

All Stakeholders Training



Are You Ready to Track

Section 3

Hours Worked?

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Presenter and Firm



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Motivation, Inc.

28 Year old, Faith-based Consulting and Compliance Firm Offering: Compliance Services/Software, and Fair Housing, Sexual Harassment, Customer Service, Leasing, and Resident Employment Readiness and Skills Training

Motivation, Inc. has provided Section 3 Training to 42 (84% of the US) State Public Housing and Community Development Associations

About This Event



- This web/training is intended to inform, warn, and advise stakeholders of the serious challenges in meeting the Hours Worked requirements from the proposed rule ahead of its release.
- You will be able to submit questions via the webinar system and I will address as many as possible in the time allowed, or you can submit them afterwards via email to keiths@motivation-inc.com
- This event is being recorded and will be available for a week to replay at your leisure or share with colleagues. A post webinar email will be sent with the necessary information.

Impact to All Beneficiaries



- Two new categories of Section 3 persons... They are to be referred to as "Section 3 Workers" or "Targeted Section 3 Workers"
- Though HUD considered two **Alternative** compliance approaches:
Alternative 1=Labor hours or Alternative 2=New Hires
- I am convinced they have selected to go with Labor ***Hours Worked*** because of the historic and well documented manipulation of the New Hires rule

Defining Labor Hours



Labor Hours means:

- Section 3 Workers must work 25% of the hours of the total labor hours and
- Targeted Section 3 Workers must work 5% of the total labor hours
- Or both

I believe both of these requirements will be the Benchmark requirement.

Exemptions



- PHA's with fewer than 250 Units are exempt from these "Benchmark" requirements but may still have some small "Qualitative" Efforts.
- Community Development (CD) recipients that receive less than \$200,000 annually of total HUD funds



Section 3 Workers



Section 3 Workers are:

1. Persons whose pre-employment income is below the HUD published income limits based on eligibility for assisted housing
2. Resides in a qualified census tract (Bureau of Census)
3. A worker employed by a Section 3 Business
4. Prior arrest/conviction shall not negatively impact business owners (All other applicable laws applied)
5. The worker must be qualified for the job

Targeted Section 3 Workers



Targeted Section 3 Workers are:

1. Current PH or Section 8 assisted housing residents
2. Residents of other PHA managed projects
3. Current YouthBuild participants
4. For Community Development - Workers employed by Section 3
Businesses
5. For Community Development - Residents living in service area and
YouthBuild

Section 3 Businesses



1. 51% Owned by low- and very low-income persons
2. Over 75% of all labor hours performed for the business by low- and very low-income persons
3. Owned at least 25% by current public housing residents

I am hoping HUD will modify these to ensure other contractors can successfully bid and win contracts. The contractors will carry the hiring load and they must be qualified to carry the project/contract.

I tried!



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January 6, 2020

VIA: USPS Overnight Express

Dr. Ben Carson, Secretary
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Serious Concern About the Section 3 Proposed Rule

Dear Secretary Carson:

Again, I find myself compelled to write you about a concern around Section 3 of the HUD Act of 1968 and the Proposed Rule Issued April 3, 2019. The rule centers on, and HUD staff have made it

Staffing Impact



Assume the recipient employs 30 full-time staff (Including all senior/executive and salaried staff) The rule applies to all staff despite their salary/hourly status.

$30 \times 2,080 = 62,400$ total full-time hours annually
(Assuming 40 hours a week for one year)

The proposed rule requires 25% of the total work hours be worked by Section 3 Workers (Non-Public Housing)

$62,400 \times .25 = 15,600$ Section 3 Worker Staff Hours

Staffing Impact



Divide the 15,600 hours by 2,080 (40 hours a week for one year) =

7.5 Staff Section 3 Workers

The proposed rule also requires 5% of total work hours be worked by Section 3 Targeted Workers (Public Housing Residents).

$62,400 \times .05 = 3,120$ hours annually

Divide 3,120 hours by 2,080 (40 hours a week for one year) =

1.5 Targeted Section 3 Workers (Public Housing Residents)

Staffing Impact



Total **Section 3 Workers** would have to work **18,720 hours annually and have 9 of the 30 current full-time staff positions.**

*These Section 3 Workers and Targeted Section 3 Workers must be new hire employees only and **not** existing employees that have been previously counted as Section 3. This prevents double-dipping of Section 3 beneficiaries.*

NYCHA (as an example) would need to employ about 3,000 Newly Hired Section 3 employees based on its roughly 10,000 employees.

All union/collective bargaining agreements across all PHA's will have to be rewritten to comply.

Counting Contract Hours



Because the rule requires the counting of every hour worked using HUD Funds, whole or in part, every contractor must track their hours and report them accurately monthly.

Therefore, every large and/or small purchase service contractor, must report their hours to the recipient monthly. My fear is the confirming of this during an audit would clearly show if the contractor or recipient under reported to boost their compliance.

