



## NATIONAL LOW INCOME HOUSING COALITION

### SUMMARY AND ANALYSIS PROPOSED SECTION 3 REGULATION

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#### INTRODUCTION

On April 4, 2019, HUD published the long-awaited update to the 1994 interim Section 3 rule.

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

During the Obama administration, HUD staff at the Office of Fair Housing and Equal Opportunity (FHEO) proposed significant changes to the interim rule. Many of those changes reflected input from advocates, including NLIHC, after numerous conference calls. That proposed rule never cleared the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). The Trump administration replaced the previous proposed rule with the one now open for public comment. Comments are due June 3.

Page references in this summary refer to the proposed regulation “text” and HUD’s explanation of the text, called the “preamble”, in the large-format version of the proposed rule and preamble at <https://bit.ly/2TTTsCV> and the proposed benchmarks at <https://bit.ly/2VqufBK>.

#### STRUCTURE OF PROPOSED RULE [page 15 preamble]

The proposed rule would have four subparts: Subpart A for general provisions, Subpart B for public housing, Subpart C for “Section 3 projects, which are projects funded by other HUD programs such as CDBG and HOME, and Subpart D for projects with public housing and other HUD funds. Subparts A and D would apply to all recipients of funds that trigger Section 3, along with subrecipients, contractors, and subcontractors.

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## **EIGHT KEY CHANGES – A PREVIEW**

### Potential Positive Changes

- Instead of using a “new hires” standard, HUD proposes to use “labor hours worked”. However, HUD asks PHAs whether they prefer to use “labor hours” or “new hires”. Depending on feedback during the public comment period, HUD will determine whether PHAs can continue to use new hires or will be required to switch to labor hours worked.
- The proposed rule would create a “Targeted Section 3 worker”, intended to give PHAs and jurisdictions an incentive to focus on reaching workers given priority in the statute and providing contracts to Section 3 businesses that are primarily owned or controlled by low-income people, or that hire a substantial number of low-income people. However, the Section 3 business option could result in people who are not low-income being counted as a Section 3 worker. NLIHC proposes a modified definition.
- HUD would establish “benchmarks” indicating that 30% of all labor hours worked are by “Section 3 workers” (25%) and “Targeted Section 3 workers” (5%), replacing the current rule’s 30% employment “goals”.

Because “Section 3 workers” and “Targeted Section 3 workers” are defined in ways that could include people who are not low-income, NLIHC proposes separate significantly modified benchmarks.

- Residents with Section 8 vouchers or living in Section 8 properties with project-based rental assistance are added to the second-level priorities for employment and contracting opportunities. Section 8 residents would also be included among “Targeted Section 3 workers” in a PHA context.

### Potential Negative Changes

- HUD would remove Section 3 monitoring and enforcement from FHEO, shifting monitoring and enforcement to the Office of Public and Indian Housing and to the Office of Community Planning and Development. However, it appears that a separate HUD office would have overall responsibility for Section 3 – the Office of Field Policy and Management.
- HUD would eliminate any Section 3-specific complaint process.
- In place of the interim rule’s term “Section 3 resident”, the proposed rule would create the term “Section 3 worker”.
  - Public housing residents would no longer be specifically identified.
  - There would be three options to determine whether someone was a Section 3 worker; two of the options could result in someone who is not low-income being counted as a Section 3 worker.
- HUD would establish a \$200,000 per project threshold before a contractor or subcontractor would have to comply with Section 3. Jurisdictions, contractors, and subcontractors could avoid Section 3, even if a contractor or subcontractor is getting a lot more HUD money to do construction work, by breaking up construction activities (such as single-family rehabs or road repaving projects) into small contracts of less than \$200,000.

## HUD REMOVES SECTION 3 FROM FHEO [pages 11 & 15 preamble]

Historically, the Section 3 regulations have been at 24 CFR part 135, which is under the umbrella of the Office of Fair Housing and Equal Opportunity (FHEO). HUD proposes to remove the Section 3 regulations from part 135 and create a new part 75, which is under the umbrella of the Office of the Secretary.

