

Section 3: Economic Opportunities



Florida Housing Coalition Conference

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**U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Miami, Florida**

Section 3

Summary of Presentation

- **Historical background**
- **Purpose**
- **Applicability**
- **Definitions**
- **Recipient responsibilities**
- **Preferences and contracting**
- **Enforcement - complaints and compliance**
- **Reporting and record keeping**
- **Initiatives and Strategies**

Simply Stated...

- HUD funds are one of the largest sources of federal investment in distressed communities
- These funds typically result in new employment, training and contracting opportunities
- Section 3 is designed to direct those opportunities to local residents

Purpose of Section 3

To ensure that economic opportunities generated from HUD funded projects will be directed to low and very low-income persons - particularly those receiving assistance for housing

§ 135.1

Triggering the Regulation

Section 3 regulations do not require hiring or subcontracting unless it is necessary to complete the project.

Section 3 is **not an entitlement**, it is an opportunity

Section 3 is triggered when covered projects require **“new” hires or subcontracting**.

Applicability

- **Public and Indian Housing**
 - Development
 - Operation
 - Modernization
- **Housing and Community Development**
 - Housing rehabilitation
 - Housing construction
 - Other public construction

§ 135.3

Applicability to Economic Stimulus Funds

- PIH Public Housing Capital Funds
- Neighborhood Stabilization Program
- Community Development Block Grants
- Native American Housing Block Grants
- Assisted Housing Energy & Green Retrofits
- Lead Hazard Control (LHC Grants Only)

Total: \$7.8 Billion

(57% of HUD's Stimulus Funds)

Thresholds

- **Public and Indian Housing Threshold: None**
(no threshold for PIH Authorities)
- **Housing and Community Development Threshold:**
Recipient/Project - \$200K
Contractor/Subcontractor - \$100K

When Threshold is met for recipient (\$200,000+) but no contractor or subcontractor exceeds the \$100,000 amount Section 3 requirements only apply to the recipient

§ 135.3(A-C)

Applicability to Entire Project

- Section 3 requirements **apply** to the **entire project** or activity, regardless of whether it is **fully or partially** funded by HUD.
- Section 3 requirements also apply to Indian Housing Authorities.

§ 135.3(b)

Covered Programs

Each program area within HUD has a responsibility to ensure that recipients of HUD funds comply with Section 3.

Examples of covered funding:

- **HOPE VI, Capital Fund**
- **CDBG, HOME, ESG, NSP, AARA**
- **Lead Base Paint Abatement**
- **Section 202 / 811**

§ 135.3

Section 3

Definitions

Employment Opportunities

Public and Indian Housing Programs-

- All positions associated with PIH Development, Operations and Modernization

Housing and Community Dev. Programs-

- Construction Labor
- Management & Administrative Support
- Architectural, Engineering and Professional Services

§ 135.5

Section 3 Resident

- Public Housing Resident,
or
- A resident of metro area or non metro county in which the Section 3 covered assistance is expended, and who qualifies as a low- or very low-income person.
- Low income = 80% of the median area income
 - Very low income = 50% of the median area income

§ 135.5

Section 3 Residents MUST

- Certify their Eligibility to received a preference as a Section 3 Resident
- Recipients must develop a certification form that allows area residents to certify their financial qualifications.
- Section 3 Residents must the minimum qualifications for the job

Section 3 Business Concern

- **51%** or more owned by Section 3 Residents, or
- **30%** of employed staff are Section 3 Residents; or
- **25%** of subcontracts committed to Section 3 Businesses

§ 135.5

Section 3 Businesses MUST

- Certify their Eligibility to received a preference as a Section 3 Business
- Recipients must develop a certification form that allows area businesses to certify how they meet the special qualifications for this designation.

Requirements for HUD NOFAs

- All notices of funding availability issued by HUD covered by Section 3 include a provision stating its applicability.
- Applicants must certify compliance with Section 3 regulations.

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Procurement Standards

Section 3 regulations do not supersede the general requirement that (material only) procurement transactions be conducted in a competitive manner.

Consistent with 24 CFR § 85.36(c)(2), Section 3 encourages a geographic preference in the evaluation of bids.

