

## Section 3 Overview

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD's legislative directive for providing preference to low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training and contracting opportunities resulting from HUD-funded projects. The regulations seek to ensure that low- and very low- income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created.

A Section 3 resident is defined as a public housing resident or someone with a household income that is less than 80% of the area median income. A Section 3 business is defined as a business that is:

- 1) 51% owned by Section 3 residents
- 2) Whose permanent, full-time staff is comprised of at least 30% Section 3 residents\*\*
- 3) Has committed 25% of the dollar amount of its subcontracts to Section 3 businesses

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods. However, recipients are not required to hire or enter into contracts with Section 3 residents or businesses simply to meet the Section 3 goals—anyone selected for contracting or employment opportunities must meet the qualifications for the job/contract being sought.

### When Section 3 Applies

Section 3 applies to projects/activities involving housing (construction, demolition, rehabilitation) or other public construction—i.e. roads, sewers, community centers, etc. Section 3 applies to HOME projects when:

- The recipient's HOME contract with the State of Iowa exceeds \$200,000 and involves housing and/or public construction.
- The recipient has contracted with subcontractors for professional/administrative services contracts and the contract amount is over \$100,000.

If no individual subcontract for activities exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient (City/County and the State).

Please note that while Section 3 applies to projects and contracts described above, the Section 3 requirements are only triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting or training opportunities. Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

### **Compliance with Section 3**

Each recipient has the responsibility to comply with Section 3 in its own operations and ensure compliance in the operations of its contractors/ subcontractors. This responsibility includes but may not be necessarily limited to:

- (a) Implementing procedures designed to notify section 3 residents about training and employment opportunities
- (b) Notifying potential contractors for section 3 covered projects of the requirements of this part and incorporating the section 3 clause set forth in § 135.38 in all solicitations and contracts.
- (c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 businesses
- (d) Assisting and actively cooperating with HUD in obtaining the compliance of contractors and subcontractors with the requirements of this part and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.
- (e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

### **Procurement & bid documents**

HOME recipients must include Section 3 language in all procurement and bid documents. The required language to be included in these documents can be found later in this section of the HOME Management Guide. In addition to the required language, recipients must include the “Intent to Comply with Section 3” form with all RFPs.

Contractors responding to bids must submit with their bid documents a signed copy of the “Intent to Comply with Section 3” form included in this Guide. This form will be used to collect information that recipients should use when reviewing responses to ensure compliance with Section 3 requirements.

### **Selecting Contractors with Section 3**

In addition to certifying new employees’ level of income, Section 3 requires recipients make an effort to the “greatest extent feasible” to facilitate contracts to Section 3 businesses. By “greatest extent feasible,” HUD means that recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. This may mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 residents and businesses for these types of economic opportunities. Suggestions on strategies for reaching Section 3 businesses is provided later in this section of the HOME Management Guide.

While Iowa procurement procedures require recipients select the lowest responsible bidder when under a competitive sealed bid process, recipients may give preference to Section 3 businesses as a means of evaluation criteria for professional services contracts where proposals are solicited.

In order to give preference to Section 3 businesses during the contract awarding process, recipients must ask the contractor to certify whether or not they are a Section 3 business when soliciting for proposals. The “Intent to Comply With Section 3” form that will be provided with procurement documents and submitted by bidders will capture this information.

Remember, to be considered a Section 3 business the business must meet the definition by satisfying one of the following requirements:

- 1) Is 51% owned by Section 3 residents
- 2) Whose permanent, full-time staff is comprised of at least 30% Section 3 residents\*\*
- 3) Has committed 25% of the dollar amount of its subcontracts to Section 3 businesses

Section 3 businesses must be given priority in contracting for work, to the greatest extent feasible. Recipients should use the following order of priority:

1st: Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

2nd: Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

3rd: Other section 3 business concerns.

It is important to note that Section 3 requirements at 24 CFR 135, provides only preference for contracts and subcontracts to Section 3 businesses; Eligible businesses must demonstrate that they are responsible and have the ability to perform successfully under the terms and conditions of proposed contracts.

### **Hiring & Training with Section 3**

Recipients and their contractors/subcontractors are required to give hiring and training preference to Section 3 residents, to the greatest extent feasible, when new employment opportunities result from a HOME funded project.

When a recipient or contractor/subcontractor has identified that new employment or training opportunity will result from the normal completion of the HOME construction and/or rehabilitation projects, the HOME grant administrator should work with that entity to assist with advertising the opportunity to Section 3 residents.

Notices of employment/training opportunities must be sent to the Iowa Chapter of the National Association of Housing and Redevelopment Officials (NAHRO). Notices should be sent to the NAHRO Chapter President. Contact information can be found here: <http://www.ianahro.org/contactus.cfm> NAHRO will share the notice with public housing authorities, in an effort to help reach Section 3 businesses. A sample notice for employment/training opportunities is provided in the attachments to this section of the Management Guide.

