Designing and Implementing Your Section 3 Program

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PART I: SECTION 3 PROGRAM DESIGN
1. Section 3 Final Rule
2. Overview of Section 3
3. Designing Your Section 3 Program

PART II: SECTION 3 PROGRAM IMPLEMENTATION
1. Putting Your Section 3 Plan Into Action
2. Documenting Compliance with Section 3
3. Section 3 Compliance Scenarios
Please Note!

• This presentation focuses on Section 3 requirements for housing and community development projects (including CDBG-DR and MIT) which are different than the requirements for Public Housing Authorities.

• The recent Section 3 “Final Rule” modified Section 3 requirements. The first section covers these changes in detail, and throughout this presentation the new requirements will be indicated by purple italic text.
PART I:
SECTION 3 PROGRAM DESIGN
Section 3 Final Rule
What is Section 3?

• Provision of Housing and Urban Development Act of 1968
• Helps bring economic opportunities generated by some HUD assistance to low-income and very low-income persons residing in the area where HUD funds are being expended
• Results in a dual benefit for LMI areas:
  – New or rehabilitated housing and public facilities and/or infrastructure
  – Jobs and other economic opportunities working on HUD-assisted projects
Why did Section 3 Change?

- Streamline tracking and reporting to make compliance easier
- Align regulations with standard business practices
- Increase positive Section 3 outcomes
Current Resources

• Talk about what is available currently from HUD
• Reference the portal
## Section 3 Policy Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 1, 1968</td>
<td>Congress approves the Housing and Urban Development Act of 1968, which includes the original Section 3 requirements</td>
</tr>
<tr>
<td>August 1, 1994</td>
<td>HUD promulgates Section 3 Interim Rule (this is the one most grantees and contractors are familiar with)</td>
</tr>
<tr>
<td>April 4, 2019</td>
<td>HUD issues the Section 3 Proposed Rule for public comment</td>
</tr>
<tr>
<td>November 30, 2020</td>
<td>The Section 3 Final Rule takes effect</td>
</tr>
<tr>
<td>July 1, 2021</td>
<td>Section 3 Final Rule becomes applicable to recipients of public housing financial assistance</td>
</tr>
<tr>
<td>July 1, 2021</td>
<td>Section 3 Final Rule becomes applicable to Section 3 projects for which CPD or CDBG-DR funds are committed</td>
</tr>
</tbody>
</table>
## Highlights of the Final Rule (1/2)

<table>
<thead>
<tr>
<th>Previous Requirement</th>
<th>New Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>30% of new hires must be Section 3 residents</td>
<td>25% of total project hours worked by Section 3 workers; 5% by targeted Section 3 workers</td>
</tr>
<tr>
<td>Used the term “Section 3 resident”</td>
<td>Uses the term “Section 3 worker”</td>
</tr>
<tr>
<td>No preference or definition for targeted Section 3 worker</td>
<td>Added preference &amp; definition for targeted Section 3 worker</td>
</tr>
<tr>
<td>Business could be Section 3 if subcontracting 25% of work to other Section 3 firms</td>
<td>Business can be Section 3 if 51% owned by PHA resident or 75% of hours worked are by Section 3 workers</td>
</tr>
<tr>
<td>10% of construction costs contracted to Section 3 firms</td>
<td>No numeric benchmark but must contract with Section 3 businesses to greatest extent feasible</td>
</tr>
<tr>
<td>3% of non-construction costs contracted to Section 3 firms</td>
<td>Professional services that require specialized degrees or licensing not subject to Section 3</td>
</tr>
<tr>
<td>Program-wide compliance required if &gt;$200K in HUD funds</td>
<td>Section 3 compliance required on a per-project basis only</td>
</tr>
</tbody>
</table>
## Highlights of the Final Rule (2/2)

<table>
<thead>
<tr>
<th>Previous Requirement</th>
<th>New Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered project = greater than $100K in HUD assistance</td>
<td>Covered project = greater than $200K in CPD assistance or greater than $100K in Lead and Healthy Homes funding</td>
</tr>
<tr>
<td>Covered project threshold was fixed</td>
<td>Covered project threshold may be updated every 3 years by FR notice</td>
</tr>
<tr>
<td>Reported in SPEARS</td>
<td>Reported in IDIS or DRGR depending on funding source</td>
</tr>
<tr>
<td>Implementing regulation 24 CFR 135</td>
<td>Implementing regulation 24 CFR 75</td>
</tr>
<tr>
<td>Fixed numeric benchmarks and project thresholds</td>
<td>Numeric benchmarks updated every 3 years by FR notice; Project thresholds updated every 5 years by FR notice</td>
</tr>
<tr>
<td>Overseen by the Office of Fair Housing and Equal Opportunity</td>
<td>Overseen by Program Offices</td>
</tr>
</tbody>
</table>
Additional Considerations

• Under the old Section 3 rule, grantees were required to direct 3% of non-construction project costs (such as professional services) to Section 3 business concerns.

