

Frequently Asked Questions and Answers About

Section 3 of the Housing & Urban Development Act of 1968

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GENERAL QUESTIONS

1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities through the form of grants, loans, entitlement allocations and other forms of financial assistance. Section 3 is intended to ensure that when employment or contracting opportunities are generated because a covered project or activity necessitates the employment of additional persons or the awarding of contracts for work, preference must be given to low- and very low-income persons or business concerns residing in the community where the project is located.

2. What does the term "Section 3 resident" mean?

A "section 3 resident" is: 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or Non-metropolitan County in which the Section 3 covered assistance is expended.

3. What does the term Section 3 Business Concern mean?

Section 3 business concerns are businesses that can provide evidence that they meet one of the following:

- a) 51 percent or more owned by Section 3 residents; or
- b) At least 30 percent of its fully time employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or

- c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.
4. How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?

Section 3 is both race and gender neutral. The preferences provided under this regulation are based on income-level and location. The Section 3 regulations were designed to encourage recipients of HUD funding to direct new employment and contracting opportunities to low-income residents, and the businesses that employ these persons, within their community regardless of race and/or gender.

Please contact HUD's Office of Small and Disadvantaged Business Utilization at 202-708-1428, to learn more about these programs.

5. How is "low-income" determined?

The term "low-income" is used in the Section 3 regulation to include both low- and very low-income individuals. Local income levels can be obtained online at: <http://www.huduser.org/DATASETS/il.html>.

6. Define "metropolitan area" and "Non-metropolitan County."

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget. Non-metropolitan County means any county outside of a metropolitan area.

7. What is a "new hire"?

A new hire means a full-time employee for a new permanent, temporary, or seasonal position that is created during the expenditure of Section 3 covered financial assistance.

8. What is a Section 3 covered project?

A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

9. Who is considered a recipient of Section 3 funding?

A recipient is any entity which receives Section 3 covered assistance, directly from HUD or from another recipient. It does not include contractors or any ultimate beneficiary under the HUD program to which Section 3 applies.

10. Is a non-profit organization considered a "business" for the purposes of Section 3?

Yes. A non-profit organization is a legitimate business. The non-profit organization must meet the criteria of a Section 3 business concern as defined in 24 CFR Part 135.5 in order to receive Section 3 preference.

11. What is a Service Area?

The Service area is the geographical area in which the persons benefiting from the Section 3 covered project reside. The Service Area shall not extend beyond the unit of local government in which the Section 3 covered financial assistance is expended.

APPLICABILITY

12. What is Section 3 covered assistance?

- Public and Indian housing development, operating or capital funds; or
- Other housing assistance and community development assistance expended for housing rehabilitation, housing construction or other public construction projects, such as: CDBG, HOME, 202/811, Lead-Based Paint Abatement, etc.

13. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?

Public Housing Authorities regardless of size or number of units

Section 3 also applies to recipients of \$200,000 or more of the following Housing and/or Community Development financial assistance:

- HOPE VI funding
- Community Development Block Grant (CDBG) funding
- Community Development Block Grant Programs for Indian Tribes and Alaska Native Villages
- HOME Investment Partnership funding
- Self-Help Homeownership Opportunity Programs
- Economic Development Initiatives assistance
- Brownfields Economic Development Initiatives

- Continuum of Care Homeless Assistance Programs
- Housing Opportunities for Persons with AIDS
- Section 202 Supportive Housing for the Elderly
- Section 811 Supportive Housing for Persons with Disabilities
- Assisted Living Conversion Program
- Lead Hazard Control Grants
- Healthy Homes and Lead Technical Studies
- Healthy Homes Demonstration Programs

***Note:** The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact the Economic Opportunity Division at section3@hud.gov to determine applicability to a particular project/activity.

14. Are Section 8 ONLY Housing Authorities exempt from the requirements of Section 3?

Yes. Since Section 8 ONLY Housing Authorities do not utilize any of the financial assistance described above, they are exempt from the requirements of Section 3. However, compliance with Section 3 is encouraged.

15. What are funding thresholds and how do they apply to Section 3 covered financial assistance?

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. There are **no thresholds for Public Housing Authorities (PHAs)**. The requirements of Section 3 apply to all PHAs regardless of the amount of assistance received from HUD.

The requirements of Section 3 apply to recipients of Housing and Community Development assistance that invest \$200,000 or more into projects/activities involving housing construction, rehabilitation, or other public construction.

