

Section 3: Non-Profit and Private Sector Partners
Commonly Working with PHAs
May 11, 2018
Session Transcript¹

Attendees:

Stephen Green, NHP Foundation
Juan Powell, The Community Builders, Inc.
Brian Sawnton, Gorman & Company
Milton Pratt Jr., Michaels Development
Company
David Ambromowitz, Goulston & Storrs
P.C. and YouthBuild
Ivy Dench Carter, Pennrose Development
Thom Amdur, National Housing &
Rehabilitation Association

HUD Staff:

Aaron Santa Aaron, OGC
Bernita James, PIH
Emily Gargiulo, OSPM
Eric Christensen, PIH
Merrie Nichols-Dixon, PIH
Tiffany Johnson, OSPM
Tom Davis, HSG
Vicki Longosz, OGC

HUD's welcome remarks.

Santa Anna and Davis: HUD staff welcomed the participants and introduced the discussion. HUD OGC noted that the Department's plan to revise the Section 3 regulations was announced in the Semi-Annual Agenda of Regulations and appears on www.reginfo.gov. This conversation is a listening session, to gather perspectives and information, and is not an attempt to get consensus on any topic. The proposed rule will be subject to public review and comment. The goal of this session is to learn what has worked for the participants in the conversation and what has not worked, in order to inform HUD's thinking about the Section 3 framework. HUD will offer a series of topic areas and looks forward to participants' thoughts and reactions to them.

Challenges Associated with Effective Implementation of Section 3

Amdur: Section 3 is valuable to create opportunities for residents of assisted housing, but there are significant challenges in complying with the Section 3 rules. There is often tension between the Section 3 requirements and the union and prevailing wage requirements. When we hear feedback from general contractors and their subcontractors, it is often that they can't hire Section 3 workers because the potential workers don't have union cards.

Carter: A major issue is the training piece of the puzzle. Finding qualified Section 3 workers with skills appropriate for major construction activities, not just trash pick-up and cleaning, is difficult. There needs to be meaningful training built into the system for Section 3 to be effective.

¹ Due to documentation issues, this record of attendance and comments may be incomplete. Names indicate the participants who primarily offered the comment, but often others reiterated or supplemented the comments, so attribution is not certain.

Carter: In terms of hiring Section 3 businesses, the effort needs to be made long before the specific redevelopment or construction activity. The challenges are in getting the Section 3 business insured, overcoming bonding issues, ensuring they have the capacity to accurately estimate the cost of the project, etc. We need to set the companies up to be successful, otherwise we'll do more harm than good. We've been able to do that with some of our HOPE VI projects, where there's a long lead time. Often, other businesses involved in these efforts don't know that Section 3 applies and how to work with it.

Green: Hiring qualified people is difficult. Local residents who meet the baseline qualifications – you can train them to do the work, but not to pass a drug test.

Green: There is inconsistent administration of Section 3 across the country. It varies state to state, block-grant agency to block-grant agency and PHA to PHA, as they all apply it differently. We need to know the rules. Sometimes the rules aren't clear. For example, does Section 3 apply to all phases of a multi-year project or only to the phase with federal money or only to the work paid for with the federal money? Some agencies are brutal about their interpretation of the rules – their intent is good, but their methods border on improper.

Abromowitz: YouthBuild does training in construction techniques so participants can get OSHA certified. The applicants may not have passed the drug test initially but they get motivated and eventually can pass. YouthBuild is in 260 places across 42 states, but only about 8,000 young people per year are being trained. We know local players, such as PHAs, would like to start their own YouthBuild programs but the rules around social services training don't allow the PHA to set aside enough funds to implement it. YouthBuild is a successful program with a 25 year history, but with resource limitations.

Abromowitz: Owners and contractors can quantify everything about their transactions other than Section 3 and job training expectations. They can quantify the credits and the burdens – we know what we get and lose for complying or not complying. With the current Section 3 requirements, there is no way to quantify compliance. Do I get 110% of the grant that I qualify for because I am Section 3 eligible or compliant? No. Most owners in the affordable housing industry would like to train and hire low-income people in need of the opportunity, but the owners can't take on the associated costs.

Swanton: General contractors are not great at job training (said by a representative of a company that is both an owner and a general contractor). There is no incentive for exceeding the benchmark and no punishment for falling short. For example, we worked on a Rental Assistance Demonstration (RAD) project with a 2-year construction schedule. It was a 38 acre project, with 300 units needing historic rehabilitation. We did job fairs and tried to build up Section 3 interest. Teenage kids came with their mothers and then they wouldn't apply or weren't skilled for the jobs. We don't have the capacity and infrastructure to case manage the Section 3 employees to be successful and to sustain employment. The Section 3 workers need more training.

Swanton: Local governments (entitlement jurisdictions) have no idea how to implement Section 3. It would be helpful to train the local governments where HUD anticipates large volumes of construction activity.

Swanton: There are a lot of scam artists posing as Section 3 business concerns. You can get one guy with a letter from a HUD office, and he goes out trying to recruit a workforce of young

people into his “company.” They can’t deliver on the contract, but unsophisticated public agencies select them in part for their Section 3 workforce.