• With the new rule there is no longer a numeric benchmark for non-construction participation, but HUD permits grantees to include professional services in the percentage of Section 3 hours worked to help achieve safe harbor. (This can help you meet the numeric goals.)
Overview of Section 3
When Does Section 3 Apply?

• Section 3 is required when the following occur:
  1. The project involves new construction, rehab or demolition of housing, infrastructure or public facilities AND
  2. The project costs exceed $200K for CPD or $100K for Lead and Healthy Homes funded projects and results in employment, training, or contracting opportunities during the course of the project

• Section 3 applies to the entire project, regardless of whether the activity is fully or partially funded with HUD assistance

• States and subrecipients must ensure that contractors, subcontractors and developers comply with Section 3 on applicable projects

• *Dollar thresholds may be updated every 3 years by FRN (https://www.federalregister.gov)*
Other Section 3 Considerations

• For projects estimated to be near or above the dollar threshold, contractors should be procured with the upfront understanding that Section 3 numeric goals apply.

• You may give award preference to Section 3 businesses in your evaluation of returned bids—HUD will consider this a qualitative effort that can help achieve safe harbor if numeric benchmarks are not achieved.

• Contractors are not required to hire or subcontract solely to comply with Section 3 if they have the capacity to complete the project in-house using existing staff.

• Section 3 will only apply on a per-project basis rather than per contracted program activity. “The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.” (24 CFR 75.3(a)(2))

For individual projects under $200K Section 3 is encouraged but not required.
What is a Section 3 Business Concern?

A Section 3 Business Concern is any business that meets at least one of the following criteria, documented within the last six-month period:

- At least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers;
- A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

The six-month period starts the date the contract is executed or at any later point while the project is underway.
Why Certify Section 3 Businesses?

There is no longer a numeric goal for contracting with Section 3 businesses. However, it is still important to certify Section 3 business concerns and document contract costs awarded to Section 3 business concerns for the following reasons:

– Regulations require grantees to contract with businesses that direct economic opportunities to Section 3 workers
– It may be necessary to certify Section 3 businesses in order to certify workers
– *100% of hours worked by Section 3 business concerns can be counted as Section 3 hours*
– It helps grantees and subrecipients meet best efforts toward safe harbor when numeric goals cannot be achieved
Section 3 Certification for Businesses

- Recipients may establish their own system to certify Section 3 business concerns, including when and how self-certification may be used.
- If a business concern claims Section 3 status, certification should be done at the start of the project.
- A business retains Section 3 status for the life of the project as long as it continues to meet the definition.*

*Grantee must set policy as to how long a business may retain its Section 3 certification on a project before re-certification is necessary.
Types of Section 3 Worker

Grantees must qualify two categories of Section 3 workers to meet the overall numeric goals for Section 3 projects:

– Section 3 worker \((25\% \text{ total hours worked on project})\)

– Targeted Section 3 worker \((5\%\text{* of total hours worked on project})\)

*The 5% is included within the overall 25% total numeric goal per project.
What is a Section 3 Worker?

Any employee who meets one of the following categories within the past five* years or at time of project:

- The worker's income for the previous or annualized calendar year is below 80% of the area median income for the area in which the worker resides. Use the worker’s annual gross income based on AMI for a single-person household; or
- The worker is employed by a Section 3 business concern; or
- The worker is a YouthBuild participant.

Qualifying a worker as a targeted Section 3 worker will count as a Section 3 worker.

*Documentation must be dated within five years of the project start date or date of hire (whichever is later)
What is a **Targeted** Section 3 Worker?

A targeted Section 3 worker is a subset of Section 3 workers.

Contractors must track hours worked by both Section 3 workers AND targeted Section 3 workers in order to meet numeric goals.

A Targeted Section 3 worker means a Section 3 worker who:

- Is employed by a Section 3 business concern; or
- Currently fits, or when hired fit, at least one of the following categories as documented within the past five years:
  - Living within the service area or the neighborhood of the project
  - A YouthBuild participant.
Section 3 Certification for Workers

Recipients may establish their own system to certify Section 3 workers, including when and how self-certification can be used.

