

HUD Section 3 Listening Forum

August 24, 2010

This document was prepared by a number of individuals in response to the request to attend the August 25, 2010, HUD Listening Forum on Section 3. These individuals represent a range of interests, including attorneys and advocates who specialize in housing and who have worked on Section 3 issues, an attorney who represents community-based development organizations, an owner of a Section 3 business concern, and a city attorney working to increase contracts to small businesses.¹

This document is tailored to HUD's request for information regarding barriers or common challenges to implementation of Section 3, best practices for providing employment, training, and contracting opportunities to Section 3 residents and businesses, and recommendations for strengthening the overall effectiveness of Section 3. The purpose of the document is to highlight key issues and recommendations and to assist HUD in developing policy guidance and new regulations. These issues are not new. Advocates have been seeking solutions to many of the below listed barriers for many years.

Barriers to employment of Section 3 individuals

- "New hire" standard is inadequate
 - Creates a loophole - contractors can avoid compliance by placing their new hires on non-Section 3 covered projects
 - Creates monitoring difficulties - hard to verify number of new hires/hours worked by new hires
 - To the extent that compliance is measured by new hires alone (as opposed to hours worked by new hires as enunciated by HUD in the Carmelitos Tenants Association v. City of Long Beach Determination of Non-Compliance), contractors can comply by conducting a hiring surge or employing Section 3 residents for only a short time
- Difficult to enforce - no clear/consistent sanctions for failure to comply
 - HUD rarely imposes sanctions
 - Local jurisdictions and PHAs rarely impose sanctions
- Project labor agreements issues - union hiring excludes most Section 3 residents; difficult to coordinate Section 3 hiring with union apprenticeship timelines
- Gender discrimination – most residents of public and assisted housing are female, most jobs created by Section 3 funds are in the building trades, and there are numerous barriers to women entering the building trades
- Lack of job skills – many Section 3 residents (particularly residents of public and assisted housing) lack the necessary job skills, work experience and other credentials such as GED and Drivers License.
- Lack of resources and coordination for training, pre-apprenticeship and on-the-job – training.
 - Ineffective coordination with Workforce Investment Boards (WIBs) and One-Stop Career Centers

¹ The individuals involved in creating this document are listed on Attachment 1.

- Lack of resources to pay for a Section 3 coordinator to make referrals, coordinate training and other supports, troubleshoot problems, monitor compliance, etc.
- Lack of public awareness of the obligations and benefits of Section 3
- Lack of transparency - no real time compliance information is available to the community
- Insufficient focus on job retention
- Insufficient focus on jobs for very-low and extremely low income individuals

Barriers to contracting with Section 3 Businesses

- Lack of support for Section 3 business concerns
 - Many are small, start-up businesses that need help with bonding requirements, lines of credit and insurance
 - Section 3 businesses lack technical assistance to build their capacity
 - Few jurisdictions maintain a list of certified Section 3 businesses, which puts the burden of identifying such businesses on developers and contractors and reduces the possibility of meeting the 10% goal.
- A Section 3 business concern is defined to include a business that hires individuals who are currently low income. An unintended consequence of this definition is that it promotes or rewards businesses that pay low wages.

Promising Models Meriting Further Study

1. Kansas City, Missouri

- All contractors/subs required to identify existing employees at time of contract award
- All recipients are required to submit Section 3 plan, which becomes part of the contract
- Quarterly compliance reports, with regular compliance monitoring
- City maintains list of certified Section 3 business concerns
- In 2007, 39% of all new hires 26% of the dollar amount of all contracts were Section 3

2. Housing Authority of Kansas City

- PHA staff person identified and charged with Section 3 implementation and oversight (including identifying and assisting Section 3 individuals to obtain jobs and training)
- Local oversight board composed of public housing residents, local housing advocate and PHA staff member, which holds monthly meetings when there is an ongoing construction project,
- If a section 3 worker is fired, the contractor has to justify his or her decision to the oversight board.
- Section 3 Plan for the agency; in addition, every contractor must submit a plan for how they will achieve Section 3 goals
- Review of contractor payroll to determine if there were Section 3 hires
- Adopts the “X Factor” as provided for in appendix to 24 CFR Part 135
- Took steps to coordinate with Workforce Investment Board
- Clear sanctions for failure to comply with Section 3 obligations - Liquidated damages of up to \$1500 per day for the failure to hire a Section 3 worker

3. NYCHA CM-Build/TRADES Program

- 259 public housing residents hired as union apprentices between 1/1/07 and 12/31/09
- CM contracts require 1 apprentice per \$2 million construction cost
- Over 350 residents completed pre-apprenticeship training over same period
- Workforce Investment Board funded NYCHA at \$725K per year for pre-apprenticeship

Things that HUD Can Do to Improve the Effectiveness of Section 3

1. Close “new hire” loophole and simplify Section 3 monitoring

- Use a percentage of all work hours to gauge compliance, not just work hours by new hires
- In the interim (until HUD can change Section 3 regulations to require a percentage of all work hours), hold all recipients to the standard enunciated in Carmelitos (30% of hours worked by new hires)
- Develop a HUD contractor’s payroll form modeled after DOL form WH-347, for use on Section 3 covered projects, with a column denoting an employee’s Section 3 status
- Urge recipients to require contractors to submit their certified payrolls electronically at the time of contract award and throughout the job (Electronic filing makes it easier to identify new hires and track duration of employment)