In addition, a potential adverse change includes removing monitoring and enforcement of Section 3 from FHEO, transferring responsibility to the HUD program office responsible for the funding program that triggers Section 3, such as the Office of Public and Indian Housing (PIH), the Office of Community Planning and Development (CPD), and Office of Recapitalization (for RAD demolition, rehab, or new construction).

[§ 75.33(c) page 81 text]

- ⇒ *In the past, FHEO Field Office staff have complained that other program offices were not responsive to Section 3 problems. Also, in the past program staff (for example, PIH or CPD staff) have declared that their “constituents” are the PHAs or the jurisdictions, failing to include residents who are supposed to benefit from HUD programs.*
- ⇒ *Section 3 monitoring and enforcement should be carried out by HUD staff who are independent of HUD program offices that are too close to the development projects funded by their programs.*
- ⇒ *The proposed rule is issued by the Office of Field Management and Policy (FMP), which is separate from the program offices (PIH and CPD). FMP will probably be in charge of Section 3. Will FMP be that independent arm of HUD for monitoring and enforcement?*

**The proposed rule would eliminate any Section 3-specific complaint process. Instead, it would rely on existing provisions in other HUD program regulations to address resident complaints.** [§ 75.33(b) page 81 text]

- ⇒ *The current regulation has an entire section about complaints and compliance [§135 Subpart D]. Included is a section with details for residents to submit complaints [§135.76].*  
*Other HUD program areas do not have detailed provisions for residents to register failure on the part of a PHA or jurisdiction to meet a program requirement.*
- ⇒ *NLIHC recommends that the final rule require each federal program have a detailed complaint process identical to or similar to the one used under the current rule, but assign enforcement to an independent HUD office.*
- ⇒ *It seems that HUD is planning to have the Office of Field Management and Policy (FMP) be that independent office. But, it is not clear that FMP has the administrative enforcement capacity to effectively oversee Section 3. In addition, FMP does not have the Section 3 reporting technology (SPEARS), all of which might suggest keeping Section 3 at FHEO.*
- ⇒ *The best independent office would be the Office of Davis-Bacon and Labor Relations (DBLR). It has experience with the construction industry and with providing training and technical assistance to jurisdictions and PHAs. In addition, DBLR has a working relationship with the Department of Labor.*
- ⇒ *Which ever office has the responsibility, it will need increased staff to provide greater technical assistance and monitoring and enforcement capacity.*

## **SWITCH TO “LABOR HOURS WORKED” FROM “NEW HIRES”**

Instead of using a “new hires” standard, HUD proposes to use “labor hours worked”.

⇒ *The 1994 interim rule required PHAs and jurisdictions to have goals of 30% of “new hires” be Section 3 residents. However, as advocates had long observed, some contractors would hire Section 3 residents for a short time so that they would “count” toward the 30% goal, only to lay them off in short order. Another abuse observed by advocates was contractors giving a Section 3 new hire only 20 hours or less of work per week. In addition, some contractors would shift 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, while hiring new, non-Section 3 residents at non-Section 3 projects.*

As HUD rightly notes in the preamble, a focus on labor hours worked instead of new hires will measure total actual employment by Section 3 workers (defined on page 7 of this summary) and allow for the measure of the proportion of total work performed by Section 3 workers to total work performed by all workers on a project.

Using labor hours worked also emphasizes continued employment. As an example, HUD observes that with a new hires standard, hiring five new Section 3 workers for one or two months would be counted as more valuable than hiring one Section 3 worker for a full year. A full-time job sustained over a long period provides a Section 3 worker with the potential to gain skills that can lead to greater self-sufficiency. [page 5 preamble]

## **WILL PHAs BE ABLE TO CONTINUE TO USE “NEW HIRES”?**

[pages 6 & 16 preamble]

HUD writes in the preamble that some PHAs have said that they prefer using the new hires standard. Therefore, HUD proposes alternative regulatory language for PHAs.

Throughout the draft rule, there are provisions pertaining to “Alternative 2” for PHAs.

HUD asks PHAs to comment on whether they prefer to use “labor hours” or “new hires”. Depending on feedback during the public comment period, HUD will determine whether PHAs can continue to use new hires or will be required to switch to labor hours worked.