For targeted Section 3 workers, grantees must document one of the following:

– Employer’s confirmation that a worker’s residence is within the Section 3 service area

– Employer’s certification that the worker is employed by a Section 3 business concern; or

– Worker’s self-certification of YouthBuild participation.

Current Section 3 workers who were certified under 24 CFR 135 must be re-certified under 24 CFR 75.

A worker’s hours may be counted for up to five years toward the Section 3 numeric goal. The five-year period begins at the time of hire, or when the worker is first certified as meeting the definition of a Section 3 worker.
## “Section 3” vs. “Targeted Section 3”

<table>
<thead>
<tr>
<th>Section 3 Worker</th>
<th>Targeted Section 3 Worker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:</td>
<td>Any Section 3 worker who:</td>
</tr>
<tr>
<td>1. Employed by a Section 3 business concern</td>
<td>1. Is employed by a Section 3 business concern; or</td>
</tr>
<tr>
<td>2. YouthBuild participant or</td>
<td>2. Currently fits, or when hired fit, at least one of the following categories as documented within the past five years:</td>
</tr>
<tr>
<td>3. Income is below 80% AMI</td>
<td>a. Living within the service area or the neighborhood of the project</td>
</tr>
<tr>
<td>25% of hours worked on a Section 3 project</td>
<td>b. A YouthBuild participant.</td>
</tr>
<tr>
<td>Self-certification permitted</td>
<td>Grantee or UGLG must verify status by one of three methods:</td>
</tr>
<tr>
<td>But grantees should perform due diligence before awarding contracts to firms that have self-certified by ensuring that they meet the definition of a Section 3 business concern as defined by the Department's regulations at 24 CFR 135.5.</td>
<td>1. Employer confirmation that worker resides within the Section 3 service area</td>
</tr>
<tr>
<td></td>
<td>2. Employer certification that worker is employed by a Section 3 business concern</td>
</tr>
<tr>
<td></td>
<td>3. Worker self-certification of YouthBuild participation</td>
</tr>
</tbody>
</table>
What is YouthBuild?

- National organization with community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school
- Participants learn vocational skills in construction and other industries such as health care, IT and hospitality
- Youth also serve the community through construction or rehabilitation of affordable housing for low-income or homeless families in their own neighborhoods
- Administered by the U.S. Department of Labor
Section 3 Service Area

• “Service area” or the “neighborhood of the project” means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

• *Residing in the Section 3 service area is one of the criteria for a Section 3 targeted worker.*

• Section 3 service area is NOT the same as low-mod area, which pertains to meeting a national objective.
Qualifications and Capacity

• A Section 3 worker or targeted worker must possess the necessary qualifications in order to be hired

• Reassure your contractors that only qualified workers should be used to fulfill Section 3 numeric goals and that the qualifications for a position are determined by the business

• A Section 3 business concern must have the capacity to perform in order to be awarded a contract
Numeric Goals for Section 3 Projects

• 25% or more of the total hours worked on a project performed by Section 3 workers
• 5% or more of the total hours on a project performed by Targeted Section 3 workers
• Includes hours worked by subrecipients, contractors and subcontractors
• If numeric goals not achieved, must document “qualitative efforts”

*There is no numeric goal for contracting and/or subcontracting

**Benchmarks updated every 3 years by FRN (https://www.federalregister.gov)
Section 3 Safe Harbor Provision

- If you meet the numeric goals, HUD will consider you in compliance
- You may also achieve safe harbor through qualitative efforts toward compliance such as outreach and training
- If you do not meet the numeric goals, HUD will evaluate your qualitative efforts to determine if safe harbor is achieved
Qualitative Efforts to Achieve Safe Harbor

Best Efforts or Greatest Extent Feasible?

• Both terms are used (but not defined) in 12 U.S. Code § 1701u
• HUD uses the terms interchangeably
• Regardless of terminology, the focus is on outcomes as measured against the numeric goals defined in the Federal Register Notice
• If grantee does not achieve safe harbor by meeting numeric goals, HUD will assess the grantee’s qualitative efforts
• Qualitative efforts may include outreach, training/apprenticeship opportunities, and/or technical assistance
Section 3 Responsibilities

**State**
- Provides Section 3 Plan template and guidance to UGLGs
- Monitors UGLGs for compliance with Section 3 requirements
- Reports Section 3 compliance to HUD

**UGLG**
- Refines State plan and implements Section 3
- Ensures contractors and developers make best efforts to comply with Section 3
- Reports Section 3 compliance to the State

**Contractor**
- Makes best efforts to comply with Section 3 requirements
- Documents compliance efforts and submits timely reports to UGLG
M/WBE vs. Section 3

