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Re-distribution of an article from HUD, "Lifting the Fog on Section 3"

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Housing Agency Procurement Assistance

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You may have received the following article on a HUD List Serve. There is, in my opinion, some useful "real life" information within the following article; it is very helpful when HUD shares such information with housing agencies. If you have not done so, I encourage you to sign up for the HUD Section 3 Listserv at www.hud.gov/section3 so you can receive this kind of information from HUD.

However, there is one small piece of information in the article that I wish to warn housing agencies about specifically: "[The Agency] also allows contractors to opt out of their Section 3 obligations by paying a portion of their contract back to [to the Agency]."

It is my impression that this may be a misprint or misquote that will be soon be corrected in some manner. Accordingly, I continue to caution housing agencies to not make this "contribution" option a part of their stated Section 3 work plan.

I am aware that there are a number of housing agencies that have, during the past few years, accepted or required contractors to, as an option, contribute monies (typically a percentage of the awarded contract) towards a Section 3 training fund administered by the agency; and those agencies have accepted this "contribution" as a way for the contractor to satisfy the requirements of Section 3. A close reading of 24 CFR 135 (a/k/a the Section 3 regulation) will show that no such option is provided for within the regulation. I have taught for some time that this alleged option is a myth that does not satisfy the regulatory requirements of Section 3. This does not, in my opinion, mean that agencies are prohibited from accepting such "contributions;" it just means that such a contribution will not allow an agency to certify that the contractor has met his/her Section 3 obligations.

A further comment: This percentage "contribution" is not really a contribution--remember, it is a contract cost and when the contractor is aware that they are required to make this contribution, they will ensure that their cost offer to the agency includes this cost--such is the manner that capitalism works! Accordingly, this "contribution" realistically is just a pass-through in that the Agency pays the contractor for the work provided, which includes the contribution amount, then the contractor simply returns the monies to the agency in the form of a "contribution." My opinion is that such is a wasted effort that creates a false sense of compliance or usefulness.

I hope that this information helps.

Regards,
Michael S. Gifford, C.P.M., CPSD
Housing Agency Procurement Assistance

I have a consulting practice providing procurement- and contracts-related mentoring, training, and technical assistance to housing agencies. I help housing agencies conduct procurement and contracts in a HUD-compliant and "best practice" manner. [Click here](#) to see my full resume. Please do not hesitate to contact me if you have any questions or concerns pertaining to procurement and contracts (initial answering of questions is "no charge"). As I am either on-the-road or on the phone a lot, an initial contact by e-mail is best; please be sure to include your return telephone number (office/cellular) so that I can call you back.

ORIGINAL ARTICLE DISTRIBUTED BY HUD

Shelterforce *The voice of community development*

Fall/Winter 2013/14 » Economic Development » October 02, 2014

Lifting the Fog on Section 3

When it's more appealing to circumvent the law requiring that jobs in public housing construction go to qualified residents than to follow it, something needs to change.

By Katy Reckdahl

Here is the link to the published article

http://www.shelterforce.org/article/3878/lifting_the_fog_on_section_3/

Alfred Marshall lives directly across the street from a section of his World War II-era brick New Orleans housing complex, B.W. Cooper, that is undergoing redevelopment.

Looking out his window in the morning, he could watch every part of the construction yard. He saw every new worker hired. No one looked familiar.

"Nobody from our community was working there," said Marshall, who had some carpentry experience. He asked foreman on the site, who sent him to a nearby "hiring trailer," but it was never open. The situation seemed all wrong, he said.

Two years later, Marshall is a near-expert on Section 3, a law that requires contractors funded by the U.S. Department of Housing and Urban Development to give preference to qualified residents when making new hires. And the Housing Authority of New Orleans (HANO) is one of a handful of housing agencies now prioritizing Section 3 requirements as a way to combat the extreme poverty and sporadic employment faced by many public-housing residents.

Section 3 was first created 45 years ago, as part of the Civil Rights Act of 1968, and has been strengthened since then. But it's little known and scarcely enforced.

"I didn't know nothing about the law," Marshall said. "I was just trying to get local people on the yard."

Other housing authorities are also motivated by opportunity more than the law. Trinh Nguyen, chief of staff at the Boston Housing Authority (BHA), remembers studying Section 3 policy and believing that it "could be a goldmine for our residents."

Section 3 In Action

Section 3 has unique potential for low-income communities, because it creates employer demand for workers living in poverty, according to a 2009 analysis by Deborah Austin, head of the Community Development Project at the Lawyer's Committee for Civil Rights Under Law in Washington, D.C. "Unlike other federal set-aside programs that focus on contracting opportunities for certain classes of small and minority-owned business entities, Section 3 operates in large part to create job opportunities at the individual level," she says.

Three years ago, Nguyen designed an institutional framework for Section 3 timed to the launch of Building Pathways, a pre-apprenticeship program established in advance of a \$63 million green retrofit on BHA properties. Her colleagues in Philadelphia and New Orleans are also making Section 3 jobs more accessible through pre-apprenticeship training programs.

