

Section 3 Highlights Outline

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BACKGROUND

Section 3 refers to a part of the Housing and Urban Development Act of 1968. The law says the purpose of Section 3 is to ensure that

- employment *and*
- other economic opportunities (*such as construction contracts, see page 6*)

generated by federal assistance for housing and community development programs be directed to low and very low income ♦ people, particularly people who receive government housing assistance – “**to the greatest extent feasible**”. [Sec. 135.1(a)♣]

Section 3 is run by the US Department of Housing and Urban Development (HUD) and its Office of Fair Housing and Equal Opportunity (FHEO). The Section 3 website is http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3

There are two Section 3 categories in the law and regulations, each with different obligations, depending on which program provides the money:

- 1) public housing programs, and
- 2) all other housing and community development programs (such as CDBG, HOME, NSP [Neighborhood Stabilization Program], etc)

Section 3 Does Not Require Creation of Jobs

Section 3 does not require the creation of jobs for low income people. However, if the use of HUD dollars results in the need to hire additional people, then Section 3 requires recipients of the HUD money to give “preference” to low income people for those additional jobs.

[Preamble to interim regs, Federal Register, Vol. 59, No. 125, June 30, 1994, page 33867]
[Preamble to proposed regs, Federal Register, Vol. 58, No. 194, October 8, 1993, page 52536]
[“Frequently Asked Questions and Answers”, Question #36]

People must have the qualifications needed to do the job. [Sec. 135.34(c)]

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- ♦ “Low” is 80% of area median income, “very low” is 50% AMI.
 - ♣ Instead of citing the law, this outline will cite the regulations. The regs are at 24 CFR Part 135.

EMPLOYMENT GOALS

When local and state governments, or public housing agencies (PHAs) -- and their contractors and subcontractors -- have **new** job slots at housing or community development **construction** projects funded by HUD programs, they must, “**to the greatest extent feasible**”, attempt to reach minimum “**goals**” for filling those “**new hires**” with “**Section 3 residents**”.

There are two levels of goals:

1. A goal of **30%** of new hires applies to:
 - a. Non-housing construction...mostly CDBG.
(eg roads, sidewalks, sewers, recreation centers, community centers, commercial buildings, etc.)
 - b. Public housing capital improvements, or modernization, or even operating funds
2. A goal of **10%** of new hires applies to **other HUD programs** to rehab or construct housing (eg, *HOME, CDBG, NSP, Continuum of Care Homeless Assistance programs, Lead-based Paint Abatement, etc.*).

[Sec. 135.3(a)], [Sec. 135.30(a)(1) & (4)], [Sec. 135.30(b)]

Section 3 applies to projects even if they are only partially funded by HUD.

[Section 135.3(b)]
[“Frequently Asked Questions and Answers”, Question #18]

A “**new hire**” is a full-time employee, whether permanent, temporary, or seasonal.

A **Section 3 resident** is, in general, a public housing resident or a low or very low income person living in the project’s metro area or non-metro county.

“**aggregate**” number of new hires means that the percentage goal applies to the total sum of new hires, not to each category of job. **However** the reg says that efforts should be made to employ Section 3 residents **at all job levels** [*not just entry level jobs*]. [Sec. 135.30(b)]

The word “aggregate” can be a problem if there are not serious efforts to train and hire people beyond the most basic, entry-level jobs.

When the regulations were first issued, the introduction made this a little clearer.

It says that “efforts to employ Section 3 residents applies to all new employment opportunities, at all levels”. It goes on to give an example:

“The following provides an example of how a recipient may meet the minimum numerical goals, but found not to be in compliance with the Section 3 preference requirements: A recipient meets the 10 percent minimum goals [for housing] by employing Section 3 residents in new *entry level* positions that the recipient has available. However, the recipient made no effort to employ, and does not employ, Section 3 residents in *more skilled positions* that the recipient also had available. That is, the recipient made no effort to make Section 3 residents aware that these positions were available, or to encourage Section 3 residents to apply for these positions.”

Order of Priority For Selecting New Hires

The law and regs set **priorities** for meeting the training and employment goals.

For non-housing community development projects, or for housing projects (*that are not public housing*), “where feasible” Section 3 residents should be selected in this order:

- 1) Low and very low income people living in the “service area” or neighborhood where the assisted project is located;
- 2) Participants in the federal YouthBuild_α program;
- 3) Homeless people in the service area or neighborhood if the project receives Continuum of Care Homeless Assistance funds;
- 4) Other low and very low income people in the metro area (or non-metro county) where the HUD-assisted housing is spent.

