Understanding Section 3 of the Housing and Urban Development Act

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Statute and Regulation

- Section 3 of the Housing and Urban Development Act of 1968
  - 12 U.S.C. 1701u

- Economic Opportunity Regulation
  - 24 CFR Part 135
To ensure that economic opportunities generated from HUD funded projects, to the greatest extent feasible, will be directed to low and very low-income persons - particularly those receiving assistance for housing, and the businesses that provide economic opportunities to these persons.
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 and businesses
Intent

- HUD funding creates opportunities “beyond bricks and mortar”
- Promote Self-Sufficiency amongst low-income persons
- Level the playing field for Section 3 residents and businesses
- Strengthen local economy
To the Greatest Extent Feasible...

- More than normal efforts are implemented

- Recipients must make every effort to recruit, target, and direct economic opportunities to Section 3 residents and businesses
Who is Required to Comply?

• Any entity which receives Section 3 covered assistance, directly from HUD or from another recipient including:

– Any State unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association.
Housing and Community Development Covered Activities

HUD Housing and/or Community Development Assistance that is used for:

- Housing Construction
- Housing Rehabilitation
- Other Public Construction
Section 3 Covered HUD Funding

Some types of Section 3 Covered HUD funding are:

- Public Housing Capital Fund Program Funding
- Public Housing Operating Assistance
- Community Development Block Grant (CDBG)
- Community Development Block Grant—Disaster Recovery
- HOME Investment Partnership
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Economic Development Initiative (EDI)/Brownfield Economic Development Initiative Grants
- Housing Opportunities for Persons with AIDS (HOPWA)
- Homeless Assistance Grants (ESG)
- University Partnership Grants
- 202/811 Grants
- Lead Hazard Control Grants
Funding Thresholds

• The requirements apply to recipients of Housing and Community Development Assistance exceeding $200,000

• The requirements also apply to Contractors/Subcontractors that receive awards exceeding $100,000
Funding Thresholds

- The requirements apply to all construction and rehabilitation activities that are funded from covered assistance
- Does not apply on a per-project basis
- Covered contractors have the same responsibilities as direct recipients
Section 3 Certification(s)

- Annual Certifications
- Signed by Highest-Elected Officials
- Failing to comply with Section 3 Certifications could have severe consequences
Failure to Comply with Section 3

HUD holds direct recipients of covered funding accountable for their own compliance, and the compliance of their contractors.

Sanctions for noncompliance include:

– Debarment
– Suspension
– Limited Denial of Participation
Intended Beneficiaries
Section 3 Resident

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

HUD sets the low-income limit at 80% and very low income limits at 50% of the median family income for the county or metropolitan area in which you choose to live

http://www.huduser.org/portal/datasets/il.html
Section 3 Preference

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

• Not MBE/WBE

• The preference provided by this federal act is based on income and location.
Section 3 Business Concern

• 51% or more owned by Section 3 Residents, or

• 30% of employed staff are currently Section 3 Residents or were Section 3 residents within three years of the date of first employment; or

• 25% of subcontracts committed to Section 3 Businesses.
Triggering Responsibilities

• 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 sub-contracting.
Eligibility for employment and contracting

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

A Section 3 business concern must have the ability and capacity to perform.
Recipient Responsibilities & Practical Tips

24 CFR Part 135.32
States and Counties

States and counties that distribute funds to other units of local government must attempt to achieve compliance regardless of the number of sub-recipients receiving covered funding
States and Counties

– Inform sub-recipients of covered funding about their obligations;

– Assist with their compliance; and

– Monitor their performance and the performance of their covered contractors
Responsibility #1

Design and implement procedures to comply with the requirements of Section 3
Practical Tips:

- Develop and Publish official policies—Section 3 Plan

- Strategic Planning

- Internal/External Meetings
Practical Tips:

– Identify long and short term projects/activities

– Consider applicable State, Federal and local laws
Section 3 Plans

– Strategies to target Section 3 residents and businesses

– Certification/Selection criteria

– Process for informing contractors about responsibilities and assessing hiring/subcontracting needs
Section 3 Plans

– Penalties for noncompliance

– Incentives for good performers

– Reporting Requirements

– Recordkeeping

– Section 3 Coordinator
Responsibility #2

Notify Section 3 residents about training and employment opportunities and Section 3 businesses about contracting opportunities
Practical Tips:

– Establish certification procedures

– Maintain lists of certified Section 3 residents & businesses

– Personally notify certified residents and businesses

– Post Notices Door-to-Door
Practical Tips:

– Community Job Fairs
– Online Job Search Vehicles
– Community Partnerships
– Section 3 Coordinator
Responsibility #3

Notify covered contractors about the requirements of Section 3
Practical Tips:

– Pre-Bid Hearings/ Meetings

– Section 3 Workshops

– Provide copies of your agency’s Section 3 Plan and have contractors certify receipt
Practical Tips:

– Include compliance with Section 3 as a rating factor when selecting “responsible bidders”

– Assess bidders on their strategy for meeting the requirements of Section 3
Responsibility #4

Incorporate the Section 3 clause into covered solicitations and contracts

--24 CFR Part 135.38
Practical Tips:

– Refer to Section 3 in bid packages, RFPs, etc.