The proposed rule’s Alternative 2 new hires provisions for PHAs are added at the end of this summary (page 18).

⇒ *NLIHC recommends that PHAs be required use labor hours worked. If HUD decides PHAs can use new hires, the rule should require the use of labor hours worked for contractors carrying out major projects. However, HUD should monitor PHA performance to gather data regarding the types of jobs any new hires fill, and whether those new hires are retained. If after three years it is determined that the new hires are not being reasonably retained then HUD should require PHAs to start using work hours.*

## **SMALL PHAS** [§ 75.15(d) page 72 text, pages 7 & 31 preamble]

Small PHAs are defined as those with fewer than 250 public housing units.

They would not be required to report whether they have met Section 3 benchmarks, basically the number of labor hours or new hires (see page 13 below).

Instead, Small PHAs would only be required to report on Section 3 “qualitative” efforts, such as outreach to generate job applicants, on-the-job training, tuition for off-site training, and outreach to identify bids from Section 3 businesses.

⇒ *NLIHC recommends that Small PHAs be required to report labor hours worked.*

## **RECIPIENT** [§ 75.5 page 63 text, page 22 preamble]

This summary does not use the term “recipient”. Instead for the general reader it uses either PHA or jurisdiction.

However, residents and advocates should be aware that HUD, PHAs, and jurisdictions will often use the term “recipient”.

As with the current rule, the proposed rule uses the term “recipient” throughout.

A recipient is any entity that receives funds directly from HUD, such as a PHA receiving public housing capital and operating funds, or states, counties, or cities receiving CDBG, HOME, and other funds awarded through Notices of Funding Availability (NOFAs). Nonprofits also sometimes receive HUD funds directly through NOFAs.

**SECTION 3 PROJECT**, *next page*

## SECTION 3 PROJECT [§ 75.3(a)(2) page 60 text, pages 18 & 19 preamble]

The proposed rule defines a “Section 3 project” as one that is not funded with 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 construction or for other public construction projects (such as road repair).

- 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”.
- The \$200,000 per project threshold does not apply to various Lead Hazard and Healthy Homes programs.

The Section 3 requirements apply to the entire Section 3 project, whether the project is fully or partially funded by a HUD program.

HUD asks for public comments about the \$200,000 threshold. [preamble page 44]

⇒ *NLIHC has long raised concerns about the current rule’s \$100,000 per project threshold.*

*If there is a \$200,000 per project threshold, contractors would not have to comply with Section 3 if a contract for construction work on a project is less than \$200,000. Consequently, contractors awarded significant amounts of Section 3 covered funds in a single year to spend on small, discreet activities, such as homeowner housing rehabilitation, would not have to meet Section 3 obligations. Such contractors can spend far more than \$200,000 in Section 3 covered funds cumulatively, yet they 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 houses 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 six rehabs had a contract for more than \$200,000.*

*This is a significant limitation. Jurisdictions and contractors can avoid Section 3, even if a contractor is getting a lot more HUD money to do construction work, by breaking up construction activities into small contracts of less than \$200,000.*

⇒ *NLIHC has long urged HUD to change this practice – which is not in the law. NLIHC suggests that Section 3 obligations apply to any contractor that receives at least \$1million during a program year for a given type of activity, such as repaving city streets, laying water/sewer lines, and rehabbing single-family homes.*

**SECTION 3 WORKER**, next page

## SECTION 3 WORKER [§ 75.5 page 64 text, pages 23 & 24 preamble]

The proposed rule would replace the interim rule's term "Section 3 resident" with a new term, "Section 3 worker", who is someone who meets one of the following:

1. The worker's income is less than the income limit set by HUD for the program triggering Section 3 (for example 80% of AMI for CDBG and HOME); or,
2. The worker lives in a "qualified census tract"; or,
3. The worker is employed by a Section 3 business (explained on page 9)