[Sec. 135.34(a)(2)]

“**Service area**” is the geographic area where people live who benefit from the project.

For public housing projects Section 3 residents should be selected in this order:

- 1) Residents of the public housing development assisted;
- 2) Residents of other developments managed by the PHA;
- 3) Participants in the federal YouthBuild_α program;
- 4) Other low and very low income people in the metro area (or non-metro county) where the public housing assistance is spent.

[Sec. 135.34(a)(1)]

_αYouthBuild is a program transferred from HUD to the Dept. of Labor which provides alternative education and training for at-risk youth. Under HUD, skills developed were put to use in building and rehabbing affordable housing. (YouthBuild had a small budget during its late years at HUD [about \$50 million], but has more than \$100 million under DOL.) HUD will begin talks with DOL to better coordinate their work. Consequently, while not currently viewed as a “priority” in practice, it might become more so in the future.

No Employment Obligation Unless Dollar “Threshold” Crossed

The 10% hiring goal for non-public housing and the 30% hiring goal for non-housing construction projects do not kick in until a one or two “thresholds” are crossed.

However, there are **no “thresholds” for public housing**; \$1 of public housing money triggers the 30% hiring goal for PHAs and their contractors and subcontractors

[Sec. 135.3(a)(3)(i)]

\$200,000 Threshold for “Recipients”

If a “recipient” receives \$200,000 or more of HUD assistance (not public housing assistance, but for example CDBG, HOME, NSP, HEARTH, etc. in any combination), then any rehab or construction activities funded by the recipient using those funds (not public housing) must comply with Section 3.

[Sec. 135.3(a)(3)(ii)(A)]

[“Frequently Asked Questions and Answers”, Questions #16]

A “recipient” is any entity that gets “Section 3 covered assistance”^α directly from HUD or from another recipient. Typical direct recipients are cities, counties, PHAs, and states. These might allocate the HUD funds to other entities which then become recipients too. For example, states can pass CDBG money to counties, or urban counties can pass funds to towns. Even nonprofits and for-profits can be recipients. However, contractors are not recipients, and people who ultimately benefit are not “recipients” (for example, someone whose house is rehabbed with HOME money).

[Sec. 135.5]

The \$200,000 threshold does not apply on a per project basis, and it only applies to “Section 3 covered projects/activities” (housing rehab or construction and other public construction such as street repairs and commercial building façade improvements). HUD provides an example:

The City of Mountain View receives \$210,000 through its state CDBG program. Mountain View uses \$180,000 for housing rehab, \$20,000 for a micro-enterprise revolving loan fund, and \$10,000 for fair housing counseling.

Mountain View **is subject** to Section 3 because it received more than \$200,000 in housing and community development funds. However, only the housing rehab program is covered (the revolving fund and fair housing counseling are not “construction”).

[“Frequently Asked Questions and Answers”, Questions #17 and #28]

\$100,000 Threshold for Contractors and Subcontractors, see next page

^α “Section 3 covered assistance” is a catch-all term for any of the HUD programs that trigger Section 3 obligations, such as public housing, CDBG, HOME, NSP, etc.

\$100,000 Threshold for Contractors and Subcontractors

Contractors and subcontractors with contracts greater than \$100,000 for construction work on “project(s)” getting at least \$200,000 in non-public housing Section 3 covered assistance must comply with Section 3. [Sec. 135.3(a)(3)(ii)(B)]

If a recipient receives at least \$200,000 in non-public housing Section 3 covered assistance, but no single contract is greater than \$100,000, then only the recipient needs to comply with Section 3. [Sec. 135.3(a)(3)(ii)(C)]

This regulation has been interpreted by HUD to mean that for Section 3 to be triggered at **a** project, **both** the recipient spends \$200k on the project **and** the contractor spends \$100k on it. However, in a personal email in response to a request by NLIHC for clarification, FHEO Headquarters wrote on October 1, 2010:

“The Department had previously applied that interpretation, but as you very well know, that makes Section 3 largely un-implementable and inefficient. We are working to issue new guidance in the coming months.”

A Major Problem Making Section 3 Less Useful

Even though neither the law nor the regs call for it, HUD has treated small activities as “projects”, effectively exempting many uses of HUD dollars from Section 3.

