Office of Community Planning and Development (CPD), and
- Office of Recapitalization (for RAD demolition, rehab, or new construction),

which ever program office is in charge of the funds that trigger Section 3.

# HUD REMOVES SECTION 3 from FHEO

slide 3



- ⇒ *In the past, FHEO Field Office staff have complained that other program offices were not responsive to problems.*
- ⇒ *In the past, some PIH or CPD staff have said their “constituents” are the PHAs or the jurisdictions, failing to include residents who are supposed to benefit.*

# HUD REMOVES SECTION 3 from FHEO

slide 4



## NLIHC Recommendation

- ⇒ *Section 3 monitoring and enforcement should be done by HUD staff who are independent of HUD program offices.*
- ⇒ *Office of Field Policy and Management (FPM) will now be in charge.*
- ⇒ *Will it be that independent arm of HUD?*

# HUD REMOVES SECTION 3 from FHEO

slide 5



- Proposed rule would eliminate any Section 3-specific complaint process.
- It would rely on existing provisions in other HUD program regulations to address resident complaints.
  - ⇒ *The current rule has entire section about complaints, including a section with details for residents to submit complaints.*
  - ⇒ *Other HUD program areas do not have detailed provisions for residents to register a PHA's or jurisdiction's failure to meet a program requirement.*

# HUD REMOVES SECTION 3 from FHEO

slide 6



## NLIHC Recommendation

- ⇒ *A detailed complaint process similar to one used under the current rule should be included in each federal program.*
- ⇒ *But enforced by the Office of Field Management and Policy (FMP).*
- ⇒ *Not clear FMP has staff capacity or technical knowledge to oversee Section 3 monitoring and enforcement.*
- ⇒ *Keep Section 3 at FHEO?*
- ⇒ *Whatever independent office monitors and enforces will need to have more staff.*

# FEEDBACK PLEASE

- What are your suggestions regarding removing the complaint process?
- What are your suggestions about which office should have strong Section 3 enforcement responsibilities?

# SWITCH to LABOR HOURS WORKED



NATIONAL LOW INCOME  
HOUSING COALITION

HUD proposes to use “labor hours worked” instead of “new hires”.

- Current rule has goal of 30% of “new hires” be Section 3 residents.

# SWITCH to LABOR HOURS WORKED

slide 2



NATIONAL LOW INCOME  
HOUSING COALITION

Past problems using “new hires”:

- ⇒ *Contractors hire Section 3 residents for short time so are “counted” toward 30% goal, but are laid off after a while .*
- ⇒ *Section 3 new hires only get 20 hours per week.*
- ⇒ *Contractors shift existing workers to Section 3 project so claim new hires not needed, while hiring new, non-Section 3 residents at non-Section 3 projects.*

# SWITCH to LABOR HOURS WORKED

*slide 3*



NATIONAL LOW INCOME  
HOUSING COALITION

- When we discuss “benchmarks” later, we will see HUD proposes that Section 3 workers should make up 30% of the total hours worked by all workers.
- This is almost exactly what advocates have long wanted.
- However...

# SWITCH to LABOR HOURS WORKED

slide 4



NATIONAL LOW INCOME  
HOUSING COALITION

## NLIHC Recommendation

⇒ *Advocates strongly recommend that 30% of hours worked should be measured for each job category/trade.*

*and*

⇒ *That 15% of all hours worked should be filled by women for each job category/trade.*

# PHA ALTERNATIVE



- Some PHAs told HUD they prefer using new hires.
- HUD offers PHAs “Alternative 2” for using new hires.
  - PHAs asked to comment on which they want to use.
  - HUD will later decide if all PHAs will have to use new hires or labor hours worked.
  - Alternative 2 described at the end of these slides.