2. Simplify enforcement

- Develop a remediation/sanction protocol applicable to all recipients and contractors who fail to meet the compliance threshold
- Support an amendment to the Section 3 statute to create a private right of action for Section 3 residents and business concerns to enforce Section 3 through judicial action

3. Encourage linkages with union apprenticeship programs

- For Section 3 covered projects that are subject to a project labor agreement, give contractors the option of complying with Section 3 by hiring enough apprentices, who are Section 3 individuals, to meet the maximum journeyman to apprentice ratio, or alternatively, at least 1 Section 3 apprentice per \$1 million construction cost.

4. Training

- Provide funding, and encourage the Department of Labor (DOL) to provide funding, for career paths so that Section 3 individuals are ready for pre-apprenticeship training and on-the-job training for Section 3 residents
- Provide frequent trainings for recipients of HUD funds, contractors and residents of HUD assisted housing, including voucher tenants.

5. Section 3 contracting

- Make mandatory the “X Factor” in appendix to 24 CFR Part 135 for Section 3 contracting
- Change the definition of Section 3 business concern, so that businesses can not qualify by paying their employees wages such that they remain low income.
- Support or require recipients to establish contract set asides for Section 3 businesses

6. Transparency and public accountability

- Require that reporting agencies and jurisdictions fill out Part I columns D and E of HUD Form 60002
- For each Section 3 covered project, require recipients to generate publicly available quarterly reports detailing (1) the total number of hours worked, (2) the number of hours worked by Section 3 residents, (3) the total dollar amount of all contracts, (4) the dollar amount of all contracts awarded to Section 3 business concerns, and (5) all steps that were taken to extend economic opportunities to low income residents of the community.
 - Recipients should also report on “employment durations,” “full or part-time slots,” as well as longer term impacts of Section 3 efforts (e.g. ongoing employment/career outcomes.)
- Post the following on HUD’s website:
 - All HUD form 60002s that jurisdictions and PHAs have filed with HUD
 - A list of all jurisdictions and PHAs that have not filed the HUD form 60002
 - A schedule of the PHAs and jurisdictions that HUD will monitor in the coming year
 - Copies of all HUD administrative decisions regarding Section 3 review and compliance (e.g., the Long Beach determination and the St. Paul decision/ Voluntary Compliance Agreement)
- Contact public housing residents, legal services programs and other low income individuals and advocates for inclusion in HUD’s Section 3 monitoring and review process
- Provide training to Section 3 individuals and businesses regarding Section 3 and the Section 3 complaint process
- Report to the public HUD’s findings regarding the recent effort to get recipients to file HUD forms 60002. Provide information such as how many jobs were reported, by jurisdiction, the amount of contracts with Section 3 businesses, by jurisdiction, how many recipients reported full compliance with the 30%, 10% and 3% goals, what steps does HUD plan to take with those recipients who failed to report or reported that they did not met the minimum goals, etc.
- Revise the HUD form 60002 to reflect improved goals, to capture information on job retention, etc.

7. Make Section 3 a Factor in HUD Competitive Programs

- In all HUD NOFAs, consider the applicant’s past performance in meeting Section 3 obligations and the quality of their Section 3 plan (number, type and duration of jobs) as an element of the selection criteria

8. Improve Section 3 Regulations and Guidance

- Revise the Section 3 regulations in accordance with the suggestions made above and also issue a Guidebook on Section 3, both of which should eliminate current ambiguities by seeking to provide more specificity and clarity
- Aggregate the total amount of contracts over a three year period for purposes of determining whether the \$100,000 contract threshold, applicable to recipients other than PHAs, is met. Once the threshold is met, Section 3 would be applicable to the proposed contract and future contracts for the next three years.

- Revise the Section 3 regulations to explicitly state that contracts must be considered on a cumulative basis, and also revise the current FAQ # 23 (FAQ08.pdf) to require cumulative treatment of contracts
- Clarify the regulations to ensure that a “Section 3 covered project” is not defined to mean a small discrete activity (such as one, single-family rehabilitation activity), and expand upon the current FAQ # 23 (FAQ08.pdf) to be consistent with this definition

10. Internal HUD Improvements

- Break down silos within HUD between CPD, PIH, Multifamily, and FHEO. The HUD Secretary should improve departmental culture with respect to Section 3 by establishing and supporting an interoffice taskforce to improve Section 3 effectiveness within HUD. Such a taskforce should be comprised of relevant staff from CPD, PIH, Multifamily, and FHEO, and should report jointly on a quarterly basis to the respective Assistant Secretaries and the Secretary. At a minimum, the task force should ensure that CPD and PIH staff at both the Headquarters and Field Office levels are fully trained about Section 3 obligations and are instructed to work cooperatively with FHEO counterparts to secure better Section 3 compliance at the local level.
- Provide information and technical assistance
 - Offer frequent trainings and webinars on Section 3 to recipients of HUD funds and to resident leaders, such as tenant council representatives and RAB members
 - Provide technical assistance to recipients of HUD funds regarding Section 3
 - Issue FAQs in response to local concerns