For example, if a recipient gets \$800,000 in HOME and awards three contracts to a company to rehab single-family houses (one rehab is for \$36,000, a second rehab is for \$50,000, and the third rehab is for \$20,000) that contractor does not have to comply with Section 3 even though the company got \$106,000, because not one of the three individual rehabs had a contract for more than \$100,000.

[“Frequently Asked Questions and Answers” Question #29]

This is a significant limitation. Recipients and contractors can avoid Section 3 by making sure they break up all construction activities into small contracts of less than \$100,000, even if the company is getting a lot more HUD money to do construction work. Advocates have urged HUD to change this practice – which is not in the law or regs – so that if a company gets \$500,000 (for example) to rehab homes, that company should comply with Section 3 even if less than \$100,000 is spent on any one house.

CONTRACTING GOALS

Not only do recipients (and contractors and subcontractors) have an obligation to attempt to train and hire Section 3 residents*, they also have an obligation to give contracting preferences to businesses that are primarily owned by or employ a significant number of Section 3 residents, “to the greatest extent feasible”.

When jurisdictions award contracts to carry out work♦ in connection with a project covered by Section 3 (and when contractors engage subcontractors), each jurisdiction, contractor, or subcontractor can show that they are complying with Section 3 by committing to award contracts to “Section 3 businesses”♥.

There are **two numerical goals for contracts**:

1. At least 10% of the total dollar amount of all Section 3 covered contracts should be awarded to “Section 3 businesses” for any building trades work^ for:
 - a. Public housing maintenance, repair, modernization, or construction; *or*,
 - b. Housing rehab or construction arising from other HUD housing programs; *or*
 - c. Other public construction projects.
2. At least 3% of the total dollar amount of all other (non-building trades) Section 3 covered contracts should be awarded to “Section 3 businesses”.

[Sec. 135.30(c)]

♥“Section 3 Business” is one which meets one of the three following tests:

- a. At least 51% of the business is owned by Section 3 residents; *or*,
- b. At least 30% of its permanent, full-time employees are now Section 3 residents (or were Section 3 residents up to three years ago, but now have higher incomes – *this rewards firms who offered upward mobility even before being considered for a Section 3 business preference*); *or*
- c. Commits to subcontract more than 25% of the dollar amount of all subcontracts to businesses that meet (a) or (b).

♠“Building Trades Work” is not defined in the regs, but it probably includes obvious things like bricklaying, plumbing, and painting. “Other” kinds of contracts might be carpet installation, landscaping, and bookkeeping (for the construction company).

* “Section 3 residents” in general are public housing residents and low and very low income people in the metro area (or non-metro county).

♦“Work”: The regs clarify that contracts to buy supplies and materials are not covered by Section 3. However, if the contract for materials includes the **installation** of the material, then the contract is covered by Section 3. HUD gives an example: If a contract is for the purchase and installation of a furnace, the contract would be covered by Section 3 because the contract is “for work” – the installation of the furnace.

[Sec. 135.5, definition of Section 3 covered contract]

Relative Priorities for Awarding Contracts

Contracts with Section 3 businesses should be awarded according to the following order of priority, “to the greatest extent feasible”:

Public Housing

- 1) First priority should go to businesses that:
 - a) Are primarily owned (51%) by residents of the public housing receiving the HUD funds, *or*
 - b) Have a full-time workforce made up of at least 30% residents of the public housing receiving the HUD funds.
- 2) Second priority should go to businesses that:
 - a) Are primarily owned (51%) by residents of other public housing managed by the PHA receiving the HUD funds, *or*
 - b) Have a full-time workforce made up of at least 30% residents of other public housing managed by the PHA receiving the HUD funds.
- 3) Third priority should go to YouthBuild programs in the metro area (or non-metro county).
- 4) Fourth priority should go to business that:
 - a) Are primarily owned (51%) by low and very low income people in the metro area (or non-metro county); *or*,
 - b) Have a full-time workforce made up of at least 30% low and very low income people in the metro area (or non-metro county); *or*
 - c) Subcontract more than 25% of the dollar amount of all subcontracts to businesses that meet (a) or (b).

[Sec. 135.36(a)(1)]

Other Housing Programs and Community Development Projects

- 1) First priority should go to “Section 3 businesses” that provide economic opportunities to low and very low income residents living in the service area or neighborhood of the project.
- 2) Second priority should go to YouthBuild programs in the metro area (or non-metro county).
- 3) Third priority should go to other “Section 3 businesses”.