16. What dollar threshold amounts apply to contractors/subcontractors?

All contracts (or subcontracts) funded with Public and Indian Housing assistance (regardless of the dollar amount or the type of contract) is subject to the requirements of Section 3.

With respect to recipients of Housing and/or Community Development funding, all contractors (or subcontractors) receiving covered funds in excess of \$100,000 to complete projects involving housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.

17. What responsibilities do contractors/subcontractors have if they receive Section 3 covered financial assistance?

If the contractor/subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals apply to contractors and subcontractors (i.e., 30 percent of new hires, 10 percent of construction contracts, and 3 percent of non-construction contracts). In addition, the contractor/subcontractor must notify the recipient agency about their efforts to comply with Section 3 and submit any required documentation.

18. Do the Section 3 requirements apply to HUD's procurement activities?

No. Section 3 covered contracts do not include contracts awarded under HUD's procurement programs, which are governed by the Federal Acquisition Regulation System.

19. Are maintenance projects covered by Section 3?

Yes, but only for projects using funding that is provided for the operation, development, or modernization of Public Housing Authorities.

Extensive rehabilitation (i.e., complete renovation of one or more livable units) activities are covered by Section 3 for all covered programs.

20. Does reduction and abatement of lead-based paint hazards constitute housing rehabilitation?

Yes, reduction and abatement of lead-based paint hazards does constitute housing rehabilitation and is covered by Section 3.

21. Are professional service contracts covered under Section 3?

Yes, the term "Section 3 covered contract" includes professional service contracts provided that the work to be performed is generated by the expenditure of Section 3 covered Public and Indian housing assistance, or for work arising in connection with projects involving housing rehabilitation, housing construction, or other public construction.

21. Does Section 3 apply to hiring by a CDBG-Entitlement recipient?

Yes. If the recipient intends to use its HUD allocation to hire additional staff person(s) to perform work related to housing construction, rehabilitation, or other public construction, then the position(s) is covered by Section 3. However, if the local municipality uses a civil servant applicant process to

hire new employees, compliance with the requirements of Section 3 may not be feasible.

22. For community development and other housing assistance, do the thresholds apply to the total amount of HUD assistance received or the amount of funds invested into Section 3 covered projects/activities?

The threshold applies to the amount of funds invested into Section 3 covered projects/activities. Example: the City of Hilltop, receives \$210,000 through the State CDBG program. The funds will be used as follows:

- a. Housing rehabilitation- \$180,000;
- b. micro-enterprise revolving loan fund- \$20,000; and
- c. Fair housing counseling- \$10,000.

Hilltop is not subject to Section 3 requirements because only \$180,000 is spent for Section 3 covered activities, and the remaining \$30,000 is not used for construction, rehabilitation, or other public construction. Therefore, the \$200,000 threshold is not met. However, the city must still submit a Section 3 annual summary report (form 60002) to HUD headquarters.

23. Are contracts cumulative for reaching the Section 3 threshold? For example, a recipient agency receives \$800,000 in HOME Investment Partnership funds. The recipient awards contracts for single housing rehabilitation on a rotating basis from a list of qualified contractors. One contractor receives three contracts (\$36,000; \$50,000; and \$20,000) with a cumulative total of \$106,000 for three different projects within a twelve month period. Is that contractor covered by Section 3?

No, contracts for Section 3 covered projects are not cumulative.

The requirements of Section 3 apply to contractors and subcontractors performing work on a Section 3 covered project for which the amount of the assistance exceeds \$200,000; and each contract or subcontract exceeds \$100,000.

CONSISTENCY WITH OTHER LAWS

24. Does Section 3 apply to other State/local laws?

Compliance with Section 3 shall be achieved to the greatest extent feasible, and consistent with local laws and regulations.

25. What is the relationship between Section 3 and Minority Business Enterprises (MBEs)?

“Minority business enterprise” (MBE) means a business enterprise that is owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

Section 3 preferences are not tied to race or ethnic origin of the owner. A minority business enterprise must provide evidence that it meets at least one criterion of a Section 3 business outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.

The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs, and other socially and economically disadvantaged businesses. Additional information about the MBE program can be obtained by calling the Office of Small and Disadvantaged Business Utilization at 202-708-1428.

RECIPIENT RESPONSIBILITIES

26. What are the responsibilities of recipient agencies under Section 3?

Recipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR § 135.32.

27. Are funds provided to recipients that comply with the requirements of Section 3?

No. There is no need for funds to be provided to ensure Section 3 compliance because the Section 3 requirements are only triggered **when** new jobs and/or contracting opportunities are created during the completion of covered projects/activities.

