Council Of State Community Development Agencies

May 30, 2019

Regulations Division
Office of General Counsel
451 7th Street SW, Room 10276
Department of Housing and Urban Development
Washington, D.C. 20410-0500

Re: Submission of Comments – Enhancing and Streamlining the Implementation of ''Section 3'' Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses
Document Citation: Docket No. FR–6085–P–01

To Whom It May Concern:

The Council of State Community Development Agencies (COSCDA) represents state housing and community development agencies responsible for administering U.S. Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and McKinney-Vento Homeless Assistance programs. COSCDA applauds HUD for its efforts to improve guidelines within the Section 3 Rule. However, the new updates to Section 3 present additional challenges to states and prove disruptive overall with current administrative processes. On behalf of the members of COSCDA, I respectfully submit the following comments in response to the Section 3 Rule update.

General Comment on the Section 3 Rule

The Section 3 Rule intends to increase employment opportunities for low income persons on project developments funded by HUD programs. The purpose of the policy aligns with HUD's mission to support underserved populations and assist people with limited access to capital and stable housing. Section 3 may complement client services underway with Public Housing Agencies (PHAs), and similar HUD program administrators. However, the policy is unfortunately not compatible with state CDBG and HOME program administration. Additionally, while the newly-proposed reforms in Section 3 may be applicable to some HUD program administrators, the changes prove even more challenging to state administrators both in implementation and meeting Section 3 objectives.

Section 3 invokes additional administrative burdens to CDBG and HOME program implementation. States operate under limited capacity to adequately serve communities, mostly small and rural. Sub-grantees, as small and rural communities, likewise have few staff and resources to complete Section 3 reporting and oversight requirements. Instead of meeting the objective to provide employment assistance to low-income persons and businesses, the policy diverts resources away from project development in order to meet its requirements.

State programs facilitate HUD resources in areas where little to no opportunity exists to promote employment opportunities or business as outlined in Section 3. The service population primarily features small communities with only a few thousand persons. Communities located in remote parts of a state have few connections to or availability of contractors and employees. It is difficult to hire or bring on eligible workers or businesses under Section 3 to conduct this type of work related to infrastructure, facilities, housing, or community services. CDBG and HOME funds are often financing projects completed by either small, locally-owned contractors or contractors outside of the immediate area. In either case, meeting the Section 3 requirements proves challenging and in many cases, impossible. Few qualified contractors are available in smaller communities to accommodate project development. Therefore, contractors need to travel outside of the service area to complete work on a project. In other instances, small contractors qualified for specific project activities are conducting work using permanent or longstanding employees. These contractors rely on a small clientele in many cases and are positioned to only retain a few employees at a time. Neither situation offers ample conditions to facilitate Section 3 in small communities and rural areas.

In Response to the Proposed Updates to the Section 3 Rule:

Hours and Hires

The change to reporting requirements of hours over hires fails to support state administrative processes. HUD claims that a change from counting new hires to work hours would improve efficiency in reporting duties. COSCDA disagrees with this view and believes that no hours or resources will be saved in converting to the new reporting format. HUD's conclusion is based upon the view that every contractor will operate under the same federal labor standards. Instead, many eligible activities through CDBG and HOME do not fall within the federal labor standards; projects which fall outside of these standards could qualify under Section 3 guidelines. In this case, the proposed update to hours counted will add more reporting duties for both contractors and administrators. The result will be high project costs for administration and less available funds for project development.

Targeted Section 3 Worker

COSCDA is concerned with the definition of Targeted Section 3 worker as it does not accurately identify a person's current economic status. Targeted Section 3 Worker, as defined, is "a worker who currently is or who was when hired by the worker's current employer" a public housing project or Section 8 housing resident or resident of other PHA project, or a YouthBuild participant. No timeframe is given though to determine when a person meets the qualification. Without a timeframe, current economic status is not properly determined. As defined, a person could be counted as a Targeted Section 3 worker years removed from meeting one of the qualifications which falls outside of HUD's intention to identify low-income persons. Instead, the definition should clarify and provide a specific timeframe to appropriately identify low-income persons.

Options to Meet Section 3 Requirements
While COSCDA does not agree with the proposal to count hours as opposed to new hires, we request that states have the same option as PHAs under the update. States would prefer to have the option to count either hours or new hires towards meeting the Section 3 benchmarks. Additionally, we recommend another alternative which is to report qualitative efforts in meeting Section 3 requirements. States serve small communities with fewer opportunities to hire eligible Section 3 workers or businesses. Further, small communities administer projects with fewer resources than their urban counterparts. Program administration is handled differently state-to-state as well. Recognizing these circumstances, states are better positioned to comply with Section 3 requirements if afforded the ability to report details of its efforts as opposed to tracking and sharing data on employees.

Service Area and Population Limit
As HUD updates its definition of "service area" or "neighborhood," we recommend that the one-mile radius be retained within the definition but population limit be eliminated. The population threshold is too large for many rural areas. A service area of 5,000 persons could span several miles in some locations. Transportation over such a large stretch of area proves too burdensome on low-income residents to find and maintain employment. Additionally, service area takes on different applicability based on project type. Funds are administered to local jurisdictions and projects may serve either portions of a community. In other cases, projects support populations beyond the sub-grantee's boundaries. Service area varies overall based on the project type. Since service population is based on an individual project basis, the one mile radius could be inapplicable in many cases.

Updated Project Threshold
COSCDA concurs with the updated $200,000 project threshold per individual project however the amount does not necessarily result in employment opportunities for low-income persons. Administration on the $200,000 per project allows states to dedicate resources and staff to meet Section 3 based on projects more likely to use low-income workers. A higher project amount does not necessarily mean that an employer will need additional employees. Contractors determine their capacity to meet project needs and will hire additional persons as necessary.

Subcontractor Reporting
We also request that reporting only extend to contractors and not apply to subcontractors. States monitor projects based upon reporting by sub-grantees. Sub-grantees likewise oversee contractors on project development. The three levels of project implementation provides capable oversight to fulfill Section 3 compliance. In this case, further monitoring beyond the contractor results in increased costs and time on project developments.

COSCDA is appreciative of the opportunity to comment on the proposed updates to the Section 3 Rule. As HUD continues to include stakeholders in its policy updates, COSCDA offers its assistance in developing adequate and responsive guidelines. Please feel free to reach out to us with any questions related to the feedback above or concerning related issues. Thank you for your consideration.

Sincerely,

Dianne E Taylor

Dianne E. Taylor
Executive Director