

June 3, 2019

Regulations Division  
Office of the General Counsel  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0500

RE: [Docket No. FR-6085-P-01] RIN 2501-AD87  
Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses; Proposed Rule

To Whom It May Concern:

The National Community Development Association (NCDCA) and the U.S. Conference of Mayors (USCM) are pleased to provide the following comments on the proposed Section 3 rule. NCDCA is a national non-partisan organization comprised of more than 400 local government agencies across the country that administer the Community Development Block Grant (CDBG) Program, HOME Investment Partnerships (HOME) Program, HUD’s Homeless Assistance Programs (CoC and ESG), HOPWA, and HUD’s lead hazard control grants. NCDCA represents large urban areas, suburban areas, and small cities and towns. USCM is a non-partisan organization comprised of 1,408 members that represent cities with populations of 30,000 or more. We urge HUD to incorporate the following recommendations into its final Section 3 rule.

### **III. Specific Questions for Comment**

1. HUD seeks comments on the use of the statutory terms “best efforts” and “greatest extent feasible” in this proposed rule. Specifically, HUD seeks comments on whether this proposed rule should define these terms, whether the two terms should be considered interchangeable, whether only one term should be used, how the proposed rule should apply these terms relative to HUD’s efforts to increase employment and training opportunities for low- and very low-income persons, and how recipients can most effectively/efficiently demonstrate they have satisfied these definitions in reporting to HUD. In accordance with the Section 3 statute, both HUD’s existing Section 3 rule and this proposed rule do not provide an absolute mandate that employers hire Section 3 workers or that HUD funding recipients provide contracting opportunities to Section 3 businesses. Such a mandate would be infeasible, as there could be situations where no Section 3 workers or businesses are available or are qualified. However, HUD emphasizes its intention that the terms “best efforts” and “greatest extent feasible” should be read as very narrow qualifiers and seeks comment on how to best convey that.

#### **Answer:**

We recommend HUD use the term “reasonable best efforts” for CDBG and HOME recipients and remove the term “greatest extent feasible” from the Section 3 regulations.

Reasonable best efforts definition: HUD recipients will make every effort within their disposal, where practicable, to ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers and contracts for work awarded in connection with Section 3 projects are provided to Section 3 business concerns that provide economic opportunities to Section 3 workers.

HUD will need to modify IDIS to allow CDBG and HOME recipients to report on their Section 3 actions annually. CDBG and HOME recipients will report on their Section 3 actions in IDIS using a similar form as HUD Form 60002 that has been modified to capture labor hours worked.

In addition, we recommend HUD make the following changes to the Section 3 Business Registry to ensure CDBG and HOME recipients have accurate business data to use in facilitating the award of HUD-funded contracts.

- Ensure the businesses listed within the registry are eligible under Section 3. *Do not allow businesses to self-certify their eligibility.*
- Update the registry annually.

3. As discussed in this preamble, this proposed rule would set the threshold for applicability of Section 3 requirements for Section 3 projects to when the amount of the assistance to the project exceeds \$200,000. HUD seeks comment on whether an alternate threshold would be more appropriate or equally effective to the proposed \$200,000 per project threshold. HUD also seeks comment on the inclusion of all projects under the HUD's Lead Hazard Control and Healthy Homes programs and exclusion of Section 8 programs. In addition to seeking comments on an appropriate per project threshold, HUD seeks comments on whether the threshold for Section 3 projects should be established by project, total funding received by the recipient, or whether the threshold should be based on total funds expended by a recipient. If HUD were to use a threshold based on total funding a recipient receives, rather than a per-project threshold, HUD seeks comment on whether the \$200,000 threshold included in this proposed rule should be maintained, or whether the rule should adopt a different threshold.

**Answer:**

A per project threshold is more effective since it ties Section 3 obligations to a specific project. However, we recommend increasing the project threshold to at least \$500,000 per stand-alone project of federal assistance covered by Section 3 to ensure greater training and a longer employment period for Section 3 workers. Further, the activities that trigger the threshold must be limited only to those contained within the Section 3 statute for CDBG, HOME and other CPD programs which is construction and rehabilitation only. The threshold should be updated annually to include an inflation factor.

We propose the following definition of "project" be used in the Section 3 regulations.

*Project* means a site or sites together with any building or multiple buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with Section 3 covered funds as a single undertaking. A program that funds multiple buildings under separate ownership, management and financing is not a project.

We *strongly urge* HUD to exempt small CDBG and HOME grantees from the Section 3 regulations, altogether. We define small grantees as jurisdictions that receive \$1 million or less annually in CDBG or HOME funds. These grantees, because of limited funding, focus on a finite set of activities (usually single-family rehabilitation) that involve small projects.

4. HUD seeks comment on HUD's proposal to include hours worked by Section 3 business employees in the Targeted Section 3 Worker definitions as a way to report all Section 3 activities in a single metric rather than reporting on Section 3 business concern participation separately through the existing

aggregate dollars spent calculation. HUD also seeks comment on whether the changes to the Section 3 business concern definition are appropriate to the proposed new framework, especially the change that to qualify as a Section 3 business over 75 percent of the labor hours performed for the business must be performed by low- or very low-income persons versus the current requirement that 30 percent of permanent, full-time employee, include persons who are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents.