- M/WBE certification is different from Section 3
- Section 3 preferences are based on income and location
- Section 3 is race and gender neutral, although it may overlap with M/WBE certification
- HUD encourages recipients to align their Section 3 activities with their M/WBE and procurement policies
Additional Considerations

- Section 3 does not apply to material supply contracts or contracts that do not require any labor.
- Section 3 does apply to demolition.
- The Section 3 status of a worker, targeted worker or business owner cannot be negatively affected by prior arrest or conviction.
- Grantees are required to make best efforts to contract with businesses that employ Section 3 workers from the metropolitan area (or nonmetropolitan county) in which the project is located.
Designing Your Section 3 Program
Step 1: Appoint a Section 3 Coordinator

Why appoint a Section 3 Coordinator?

- Helps the State and UGLG more efficiently implement Section 3 activities and manage compliance by having a designated staff member who is informed and up-to-date.
- Single point of contact for consistent communication, regular review of updates and to maintain a resource inventory.

The Section 3 Coordinator is responsible for:

- Performing research and assembling the elements of the Section 3 plan.
- Informing other UGLG staff members if there are missing elements of the plan, and where assistance is needed to meet Section 3 requirements.
- Obtaining assistance to help the UGLG and its contractors meet the Section 3 requirements.
- Leading training and policy discussions as needed.

Note that the Section 3 Plan should still be reviewed by grantee or subrecipient policy team prior to its adoption.
Step 2: Learn the Requirements

It is essential to review and understand Section 3 requirements in order to develop a clear and compliant plan. At a minimum, review should include 24 CFR Part 75 (the Section 3 implementing regulations) and the Federal Register Notice FR-6085-F-03 which outlines the Final Rule.

https://ecfr.io/Title-24/Part-75


See the Resources slide at the end of this presentation for additional resources and links.
Step 3: Conduct a Resource Inventory

The purpose of the inventory is to identify potential partners that can work with you to meet your Section 3 goals and build on existing community resources rather than duplicate efforts. Types of resources to identify include:

- Employment and job training agencies at the local, regional and state level, including YouthBuild chapters.
- Public housing and other HUD-assisted housing, as well as managers and owners of these units.
- Local businesses, including contractors, suppliers, vendors, and other businesses involved in construction and rehabilitation and property management that meet the qualifications of Section 3 businesses.
(Step 3) Sample Resource Inventories

**Inventory of Employment/Training Agencies**

<table>
<thead>
<tr>
<th>Job Training Agencies</th>
<th>Name of Agency</th>
<th>Service Area</th>
<th>Contact Person</th>
<th>Email</th>
<th>Phone</th>
<th>Brief description of core services</th>
</tr>
</thead>
</table>

**Inventory of Public Housing/HUD-Assisted Housing Units**

<table>
<thead>
<tr>
<th>Public Housing Units</th>
<th>Name of Complex</th>
<th>Location/Address</th>
<th>Exec. Director</th>
<th>Employment Coordinator</th>
<th>Email</th>
<th>Phone</th>
<th>Notification Procedures</th>
</tr>
</thead>
</table>

**Inventory of Local Businesses**

<table>
<thead>
<tr>
<th>Section 3 Business</th>
<th>Name of Business</th>
<th>Type of Business</th>
<th>Contact</th>
<th>Email</th>
<th>Phone</th>
<th>Brief description of services and any past Section 3 project experience</th>
</tr>
</thead>
</table>
(Step 3) Workforce Development

Workforce Development Agencies (WDAs) are a valuable partner in developing or expanding a pool of Section 3 workers. Strategies for collaboration may include:

- Giving Section 3 presentations at job fairs and other events hosted by WDAs
- Developing co-branded brochures or other handouts that WDA staff can distribute to clients
- Convening regular capacity-building refreshers for WDA staff on the basics of Section 3
Step 4: Review Procedures Related to Local Preference*

Many subrecipients and agencies have goals for hiring local workers and using local businesses when unrestricted funds are being awarded to local projects. These goals are often similar to Section 3 goals, and an UGLG can integrate and combine its Section 3 policies and procedures with the UGLG’s procedures. Procedures to review include those related to:

- Workforce Development
- Procurement
- Employment

Note that local preferences do not conflict with 2 CFR 200.319(c) regarding geographic preference because the reg contains an exception for “cases where applicable Federal statutes expressly mandate or encourage geographic preference.”