28. Does Section 3 require that the expenditure of HUD financial assistance result in the creation of training, employment, and contracting opportunities?

Recipient agencies are not required to create jobs or contracts for Section 3 residents and business concerns simply for the sake of creating them. Section 3 requires that **when** employment or contracting opportunities are generated because a project or activity undertaken by a recipient of covered HUD

financial assistance necessitates the employment of additional personnel through individual hiring or the awarding of contracts, the recipient must give preference in hiring to low- and very low- income persons and/or businesses owned by these persons or that substantially employ these persons.

29. Are Section 3 residents or business concerns guaranteed employment or contracting opportunities under Section 3?

No. Section 3 residents must demonstrate that they meet the qualifications for new employment opportunities created as a result of the expenditure of covered assistance.

Section 3 business concerns must submit evidence to the satisfaction of the party awarding the contract to demonstrate that they are responsible firms and have the ability to perform successfully under the terms and conditions of the proposed contract.

30. Are recipients and contractors required to provide long- term employment opportunities, and not simply seasonal or temporary employment/

Recipients and contractors are required, to the extent feasible, to direct all employment opportunities to low- and very low-income persons- including seasonal and temporary employment opportunities.

Employment goals are based on "new hires", which is defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. They may count a Section 3 resident employee for three years to meet the business criterion that at least 30 percent of the permanent, full-time employees are Section 3 residents.

31. When might a recipient agency be exempt from the requirements of Section 3?

If Section 3 covered assistance is awarded and the recipient has no need for additional employees or trainees, or the recipient has no need to contract for work, then the Section 3 requirements are not triggered. However, the recipient agency must still submit a Section 3 Annual Summary report (HUD form 60002), in accordance with 24 CFR § 135.90.

SECTION 3 PREFERENCE

32. What is considered acceptable evidence to determine eligibility as a Section 3 resident?

HUD does not prescribe any specific forms of evidence are required for Section 3 certification. Sample certification documents can be found on the Section 3 website. Acceptable documentation includes, but is not limited to the following:

- proof of residency in a public housing development;
- evidence of participation in a HUD Youthbuild program operated in the metropolitan are (or non-metropolitan county) where the Section 3 covered assistance is spent;
- evidence that the individual resides in the Section 3 area and is a low or very low-income person, as defined in Section 3(b) (2) of the U.S. Housing Act of 1937 (1937 Act).
- Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information.

33. What is acceptable evidence for determining eligibility as a Section 3 business?

HUD does not prescribe any specific forms of evidence are required for Section 3 certification. Sample certification documents can be found on the Section 3 website. The business seeking the preference must be able to demonstrate that it meets one of the following:

- 51 percent or more owned by Section 3 residents; or
- Has permanent, full time employees at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- Has a commitment to sub-contract in excess of 25 percent of the dollar award of all sub-contracts to be awarded to such businesses described above.
- Recipient agencies may choose to allow prospective Section 3 business concerns to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information.

34. Are all public and Indian housing residents considered Section 3 residents regardless of their income?

Yes. Public and Indian housing residents need only show proof of residency in public housing within the metropolitan area (or non-metropolitan county). Other residents of the Section 3 area need to show proof of residency in the metropolitan area (or non-metropolitan county) and meet the income requirements. [See 24 CFR Part 135.5 for the definition of a Section 3 resident].

35. Does preference to a Section 3 business mean that the business should be selected if it meets the technical requirements of the bid, regardless of bid price?

No. As provided in 24 CFR 85.36(b) (8), contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. The determination that a prospective contractor is responsible must include consideration of the firm's compliance with technical and public policy requirements.

Preference to Section 3 business concerns means that a recipient's or contractor's procurement procedures include methods to provide preference to Section 3 business concerns. Accordingly, if a Section 3 business concern is a responsible bidder, but their bid price is slightly higher than a non-Section 3 firm, the recipient agency can give preference to the Section 3 business in an effort to meet its numerical goals annually.

36. Does a business have to be incorporated to be considered as a Section 3 eligible business? What forms of identification are used to determine that an organization is a Section 3 business?

No, a business does not have to be incorporated to be a Section 3 business concern. It can be any type of business- sole proprietorship, partnership or a corporation.

ECONOMIC OPPORTUNITIES/NUMERICAL GOALS

37. What types of new employment opportunities are covered by Section 3?

For Public and Indian Housing (PIH) Programs, all employment opportunities generated by the expenditure of development, operating, and modernization assistance, including management and administrative jobs, technical, professional, construction and maintenance jobs; and jobs at all levels.