## NLIHC Recommendation

⇒ *After talking with other advocates, we recommend PHAs use labor hours worked for contractors carrying out major projects (new elevators or repair roofs), but be allowed to continue using new hires for permanent staff for up to three years – then be required to use labor hours worked, in recognition of staff turnover.*

# FEEDBACK PLEASE

*What do you think is best for PHAs,  
new hires or labor hours worked?*

# SMALL PHAs

- Small PHAs have fewer than 250 public housing units.
- Won't have to report whether have met “benchmarks” (number of labor hours worked or new hires made – will discuss later).
  - Only required to report on “qualitative” efforts –
    - Outreach to generate job applicants
    - Provide on-the-job training
    - Outreach to find Section 3 businesses

# FEEDBACK PLEASE

*Should Small PHAs be exempt from reporting economic opportunities provided?*

# SECTION 3 WORKER

HUD would replace the current rule's term "Section 3 resident" with "Section 3 worker", who is someone who meets one of three criteria:

1. Worker's income is less than limit set by HUD for program triggering Section 3 (for example 80% of AMI for CDBG and HOME).
  - ⇒ *Current rule specifically lists public housing resident.*
  - ⇒ *Can we assume public housing resident or voucher resident or project-based rental assistance resident meets this criterion? HUD needs to clarify.*

# SECTION 3 WORKER

slide 2



## NLIHC Recommendation for Option 1

- ⇒ *Rule should list public housing residents, Section 8 residents (voucher or PBRA), and Section 811, and Section 202 residents as Section 3 workers.*
- ⇒ *Rule should continue to include anyone whose income meets definition of low-income, but begin by saying “immediately prior to the date of hire”.*

# SECTION 3 WORKER

*slide 3*



Second option defining Section 3 worker:

2. Worker lives in a “qualified census tract”.

- Qualified census tract (QCT) term of Low Income Housing Tax Credit program.
  - QCT is census tract with poverty rate of 25% or more, or 50% of households with income less than 60% of AMI.
  - HUD must officially designate QCTs each year.

# SECTION 3 WORKER

slide 4



## NLIHC Recommendation for Option 2

- ⇒ *Someone in a QCT not necessarily low-income.*
- ⇒ *Depending on how QCT is drawn, a number of residents could be higher-income.*
- ⇒ *Rule should not use geographic area to define Section 3 worker.*

# SECTION 3 WORKER

*slide 5*



Third option defining Section 3 worker:  
3. Worker employed by Section 3 business  
(explained soon).

# SECTION 3 WORKER

slide 6



## NLIHC Recommendation for Option 3

⇒ *Someone hired by Section 3 business not necessarily low-income or public housing resident or voucher or project-based rental assistance resident.*

⇒ *Rule should only consider public housing, Section 8, Section 811, and Section 202 residents, or other low-income people, especially women, as Section 3 workers.*

# SECTION 3 WORKER

slide 7



## NLIHC Recommendation for Section 3 worker

⇒ *Rule should encourage employers to keep Section 3 worker by allowing employer to continue counting that worker in the future, even if no longer low-income. Definition should be:*

⇒ *“Any worker who currently is or immediately prior to date of hire was a public housing, Section 8, Section 811, Section 202, or other low-income resident, especially women.”*

# SECTION 3 WORKER

*slide 8*



- Rule states employer not required to hire someone just because they meet Section 3 worker definition, and
- Section 3 worker must be qualified for the job.

# FEEDBACK PLEASE

*Do you any suggestions about the definition of Section 3 worker?*

# SECTION 3 BUSINESS

Statute:

PHA must make “best efforts” to give preference in awarding contracts to businesses owned or controlled by low-income people, or businesses that hire substantial number of low-income people.

# SECTION 3 BUSINESS

*slide 2*



Proposed Rule:

Section 3 business meets one of three criteria:

1. 51% of business is owned by low-income people;  
or,
2. Low-income people work more than 75%  
of the labor hours worked; or,
3. 25% of business owned by public housing  
residents or residents living in Section 8 housing  
(either tenant-based or project-based).