*Reminder: Grantees may set policies that are more restrictive, but not less, and should continue to encourage Section 3 participation even when not required.
(Step 4) When Developing a Section 3 Plan
Review Local Procedures

- UGLGs may find it helpful to develop a table to compare local requirements in order to align Section 3 Plan goals with their other procurement, labor, contracting requirements or goals such as M/WBE.

- By comparing and aligning the UGLG’s procurement policies and procedures with their Section 3 Plan, an UGLG can integrate Davis Bacon, DBE, MBE, WBE, VA or small business and/or micro enterprise requirements so that all the goals and requirements are summarized in one place and not in conflict. Integrating all the federal requirements so they are consistent with the UGLG’s other requirements creates a streamlined and more manageable system.
Step 5: Prepare Your Section 3 Plan

A Section 3 plan is a set of written policies, procedures and practices that a grantee or subrecipient develops to implement Section 3 requirements. An effective Section 3 plan:

– Is written in clear, simple narrative
– Is updated on a regular schedule, such as semi-annually
– Includes forms, checklists, templates and other tools that make Section 3 easier for partners to understand and comply with
– Informs subrecipients, developers and general contractors on what goals and criteria the UGLG will require for achieving and documenting Section 3 compliance.
(Step 5) Required Components of a Section 3 Plan

- Policies and Procedures for Implementing and Setting Standards
- Section 3 Service Area Boundary
- Methods for Cultivating Section 3 Participation:
  - Public Housing Residents
  - Other HUD-Assisted Units
  - Section 3 Businesses
  - Section 3 service area residents
- List of Outreach Activities
- Section 3 Procurement Clause
- Section 3 Contract Clause
- Participant Certifications and Acknowledgement Form
- Method for Tracking Compliance
(Step 5) Other Helpful Items to Include in Your Plan

- Section 3 service area map for general business certification
- Section 3 policy for establishing project area based on one mile
- Outreach flyers and sample social media graphics
- Current HUD income limits
- Links to Section 3 databases and registries including HUD Section 3 portal
- Section 3 Business and Worker Applications
- Section 3 Project File Checklist
### Step 6: Develop Project Compliance Forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions to Bidders</td>
<td>Tells bidders how to complete packet and which forms must be submitted with bid</td>
</tr>
<tr>
<td>Section 3 Overview</td>
<td>Informs bidders of Section 3 requirements including numeric targets</td>
</tr>
<tr>
<td>Prime Contractor Information Form</td>
<td>Captures whether contractor is a Section 3 business or how they plan to achieve safe harbor on the project and include certifications</td>
</tr>
<tr>
<td>Subcontractor Information Form</td>
<td>Lists all firms who will subcontract on project to determine whether they may be Section 3</td>
</tr>
<tr>
<td>Employee List</td>
<td>Lists all employees of the contractor, including which ones are Section 3 workers—also required for each subcontractor</td>
</tr>
<tr>
<td>Example Tracking Report</td>
<td>Includes tracking form for hours worked and narrative section to describe qualitative efforts</td>
</tr>
<tr>
<td>Section 3 Clause for Subcontracts</td>
<td>Prime Contractor must include Section 3 clause in all subcontracts subject to Section 3 compliance</td>
</tr>
</tbody>
</table>
(Step 6) Using Project Compliance Forms

• Include in bid package
• Completed project compliance forms become an exhibit to contract
• Require contractor to provide supporting documentation of claims such as Section 3 certification
• Recommend requiring Subcontractor Information Form and Employee List to be submitted at beginning and end of project to capture updates
• Option to also use forms to capture M/WBE data
Section 3 requirements are found in several different HUD statutes and regulations, and therefore grantees and subrecipients must refer to different sections of the regulations to find all the requirements.


Federal Register Notices: FR-6085-P-01, FR-6085-F-03
Additional Resources

HUD Section 3 Portal: https://www.hud.gov/section3
HUD Section 3 Training Curriculum: https://www.hudexchange.info/trainings/section-3/
HUD Section 3 FAQs: https://www.hud.gov/sites/documents/11SECFAQS.PDF
YouthBuild: https://www.dol.gov/agencies/eta/youth/youthbuild
HUD Income Limits: https://www.huduser.gov/portal/datasets/il.html
Federal Register: https://www.federalregister.gov
Thank You!

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HCD values diversity at all levels of the department and is committed to fostering an environment in which employees from a variety of backgrounds, cultures, and personal experiences are welcomed and can thrive. We believe the diversity of our employees and their unique ideas inspire innovative solutions to complex housing challenges.

Join us and help improve the lives of all Californians.

To find jobs at HCD:
Visit: jobs.ca.gov and click “Advanced Job Search.”
• Search for California Department of Housing and Community Development

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