### Regarding option 1:

- ⇒ *The interim rule specifically lists a public housing resident as a "Section 3 resident". The proposed rule would no longer explicitly list a public housing resident as a "Section 3 worker".*
- ⇒ *We can assume a public housing resident or a voucher resident or a project-based rental assistance resident meets this criterion, but it should be emphasized.*
- ⇒ *There is another problem with the wording of option 1. It should read, "Immediately prior to the date of hire, the worker's income..." People should not be counted as Section 3 workers simply because they are paid low wages.*
- ⇒ *NLIHC suggests the final rule explicitly list public housing residents, and add Section 8 residents (voucher or project-based), as well as residents of Section 811 (disabled) and Section 202 (elderly) developments.*  
*(HUD adds Section 8 residents to the second-tier priority for employment (see page 10), so NLIHC proposes adding to Option 1, Section 8, Section 811, and Section 202 residents because they fit the statute's emphasis: "particularly those who are recipients of government assistance for housing".)*
- ⇒ *The rule should continue to include anyone who meets the definition of low-income, but begin by saying "whose income immediately prior to the date of hire was low-income".*
- ⇒ *Because women are under-represented in construction trades, women should be emphasized in the definition.*
- ⇒ *Therefore, the rule should be modified to be:*  
*"Immediately prior to the date of hire, was a public housing, Section 8, Section 811, Section 202, or other low-income resident, particularly women."*

### Regarding option 2, next page



### Regarding option 2:

A qualified census tract (QCT) is a term created for the Low Income Housing Tax Credit program.

- A QCT is a census tract with a poverty rate of 25% or more, or with at least 50% of the households having income less than 60% of AMI.
  - HUD must officially designate QCTs each year.
- ⇒ *Someone who lives in a QCT will not necessarily be a low-income person. Depending on how the QCT is drawn, a large number of residents could be higher-income.*
- ⇒ *The rule should not use a geographic area to define a Section 3 worker.*

### Regarding option 3:

- ⇒ *Someone hired by a Section 3 business (defined on page 9) will not necessarily be a low-income person or a public housing resident or resident with a voucher or with Section 8 project-based rental assistance.*
- ⇒ *The rule should only consider public housing, Section 8, Section 811, or Section 202 residents, or other low-income people as Section 3 workers.*

### Encouraging Sustained Employment of Section 3 Workers

In the preamble, HUD claims that the proposed rule would encourage employers to retain a Section 3 worker by allowing the employer to continue counting that worker in the future, even if the employee is no longer a “low- or very-low income” person – someone whose income exceeds a specific program’s income limit or 80% of the area median income (AMI). [page 5 preamble] However, the definition of “Section 3 worker” in the proposed text of the regulation does not provide for this [§ 75.5 page 64 text]. The definition of “Targeted Section 3 worker” does (described on page 14).

- ⇒ *The definition of a Section 3 worker, as modified by NLIHC’s proposal, should be further modified to be:*

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

The definition also states that someone’s status as a Section 3 worker will not be negatively affected if they have had a prior arrest or conviction.

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.



## SECTION 3 BUSINESS [§ 75.5 page 63 text, pages 22 & 23 preamble]

Although the proposed rule emphasizes employment [§ 75.1 page 59 text], Section 3 is not solely about employment and training opportunities – there is also an obligation to make “best efforts” to give preference in awarding contracts to businesses owned or controlled by low-income people, or to businesses that hire a substantial number of low-income people.

The proposed rule significantly changes the definition of “Section 3 business”.

A section 3 business concern meets one of the following:

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

⇒ ▪ *The first proposed category is the same as the current rule and reflects the statute’s definition.*

▪ *The second category is new.*

⇒ *Businesses should not be rewarded for paying poverty wages. Therefore, the second category should be modified to read:*

*“More than 75% of the labor hours worked at the business is performed by public housing, Section 8, Section 811, or Section 202 residents, or persons who were low- or very low-income immediately prior to the date of hire, particularly women.”*

▪ *The third category is new and according to the preamble indicates HUD’s intent to encourage businesses owned by public housing and Section 8 residents.*

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

⇒ *Anything less than 51% ownership can be in danger of being a “front” for non-low-income people. That is, the other 75% owners could be regular business people who do not have the best interests of residents at heart.*

Also new, the proposed rule would state 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 proposed 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 proposed rule would reflect the statute's requirements for giving priority to certain categories of Section 3 workers.