# SECTION 3 BUSINESS,

slide 3



## NLIHC Recommendation

*Regarding option 2:*

*Businesses should not be rewarded for paying poverty wages. Therefore should be:*

*“More than 75% of the labor hours worked at the business is performed by persons who were low- or very low-income immediately prior to the date of hire.”*

# SECTION 3 BUSINESS,

slide 4



## NLIHC Recommendation

Regarding option 3:

⇒ *Rule should be 51% or more ownership by public housing or Section 8 residents.*

⇒ *Anything less than 51% ownership in danger of being a “front” for non-low-income people.*

*Other 75% owners could be regular business people who do not have the best interests of residents at heart.*

# FEEDBACK PLEASE

*Do you any suggestions about the definition of Section 3 business?*

# EMPLOYMENT PRIORITIES

PHAs, contractors, and subcontractors must make “best efforts” to provide employment and training to Section 3 workers in following order of priority:

1. Residents of the public housing project funded with public housing money;
2. Residents of PHA’s other public housing projects, or residents with vouchers or project-based assistance (*addition of Section 8 residents is an improvement*);
3. YouthBuild participants (see page 56)
4. People in metro area with income less than 80% of area median income (AMI)

# CONTRACTING PRIORITIES



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

1. Section 3 businesses that provide economic opportunity for residents of the public housing project funded with public housing money;
2. Section 3 businesses that provide economic opportunity for residents of PHA’s other public housing projects, or residents with vouchers or project-based assistance (*addition of Section 8 residents is an improvement*);
3. *Next slide*

# CONTRACTING PRIORITIES

*slide 2*

Contracting priorities, continued:

3. YouthBuild participants (see page 56)
4. Section 3 businesses that provide economic opportunity to people with income less than 80% of AMI living in metro area.

# BENCHMARK

“Benchmark” will replace the current rule’s “goals”.

Proposed benchmark is:

1. Section 3 workers make up 25% of total number of labor hours worked by all workers.  
*and*
2. Targeted Section 3 workers (explained next) make up 5% of 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%).

# BENCHMARK

*slide 2*



- Professional services not included in benchmark.
  - Examples are non-construction services such as legal services, financial consulting, accounting, environmental assessments, architectural & engineering.
  - PHAs may include to increase their total numbers to reach their benchmark.

# BENCHMARK

slide 3



- ⇒ *Current rule includes professional service jobs.*
- ⇒ *Proposed rule leaves it up to PHA to include professional services.*
- ⇒ *Exclusion might overlook entry-level and career-growth opportunities in those professional areas.*

Benchmarks will be discussed more, but first it is necessary to discuss Targeted Section 3 workers.

# TARGETED SECTION 3 WORKER

A Targeted Section 3 worker for PHAs would be:

1. A worker employed by a Section 3 business; or
2. A worker who currently is or who was when hired:
  - a. Resident of any of a PHA's public housing or any Section 8 resident (voucher or project-based rental); or,
  - b. Current YouthBuild participant (see page 56)

# TARGETED SECTION 3 WORKER

slide 2



## NLIHC Recommendation

- ⇒ *But definition of “Section 3 worker” includes as an option “a worker employed by a Section 3 business”.*
- ⇒ *Repeating “worker employed by Section 3 business” as option in “Targeted Section 3 worker” definition dilutes targeting idea in benchmark.*
- ⇒ *Also, someone working at a “Section 3 business” is not necessarily a public housing, Section 8, or low-income resident.*
- ⇒ *Option 1 should be deleted, leaving option 2.*

# FEEDBACK PLEASE

*Do you any suggestions about the definition of Targeted Section 3 worker?*

# BENCHMARK

*returning to benchmark*

## NLIHC Recommendation

Returning to the idea of “benchmark”,  
⇒ *Benchmark should mirror the statute’s  
“particularly to those who are recipients of  
government assistance for housing”.*

⇒ *Using the recommended changed definition of  
Section 3 worker:*

*“The rule should only consider public housing,  
Section 8, Section 811, Section 202, or other  
low-income residents, especially women,  
as Section 3 workers.”*

# BENCHMARK

*returning to benchmark, slide 2*

## NLIHC Recommendation

⇒ *NLIHC proposes public housing benchmark to be:*

- 1. Public housing, Section 8, Section 811, or Section 202 residents make up 30% of the total number of labor hours worked by all workers for each job category, and women make up 15% of all labor hours worked by all workers for each job category.*

*and*

- 2. Three percent of all contracts are for Section 3 businesses.*

# FEEDBACK PLEASE

*Do you any suggestions about the benchmarks?*

# SAFE HARBOR



If PHA certifies it met jobs and contracts priorities  
(described above)

and met job benchmark (explained above),

then HUD assumes PHA complies with Section 3.