Swanton: HUD should include developers in their Section 3 trainings. The developers and the general contractors are the ones who do the hiring.

Powell: We need to figure out a way to get people into the pipeline who either are, or can become, qualified for the work. Capacity building is the critical link. The low-income applicants need to have options for training to become skilled.

Should HUD Focus on a Revision Using the Current New Hires Framework or Shift to a Labor Hours Framework.

Amdur: The current paperwork regime is burdensome and can be very onerous for the general contractors. If implemented right, a labor hours framework could be a data export from the payroll systems rather than a paperwork-intensive compliance regime.

Green: Labor hours could be an improvement, but implementation is key. Washington DC requires reporting of labor hours and it’s a rough implementation. There is a real cost to the reporting requirements – under either of the current framework or a labor hours framework. It would make sense to create a mechanism to be compensated for the cost or an incentive to compensate for the cost and the burden. In Houston, if they think you aren’t complying, then they won’t approve your draw. That’s a strict standard with a lot riding on it, and then you have less flexibility. The key is to be clear about what is required. Aligning the reporting with Davis Bacon would be helpful because Section 3 requires a lot of unique paperwork.

Unknown: The current Section 3 regulations are aspirational, which results in varied implementation.

Swanton: The challenge in getting Section 3 workers – whether tracked by new hires or by labor hours – is in attracting qualified subcontractors. The subcontractors don’t want to do Davis-Bacon reporting, so adding Section 3 requirements makes it harder. Milwaukee, Madison and the State of Wisconsin already require labor hour reporting, so aligning Section 3 to labor hours would reduce the burden. The subcontractor’s argument for not bidding is already the complexity of reporting. The more HUD can reduce that, the better. However, HUD should think about the smaller jobs as well – the ones not covered by Davis Bacon requirements. If Section 3 adds complex reporting at the level of detail required in a Davis Bacon project for small jobs, that would be a significant added burden and a significant challenge, especially in rural markets.

Abromowitz, Amdur, Powell: The key question is whether one system or the other would encourage the creation of training opportunities and encourage retention. A lot of general contractors and subcontractors are using their existing workforce so there are no new hires – those contractors are in effect exempt from Section 3. Perhaps with a focus on labor hours there is more flexibility in addressing the challenge of finding qualified people – the employers can train in place and the worker can be Section 3 at the next job and the next. Ideally, the worker should be classified as Section 3 so that the worker can get training and grow in the trade and still count for Section 3 reporting. The rule should give credit for longevity. Eventually, the worker might not live in a distressed area, but could be treated as a Section 3 worker for three years or some other period of time.

Contracting

Carter: The economic opportunities should be focused more broadly than just construction. There are other parts of the process where we can offer opportunities, such as office staff. The City of Baltimore brings one or two summer youth into their offices. People often lump these issues all together in the construction field. The low-income folks not in the workforce need exposure to the requirement to get up every day, get dressed, rely on child care and the other elements of life that surround having a job. This is true not just for public housing residents but also other people in the community. We want to hire from the community and engage the entire community.

Green: It's hard to make a connection between a job on the soft side and a construction contract. There may be value to focusing more energy on Section 3 business concerns so that they build sustainable operations they can take from project to project. Perhaps HUD should take the focus off the new hires piece of the rule. Can HUD build in more incentives for the development of Section 3 business concerns? For example, some public housing authorities have implemented bidding advantages for Section 3 businesses – the Section 3 business concern can be up to 10% higher in its bid and still win the contract. Having a database of Section 3 business concerns that developers and contractors can use is helpful. Smaller public housing authorities don't have the staff and capacity to comply with the Section 3 requirements and should have flexibility.

Abromowitz: Is there a way to give Section 3 credit to post-completion work on a project, such as the hiring of maintenance staff after a building is finished? Credit for that would open up a new pool of jobs for these low-income candidates. Could people be Section 3 certified, so that the person retains their Section 3 status as they move from job to job? It could be a credential like a union card. YouthBuild participants are always looking for more credentials.

Incentives

Green: These requirements are a stick – you need a carrot too. People will complain loudly about a labor hours requirement if the DC experience is any guide. The local construction costs have gone up 10-20% because of a DC requirement that 51% of labor hours on a project must be local residents. The incentive is money.

Powell: “Good guy” firms should have a competitive advantage when submitting their proposals. If a general contractor's workforce includes a number of Section 3 employees, even if not on this job, the developer should get credit for that.

Swanton, Green: It would be valuable to have bidding incentives to select firms with some sort of Section 3 certification or Section 3 track record. The bar to being a Section 3 business is not that high in most metropolitan areas since the definition of a Section 3 worker is 80% of AMI. A strong employment market also means it is difficult to incentivize, so it would be good to allow for differences in market environments.