Each agency has its own approach to the apprenticeships, trainings, and Section 3 job slots. And at this point, it's difficult to draw conclusions about pre-apprenticeship programs across agencies, since they vary so widely: While participants are just getting underway in New Orleans, they have been successfully tracked for two years and carefully bird-dogged in Boston, whose program graduates complete intensive, seven-week classroom and hands-on trainings and are given free admission into apprenticeships and first-year apprenticeship job placement as carpenters, plumbers, electricians, and other trades through the Boston Building and Construction Trades Council. They now have about 600 people show up for informational meetings, even though the semi-yearly training cycles only include 15 trainees.

In Philadelphia, on the other hand, administrators scrapped their 14-year-old training program because it was producing few sustainable jobs: only 100 out of 828 program graduates were working, they found. So this summer, they canceled the long-running program and started a new self-administered program that focuses not only on Section 3 but on internal hiring, with the ultimate goal that residents make up 25 percent of the total agency workforce.

But despite their varied perspectives on job training and apprenticeships, agency administrators spoke in a chorus on one point: No Section 3 jobs program will work without stringent monitoring.

"It's a lot of commitment to do contract compliance. But the agency has to make that commitment. Otherwise, people think Section 3 is a joke," said Nguyen. To check certified payroll records regularly, BHA purchased a software program last year to assess compliance.

"We have been very stringent," Nguyen said. "We know we have the upper hand: they're not going to walk away from money."

Meaningful reporting is a top priority, HANO administrative receiver David Gilmore concurred. "You have to have a reporting system in which everyone is kept honest," he said. If agencies don't set tight parameters about reporting, they can get into what Gilmore calls "a slippery slope game."

Disobeying the Spirit of the Law

As it turns out, slippery slopes are common within the Section 3 program, because the federal requirements leave much to interpretation. For instance, Section 3 law requires that low-income workers total 30 percent of new hires, but it doesn't specify how many hours each new hire must work. So some contractors satisfy the requirements by "churning"—hiring a series of new workers for one day each, typically in a laborer position, which pays the lowest wages on most construction sites.

Also, the law requires only that contractors provide low-income residents with job training and employment "to the greatest extent feasible." So, if contractors' numbers are low, all they have to do is throw up their hands and say that they couldn't find qualified low-income workers for open positions. Advocacy groups, including the National Housing Law Project and its Housing Justice Network, have long tried to change this part of the law. In New Orleans, at least, HANO's bid documents no longer contain that phrase. "It is an escape hatch," Gilmore said. "People will always find reasons that they couldn't."

Last year, to assist contractors having difficulty matching Section 3 job openings with low-income residents with the right skill sets, HUD's Office of Fair Housing and Equal Opportunity launched a pilot Section 3 Business Registry Program in New Orleans, Miami, Detroit, Los Angeles, and Washington, D.C. to make connections between contractors and businesses who hire low-income residents. HUD spokeswoman Shantae Goodloe said that the department may expand the program nationally.

In Philadelphia, public-housing residents can go to 13 computer labs to upload resumes and look for jobs through the agency's Resident Job Bank. If contractors can't locate qualified PHA residents despite Section 3 obligations, they must contribute up to 3 percent of their contracts to a scholarship fund, run by a nonprofit called PhillySeeds. A few months ago, PhillySeeds, which is part of the Philadelphia

Housing Authority, awarded \$160,000 in scholarships from that pot of money, said the PHA's CEO, Kelvin Jeremiah.

HANO also allows contractors to opt out of their Section 3 obligations by paying a portion of their contract back to HANO.

In addition to the law's loopholes, Section 3 monitoring had been notoriously slack for years. Prior to 2006, HUD received only *4 percent* of required Section 3 reports from state and local governments and housing authorities, according to Congressional testimony by John Trasviña, who served as HUD's assistant secretary for its Office of Fair Housing and Equal Opportunity from 2009 until he stepped down in 2013. In 2009, Trasviña had co-signed a letter that ordered HUD grantees to file reports or risk losing their grants.

Two years later, almost 25 percent of agencies had filed reports, Trasviña testified to Congress. "However, in more than 80 percent of the reports submitted, the recipient failed to meet the minimum goals and did not include valid explanations for this failure," he noted.

One of the long-term weaknesses of Section 3 comes less from the program's structure than from the temporary nature of construction: no housing authority these days has a never-ending stable of construction jobs. And once the construction ends, many residents are back where they started, said Erik Solivan, Philadelphia Housing Authority's executive vice president for community operations and resident development. "We'd see a temporary spike in Section 3 hiring," he said, but then the apprentices were jobless. "They went with their union cards back to the union hall, where hiring is based on seniority and they were toward the bottom of the seniority list."

But Gilmore, who has headed up housing authorities in several cities, sees union apprenticeships as providing "a job sponsor for the rest of your life" and is hopeful that the 30 youth currently participating in HANO's pre-apprenticeship program for \$8 an hour will find sustainable work through the two-year "Career Academy," a full-service training, placement, and support program hub for young adults ages 18 to 30, implemented by Urban Strategies. HANO's newest redevelopment, the Iberville complex, not far from the French Quarter in New Orleans, could provide many of the jobs. Without that extra support, Gilmore sees the potential for some pitfalls that Solivan described.