11. Interagency Improvements

- HUD must fully engage in a collaborative effort with other federal agencies, particularly the Department of Labor (DOL), the Department of Education, the Department of Health and Human Services, and the Department of Energy, and the Department of Transportation to create a robust and effective workforce development strategy for public and subsidized housing residents so that those individuals can fully meet the employment needs of all recipients of HUD funds and Section 3 contractors.
 - For example, Section 3 resident-only crews should be trained and employed for the greening of public and subsidized housing. These training and employment opportunities can and should be used as career pathways into the broader range of construction industry occupations.
- Follow up on the Interagency agreements and proposals
 - Publicize more broadly the Department of Transportation (DOT) SEP-14 proposal
 - Follow up with DOL to determine the effects of the DOL Notice of Feb 17, 2009; have PHAs and WIBs coordinated, and if so, to what end?
 - Republish this notice, make it generally applicable to PHAs and jurisdictions subject to Section 3 and not limited to the context of ARRA and post on the HUD Section 3 page
 - Ask PHAs to report on any successes in working with WIBs

12. Work with PD&R to Assess Section 3

- Conduct a systematic field assessment of Section 3 initiatives to determine which methods produce the best results
- Conduct an evaluation of the number and characteristics of unemployed public and assisted housing residents who are seeking work

Things that PHAs and Jurisdictions Can Do to Improve the Effectiveness of Section 3

1. Demonstrate compliance with Section 3 to the “greatest extent feasible.”

- Until the regulation is changed, track and enforce compliance with Section 3 by the number of hours worked by new hires
- The recipient of the Section 3 funds, the PHA or jurisdiction, should adopt a Section 3 plan with firm goals and enforcement provisions
- Designate a staff person to coordinate Section 3 efforts and compliance
- Increase public awareness of the obligations and benefits of Section 3 by posting information, providing public service spots, training, including Section 3 preferences on job applications, etc.

2. Simplify enforcement

- Require contractors to submit a detailed Section 3 plan with firm hiring and contracting goals, which becomes part of the contract
- Require contractors to submit their certified payrolls electronically at the time of contract award and throughout the job (this makes it easier to identify new hires and track duration of employment)
- Consider a contractor’s past compliance with Section 3 in their determination of contractor responsibility (past failure to comply with Section 3 should be grounds to disqualify a bidder) Establish fines or penalties for contractors that fail to comply with Section 3, as part of the contract

2. Improve job retention and focus on skill development

- Encourage contractors to achieve percentage thresholds in each craft or job category, not just for the project as a whole, so as to support increased job skills.
- Encourage local recipients of HUD funds to use the maximum ratio of apprentices to journeymen.
- Support initiatives to keep residents working with the same contractor even if it is not on a Section 3 job

3. Encourage linkages with union apprenticeship programs

- For Section 3 covered projects that are subject to a project labor agreement, give contractors the option of complying with Section 3 by hiring enough apprentices, who are Section 3 individuals to meet the maximum journeyman to apprentice ratio, or alternatively, at least 1 Section 3 apprentice per \$1 million construction cost

4. Training

- Prepare a Section 3 implementation plan in collaboration with existing training programs, small business assistance centers, minority/disadvantaged/ women owned business organizations and job referral agencies
- Collaborate efforts with local WIBs and One-Stop Career Centers and local training programs to develop career paths as well as pre-apprenticeship and OJT and YouthBuild, by
 - referring residents, announcing job and contracting opportunities, and
 - urging these entities to provide services to residents of HUD assisted housing (public housing, Section 8 and voucher residents) and to very low and extremely low income individuals, generally
 - take affirmative steps to assist residents of HUD assisted housing, including voucher tenants, and other very low and extremely low income individuals develop career paths through Section 3 work.

5. Section 3 contracting

- Maintain a list of Section 3 business concerns
- Use the “X Factor” in appendix to 24 CFR Part 135
- Break contracts into smaller components as necessary to meet Section 3 contracting thresholds
- Require contractors to offer flexible (more frequent) invoicing and payment terms for Section 3 business concerns
- Coordinate technical assistance with small business assistance centers and minority/disadvantaged/women owned business organizations

6. Transparency and public accountability

- Establish numerical goals for hiring and contracting each year and report on progress
 - Complete Part I columns D and E of HUD Form 60002
- Establish a community oversight board to review and improve Section 3 compliance, which includes a resident, employment and housing advocates, a representative of an organization that provides job readiness and job training to very low and extremely low income residents and a representative of minority, women or disadvantaged owned businesses
- Post all Section 3 plans and 60002 forms on the City’s/PHA’s website

7. Other steps Cities/PHAs can take to improve compliance with Section 3

- Track long-term progress of Section 3 residents (e.g., duration of employment, career outcomes)

Attachment 1

Listed below are some of the Individuals who assisted with the development of the document entitled “HUD Section 3 Listening Forum,” date August 24, 2010

- Vic Bach, Community Services Society
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