– Review clause with developer and have them certify compliance
Practical Tips:

Monitor Developers/Contractors Regularly

Develop appropriate penalties for noncompliance and/or incentives for those that exceed minimum goals
Responsibility #5

Facilitate training and employment of Section 3 residents and the award contracts to Section 3 businesses, as appropriate to reach the minimum numerical goals.
Practical Tips:

– Assess needs of developers at time of contract award

– Match potential employees or subcontractors with developers

– Ensure that developers advertise vacancies in accordance with the agency’s policies
Practical Tips:

– Conduct local career/business development trainings

– Sponsor Job-Fairs

– Develop Partnerships with local One-Stop Career Centers

– Youthbuild/Apprenticeship Programs
Practical Tips:

- Provide guidance for determining Section 3 eligibility
- Have certified residents and businesses provide evidence to contractors
Responsibility #6

Minimum Numerical Goals:

– 30% of new hires annually

– 10% of the total dollar amount of covered construction contracts

– 3% of the total dollar amount of covered non-construction contracts
Minimum Numerical Goals

– 24 CFR Part 135.30

– Numerical Targets (may be exceeded)

– Safe Harbor Compliance

– Other Efforts Taken to Achieve Compliance—To the Greatest Extent Feasible
Who Can be Counted As a New Hire?

- New Workers
- Returning Laid-off Workers
- Temporary/Seasonal Workers
- Full-time Workers
Practical Tips:

– Identify short- and long-term capital improvement projects, job vacancies, training opportunities, contracts, etc.

– Implement strategies to target Section 3 residents and businesses

– Review Appendix to Regulation
Practical Tips:

– Consider all hiring and subcontracting needs of developers and contractors

– Maintain evidence of efforts taken to achieve compliance

– Describe efforts taken on Section 3 annual report
Responsibility #7

Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors
Practical Tips:

– Cooperate with HUD’s Section 3 Enforcement Actions

– Hold developers/contractors accountable
Practical Tips:

– Develop appropriate penalties and apply them consistently

– Withhold Final Payments for “Section 3 Training Fund”
Responsibility #8

Refrain from entering into contracts with contractors that fail to comply
Practical Tips:

– Determine appropriate timeframe for suspensions (i.e., 90 days, 1 year, 3 years)

– Be Consistent!!!

– Publicize actions taken
Responsibility #9

Documenting actions taken to comply with the requirements of Section 3, results of actions taken, and impediments, if any
Practical Tips:

– Records of notification/recruiting efforts
– Copies of vacancy announcements
– Participation in local events
– Signed contracts
– Penalties imposed
– Outcomes produced
– Annual 60002 forms
Section 3 Reporting

• Measures efforts to meet numerical goals

• Narrative explanations

• Must be submitted even if no covered actions were completed
Section 3 Reporting

• Online Reporting System Currently Disabled

• No Penalties will be Assessed during the System Outage

• Maintain Records

• Sign up for our Listserv
Section 3 Proposed Rule

- Public Comment Period Closed May 26, 2015
- Over 300 Comments Received
- Archived Webinars
Section 3 Business Registry

- Expanded Nationally
- More than 1,000 businesses
- Encourage local businesses to sign-up
BusinessUSA’s Mobile Application
pulls together the best business information, events, services, tools and advisors from U.S. federal, state and local governments. Whether you’re a potential entrepreneur interested in launching a startup, or you’re the CEO of an existing business needing help growing that enterprise, BusinessUSA has resources that can help with advice on financing expansion, finding taxes and credits, learning to export, or discovering new business leads.

What Can the BusinessUSA Mobile App Do for You?

Use the BusinessUSA mobile app to find business events near you, then register right on your mobile device and tap to get directions. Find local business advisors and request an appointment. Get notified about contract opportunities to bid on, both domestically and internationally. Or just use BusinessUSA to discover helpful information, services, and tools to:

- Start and grow your business
- Access financing
- Find new markets, with trade leads, research grants and contracting opportunities
- Protect your intellectual property, including inventions and trademarks
- Learn about benefits and services for veteran entrepreneurs
- Comply with regulations, taxes and healthcare changes
Additional Resources

- www.hud.gov/section3
- section3@hud.gov
- Section 3 Business Registry: http://www.hud.gov/sec3biz
- Section 3 Reporting Questions: 60002questions@hud.gov
Questions & Answers