For Housing and Community Development Programs, all employment opportunities arising in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project (i.e., management and administrative jobs, technical, professional, and construction and non-construction jobs; and jobs at all levels).

38. Are recipient agencies required to meet the Section 3 goals or are they merely “goals”?

The Section 3 Numerical goals are minimum numerical targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make efforts to the greatest extent feasible to achieve the annual numerical goals for employment and contracting. If an agency fails to fully meet the Section 3 numerical goals, they must be prepared to demonstrate the efforts taken in an attempt to meet the numerical goals.

39. What are the Section 3 numerical goals?

The minimum numerical goal for employment 30 percent of the aggregate number of new hires shall be Section 3 residents annually—i.e., 1 out of 3 new employees needed to complete a Section 3 covered project/activity shall be a Section 3 resident.

The minimum goals for contracting are:

- Ten percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing or building trades work arising in connection with housing rehabilitation, housing construction and other public construction, shall be awarded to Section 3 businesses; and
- Three percent of the total dollar amount of all non-construction Section 3 covered contracts, shall be awarded to Section 3 businesses.

40. Are the numerical goals the same as set-asides and quotas?

No. A set-aside guarantees that a specific portion of funds will be provided to a protected class. The numerical goals in the Section 3 regulations are goals that a recipient of HUD Section 3 covered financial assistance must try to meet in order to demonstrate Section 3 compliance.

41. What is the meaning of the “safe harbor” determination?

Absent evidence to the contrary (i.e., evidence that efforts to the “greatest extent feasible” were not expended), if a recipient or contractor meets the numerical goals, the recipient or contractor is considered to be in compliance with Section 3.

A recipient or contractor considered to be in compliance with Section 3 may not be subject to routine compliance reviews.

In the event that a complaint is filed against a recipient or contractor considered to be in compliance with Section 3. HUD will investigate to determine if “the greatest extent feasible” policy was met.

RECORDKEEPING AND REPORTING

42. What are the recordkeeping requirements of a recipient?

Documentation of actions taken to comply with the employment and training requirements of Section 3, the results of actions taken and impediments encountered. Recipient agencies should maintain records of job vacancies, solicitation for bids or proposals, selection materials, and contract documents (including scope of work and contract amount), in accordance with Federal or State procurement laws and regulations. The documentation should demonstrate efforts taken towards the achievement of the Section 3 numerical goals.

43. Who is required to submit Section 3 reports?

Each recipient of Section 3 covered HUD financial assistance shall submit an annual report to the Assistant Secretary for the purpose of determining the effectiveness of Section 3 (HUD form 60002). Section 3 summary reports are required even if the recipient agency did not undertake any activities that triggered the requirements.

44. Where should the Section 3 summary reports be submitted?

Section 3 Summary reports can be sent by mail to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW room 5232
Washington, DC 20410
Attn: Economic Opportunity Division

Section 3 reports can also be submitted online at:
www.hud.gov/offices/fheo/section3/section3.cfm

45. When should annual reports be submitted?

Depending on the source of funding, annual reports should be submitted
 1) at the time the recipient submits an annual performance report; 2) by
 January 10 of each year if no program annual performance report is required;
 or 3) within ten (10) days of project completion, whichever is earlier.

- PHAs should submit Section 3 reports on form 60002 by January 10th.
- Grantees Awarded funding for CDBG, HOME and/or ESG should submit Section 3 reports on form HUD 60002 at the same time they submit the CAPER report.
- Grantees Awarded funding for Section 202/811 should submit Section 3 reports on form 60002 by January 10th.
- Grantees Awarded funding for lead abatement activities should submit Section 3 reports on form 60002 with their annual reports no later than September 30th.

45. What amount should be reported on the Section 3 Annual Report?

Box #3 on the 60002 form should reflect the amount of HUD funds that were expended during the reporting period.

SECTION 3 COMPLAINTS

46. Who can file a complaint when the requirements of Section 3 are not met?

Any Section 3 resident or Section 3 business (or authorized representative) seeking employment, training or contracting opportunities generated by Section 3 covered assistance may file a complaint using *form HUD 958*.

46. Where are Section 3 complaints filed?

Effective November 2007, Section 3 complaints must be filed at the appropriate FHEO Regional Office in which the violation occurred. Please visit www.hud.gov/offices/fheo to obtain the address and telephone number for FHEO regional offices.

47. Is there a time limit for filing a Section 3 complaint?

Yes. Section 3 complaints must be filed no later than 180 days from the date of the action or omission upon which the complaint is based.