**PHAs** [§ 75.9(a) page 66 text, page 26 preamble]

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:

1. Residents of the public housing project funded with public housing money;
2. Residents of a PHA's other public housing projects, or residents assisted with Section 8 voucher or project-based rental assistance (*the addition of Section 8 residents would be an improvement over the existing rule*);
3. YouthBuild participants (see Attachment 1 on page 20); and,
4. People in the metro area (or non-metro county) with income less than 80% of the area median income (AMI).

These mirror the statute.

⇒ *Because women are under-represented in the construction trades, NLIHC recommends slightly modifying the language of each priority level to include “especially women”.*

**Jurisdictions** [§ 75.19(a) pages 72 & 73 text, pages 33 & 34 preamble]

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 proposed rule adds that “where feasible” jurisdictions “should” provide employment and training opportunities to Section 3 workers who live in a project's “service area or neighborhood”, and to YouthBuild participants (see Attachment 1 on page 20).

HUD defines the “service area or neighborhood” of the 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.

[§ 75.5 page 64]

NLIHC's comments regarding the jurisdiction priorities are on the next page.

## SECTION 3 EMPLOYMENT PRIORITIES

### Jurisdictions

#### NLIHC's comments

- ⇒ *Because the statute emphasizes that employment and training should go **“particularly to those who are recipients of government assistance for housing”**, NLIHC suggest an alternative list of employment priorities:*
- *The first priority should be for public housing residents, Section 8 residents (vouchers and PBRA), and Section 811 and Section 202 residents.*
  - *The second priority should be for low-income people, especially women, living in the service area or neighborhood of the project (using the current rule's definition of service area or neighborhood – the geographical area in which the persons benefitting from the project live).*
  - *The third priority should be homeless people living in the jurisdiction.*
  - *The fourth priority should be for other low-income people, especially women, living in the jurisdiction of the project.*
  - *The fifth priority should be for other low-income people, especially women, living in the metro area.*
  - *The sixth priority should be for any low-income person, especially women.*
- ⇒ *Geographic limits often contribute to few or no women being hired, and can also limit access to certain types of jobs to men as well as women depending on the labor pool in a given geographic area.*
- ⇒ *Therefore, PHAs and jurisdictions should be allowed to go beyond a service area, neighborhood, jurisdiction, or metro area if they determine that there are not enough Section 3 residents with the requisite job skills within a project's geographic area.*

## SECTION 3 CONTRACTING PRIORITIES, *next page*

## SECTION 3 CONTRACTING PRIORITIES

**PHAs** [§ 75.9(b) pages 66 & 67 text, page 26 preamble]

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:

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 the PHA’s other public housing projects, or residents assisted with Section 8 vouchers or project-based rental assistance (*the addition of Section 8 residents would be an improvement over the existing rule*);
3. YouthBuild Programs (see Attachment 1 on page 20); *and*,
4. Section 3 businesses that provide economic opportunity to low-income people living in the metro area (or non-metro county).

When reading this part of the proposed rule it is important to remember the formal definition of a Section 3 business (as described on page 9 above).

This proposed version is much simpler than the current rule, but seems to address the statute’s intent. (See box with the current rule’s provisions at Attachment 2 on page 20.)

**Jurisdictions** [§ 75.19(b) page 73 text, pages 33 & 34 preamble]

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” direct these efforts to:

1. Section 3 businesses that provide economic opportunities to Section 3 workers living in the service area or neighborhood of the project; and
2. YouthBuild programs (see Attachment 1 on page 16).

⇒ *Although this proposed language mirrors the statute, NLIHC recommends using the same five priority levels suggested for employment priorities (page 11 above).*

**SECTION 3 BENCHMARKS**, *next page*

## SECTION 3 BENCHMARKS

[Pages 10 & 11 preamble; § 75.13(b) PHAs pages 68 & 69 text, page 29 preamble; § 75.23(b) jurisdictions pages 74 & 75 text; pages 36 & 37 preamble]

The proposed rule would establish Section 3 “benchmarks” to replace the current rule’s “goals” (see box with the current rule’s goals provisions at Attachment 3 on page 21).

