



## HUD Publishes New Proposed Section 3 Rule to Direct Employment and Other Opportunities for Low- and Very Low-Income Persons

By Adam Norlander

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On April 4, 2019, HUD published a proposed regulation to implement the policies of Section 3 of the Housing and Urban Development Act of 1968, as amended (“**Section 3**”). The goal behind Section 3 is to ensure that employment and other economic opportunities generated by federal financial assistance for housing and community development programs is, to the greatest extent feasible, directed toward low- and very low-income persons, particularly recipients of government assistance. HUD’s current regulations at 24 CFR Part 135 were promulgated as an “interim” rule in 1994. Since then, HUD has undertaken several efforts to reform the Section 3 interim rule, but no final regulations have been issued. Senior HUD officials, including HUD Secretary Carson, indicate that HUD’s adoption of a final Section 3 rule is one of HUD’s top priorities.

As proposed, the new rule would represent an overhaul of HUD oversight and administration of Section 3 by integrating requirements into regular program oversight and enforcement mechanisms and removing a separate compliance review process.

Notable provisions of the proposed new rule, and proposed changes to the existing, interim rule, include the following:

**Applicability** – The proposed new rule would apply to:

- Public housing financial assistance including specified development, operating fund and capital fund assistance; and
- Assistance provided under certain other HUD programs (such as CDBG and HOME) for housing rehabilitation, housing construction and other public construction where the HUD assistance to a project exceeds a threshold of \$200,000 (which may be adjusted by notice in the Federal Register); or Lead Hazard Control and Healthy Homes program fund assistance in any amount received by a project.
- According to the preamble, the new Section 3 Rule would not apply to Section 8 programs despite being included in the current Section 3 rule.

### **Focus on Sustained Employment and Targeting of Certain Types of Workers –**

Under the proposed new rule:

- HUD proposes to count the proportion of total hours worked rather than counting the number of new hires.
- Hours worked by employees of “Section 3 business concerns” would count towards Section 3 requirements (irrespective of whether the individual worker qualifies).
- A new category of “Targeted Section 3 Workers” would be created that includes YouthBuild participants, residents of HUD-assisted housing and low-income persons residing within specified distances from the project (requirements vary slightly by program).
- Additional employment thresholds would be established for “Targeted Section 3 Workers.”
- The definition of a “Targeted Section 3 Worker” would include workers that met the definition when hired for as long as they are retained.
- HUD, recognizing that employment of Section 3 Workers in the professional services realm is difficult, proposes to count such workers’ hours in the reporting, but not to count professional services hours in the denominator.

### **Reporting Requirements** -- The proposed new rule:

- Shifts reporting requirements to align with standard business practices (e.g., not requiring the creation of new systems for time and attendance where none existed).
- Focuses more heavily on outcomes of labor hours rather than documentation of an employer’s compliance efforts.
- Requires documentation of efforts if numerical benchmarks are not met.
- Largely shifts compliance review responsibilities to HUD program offices.

### **Section 3 Safe Harbors** – The proposed new rule indicates that:

- HUD would move from a Section 3 target locked into regulation to benchmarks that would be published in a Federal Register Notice and updated regularly (at least every 3 years).
- Absent evidence to the contrary, HUD would assume a PHA or other recipient is in compliance with Section 3 obligations if it has met the benchmark.
- Initial proposed benchmarks were also published in the Federal Register, available here: <https://www.federalregister.gov/d/2019-06564>

### **Public Participation** – HUD indicates that:

- HUD will accept public comments on both the proposed rule and the proposed benchmarks until June 2, 2019.
- A stakeholder meeting is scheduled to be held at HUD HQ on April 22<sup>nd</sup>.
- To review and comment on the proposed Section 3 rule, please [click here](#).

Should you have any questions about this KH Housing Alert or require any further information, please contact Adam Norlander at [anorlander@kleinhornig.com](mailto:anorlander@kleinhornig.com) or (202) 495-7205.

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