Amdur: The key to incentives is that they need to be tangible benefits, ideally quantifiable benefits, to offset the recruiting costs. Example ideas include preferred underwriting terms (a lower MIP rate, a lower required debt service coverage ratio, a higher loan-to-value authority or an ability to exceed FHA statutory limits) in FHA-insured projects, or access to more dividends at limited dividend properties, or authority to pull from residual receipt accounts, all of which might be available if you actually achieve specific Section 3 results. Fannie and Freddie have

implemented light incentives in their underwriting and the borrowers commit to them – for example, green incentives, 25 basis points lower interest rates with resident services, and similar programs. These are very quantifiable and the specific tangible benefit in exchange for meeting Section 3 results is the incentive. The challenge is that the incentive is often set up front and then HUD would need to monitor to ensure execution.

Would it be helpful if you knew that you were okay if you hit a certain benchmark, and are there incentives that could be created based on what you are already doing with Federal programs?

Green: Monitoring of compliance is very uneven right now, with significant regional variation. If HUD were to use Section 3 outcomes to access other benefits, HUD would need to eliminate the inconsistencies in compliance oversight.

Swanton: This is a good line of thought. It would encourage us to work with Youthbuild.

Powell: If Section 3 outcomes on previous projects were built into Notices of Funding Availability, Section 42 low income housing tax credit qualified allocation plans and scoring for competitive 9% low income housing tax credits, that would be a powerful incentive. People would build contributions to training into their budget if they got credit for it in the future. HUD would need to work closely with Treasury to make some of this happen.

Green: Existing incentives are not clear. There is an existing three- or four-year-old Department of Labor/HUD memo that if you hire YouthBuild participants, then you get Section 3 credit. No one knows what this means so it doesn't have much impact.

Unknown: Employers should get credit for prior hires on non-HUD jobs, and for hiring people coming out of Department of Labor programs. Perhaps HUD could loosen the tie to the specific project in evaluating Section 3 compliance.

Appropriate Thresholds for Applicability of Section 3

Amdur: The size of the project is important. HUD needs to set a reasonable threshold. There was a project where the public housing authority had to go through the Section 3 process when they were doing an LED lightbulb replacement initiative.

Green: Perhaps consider a \$5 million project-size threshold before applying Section 3. Most multifamily development transactions are bigger, so you would catch most development activities, and a robust Section 3 initiative is as much work for an 80-unit project as it is for a 40-unit project.

Swanton, Amdur: The size of the community matters too. It's hard to get good Section 3 results on a larger project in a small community. A \$10 million project in Yuma is very difficult because there isn't a workforce in Yuma. Consider metro- and non-metro areas in setting thresholds and benchmarks. Scaled requirements based on project size or geography would be helpful.

Swanton: Perhaps align the Section 3 benchmarks with the Davis-Bacon benchmarks.

Miscellaneous Topics

Amdur, Carter, Swanton: Section 3 efforts are often misaligned. The developer or contractor often does the Section 3 marketing and outreach at the beginning of the job, when assembling their major subcontractors. However, most of the jobs appropriate for Section 3 hiring are at the back end of the construction process. Or even in property maintenance. If you could get credit on one job to benefit you when you seek or implement a future job, that would be helpful.

Amdur, Abromowitz: The most valuable outcome might be to focus on the folks in distress. Perhaps there's a way to give more or better credit for hiring harder-to-hire individuals. For example, someone with a VASH voucher, or a veteran coming back from overseas, could be a special target for Section 3 hiring. The Department of Labor's Workforce Innovation and Opportunity Act regulations have federal definitions for categories of workers and employers get a financial benefit for certain hires. There might be additional Small Business Administration or Commerce Economic Development Administration categories that could be integrated into the Section 3 framework.

Swanton, Abromowitz, Powell: One challenge is staff to make the necessary connections and communicate opportunities. Someone needs to be the convener of the conversation, but no one is currently filling this role. Workforce Investment Boards can convene the conversations, but they are decentralized and quality varies across the country. Perhaps HUD can work with the Department of Labor to emphasize Section 3 efforts. Perhaps HUD field staff should know what projects are coming down the pipeline and make some of these connections. The Section 3 database could be useful to search for Section 3 businesses.

Swanton: Section 3 doesn't apply to transportation projects, but it should. If it did apply, there would be more funding and a better training infrastructure in place.

Swanton, Green: Standardization of the necessary paperwork would be helpful. It would be helpful to have model forms, but not ones that the participants get in trouble for not using. They should not be required. Many organizations work in several states with different requirements. As a result, every job must have a Section 3 consultant, although even with standardization, the consultants would still be necessary.

Swanton, Green: For Section 3 to be truly successful, there needs to be a companion training infrastructure. The willing employers are there, but there's no pipeline of workers. There is a lot of training happening out there, but it is not well-coordinated.

Carter, Green: There also needs to be case management. Mental disabilities, abuse, and other issues are the real problem. The workers often need support with life skills. Transitioning once they are trained into a specific job is also an issue. The impact of case management is strong.

Carter, Green, Powell: A lot of the residents of assisted housing don't want a construction job. The early morning hours can be difficult for single mothers given the schedule for their children. HUD needs to make sure that a variety of jobs count, for example the workers in the mailroom in the law firm, the clerks, the leasing agents, safety and security workers, energy companies, property management companies – all of these are robust employment environments for new workers. We should be thinking about how they can be part of this also.