The preamble indicates that benchmarks would be used to monitor a PHA’s and a jurisdiction’s accomplishments toward directing job opportunities to Section 3 workers and a new subcategory of Section 3 worker called “Targeted Section 3 workers” (described on page 14).

The proposed 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%).

PHAs [§75.13(b)(3) proposed regulation text, page 29 preamble; proposed benchmark notice page 8]  
Jurisdictions [§75.23(b)(3) proposed regulation text, no preamble text; proposed benchmark notice page 9]

- Professional services will not be included in the benchmark.
    - These are defined as non-construction services such as contracts for legal services, financial consulting, accounting, environmental assessments, and architectural and engineering services.
    - PHAs and jurisdictions may include professional services to increase their total numbers to reach their benchmark.
- ⇒ *The current rule includes these professional service jobs.*
- ⇒ *Exclusion might overlook entry-level and career-growth opportunities in those professional areas.*
- ⇒ *The proposed rule leaves it up to a PHA or jurisdiction to decide whether to include.*
- HUD will establish Section 3 benchmarks every three years through a notice in the *Federal Register*. The benchmarks were published separately on the same day as the proposed rule.
    - The proposed benchmarks are at: <https://bit.ly/2YP8td5>
    - An easier to read version of the proposed benchmarks is at: <https://bit.ly/2VqufBK>

Benchmarks are discussed more on page 15, but first it helps to discuss Targeted Section 3 worker.

## TARGETED SECTION 3 WORKER

This is a new idea intended to give PHAs and jurisdictions an incentive to focus on reaching workers given priority in the statute and workers at Section 3 businesses [pages 27, 28, & 34 preamble]. Targeted Section 3 workers are a subset of all Section 3 workers.

**PHAs** [§ 75.11(a) page 67 text; pages 9, 27, & 28 preamble]

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. 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 projects managed by the PHA that is using public housing assistance; or,
  - c. A current YouthBuild participant (see Attachment 1 on page 20).

HUD stresses in the preamble that by including current workers the proposed rule helps ensure they have continued long-term employment [page 28].

Regarding "2.b", no such projects currently exist. The rule just echoes the statute.

- ⇒ *The definition of "Section 3 worker" includes as one option "a worker employed by a Section 3 business". Repeating a "worker employed by a Section 3 business" as one option in the definition of a "Targeted Section 3 worker" dilutes the targeting concept HUD proposes for benchmarking. HUD says its intent is to make best efforts to award contracts to Section 3 businesses. [pages 27 and 28, preamble]*
- ⇒ *In addition, someone working at a "Section 3 business" is not necessarily a public housing, Section 8, or low-income resident. Is it safe to assume that a business with 51% low-income people ownership will hire public housing or Section 8 residents?*
- ⇒ *Therefore, option 1 should be deleted, leaving option 2. This would lead to the need to recommend a change to the benchmark (discussed further on page 15).*

**Jurisdictions** [§ 75.21 page 73 text; pages 9 & 34 preamble]

A Targeted Section 3 worker for jurisdictions would be:

1. A worker employed by a Section 3 business; or,
2. A worker who currently is or who was when hired:
  - a. Living in the service area or neighborhood of the project; or,
  - b. A current YouthBuild participant (see Attachment 1 on page 20).

- ⇒ *The problems are the same as those regarding PHAs, compounded by the geographic limitations of the proposed rule's definition of service area.*

**Returning to Benchmarks**, next page

## Returning to Benchmarks

⇒ *The 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."*

⇒ *NLIHC recommends two benchmarks, one for public housing and one for Section 3 projects.*

*For public housing, NLIHC proposes the 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 one half of the 30%.*

*and*

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

*For Section 3 projects, NLIHC proposes the benchmark to be:*

*1. Low-income people who are not public housing, Section 8, Section 811, or Section 202 residents make up 20% of the total number of labor hours worked by all workers for each job category, and women make up one half of the 20%.*

*and*

*2. Public housing, Section 8, Section 811, or Section 202 residents make up 10% of the total number of labor hours worked by all workers in each job category, and women make up one half of the 10%.*

*and*

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



## SAFE HARBOR

[PHAs, § 75.13(a) page 68 text, page 28 preamble; Jurisdictions, § 75.23(a) page 74 text, page 35 preamble]

If a PHA or jurisdiction certifies that it has met the priorities for job and contract opportunities (pages 10 and 12 above) and has met the job benchmark (pages 13 and 15 above), 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 job benchmark, then it will have to send to HUD “qualitative” reports on their efforts (see “Reporting” below).