Additional suggestions on strategies for reaching Section 3 residents is provided later in this section of the HOME Management Guide. Remember, recipients are required to document affirmative steps

made to meet Section 3 goals when Section 3 requirements are triggered.

When giving hiring and training preference to Section 3 residents, recipients and contractor/subcontractors should use the following order of priority:

1st: Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents).

2nd: Participants in HUD Youthbuild programs (category 2 residents).

3rd: Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority.

4th: Other section 3 residents.

### **Goals under Section 3**

Federal regulations establish numerical goals for employment/training for Section 3 residents and contracts to Section 3 businesses.

Recipients, their contractors and subcontractors may show compliance with Section 3 requirements by:

1. Employing Section 3 residents as 30 percent of the new hires each year (24 CFR 153.30(b)(3).
2. Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and
3. At least 3% of the amount of all other Section 3 covered contracts (non-construction or professional services contracts)

A recipient that has not met the numerical goals must explain why it was not feasible to meet the established numerical goals set forth in this section. Please refer to “Reporting requirements/ reporting forms” for more information.

**Note:** It is important to document efforts made to comply with Section 3. Recipient files should contain any memos, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). IEDA staff will review this documentation during the project on-site monitoring visit.

### **Penalties for non-compliance**

Recipients of HOME funding have the responsibility of complying with Section 3 regulations and ensuring compliance among its contractors and subcontractors. Federal code established penalties for Section 3 violations and non-compliance. (See 135.38(f))

Communities and contractors found in violation of Section 3 requirements may result in:

- Sanctions from HUD
- Termination of contract for HOME funds
- Debarment or suspension from future HUD assisted (HOME) contracts

Non-compliance with Section 3 can impact a community's ability to receive HOME funding in the future. Under federal code, the state of Iowa may not enter into a contract with any entity when the state has knowledge that the entity has been found in violation of the Section 3 regulations. (See 24 CFR 135.32(d) and 24 CFR 135.72(b)).

### **Reporting requirements/ Reporting forms**

To report Section 3 data, recipients must analyze whether or not the Section 3 covered contract hired any new employees (temporary or permanent) to complete the activity/project. If the expenditure of HOME funds does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, even if the HOME-funded/ Section 3 covered project did not create new employment opportunities, this information must be reported to IFA.

If the contract is covered by Section 3, based on the criteria above, and the recipient/contractor did hire new employees (temporary or permanent), it is required that they report the new employees' level of income. If the new employee's household income is less than 80% of area median income prior to their hiring, they are considered a new hire that is Section 3 eligible. If they are above the 80% level of area median income, they are considered a new hire that is not Section 3 eligible. Income limits by County are available on IFA's website.

To certify if the contractor hired any new employees for the project, please use the "Section 3 New Hire Compliance Report", found in the appendix to this chapter. Please note this form will also have the employer certify whether or not the new employee is a Section 3 resident.

To report Section 3 data to IFA, recipients will report annually to IFA. This report will be submitted to Jacob Levang at [Jacob.Levang@iowaEDA.com](mailto:Jacob.Levang@iowaEDA.com) and will be due by December 31<sup>st</sup> of each year. As part of this report, recipients will need to report Section 3 accomplishments and/or provide a detailed explanation of why Section 3 goals were not met. Such an explanation should discuss efforts taken to comply with Section 3 and any impediments the recipient experienced in meeting Section 3 goals.

### **Section 3 Business Registry**

The Section 3 Business Registry is a registry of firms that have self-certified their status as Section 3 Businesses. Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses. Section 3 residents are also encouraged to use the registry to identify businesses that may have HUD-funded employment opportunities.

HOME recipients should utilize HUD's Section 3 Business Registry to find Section 3 businesses that may be able to participate in the HOME project. Recipients can search through HUD's Section 3 registry here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/>

What Businesses may register as a Section 3 Business through HUD's website here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

It is important to note that Section 3 businesses are not entitled to receive contracts simply by being listed in HUD's Section 3 Business Registry database.

### **Additional Section 3 Resources**

More information and resources on Section 3 can be found on HUD's Section 3 website here: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3)

### **Section 3 Appendix Attachments**

- Section 3 regulations (24 CFR Part 135)
- Frequently Asked Questions on Section 3 (from HUD Section 3 website)
- Appendix to Part 135: Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents
- Appendix to Part 135: Examples of Efforts to Award Contract to Section 3 Business Concerns
- Appendix to Part 135: Examples of Procurement Procedures that Provide for Preference for Section 3 Business Concerns
- Steps for Section 3 Compliance
- Section 3 Clause (to be included in all CDBG related contracts)
- Sample Section 3 Employment Notice
- Intent to Comply with Section 3 Requirements Form (to be included with all procurement materials)
- Section 3 Business Certification form
- Section 3 New Hire Compliance report form
- Sample format for Section 3 Employee Interview form