Recipients will have to track these hours and know exactly where they are monthly, ensuring they are on-track to achieve the required percentages.

Counting Contract Hours



Where Community Development recipients have HUD funds disbursed throughout their state, county, or city to other departments, IT IS CRUCIAL that every hour worked using those dollars are recorded and reported properly.

If funds are being disbursed below the recipient, that recipient must have a method to receive and track all hours from its sub-recipients.

Service related work is accomplished in many ways by various agencies or departments, so there really should be one entity/person tracking all activities from throughout the network of expenditures.

When Might This Rule Start



Based on some published information recently, the rule is likely coming out during the summer. I would hazard a guess we will see it by or around Labor Day.

I would expect the new rule to become effective with the start of the new fiscal year of each recipient after it is released.

October 1st fiscal year recipients will likely be the first up to experience these changes, while July 1st recipients will have nine months to get their houses in order.

Serious Concerns



Who gets laid off/terminated first?

Where do you get nine qualified Section 3 employees for those nine positions?

Can the laid off nine employees sue the PHA for discrimination?

Once unemployed, can those same nine former employees re-apply as Section 3 workers?

Serious Concerns



The proposed rule also changes the guidelines on how a qualified Section 3 person's income is determined to just the individual's income from total household income.

So once unemployed, these folks would likely qualify. Then can the other Section 3 residents "sue" the PHA for failing to hire, especially those in public housing?

The risk of a "lawsuit" is greater now because the proposed rule also eliminates the current HUD Form 958 Complaint Register administration process.

Development & Construction



Risk to Projected and Planned Deals that Trigger Section 3:

- Compliance management substantial cost increase
- Deals will have to include resident training dollars that may possibly be spent before project start and during the project
- Deals may have to include resident incentives to maintain employment
- Subs may require an incentive to do the needed hiring
- Using temp agencies as subs will help but has some real risk and costs associated with their failure to understand the percentages

Development & Construction



This is what tracking hours worked looks like:

- We have been testing this measure on two projects 1) a PHA new development \$10M and 2) a CD funded project \$100M
- The PHA project has achieved a fat zero for Section 3 hours worked over seven months
- The CD project has a Section 3 GC and five months into the project has achieved 17% Section 3 hours worked, but is falling fast as more subs are coming onto the project with no Section 3 employees or hires

Contract Description	All Hours Worked This Period	Tier1 Hours Rent Assisted	Tier1 % All Hours	Tier2 Hours Not Rent Assisted	Tier2 % All Hours
[REDACTED]	18,838	3,285	17.4 %	18	0.1 %
TOTAL ALL CONTRACTS:	18,838	3,285	17.4 %	18	0.1 %

Community Development



Community Development Recipients:

- Must budget for compliance management cost increases
- Should be scoring applications based on prior compliance success and how much money developers are projecting to spend training residents before and during the project
- The Recipients may have to include resident incentives to entice residents to work on the projects and maintain their employment
- Recipients should NOT rely on the developers or their GC's to meet Section 3 without their support. Do not award to failing groups.

My Suggestion



It's our belief that HUD should be focused on a 3-Tier Measuring Tool rather than or as part of overall compliance including:

1. Dollars paid to Section 3 employees
2. Dollars paid for training Section 3 residents and businesses
3. Dollars paid to Section 3 businesses
4. (Optional) Hours Worked at a reasonable percentage in line with gross pay

3. Disbursements to Section 3 Vendors and Residents	Sec3 Disbursements This Period	All Disbursements This Period	% This Period
A. Total dollar amount of gross payroll paid to Section 3 residents	\$ 53,312	\$ 126,190	42.2 %
B. Total dollar amount of training cost for Section 3 residents	\$ 70,000	\$ 70,000	100.0 %
C. Total dollar amount of all payments to Section 3 businesses	\$ 3,460,895	\$ 4,360,895	79.4 %
D. Total dollar amount of all payments for Section 3 businesses and residents	\$ 3,584,207	\$ 4,557,085	78.7 %

Watch List



POLL QUESTION

If HUD were to institute a watch list to track success points like those on the preceding slide to help work with recipients during the compliance year, do you feel it's:

- A good idea to help support recipients toward success
- A bad idea and feels too much like Big Brother standing over you

Conclusions



No matter the hours worked percentage applied to Section 3 employment, this requirement will carry some substantial economic and political ramifications. If current, qualified employees are displaced to meet Section 3 work hours, there will be an unmistakable roar of discontent nationally.

If contractors, sub-contractors, and developers aren't able to meet the hours worked requirements on every contract, recipients will fail to achieve the prescribed compliance levels.

Its planning time! Start developing your transition plan and testing your current data. How will you collect, track, and ensure accuracy of the hours worked?

Support and Compliance Management



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