⇒ *Residents and advocates should monitor and report to HUD any evidence that contradicts a PHA or jurisdiction.*

## REPORTING

**PHAs** [§ 75.15 page 70-72 text; page 30 preamble]

- The proposed rule would require PHAs to report to HUD 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.

- If a contractor or subcontractor does not track labor hours, a PHA “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 will be required to use a HUD form to report on the “qualitative” nature of its activities or the activities of contractors and subcontractors.

The preamble indicates that HUD is considering what it will require in a “qualitative” report from a PHA that did not meet its benchmark. Qualitative efforts could include outreach to generate job applicants, provision of on-the-job training, tuition for off-site training, and outreach to identify bids from Section 3 businesses.

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

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

**REPORTING** Jurisdictions, next page

## REPORTING

### Jurisdictions [§ 75.25 page 75 & 76 text; page 36 & 37 preamble]

- The proposed rule would require jurisdictions to report to HUD 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 subrecipients, contractors, and subcontractors.

The text of the rule is confusing, but the preamble [page 37] indicates that a jurisdiction may report on a project-by-project basis.

- If a contractor or subcontractor does not track labor hours, a 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 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.

The preamble indicates that HUD is considering what it will require in a “qualitative” report from a jurisdiction that did not meet its benchmark. Qualitative efforts could include outreach to generate job applicants, provision of on-the-job training, tuition for off-site training, and outreach to identify bids from Section 3 businesses.

- Jurisdictions will report to HUD each year on all projects completed in the reporting year using the reporting requirement of the applicable HUD program (for example the Action Plan CAPER and/or the CDBG Grantee Performance Report).

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

⇒ *Reporting should not be limited to completed projects. A number of projects could be multi-year. Reporting on a multi-year project’s benchmarks on a quarterly basis during the reporting year would better reflect ongoing activity.*

### **MULTIPLE FUNDING SOURCES** [§ 75.29 pages 77 & 78 text; pages 38-40 preamble]

When a project is funded with public housing funds and also meets the Section 3 project criteria (page 6 above), 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 would tell the jurisdiction which HUD program office to report to.

NLIHC does not summarize this section of the proposed rule.

## **ALTERNATIVE 2 FOR PHAS** [pages 6 & 16 preamble]

In the preamble HUD states that some PHAs have said that they prefer to continue using the “new hires” standard. Therefore, HUD proposes alternative regulatory language for PHAs. Throughout the draft rule, there are provisions pertaining to “Alternative 2” for PHAs. HUD requests feedback from PHAs on whether to use “labor hours” or “new hires”. Depending on feedback during the public comment period, HUD will determine whether PHAs can continue to use new hires or will be required to switch to labor hours worked.

### Definition of New Hires [§ 75.5 page 62 text, page 21 preamble]

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

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

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

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

### Targeted Section 3 worker [§ 75.11 pages 67 & 68 text, page 27 preamble]

A Targeted Section 3 worker for public housing means:

1. A new hire employed by a Section 3 business; or,
2. A new hire employed by the worker’s current employer who is also:
  - a. A resident of a public housing project or a voucher household or a resident in a property subsidized with Section 8 project-based rental assistance; or,
  - b. A resident of other projects managed by the PHA that is “spending assistance”; or,
  - c. A YouthBuild participant (see Attachment 1 on page 20).

