

Encouraging PHA Compliance with Section 3 Employment Requirements

Many, but not all, public housing agencies (PHAs) do not pay enough attention to Section 3. Much of the neglect is due to a lack of monitoring, oversight and enforcement by the Department of Housing and Urban Development (HUD). Advocates have tools that they can use at the local level to address some of these failings.

Section 3 is a federal law requiring agencies that receive federal housing and community development funds to provide to the greatest extent feasible employment, contracting, and training opportunities for low-income people.¹ The law was enacted in 1968 as Section 3 of the Housing and Urban Development Act of 1968.² The HUD regulations set numerical goals for PHAs for compliance with Section 3, which state that 30% of all new hires by the PHA or its contractors in any year must be Section 3 residents.³ Section 3 residents are low- and very-low income residents of the area,⁴ and within this group, public housing residents have a preference for any new jobs or training.⁵ With respect to contracts, the PHA must provide that 10% of the contracts are with Section 3 businesses for building trades work for maintenance, repair, modernization or development work and 3% of all other contracts are with Section 3 businesses.⁶ Businesses owned by public housing residents are also subject to contract preferences.

Section 3 Requirements

PHAs are required to comply with Section 3 and ensure compliance with Section 3 by their contractors as well. To achieve that objective they must engage in a number of activities. In particular, PHAs must:⁷

- Implement procedures to notify Section 3 residents of training and employment opportunities and Section 3 businesses of contracting opportunities
- Notify contractors of their obligations and incorporate a clause into all contracts regarding the Section 3 obligations
- Engage in activities such as advertising training and employment opportunities, working with resident councils (where they exist), arranging assistance regarding job interviews for residents, maintain a file of Section 3 residents for future jobs, etc.⁸
- Assist HUD in obtaining compliance with contractors and subcontractors
- Document actions taken to comply with Section 3, the results of actions taken and impediments, if any.

PHAs are also required to submit to HUD an annual report for the purpose of determining the effectiveness of the program. These reports should be publicly available.⁹ HUD requires PHAs to submit Form 60002.¹⁰ This form, formerly required annually, is now required quarterly. It directs PHAs to report on the number of new hires, number of new hires who are Section 3 and the total number of Section 3 employees and trainees. In practice, many PHAs do not submit this form to HUD.

The documentation regarding compliance with Section 3 must be made available to the public in the PHA plan process.¹¹ A component of the annual plan and the PHA Plan Template is a "List of Supporting Documents Available for Local Review."¹² PHAs are instructed to review the list and "indicate which documents are available for public review by placing a mark in the "Applicable & On Display" column in the appropriate rows. All listed documents must be on display if applicable to the program activities conducted by the PHA."¹³

In accordance with HUD Notice PIH 2003-21, PHAs are required to make available, if applicable, "Section 3 documentation required by 24 CFR Part 135, Subpart E for public housing."¹⁴ Unfortunately, many PHAs are not making that documentation available for review.

¹12 U.S.C.A. § 1701u (West 2001).

²Pub. L. No. 90-448, § 3 (1968).

³24 C.F.R. § 135.30(b)(1) (2004).

⁴*Id.* at § 135.5.

⁵*Id.* at § 135.34(a)(1).

⁶*Id.* at § 135.30(c). Section 135.5 states that a Section 3 business concern means a business concern, as defined in this section:

(1) That is 51% or more owned by Section 3 residents; or

(2) Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 business concern."

⁷24 C.F.R. § 135.32 (2004).

⁸*Id.* at app. to pt. 135.

⁹*Id.* at § 135.90.

¹⁰Section 3 Summary Report, Economic Opportunities for Low and Very Low Income Persons, HUD Form 60002, available at <http://www.hudclips.org>. (A PHA could also provide information on the percentage of aggregate number of staff hours of new hires who are Section 3 residents, but is not required to do so.)

¹¹Every PHA is also required to submit to HUD an annual plan.

¹²Deregulation for Small Public Housing Agencies (PHAs) and Submission Requirements for New Small PHA Streamlined Annual PHA Plans, HUD Notice PIH 2003-21 (HA) (Sept. 9, 2003), available at <http://www.hud.gov/offices/pih/pha/>

¹³*Id.* (emphasis added).

¹⁴*Id.*

As a practical matter, any prospect of increased compliance with Section 3 in the near term will depend on action taken by advocates.

One possible explanation for the failure is that the obligation of a PHA to make this documentation available was never effectively implemented by amending the templates for PHA plans. A revised list of supporting documents (which includes Section 3 documentation) was incorporated into the streamlined annual and five-year plan templates.¹⁵ However, it was never incorporated into the standard plan template.¹⁶ This failure is critical because the majority of PHAs submit plans based on the standard PHA plan template.

¹⁵The Streamlined Annual and Five-Year/Annual Templates, HUD Forms 50075-5A and 50075-5E, are available at <http://www.hud.gov/offices/pih/pha/templates/index.cfm>.

¹⁶The Standard Annual PHA Plan Template, HUD Form 50075, is available at <http://www.hud.gov/offices/pih/pha/templates/index.cfm>.

Another explanation is that the PHAs are simply ignoring their Section 3 obligations. If that is the case, in the PHA plan process advocates should comment on the annual plan and complain that there is no Section 3 plan or documentation available, request the information and, if necessary, offer to assist the PHA to develop a Section 3 plan. Sample comment language appears in the box below.

Conclusion: The Role of Advocates

According to recent findings by the HUD Inspector General, HUD has failed to enforce Section 3 requirements effectively: "HUD has not implemented necessary controls for effective program oversight" and "has no assurance that Section 3 is functioning as intended by the HUD Act of 1968."¹⁷ As a practical matter, then, any prospect of increased compliance with Section 3 in the near term will depend on action taken by advocates. ■

¹⁷Office of the Inspector General, Audit No. 2003-KE-0001, Survey of HUD's Administration of Section 3 of the HUD Act of 1968 (2003), available at <http://www.hud.gov/offices/oig/reports/oiginter.cfm>. NHLP has informed HUD of the need to revise the Standard Plan Template.

Sample Comment Language

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to "the greatest extent feasible," be directed to low- and very low-income persons, particularly those public housing residents and voucher recipients, and to "Section 3 businesses," 12 U.S.C.A. § 1701u(b) (West 2001). The Section 3 regulations provide that housing authorities may establish that they have met the "greatest extent feasible" requirement by committing to employ and ensuring that their contractors employ "Section 3 residents" as at least 30% of all new annual hires (24 C.F.R. § 135.30(b)(1) (2004)) and providing a preference for hiring and training public housing residents. The _____ HA is required to comply with Section 3 and ensure compliance with Section 3 by its contractors. To achieve that objective, the _____ HA must engage in a number of activities. In particular, the _____ HA must document actions taken to comply with Section 3, the results of actions taken and impediments, if any. 24 C.F.R. § 135.30 Moreover, the _____ HA must submit quarterly reports to HUD on Form 60002. Please make available the Section 3 plan/documentation for review and comment.

Alternatively, the _____ HA must develop a Section 3 plan. _____ would be glad to assist the _____ HA in developing a Section 3 plan.*

*Examples of Section 3 plans are posted on the NHLP Web site at http://www.nhlp.org/lalshac/hjn2004_conference_materials.htm