"While projects are active, residents receive some good training and some money," Gilmore said. "But they don't gain enough experience or training to keep jobs. So people end up going right back to where they were before, because they can't get jobs."

Getting the Housing Authority on Board

Over the past year, HANO and STAND, a grassroots organizing group, worked closely together to create a project labor agreement to decide upon the wages and training that would be required at Iberville. Gilmore was forced to scrap the agreement once he was notified that Louisiana, a "right-to-work" state, has a law barring public agencies using public money from mandating union-labor agreements, but he's discussed the possibility that a similar agreement could be fashioned if private funders step in to fund some of the construction.

Unless that happens, Gilmore hopes that the Career Academy will fill some of those gaps. "I want labor unions to teach our participants construction courses, to get kids into apprenticeships. They're our employees. We can enter into agreements with unions. We just can't require that our contractors do that."

Cynthia Wiggins, a 20-year resident leader at HANO, is overseeing Section 3 hires at Iberville for the demolition. She requires that every applicant fill out a pre-employment application in person at an office on the Iberville footprint. She feels like that gives her a chance to talk with each person and verify qualifications. "People say, 'I'm a carpenter,' but they're really not," she said. She talks with them about their work experience so that the applications reflect more of what she calls "real skills."

Wiggins wishes that there was a training school that she could send people to get them prepared for the construction phases that are coming. "You know you can't do construction with people who don't have experience," she said. Administrators in Philadelphia, Boston, and New Orleans have found that many people need intensive reading and math assistance before they can even enter a construction-training program. Drug tests, lack of childcare, and transportation are other common barriers. Philadelphia and

Boston bar those with positive drug tests but help pay for transportation and childcare, while one developer in New Orleans, faced with high rates of positive drug tests opted to delay testing until weeks into the program, when participants felt more buy-in. These discussions seem light years ahead of early 2011, when Alfred Marshall couldn't seem to get himself or his neighbors hired at Cooper. As construction ramped up, Marshall put on his workboots and hardhat every morning and walked across the street, ready to be hired. But no one would allow him to put his skills to work.

A fellow resident told him about STAND with Dignity, a project of the New Orleans Workers' Center for Racial Justice, whose staff had expertise about Section 3 law. Soon, large groups of workers were attending HANO's board meetings, asking the agency to take a second look at the Section 3 hiring reports submitted by contractors.

STAND "focused the housing authority's attention on Section 3," said Gilmore, who listened and opened doors, because he supports the active use of Section 3, he said. "If you're going to spend millions and millions of federal grant money in projects of one sort or another, some of that should go to help uplift residents' lives," he said.

Gilmore allowed STAND volunteers to come into HANO's offices and audit contractors' payroll records. STAND highlighted questionable data and asked for policy changes. They testified at every monthly board meeting and they visited the hiring trailer every day. They asked why most resident workers, no matter what work they were doing, were earning \$8.01 per hour, the lowest possible wage, designated for laborers. They saw subcontractors hire new workers who filled out applications on the back of a pickup truck, instead of the hiring trailer.

Not long after, HANO hired the first of a series of Section 3 compliance officers. But to close all the loopholes took months. At one point, Gilmore withheld payment from the general contractor for not complying with his contract with HANO and its Section 3 guidelines.

"I get impatient about that stuff," Gilmore said, recalling the hiring trailer inexplicably closed during business hours, jobs that weren't posted, and a hundred other "little glitches." At times, he said he felt like, "Do we have to watch these guys 24 hours a day?"

Luckily, through Cooper's residents, Gilmore basically did have eyes and ears round the clock, said STAND attorney Colette Tippy. "The important piece was that the community was there, watching," she said. And as a result of the hard work done at Cooper, the Section 3 process began when the first contractor drove on the site at Iberville. "Iberville is already better," Tippy said, noting that 30 Section 3 workers have already been hired there, even though demolition has just begun.

One of the hardest parts of the process at Cooper was finding ways for residents to communicate directly with contractors, who at first felt as though they didn't need to respond to resident complaints, said Donna Johnigan, president of the Cooper's Resident Management Corp., who helped to facilitate a few heated meetings in the early part of Cooper organizing. "Don't talk around me, don't talk about me, talk to me," Johnigan said.

She expects that Iberville will go through its own growing pains, until all contractors realize what Section 3 is and why it's taken seriously. She describes how they struggled and struggled at Cooper. And then, the struggle ended and Section 3 began to seem so simple, she said. "Then it was like putting on a glove, once you understand how it fit on your fingers."

Katy Reckdahl is a New Orleans-based news reporter who has written for The Times-Picayune, *The New York Times*, The Daily Beast, and the *Christian Science Monitor*.

RELATED RESOURCES

[HANO's Career Academy](#)

[HUD Section 3 Resources](#)

[STAND with Dignity](#)

["The Long Road from C.J. Peete to Harmony Oaks," by Katy Reckdahl. *Shelterforce*, Spring 2013](#)

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