[Sec. 135.36(a)(2)]

Thresholds

The thresholds presented on pages 4 and 5 apply to contracting obligations.

RESPONSIBILITIES OF JURISDICTIONS

Annual Report: Each year, recipients must send in to FHEO (Office of Fair Housing and Equal Opportunity) a Section 3 performance report called **HUD form 60002**.

[Sec. 135.90]

Compliance: Each jurisdiction must be sure that its own staff and operations comply with Section 3, and that its contractors and subcontractors also comply. The regulations list some responsibilities:

- a. Having and using procedures to notify “Section 3 residents” about training and employment opportunities, and to notify “Section 3 businesses” about contracting opportunities.
- b. Telling potential contractors about Section 3 requirements and including a “Section 3 clause”^φ in all contracts.
- c. Carrying out activities that help to insure that the Section 3 goals are reached. An appendix to the regs gives examples^A of activities.
- d. Cooperating with HUD in gaining the compliance of contractors and subcontractors; and, not contracting with businesses violating Section 3.
- e. Documenting the actions taken to comply Section 3 and noting any problems.

[Sec. 135.32]

^φ“Section 3 clause”. The regs specify the language which makes up the Section 3 clause. Here are a few sample items from the clause:

- The contractor agrees to send a notice describing the Section 3 preferences to each labor organization it has an agreement with. This notice should indicate the number of jobs (and apprenticeships or training positions) subject to hire, and the titles and qualifications of those jobs.
- The contractor agrees to include the Section 3 clause in every subcontract subject to Section 3.
- The contractor “certifies” (promises in writing) that it won’t try to dodge Section 3 by filling any vacant jobs (including training slots) with non-Section 3 residents between the time the contractor is selected and the signing of a contract.

[Section 135.38]

^ASome of the examples in the Appendix to the regs include:

- Entering into a “first source” hiring agreement with organizations representing Section 3 residents.
- Establishing training programs.
- Using flyers to advertise the training and employment opportunities. The flyers should list the jobs to be filled, the job qualifications, and where to get more information.
- Contacting resident organizations and asking for their help in notifying people.
- Sponsoring a meeting about jobs, with the contractors present.
- Helping people complete job applications and prepare for job interviews.
- Hiring a job coordinator to match people with jobs.

HUD'S RESPONSIBILITIES

The part of HUD responsible for Section 3 is called FHEO (Fair Housing and Equal Opportunity). Within FHEO, the Economic Opportunity Division of the Office of Programs has oversight of Section 3.

HUD will periodically review some jurisdictions and contractors for compliance. In part, HUD will study the extent to which Section 3 residents have been hired and Section 3 businesses have gotten contracts. If HUD finds a failure to comply, it will tell the jurisdiction or contractor how to correct the problem. HUD will do follow-up reviews to be sure action is being taken to correct the problem.

Ongoing failure or refusal to follow Section 3 “may result in sanctions”. Sanctions (penalties) are specified in each funding program’s own regs. (For example, the CDBG regs allow for a reduction in the amount of CDBG a jurisdiction gets, depending on the severity of the problem. Generally, the reduction will be related to an amount associated with a specific project having a problem; however, the reduction could be for the entire amount of CDBG available to the jurisdiction if there are gross violations in the jurisdiction’s overall practices. [24CFR570.911(b)]) Contractors can be temporarily or permanently denied future contracts.

[Section 135.74]

FILING A SECTION 3 COMPLAINT

[Section 135.76]

Any Section 3 resident can file a complaint on behalf of themselves or as a representative of others in similar situations. In addition, someone who is not a Section 3 resident can file a complaint if they represent someone who is. The same applies for Section 3 businesses.

Complaints must be filed within 180 days of the action (or failure to act). Sometimes a problem is around a series of ongoing instances of noncompliance; if so, then a complaint must be filed within 180 days of the last failure to comply.

Complaints should be in writing, preferably using form HUD 958 (<http://portal.hud.gov/hudportal/documents/huddoc?id=958.pdf>), and sent to either your HUD Regional Office (http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/fheodir) or to HUD Headquarters (see below).

The regs clearly state that no jurisdiction or others shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted, or participated in a Section 3 investigation or hearing. In other words, a jurisdiction should not threaten someone’s job or a community group’s current or future receipt of HUD funds.

[Section 135.76(i)]

HUD Headquarters is at:
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