

SECTION 3



National Association of Housing and Redevelopment Officials

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TODAY'S FACULTY MEMBER

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OBJECTIVES

- Develop a clear understanding of the Section 3 Regulation
- Develop an understanding of the effect of Section 3 on existing PHA policies
- Develop an understanding of the PHA's responsibilities for outreach, providing preferences, and contracting
- Develop a strategy for the preparation of a Section 3 action plan
- Develop an understanding of HUD's expectations, HUD monitoring practices, and PHA record keeping responsibilities
- Identify common barriers and discuss methodologies for overcoming

WHAT IS SECTION 3?

- A provision of the HUD Act of 1968 (24 CFR part 135)
- HUD's legislative directive for providing preference to low and very low income residents of the community and the businesses that provide maximum potential for training/employment.
- Section 3 directs recipients of certain HUD program funding to give preference for training and employment opportunities arising from those programs to local low-income residents **“to the greatest extent feasible”**

CONTEXT

- HUD funds are often one of the largest sources of federal investment in distressed communities
 - Section 3 is designed to foster local economic development and improvement and individual self-sufficiency in these communities
 - Increased emphasis on compliance with Section 3 requirements to create jobs and economic opportunities in these communities

HISTORY

- Section 3 Act of 1968
 - Originally designed as a geographic preference
 - Amended in 1995
 - Changed the regulation from a geographic preference to an economic preference

PURPOSE

- To ensure that employment and other economic assistance generated by HUD financial assistance, to the greatest extent feasible be directed to low and very low income persons
 - Consistent with Federal, State, and Local laws and regulations
 - Particular Preference to residents of government assisted housing
 - Business Concerns that provide economic opportunities to low income persons

WHAT SECTION 3 IS NOT

- Is not a guarantee of employment
- Is not a race or gender specific goal
- Is not a set aside program
- Is not a guarantee of a contract
- Is not optional

GOAL OF THE SECTION 3 PROGRAM

- Increasing individual and business self sufficiency opportunities in distressed communities that generated the need for funding in the first place
- Maximize the public's interest on the "return on investment" of Federal dollars

WHO MUST COMPLY WITH SECTION 3?

- **Public and Indian Housing Authorities**
 - All Housing Development Programs
 - All Operating Funds
 - All Capital Fund Program Contacts
 - Housing and Community Development Assistance
 - PHA Threshold is \$1 for covered activities

WHO MUST COMPLY WITH SECTION 3?

- **Housing and Community Development Programs:**
 - CDBG
 - Home Investment Partnership
 - Economic Development Initiative (EDI)
 - Brownfields Economic Development Initiative (BEDI)
 - Emergency Shelter/Solutions Grants (ESG)
 - Homeless Assistance Grants
 - Housing Opportunities for Persons with AIDS
 - Neighborhood Stimulus Program (NSP)
 - University Partnership Grants

WHO MUST COMPLY WITH SECTION 3?

- **Community Development Agencies**
 - Section 3 requirements apply to recipients of CDBG funding exceeding \$200,000 (in any FY)
 - Section 3 requirements apply to contractors or subcontractors with contracts exceeding \$100,000
 - Section 3 applies to all projects involving “covered” activities” regardless of whether they are fully or partially funded with CDBG
 - If no contracts exceed \$100,000 but grant was greater than \$200,000, agency must still report.

WHAT IS A SECTION 3 COVERED CONTRACT?

- Any HUD funded contract involving on-site services, including construction, professional services, housing service contracts and other on-site service contracts
- Does not include materials and supply contracts

COVERED ACTIVITIES

- Housing Rehabilitation-including lead-based paint abatement
- Infrastructure development
- Demolition:
 - Housing Construction
 - Construction of other public facilities
 - Non-construction projects including
 - Maintenance contracts:
 - HVAC
 - Other professional service contracts

TRIGGERING SECTION 3 REQUIREMENTS

- Section 3 requirements are triggered when a covered project creates the need for new employment, contracting or training opportunities
- Recipients are not required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities
- If the expenditure of covered funding does not result in new employment, training or contracting, Section 3 requirements **are not triggered**, but the recipient must still submit reports indicating that the requirements were not triggered
- Section 3 requirements **do not apply** to material only contracts

NUMERICAL GOALS

- 30% of new hires generated by the activity for the Recipient and contractors
- 10% of all construction contracts dollars
- 3% of all other contracts dollars

DEFINITION

A **Section 3 Resident** is defined as:

- A resident of Public Housing or Indian Housing
- OR**
- A resident of the metro area or non-metropolitan county in which the Section 3 covered assistance is expended
- AND**
- a low-income (80% of median) or
 - very low-income (50% of median) person

ORDER OF PREFERENCE FOR SECTION 3 RESIDENTS (PHA)

Section 3 residents receive preference for training and employment opportunities generated by PHA-funded projects and activities based on the following order:

1. Residents of the development in which the covered project is located (category 1 residents)
2. Other PHA Residents (category 2)
3. Participants in HUD Youthbuild program (category 3)
4. Other Section 3 residents in political jurisdiction

ORDER OF PREFERENCE FOR SECTION 3 RESIDENTS (CDBG)

Section 3 residents receive preference for training and employment opportunities generated by CDBG-funded projects and activities based on the following order:

1. Residents of the service area or neighborhood in which the covered project is located (category 1 residents)*
2. Participants in HUD Youthbuild programs (category 2 residents)
3. Other Section 3 residents

DEFINITION

A **Section 3 Business Concern** is defined as one that:

- is 51% or more owned by Section 3 Residents

OR

- Has permanent, full-time staff comprised of at least 30% Section 3 Residents

OR

- has committed 25% of the dollar amount of its subcontracts to Section 3 Businesses

HUD'S PROPOSED RULE AMENDING

General Section 3 Overview

- Section 3 of the Housing and Urban Development Act of 1968 states that HUD-funded jobs and contracts are to be directed, to the greatest extent feasible, to local low income residents and the businesses that employ them.
- Section 3 helps foster local economic development, neighborhood improvement, and individual self-sufficiency in communities for covered financial assistance is spent.
- Section 3 keeps HUD-funded contracts and jobs local.
- Section 3 covered projects and activities include the development, operation, and modernization of public and Indian housing. They also include housing and community development projects like construction, reconstruction, conversion or rehabilitation of housing and other public construction.

HUD'S PROPOSED RULE AMENDING

Need for HUD's Section 3 Proposed Rule

- Since 1994, HUD's Section 3 requirements have been governed by an interim regulation, which is vague in certain areas that have proved confusing for Public Housing Authorities, other HUD grantees, and their contractors.
- The proposed rule clarifies definitions and provisions that are left to interpretation and eases barriers to reaching compliance for recipients of HUD funding.
- It ensures that Public Housing Authorities and other grantees are implementing consistent procedures for determining which residents and businesses should be counted towards Section 3 compliance.
- The proposed rule addresses a number of concerns expressed by stakeholders to HUD and formalizes "best practices" implemented by high-performing grantees.

HUD'S PROPOSED RULE AMENDING

Economic Impact

- The proposed rule is estimated to direct an additional 1,400 jobs to Section 3 residents, and an additional \$172+ million in HUD-funded contracts to Section 3 businesses each year¹.
- Section 3 requirements apply to approximately 5,000 recipients of HUD funding (such as Public Housing Authorities, State and local government agencies, low income housing providers, etc.) and their sub-recipients and contractors.
- Up to 40% of HUD's annual budget is subject to Section 3 requirements.²
- In FY 2013, the expenditure of covered HUD funds generated approximately 61,600 new jobs, nearly 27,200 (44%) of which went to Section 3 residents.³
- In FY 2013 more than 5,600 Section 3 businesses received construction and construction-related (professional service) contracts totaling \$883.4 million nationwide.

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23

HUD'S PROPOSED RULE AMENDING

Economic Impact

- Between 2009 and 2012⁴ :
 - HUD funding resulted in more than 190,000 new jobs, about half of which (93,448) went to Section 3 residents.
 - \$2.68 billion, or 8.4 percent, of all HUD-funded construction contracts were awarded to Section 3 businesses from 2009-2012.
 - \$334.8 million or 4.1% of the total amount of HUD-funded non-construction (professional service) contracts were awarded to Section 3 businesses.
 - Nearly 26,000 Section 3 businesses were awarded HUD-funded contracts during this time.

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24

SAFE HARBOR & COMPLIANCE DETERMINATIONS

- Document the Agency's achievements in meeting the numerical goals, or
- Demonstrate why it was not feasible to meet the numerical goals and provide justification to include impediments encountered despite actions taken

EFFECT ON EXISTING POLICIES

- Personnel Policy
- Procurement Policy

AGENCY PERSONNEL POLICY

- Since the agency is a recipient of HUD funds, Section 3 hiring practices should be incorporated into the agency hiring practices.
- Maximum feasible effort should be made to provide opportunities to Section 3 applicants when filling agency positions.

PROCUREMENT POLICY

- Procurement Methods
- Small Purchases
- Sealed Bids
- Competitive Proposals

SECTION 3 & SMALL PURCHASES

- Solicit quotes from Section 3 business as part of the PHA procurement practice
- Consider re-sizing activities to increase participation by Section 3 business
- Implement policy changes (x factor)

SECTION 3 & SEALED BIDDING

- Provide information in bid solicitation documents
- Evidence of Section 3 compliance should be commensurate with the activity and potential for Section 3 hiring and contracting opportunities.

HUD 5370 GENERAL CONDITIONS: SECTION 3 CLAUSE

Article 40 of the General Conditions

- A. Subject to Section 3 requirements
- B. Agreement to comply
- C. Notice to labor organizations
- D. Include Section 3 in all subcontracts
- E. Certify that vacant positions will be filled using the PHA Section 3 process
- F. Understands the consequences for non compliance
- G. Applicable only to Indian Housing Authorities

ADDITIONAL SECTION 3 SEALED BID DOCUMENTATION

- Section 3 Business Certification Form
- Training Plan Worksheet
- Section 3 Resident Certification
- Section 3 Acknowledgement
- Projected Hiring Goals Form
- Contractor report format

SECTION 3 & COMPETITIVE PROPOSAL PROCUREMENT

- RFP should require disclosure of strategy for meeting training, employment and contracting preferences, if applicable
- Provide range of 15-25% of the total available evaluation points for Section 3 compliance criteria
- **NEGOTIATE**
- Make award to most advantageous proposal

OUTREACH EFFORTS...

- Community Newspapers
- Resident Newsletters
- Community Meetings
- Periodic Mailings
- Referrals from Employment and Training Programs

OUTREACH EFFORTS

- Chamber of Commerce
- Postings and Community Center and Govt. Offices
- Communication with other Service Providers
- Resident Surveys

SPECIFIC EXAMPLES OF EFFORTS TO COMPLY

- Networking
- Maintain a Section 3 Business Listing
- Respond to Inquiries
- Make your Contracting Opportunities Known
- Hold Effective Pre-Bids
- Conduct Outreach Efforts
- Provide Advise to Section 3 Businesses
- Sizing and Timing of Contract
- Set Higher Goals
- Encourage Financial Institutions

RECIPIENT RESPONSIBILITIES

- Implement Notification Procedures for Section 3 individuals
- Notify and Certify Potential Contractors
- Facilitate Training and Employment Programs
- Assist HUD in Obtaining Compliance of Contractors and Refrain from Entering into Contracts with contractors known to be in non-compliance
- Document Compliance Actions

PUBLIC HOUSING RESIDENT EMPLOYMENT PREFERENCES

Category 1

- Residents of the housing development where the work is occurring

Category 2

- Public housing residents of other developments

Category 3

- Youthbuild Participants

Category 4

- Other Low Income People

COMMUNITY DEVELOPMENT RESIDENT EMPLOYMENT PREFERENCES

Category 1

- Residents of the service area or neighborhood in which the covered project is located

Category 2

- Participants in HUD Youthbuild programs

Category 3

- Other Section 3 Residents in the geo-political boundaries of the Recipient

SECTION 3 BUSINESS CONCERN IN CONTRACTING

A Section 3 Business concern means:

- 51 % owned by Section 3 resident(s)
- A business who's workforce includes at least 30% who were low income within 3 years from date of hire
- A business who subcontracts at least 25% of their subcontracts to Section 3 businesses

CONTRACTOR & RESIDENT ELIGIBILITY

- A Section 3 Resident must meet the qualifications of the position to be filled
- A Section 3 business concern must have the ability and the capacity to perform the contract activity

ELIGIBILITY FOR PREFERENCE

- A business seeking to qualify as a Section 3 business **shall certify or submit evidence**, if requested
- Must be “responsible” and submit a responsive bid:
 - Past Performance
 - Compliance with Public Policy
 - Technical and Financial Resources

JOINT VENTURES

A joint venture may qualify as a Section 3 business if:

- The section 3 partner has a clearly defined portion of the work, and
- Performs at least 25% of the work and proportional compensation

EFFORTS TO OFFER TRAINING & EMPLOYMENT OPPORTUNITIES...