⇒ *See NLIHC critique on page 14 above*

Benchmark, next page

## ALTERNATIVE 2 FOR PHAs

**Benchmark** [§ 75.13(b)(3) page 69 text and page 9 of benchmark text; page 30 preamble]

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

**and**

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

⇒ *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.”*

⇒ *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.*

**Reporting** [§ 75.15(a) page 71 text, page 31 preamble]

- The proposed rule would require PHAs to report to HUD their benchmark data:
  - Total number of new hires;
  - Total number of new hires who are Section 3 workers; and,
  - Total number of new hires who are Targeted Section 3 workers.

This includes new hires by a PHA, contractors, and subcontractors during a PHA's fiscal year.

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

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

## ATTACHMENT 1, YouthBuild

YouthBuild enables low-income young people to learn construction skills by building affordable housing for homeless and low-income people and other community assets such as schools, playgrounds, and community centers in their neighborhoods.

YouthBuild started as a HUD program but for many years has been primarily funded by the U.S. Department of Labor (DOL) through the authorized federal YouthBuild program administered by the Employment and Training Administration at DOL.

YouthBuild USA, Inc., is a nonprofit organization that provides low-income youth with the training, technical assistance, and leadership development.

More about YouthBuild is at: <https://www.youthbuild.org>

## ATTACHMENT 2, The current rule's contracting order of priority

The current interim rule's order of priority for PHAs' and their contractors' and subcontractors' obligation to make "best efforts" to award contracts and subcontracts to businesses that provide economic opportunities to Section 3 workers is in the following order of priority:

The interim rule's order of priority is:

First priority should go to businesses that:

- Are primarily owned (51%) by residents of the public housing receiving the HUD funds, *or*
- Have a full-time workforce made up of at least 30% residents of the public housing receiving the HUD funds.

Second priority should go to businesses that:

- Are primarily owned (51%) by residents of other public housing managed by the PHA receiving the HUD funds, *or*
- Have a full-time workforce made up of at least 30% residents of other public housing managed by the PHA receiving the HUD funds.

Third priority should go to YouthBuild programs in the metro area (or non-metro county).

Fourth priority should go to business that:

- Are primarily owned (51%) by low and very low income people in the metro area (or non-metro county); *or*,
- Have a full-time workforce made up of at least 30% low and very low income people in the metro area (or non-metro county); *or*
- Subcontract more than 25% of the dollar amount of all subcontracts to businesses that meet (a) or (b).

[Sec. 135.36(a)(1)]

## ATTACHMENT 3, The current interim rule’s “goals”

The current rule goals:

### Employment

If PHAs and jurisdictions – and their contractors and subcontractors – have new job slots at housing or community development construction projects funded by HUD programs, they must, “to the greatest extent feasible”, attempt to reach minimum “goals” for filling those “new hires” with “Section 3 residents”.

There are two levels of goals:

1. A goal of 30% of new hires applies to:
  - a. Public housing capital improvements or operating funds.  
This includes management and administrative jobs, technical, professional, building trades, and non-construction jobs at all levels. (Section 3 Frequently Asked Questions, page 14)
  - b. Non-housing construction...mostly CDBG.  
(eg roads, sidewalks, sewers, recreation centers, community centers, commercial buildings, etc.)
2. A goal of 10% of new hires applies to other HUD programs to rehab or construct housing  
(eg, HOME, CDBG, NSP, Continuum of Care Homeless Assistance programs, lead-based paint abatement, etc.).

[Sec. 135.3(a)], [Sec. 135.30(a)(1) & (4)], [Sec. 135.30(b)]

### Contracts

There are two numerical goals for contracts:

1. At least 10% of the total dollar amount of all Section 3 covered contracts should be awarded to “Section 3 businesses” for any building trades work<sup>▲</sup> for:
  - a. Public housing maintenance, repair, modernization, or construction; or,
  - b. Housing rehab or construction arising from other HUD housing programs; or
  - c. Other public construction projects.
2. At least 3% of the total dollar amount of all other (non-building trades) Section 3 covered contracts should be awarded to “Section 3 businesses”.

[Sec. 135.30(c)]

▲ “Building Trades Work” is not defined in the regs, but it probably includes obvious things like bricklaying, plumbing, and painting. “Other” kinds of contracts might be carpet installation, lawn care, re-painting, routine maintenance, HVAC servicing, clerks, etc. (for the PHA or construction company).