



May 31, 2019

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

Submitted electronically via www.regulations.gov

Re: Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses, Docket No. FR-6085-P-01

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) thanks you for the opportunity to comment on HUD’s proposed rule on Enhancing and Streamlining the Implementation of “Section 3” Requirements for Creating Opportunities for Low- and Very Low-Income Persons and Eligible Businesses. NCSHA supports HUD’s efforts to foster employment, training, contracting, and other economic opportunities generated by HUD financial assistance, and have long urged HUD to update its regulations implementing Section 3 requirements—a task not taken since 1994. Most recently, in response to the Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777 (Docket No. FR-6030-N-01), we urged HUD to clarify definitions and explain when scope and monetary thresholds trigger Section 3, recognizing the need for state flexibility and minimal administrative burden.

NCSHA represents the HFAs of the 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. HFAs administer a wide range of affordable housing and community development programs, including HOME Investment Partnerships (HOME), the National Housing Trust Fund (HTF), Section 8, Emergency Solutions Grants (ESG), Community Development Block Grants (CDBG), and Housing Opportunities for Persons with AIDS (HOPWA). HFAs also administer down payment assistance, the Low Income Housing Tax Credit (Housing Credit) and issue tax-exempt private activity bonds (Housing Bonds) to finance affordable housing for renters and home buyers.

NCSHA is a nonprofit, nonpartisan organization created by the nation's state HFAs more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing.¹ In addition to its policy and advocacy work, NCSHA provides HFAs education and training and facilitates best practice exchange among them.

We appreciate that HUD drafted this proposed rule with the goals of creating more effective incentives for employers to retain and invest in their low- and very-low income workers, streamlining Section 3 reporting requirements by aligning them with typical business practices, providing for program-specific oversight, and clarifying the obligations of entities that are covered by Section 3. While many of the proposed changes approach these goals, we urge HUD to consider more flexibility for recipients—including HFAs—to better align Section 3 with the contracting and employment realities in their states while minimizing administrative burden in a resource-constrained environment. We believe HUD's proposed rule will make the Section 3 program more effective and compliance more streamlined, especially if HUD amends it to take into account the following comments.

Better Align Section 3 Reporting Requirements with Contracting Realities

In the proposed rule, HUD requests comments on tracking and reporting labor hours, instead of new hires. HUD argues that tracking labor hours will better align with business practices for most construction contractors working on HUD-assisted or insured projects, as they are subject to federal prevailing wage requirements. This is not true for many recipients and contractors, however, and thus the idea that tracking labor hours is less burdensome is likely not the case. For example, the majority of Section 3 projects in many states do not trigger federal prevailing wage requirements. For these projects, tracking labor hours will add administrative burden instead of reducing it.

To better align Section 3 reporting requirements with many recipients' business practices and reduce administrative burden, NCSHA recommends that HUD allow state recipients, including HFAs, to report qualitative efforts (as proposed for small Public Housing Authorities). Alternatively, recipients should continue to be able to track and report new hires. While the proposed rule states that HUD will permit "a good faith assessment of the labor hours" for those employers that do not track this, recipients could still be required to establish new compliance procedures, including determining how to protect the privacy of Section 3 workers and businesses when supplied with labor hours supporting documentation.

Raise Section 3 Thresholds to Reduce Compliance Burden

The proposed rule would define a Section 3 project to be a housing rehabilitation, construction, and other public construction project where the HUD assistance exceeds \$200,000 and all projects that receive HUD's Lead Hazard Control and Healthy Homes programs. NCSHA commends HUD for more

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

clearly defining Section 3 thresholds, as this has been of longstanding confusion in current regulations, but is concerned that this threshold is too low and will create an undue compliance burden for small projects that are unlikely to result in Section 3 opportunities.

We recommend that HUD apply a larger dollar amount threshold for Section 3 projects to reduce compliance burden without significantly reducing the funds subject to Section 3. As detailed in the proposed rule, a \$400,000 threshold would “increase the number of recipients exempted from Section 3 requirements to 20 percent and only increase the amount of funding exempt from Section 3 coverage to 1.5 percent.” We also recommend higher thresholds for HUD’s Lead Hazard Control and Healthy Homes programs.

Better Align Section 3 Service Areas to State Employment Realities

The proposed rule seeks to define Section 3 “service areas” as within a one-mile radius or “within a circle centered around the worksite that encompasses 5,000 people.” Several state HFAs have expressed concern with this definition. State HFAs work throughout their states, in urban and rural areas, and in high population density and low population density areas. Outside of metropolitan areas, in areas of low population density, there often will not be sufficient numbers of residents or businesses that are capable of performing the work required for housing and community development projects. In some rural counties, the closest economic center may be located multiple counties from the proposed property site, making it impossible to find qualified workers in a more narrowly defined area.

We urge HUD to allow residents and businesses from anywhere in the state to receive priority consideration or to give state recipients deference in establishing areas for purposes of meeting the state’s Section 3 requirements. The diversity of states, areas included in state non-entitlement jurisdictions, and participating jurisdictions themselves requires that HUD adopt a solution that is not a one-size-fits-all approach to maximizing Section 3 compliance. Without this discretion, small rural counties, areas separated from major economic centers, and areas with residents with the greatest need may find it difficult to successfully use federal funding because of the inability to meet Section 3 goals for hiring and contracting.

According to the proposed rule, HUD states that it plans to create and provide “at the issuance of a final rule a web tool for recipients, subrecipients, contractors, subcontractors that will help in determining the geographic area that encompasses Targeted Section 3 workers.” If HUD proceeds with the current definition of service area, we urge HUD to release and test this tool prior to the final rule being issued. Specifically, we recommend that HUD test the tool with state and local recipients, subrecipients, contractors, subcontractors to determine its accuracy and effectiveness, and what improvements need to be made before implemented.

Proposed Rule Streamlines Reporting Timing and Program Oversight

NCSHA appreciates that the proposed rule seeks to streamline reporting requirements by requiring the general reporting framework or qualitative reporting be submitted annually to HUD “in a manner consistent with reporting requirements for the applicable HUD program.” This is an appropriate timeframe, providing for regular feedback while reducing the administrative burden of more frequent reporting or reporting out of sync with other program requirements. We look forward to working with HUD to further streamline these reporting procedures, including how to integrate them into current program-specific reporting systems.

NCSHA also appreciates that the proposed rule would incorporate Section 3 compliance into regular program oversight of the applicable HUD program offices. HUD program office staff have relationships with recipients—including HFAs—and understand the programs, two important components to ensure that Section 3 compliance is streamlined. We urge HUD to provide program office staff with this Section 3 oversight role in the final regulations.

We appreciate your consideration of these comments and are ready and willing to help make Section 3 program more effective and compliance streamlined.

Please contact me if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives