



Section 3 Summary and Questions for Member Call

In preparation for CLPHA's member call on the Section 3 proposed rule, the summary below highlights HUD's proposed changes to Section 3, which would significantly change how PHAs administer the program. Questions to guide member reactions and responses to the proposed changes are also included.

- 1. Transfers Section 3 oversight and monitoring from the Office of Fair Housing and Equal Opportunity (FHEO) to individual HUD program offices.** *The proposed rule requires that compliance and enforcement actions be conducted in conjunction with normal program oversight.* Accordingly, program offices that administer programs and funds subject to Section 3 would now be responsible for monitoring and enforcing Section 3, allowing HUD to impose remedies and sanctions in accordance with the laws and regulations for the program under which the violation occurred. *As a result, the proposed rule would eliminate the existing complaint and compliance review procedures currently overseen by FHEO.*
- 2. Modifies Section 3 Applicability.** HUD proposes slight modifications to the thresholds for determining applicability of Section 3 requirements and would review compliance on a project by project basis. While Section 3 would continue to apply to projects receiving any amount of public housing financial assistance, Section 3 would also apply to any amount of Lead Hazard Control and Healthy Home funding and would also apply to housing rehabilitation, housing construction, and other public construction projects assisted with housing and community development financial assistance in excess of \$200,000. *HUD has proposed excluding all material and supply contracts, professional services contracts, and Section 8 projects (including PBRA and PBV) from the requirements of Section 3.*

Questions for Members:

1. Is the proposed \$200,000 threshold appropriate?
 2. Should HUD include all Lead Hazard Control and Healthy Homes projects?
 3. Should HUD exclude Section 8?
 - a. Professional services?
 - b. Material and supply contracts?
 4. Should Section 3 requirements be applied to project subcontractors?
 - a. Should HUD consider reducing the reporting or compliance burden for subcontractors?
- 3. Redefines a Section 3 Project's Service Area.** The Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 requires that Section 3 job opportunities created through the use of housing and community development funds be provided to Section 3 workers residing within the "service area or the neighborhood of the project." *HUD proposes a definition for the "service area or the neighborhood of the project," which would be "an area within one*

mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. census.”

Questions for Members:

1. Should the term “service area or the neighborhood of the project” be defined?
 - a. If so, how?
 - b. Is this an appropriate geographic size?

4. **Redefines a Section 3 Business.** Per HUD’s proposed rule, Section 3 business contracts would no longer be separately tracked. Instead, *Section 3 business engagement would be reported to HUD as a part of a larger, project by project Section 3 benchmark metric.* Section 3 business would include businesses that satisfy at least one of the following:
 - 1) At least 51% of the business is owned by low- or very low-income people;
 - 2) More than 75% of the labor hours performed for the business are performed by low- or very low-income people, or;
 - 3) At least 25% of the business is owned by current public housing or Section 8 residents.

Questions for Members:

1. -Is the changed requirement that over 75% of labor hours be performed by low- or very low-income persons preferable to the current requirement that 30% of the permanent, full-time employees be persons who are currently or within 3 years of employment are Section 3 residents?

5. **Redefines a Section 3 Worker.** A general Section 3 worker definition has been proposed, which would define a Section 3 Worker as:
 - 1) A low- or very low-income person based on the income limits established by HUD;
 - 2) A worker living in a qualified census tract, in which 50% or more households have an income of less than 60% of AMI; or
 - 3) A worker employed by a Section 3 business.
6. **Creates New Reporting Requirements for Tracking Section 3 and Targeted Section 3 Workers.** In response to critiques that a “new hires” measure does not sufficiently reward full-time or sustained employment, *the proposed regulation requires recipients of housing and community development assistance subject to Section 3 report on a “labor hours” basis, rather than the current “new hire” basis.* For recipients of public housing assistance, HUD provides a choice for PHAs to track Section 3 participation. The first alternative, which is required for all housing and community development assistance subject to Section 3, would utilize a labor hours basis, whereby PHAs would report, on a project by project basis, the percentage of total labor hours worked by Section 3 workers and the percentage of total labor hours worked by Targeted Section 3 workers. The second alternative retains the existing new hires basis and would require a PHA to report, on a project by project basis, the percentage of total new hires that are Section 3 workers and the percentage of total new hires that are Targeted Section 3 workers.

The proposed rule would establish new benchmark requirements for those projects subject to Section 3 reporting requirements, based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. The benchmarks would be established by notice and amended periodically. Absent evidence to the contrary, achievement of the benchmarks will serve as a safe harbor and signify compliance with the Section 3 requirements.

If HUD adopts the labor hours metric for public housing assistance, PHAs would be required to have at least 25% of project labor hours worked by Section 3 workers and at least 5% worked by Targeted Section 3 workers to meet the safe harbor threshold. Alternatively, if HUD adopts the new hires metric for public housing assistance, PHAs would be required to have at least 30% of new hires are Section 3 workers and at least 5% are Targeted Section 3 workers.

Questions for Members:

1. Would you prefer to report on a new hire basis or a labor hours basis?
 2. Why?
 3. What, if any, challenges do you envision if required to report on labor hours?
 4. For those who will be required to report on a labor hours basis, are the proposed benchmarks feasible?
 5. If HUD's final regulations require public housing assistance to continue using the new hire metric, are the proposed benchmarks for new hires feasible?
 6. Should initial and future benchmarks require reporting for both Section 3 workers and Targeted Section 3 workers, or should the benchmark be limited to Targeted Section 3 workers only?
- 7. Creates a new category of "Targeted Section 3 Workers."** Under the current Section 3 regulations, all Section 3 workers are counted and reported equally, regardless of priority. *To monitor and encourage the hiring of certain priority workers, HUD proposes creating a subset of Section 3 workers known as a Targeted Section 3 Worker.*

For public housing funding, a Targeted Section 3 Worker under the labor hours approach would be defined as:

- 1) A worker employed by a Section 3 business; or
- 2) A worker who currently is or who was when hired by the worker's current employer, one of the following:
 - a. A public housing or Section 8 resident,
 - b. A resident of other projects managed by the PHA that is providing assistance, or
 - c. A current YouthBuild participant.

For public housing funding, a Targeted Section 3 Worker under the new hire approach would be defined as:

- 1) A new hire employed by a Section 3 business; or
- 2) A new hire, who is also one of the following:
 - a. A public housing or Section 8 resident,
 - b. A resident of other projects managed by the PHA that is providing assistance; or
 - c. A current YouthBuild participant.

For housing and community development funding, a Targeted Section 3 Worker under the labor hours approach would be defined as:

- 1) A worker employed by a Section 3 business; or
- 2) A worker who currently is or who was when hired by the worker's current employer, one of the following:
 - a. Living within the service area or the neighborhood of the project, or
 - b. A current YouthBuild participant.

Questions for Members:

1. Do you agree with these definitions?
 - a. If no, what changes would you like to see?
2. Does your PHA currently work with YouthBuild participants?
3. Should the Targeted Section 3 Worker definition be expanded to include former YouthBuild participants under 24 years and/or those who are still eligible to participate but may have graduated out of the program?