–unless residents or advocates tell HUD about  
evidence that contradicts the PHA.

HUD calls this the “safe harbor”

# SAFE HARBOR

*slide 2*



- If PHA can't certify it met job and contract priorities and job benchmark, then it will have to send to HUD “qualitative” reports on their efforts.
  - Outreach to generate job applicants
  - Provide on-the-job training
  - Outreach to find Section 3 businesses

# REPORTING

- PHAs required to report benchmark data to HUD:
  - Total number of labor hours worked;
  - Total number of labor hours worked by Section 3 workers; and,
  - Total labor hours worked by Targeted Section 3 workers.
- PHAs will report to HUD each year with PHA Plan.
  - ⇒ *PHAs should report on a quarterly basis to help residents identify the need for improvements during the year.*

# ALTERNATIVE 2

HUD will decide whether PHAs could continue using “new hires” instead of “labor hours worked”.

⇒ *What do you think is best, new hires or labor hours worked?*

“New Hire” is full- or part-time employee for permanent, temporary, or seasonal employment:

- Who was not on payroll of PHA, contractor, or subcontractor at beginning of award of public housing funds to PHA; or
- Who was hired by contractors or subcontractors on per-project basis as result of receiving funds from public housing.

# ALTERNATIVE 2

slide 2

## NLIHC Recommendation

⇒ *HUD's definition would allow contractors and subcontractors to lay off workers and then re-hire them in order to count them as new hires.*

⇒ *New hire should be someone who was not on payroll of a contractor or subcontractor during previous three years.*

# ALTERNATIVE 2

slide 3

Targeted Section 3 worker is:

1. New hire employed by a Section 3 business; or,
2. New hire employed by worker's current employer who is also:
  - a. Public housing resident, voucher resident, or resident with project-based rental assistance; or,
  - b. YouthBuild participant (see page 56)

⇒ *See NLIHC critique on page 42 above.*

# ALTERNATIVE 2

*slide 4*



## Benchmark

1. Section 3 workers make up 30% of total number of new hires employed with public housing funds during PHA's fiscal year.

and

2. Targeted Section 3 workers make up 5% of total number of new hires employed with public housing funds during PHA's fiscal year.

# ALTERNATIVE 2

slide 5



## NLIHC Recommendation

⇒ *NLIHC proposes the benchmark for public housing to be:*

*1. Public housing, Section 8, Section 811, or Section 202 residents make up 35% of the total number of new hires in each job category, and women make up 15% of the total number of new hires in each job category, employed with public housing funds during a PHA's fiscal year.*

*and*

*2. Three percent of all contracts are for Section 3 businesses.*

# ALTERNATIVE 2

slide 6



## Reporting

PHAs required to report their benchmark data to HUD:

- Total number of new hires;
- Total number of new hires who are Section 3 workers; and,
- Total new hires who are Targeted Section 3 workers.

PHAs will report to HUD each year with their PHA Plan.

⇒ *PHAs should report on a quarterly basis to help residents and advocates identify need for improvements during the year.*

# YouthBuild



- YouthBuild enables low-income young people to learn construction skills by building affordable housing for homeless and low-income people and by building other community assets such as schools, playgrounds, and community centers in their neighborhoods.
- Started as HUD program but now primarily funded by U.S. Department of Labor's Employment and Training Administration.
- Is nonprofit that provides low-income youth with training, technical assistance, and leadership development.

# MORE INFORMATION



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