§ 135.11

Methods of Procurement

- Small Purchase: not exceeding \$100K or less.
- Sealed Bids: Publicly solicited, firm-fixed-price contracting, lowest in price, preferred for procuring construction, but not mandatory.
- Competitive Proposals: type -fixed price or cost reimbursement contract, RFP with identified evaluation factors, most advantageous with price and other factors.
- Noncompetitive Proposals: Single source contracting when other forms of contracting determined to be not infeasible
- Time and Material Contracts: After a determination that no other contract is suitable; includes a ceiling price that the contractor exceeds at its own risk

§ 85.36

Federal Labor Standards

- Trainees hired under Section 3 may work subject to HUD determined prevailing wage rates and ratios of apprentices to journeymen in approved training programs.

§ 135.11 (c)

Race and Gender Neutrality

- A minority business enterprise or women-owned business shall be required to present Section 3 certification to receive preference **(not automatic or interchangeable)**.
- Section 3 of the HUD act is **race-neutral**.
- The **preference provided** by this Federal act is based on **income and location**.

Executive Order 11246

- The recipient shall ensure full compliance with E.O. 11246 - equal treatment without regards to race, religion, color or ethnic background.
- The recipient shall ensure that all contractors and subcontractors participating on Section 3 governed projects comply with E. O. 11246.

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§ 135.30(b-c)

Numerical Goals

Employment:

30 percent of new hires annually

Contracts:

10 percent of the total \$ amount of all Section 3 covered contracts for building trades work

3 percent of the total \$ amount of non-construction contracts

§ 135.30(b-c)

Safe Harbor and Compliance

- A recipient that meets numerical goals will be considered in compliance.
- A recipient that has not met the numerical goals has the burden of demonstrating why.
- All documented efforts taken to assist Section 3 residents and businesses will be considered.

§135.30(d)

Eligibility for employment and contracting

Section 3 of the HUD act is **race and gender-neutral**.

A Section 3 resident must **meet the qualifications** of the position to be filled.

§135.34(c)

A Section 3 business concern must have the **ability and capacity** to perform.

§135.34(a)(2)

Section 3
Recipient
Responsibilities

Recipient Responsibilities

- Notify Section 3 residents and business concerns about economic opportunities
- Notify covered contractors and incorporate the Section 3 clause verbatim into contracts - parts A through G
- Facilitate training and employment of residents
- Award contracts to Section 3 Businesses

§135.32

Recipient Responsibilities

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- Meet annual numerical goals
- Facilitate compliance among contractors
- Document other actions taken to achieve compliance
- Submit annual report (60002 form)

Preference for Training and Employment

Order of priority for Housing and Community Development Programs

- Category 1 – Residents in the service area or neighborhood
- Category 2 – Participants in HUD's Youthbuild program
- Category 3 -Homeless persons in the service area
- Category 4 – Other Section 3 Residents

-§ 135.34(a)(2)

Preference for Training and Employment

Order of priority for Programs funded by the McKinney Act

- Category 1 – Homeless persons in the service area
- Category 2 – Residents in the service area or neighborhood
- Category 3 - Participants in HUD's Youthbuild program
- Category 4 – Other Section 3 Residents

§ 135.34(a)(2)

Preference for Section 3 Business Concerns

Order of priority for Housing and Community Development programs

- Category 1 – Section 3 businesses that provide jobs and training for local residents
- Category 2 – Applicants selected to administer Youthbuild programs
- Category 3 – Other Section 3 business concerns

§ 135.36(a)(2)

Section 3

Enforcement

Complaint Processing

- Form HUD 958 filed within **180 days** of alleged non-compliance
- Most complaints are associated with contracting issues
- Preference- to conciliate
- Sanctions – debarment, suspension or LDP (24 CFR 24)

§ 135.76

Criteria for Compliance Reviews

- **Number of complaints**
- **Amount of Funding**
- **Recommendations from Field**
- **60002 data**
- **Need for Corrective Action**
- **Technical Assistance**

Annual Summary Report of Section 3 Activity

All recipients of Section 3 covered funds must submit Form HUD 60002 annually.

Reporting cycle – Simultaneously with funding annual report, at project completion or January 10th, annually.

Should be submitted to HUD HQ, preferably on-line, by direct recipients only, not contractors or sub-recipients.