**Answer:**

We urge HUD to *not include* the requirement that to qualify as a Section 3 business over 75 percent of the labor hours performed for the business must be performed by low- or very low-income persons. This provision adds to the complexity of the Section 3 rule and to the administrative burden for grantees.

We urge HUD to simplify the compliance requirements for determining Section 3 residents and Section 3 businesses by establishing a “presumed eligibility” criteria for businesses or residents located in HUD-approved Neighborhood Revitalization Strategy Areas, Choice Neighborhood target areas, Promise Zones, Empowerment Zones and Enterprise Communities, Opportunity Zones and other areas defined at 24 CFR Part 570.208(a)(1)(vii).

5. N/A

6. HUD seeks comments on whether Section 3 requirements, as it applies to Section 3 projects, should apply to all subcontractors, and whether at a certain level HUD should consider reducing the reporting or compliance burden for subcontractors.

**Answer:**

The recipient should be allowed to decide on the extent of the Section 3 reporting requirements for subcontractors.

7. HUD requests comment on whether its initial and future benchmarks should include benchmarks for both the number of labor hours worked by Section 3 workers divided by the total number of labor hours for all workers and the number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours for all workers. Alternatively, HUD seeks comment on limiting the benchmark to include Targeted Section 3 workers only.

**Answer:**

The benchmarks should be simple and, therefore, limited to one tier of worker. Two different levels of workers – “Section 3 Workers” and “Targeted Section 3 Workers” -- only serves to complicate the Section 3 requirements, add confusion for recipients and contractors and make tracking difficult. We recommend HUD eliminate the “Targeted Section 3 Worker” category altogether and use only the term “Section 3 Worker” in the final rule.

We support the use of the proposed benchmark of 30% of labor hours worked for “Section 3 Workers.” Moreover, we strongly support HUD’s proposal to allow jurisdictions to accept a “good faith assessment” of the tracking of the labor hours by contractors.

8. For Section 3 projects, the statute requires that “where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located.” The statute does not define “neighborhood” or “service area” for purposes of

how recipients determine where they should focus their prioritization. The lack of definitions complicates compliance for contractors, subcontractors, and grantees receiving multiple types of HUD financial assistance. HUD proposes to provide a definition for recipients to use when prioritizing and reporting workers for Section 3 projects. The definition differs from existing regulatory definitions and local or state definitions, and HUD specifically requests comment on whether the definition works for recipients or if a different definition for “neighborhood” or “service area” is needed for purposes of Section 3. HUD also asks whether the 1 mile and 5,000 population radius is an appropriate geographic size of a ‘neighborhood’ or ‘service area’.

**Answer:**

In many areas of the United States, Section 3 contractors or businesses are difficult to find. Inclusion, not exclusion, should be the principle followed in creating allowable geographies and populations. Eliminate the “neighborhood” and “service area” definitions altogether. Do not place any geographical limits on recipients and contractors for prioritizing and reporting workers for Section 3 projects.

9. HUD provides that a Targeted Section 3 worker includes current Youth Build participants and asks whether that definition should be expanded to include previous Youth Build workers that are under 24 years of age or those who are still eligible to participate in Youth Build, but may have graduated out of the program.

**Answer:**

The Targeted Section 3 Worker category should be eliminated. Use the term Section 3 Worker which should be defined as a low-income person, including Public Housing residents, Section 8 recipients, and Youth Build participants.

**Other Comments:**

- We *strongly support* the proposal to move the Section 3 regulations from HUD’s Office of Fair Housing and Equal Opportunity to a new part 75 under the Office of the Secretary and shift monitoring and enforcement to the Office of Community Planning and Development where the CDBG and HOME programs are housed.
- We *strongly urge* HUD to move the Section 3 reporting requirements from the Section 3 – Performance Evaluation and Registry System (SPEARS) to the IDIS system for CDBG and HOME grantees to eliminate redundancy and ease the administrative burden for grantees.
- We support HUD’s efforts to streamline the Section 3 reporting requirements by:
  - Allowing jurisdictions to accept a “good faith assessment” of the tracking of the labor hours by contractors.
  - Requiring reporting through the Action Plan and/or CAPER and not a separate reporting document.
  - Requiring reporting only on completed projects.
- We recommend HUD make available to recipients addresses of all public housing, PBRA projects and Housing Choice Voucher projects by counties to assist in matching workers’ addresses and automatically designating them as Section 3 workers.

- We encourage HUD to work with Section 3 workers receiving housing assistance (public housing, section 8) that are employed in a position that pays a living wage to ensure they remain housed.
- We encourage HUD to provide life skills support to Section 3 workers to assist with debt and budget counseling.
- We recommend HUD be more proactive in supporting and developing (in conjunction with the Department of Labor) apprenticeship and other training programs for assisted housing residents and other low-income people. These programs provide a skills-based approach to permanent employment and a living wage that can propel low-income people into financial stability.

Thank you for the opportunity to provide comments on this important rule. Please feel free to contact Vicki Watson, Executive Director, National Community Development Association at [vwatson@ncdaonline.org](mailto:vwatson@ncdaonline.org) with any questions concerning this letter.

Sincerely,

National Community Development Association  
U.S. Conference of Mayors