- Entering into “First Source” hiring agreements
- Sponsoring training and employment programs
- Establishing training programs
- Expanded advertising of employment positions

EFFORTS TO OFFER TRAINING & EMPLOYMENT OPPORTUNITIES...

- Advertising positions accessible to PHA residents
- Working with Resident Organizations
- Sponsoring a job fair
- Provide assistance in job seeking skills
- Providing for on-site applications and interviews

EFFORTS TO OFFER TRAINING & EMPLOYMENT OPPORTUNITIES

- Consulting with local service providers for employment services
- Employing a Section 3 job coordinator
- PHA hiring
- Maintaining a file of interested applicants
- Coordinate activities with local educational institutions
- Negotiate with contractors for positions

EFFORTS TO AWARD CONTRACTS TO SECTION 3 BUSINESSES...

- Modify and utilize procedures currently used for W/MBE contracting
- Consider using Section 3 compliance as a factor in determining contractor responsibility
- Work with other agencies that promote small business and W/MBE contracting efforts

EFFORTS TO AWARD CONTRACTS TO SECTION 3 BUSINESSES...

- Expanded advertisements
- Communication with Resident Councils and other Resident Organizations
- Provide bid notices to all known Section 3 businesses

EFFORTS TO AWARD CONTRACTS TO SECTION 3 BUSINESSES...

- Emphasizing Section 3 at Pre-Bid Conferences
- Conducting Contractor Workshops
- Providing Small Business Technical Assistance
- Coordinating sizing and timing of bids
- Break down contracts when feasible

EFFORTS TO AWARD CONTRACTS TO SECTION 3 BUSINESSES

- Expand advertising
- Develop a list of eligible Section 3 businesses
- Establish and adopt PHA numerical goals
- Encourage banks to participate in the Community Reinvestment Act

DEVELOPING AN ACTION PLAN...

- An Action Plan is a critical component of a successful Section 3 program
- Should address the mission, goals, policies, and procedures to be used
- A plan is not a required component of the regulation

DEVELOPING AN ACTION PLAN

Step 1

- Develop a mission statement

Step 2

- Determine what specific information you need

Step 3

- Establish goals

ACTION PLAN GOALS

- Resident Outreach
- Contractor Outreach
- Business and Resident Certification
- Timelines, Milestones, and Deliverables
- Commitment from outside service providers
- Identify Barriers
- Program Promotion

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53

DEVELOPING AN ACTION PLAN

Step 4

- Develop an administrative plan

Step 5

- Develop record keeping and reporting system

Step 6

- Develop a system for measuring the effectiveness of the plan

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54

SECTION 3 COMPLIANCE SUMMARY...

- Grantees are required to comply with this regulation found at 24 CFR Section 135.32
- To demonstrate compliance, grantees must:
 - Collect data on all new hires/trainees
 - Document the number and types of contracts awarded to section 3 businesses

SECTION 3 COMPLIANCE SUMMARY

Grantees are responsible for enforcing Section 3 requirements for all covered projects and contracts. In addition to the Section 3 clause (5370, Article 40), grantees should:

- Expand language in bid solicitation documents
- Collect data from contractors on hiring and sub contracting efforts
- Enforce subcontractor compliance
- Develop Contractor reporting formats

COMPLIANCE REVIEW & RECORD KEEPING

HUD Form 60002:

- Measures each recipient's efforts to comply
- Measures efforts of covered contractors, sub contractors and sub recipients.
- Due January 10th of each year or as directed by program close-out documents
- Should correspond to the covered projects and activities administered during the reporting period.

HUD FORM 60002

Part 1

- Total number of new hires and number of Section 3 hires. (30 % goal)

Part 2

- Dollar amount contracted to Section 3 business concerns (10 and 3 % goal)

Part 3

- Outreach and "maximum effort" efforts

SECTION 3 COMPLAINT PROCESS...

- Definitions:
 - Complaint
 - Complainant
 - Noncompliance with Section 3
- Filing Complaints:
 - Can be filed by any Section 3 Resident
 - Can be filed by any Section 3 Business

SECTION 3 COMPLAINT PROCESS...

Filing of Complaints:

- Must be received no later than 180 days from the date of action or omission
- If more information is needed, HUD shall request it
- If requested info is not received in 60 days, the complaint may be closed

SECTION 3 COMPLAINT PROCESS

- Within 10 days, a determination is made of legitimacy of the complaint
- If legitimate, recipient/grantee has 60 days to resolve
- If unresolved after 60 days, complaint may be referred to the Assistant Secretary for Fair Housing and Equal Opportunity

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