§ 135.90

Current Initiatives

- Emphasis on annual reporting
- Revisions to HUD Form 60002
- Funding for N.O.F.A. Competition
- Business Registry Pilot: D.C., L.A., Detroit, New Orleans & Miami
- Re-examination of regulatory provisions
- Listening Sessions with Stakeholders

HOW TO MAKE SECTION 3 WORK

Strategies for Implementation

- Know the Law and what it requires
- **Develop a Strategy for your program – City or County**
- Use elements of Sample Plans
- Adopt and execute Section 3 Plan
- Designate a Section 3 Coordinator or Office

Develop a Strategy for your program – City or County DO NOT KEEP IT TOO YOUR SELF

- ❖ To the greatest extent feasible means EVERY EFFORT SHOULD BE MADE
- ❖ Hold Contractors and their sub contractors accountable for your expectations
- ❖ THERE should be no contracts let to contractors found to be in violation of Section 3 – THIS MEANS YOU NEED TO ASK!!
- ❖ Contacts should not only include the Section 3 Clause (VERBATIM from the regulation) but also require Monitoring and enforcement of the responsibilities

DON'T KEEP IT TOO YOUR SELF

- ❖ At Pre bid meetings hold major clarifying discussions on Section 3. Tell applicants What you want and How you want it.
- ❖ Contractors should certify that they have a Section 3 policy and a plan. Recipient should hold contractors feet to the fire by requiring its submission with the application.
- ❖ A part of the selections procedure should identify the contractor's ability to comply with Section 3.
- ❖ Application should require a description of previous experience with the implementation of Section 3.

CHANGE THE PERCEPTION OF A SECTION 3

- ❖ A Section 3 Residents (“those people”) income does not mean abject poverty. 80% of the Medium income can be \$80,000 in some areas.
- ❖ Identify MEDIUM INCOME in your community
- ❖ Eliminate the myth that contractors CAN’T find Section 3 residents to hire. Under CDBG requirements highlight distressed areas. Research the low/mod income in census tracts. If residents are a part of the census tract we can presume they are Section 3 eligible.
- ❖ In determining a resident’s eligibility, allow person to self certify. Application should use a range of numbers (10-20,000, 30-40,000; etc). Those persons falling below the 80% are eligible.

CHANGE THE PERCEPTION OF A SECTION 3

- ❖ Get out into the community and tell residents about the requirement and how you need them.
- ❖ NETWORK AND COLLABORATE WITH LOCAL AGENCIES (CAC, WORKFORCE, OIP, PHAs, Chamber of Commerce;
- ❖ Participation in Section 3 Regional Consortiums
- ❖ Develop local and regional job banks
- ❖ Currently the regulations only apply to new hires. If contractors have no new jobs there is no obligation re Section 3 residents. However, there is still the requirement to hire Section 3 contractors.

BE SERIOUS ABOUT SECTION 3 AND IT'S IMPLEMENTATION

- ❖ **Agencies and contractors should be encouraged to exceed goals**
- ❖ **How you approach Section 3 will be key. “so how many Section 3 residents are you going to hire?”**
- ❖ **If a jurisdiction or contractor is not serious they cannot expect recipients to comply**

BE SERIOUS ABOUT SECTION 3 AND IT'S IMPLEMENTATION

- ❖ Determine how far your strategy will go.

Philadelphia, PA – 75% of all unskilled jobs for all contracts would go to Section 3 residents

Kansas City, MO – Has a Section 3 and Small Business Office that requires on-going education and outreach efforts that include:

- Section 3 Job fairs and networking opportunities
- Section 3 presentations and participation in local community forums
- Development and Distribution of Section 3 informational and educational materials
- Media presentations
- Targeted Community group mailings
- Development and maintenance of an educational presence on the City's website

SECTION 3 COMPLIANCE

- ❖ Section 3 can have the same effect as WESCHESTER
- ❖ When you sign assurances as recipients you are subject to false claims act. A recipient could be liable for damages if found in violation.
- ❖ A RECIPIENT'S ON-GOING MONITORING OF THEIR CONTRACTORS SECTION 3 REGULATORY REQUIREMENTS ELIMINATES SURPRISES.

How has HUD treated none compliance?

- ❖ In February 2010, HUD did a compliance review on a Mid West City (St. Paul, Min.). The City was found to be in Non compliance with Section 3. This resulted in the City's NSP \$ being held up and \$1 Million in penalties.
- ❖ Kansas City, Mo was also the subject of a Compliance Review. To meet the terms of the VCA KC choose to develop a plan to not only make them in compliance but change the way they do business.
- ❖ The same happened with Valdosta, GA

QUESTIONS AND ANSWERS

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