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APPENDIX TO PART 135


SOURCE: 59 FR 39880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 39880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28328, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 8 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.

(a) Section 3. The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28328, May 31, 1995]

§ 135.3 Applicability.

(a) Section 3 covered assistance. Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) Public and Indian housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

- (i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);
- (ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and
- (iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

- (2) Housing and community development assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects:

- (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
- (ii) Housing construction; and
- (iii) Other public construction.

- (3) Thresholds—(1) No thresholds for section 3 covered public and Indian housing assistance. The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

- (ii) Thresholds for section 3 covered housing and community development assistance—(A) Recipient thresholds. The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds $200,000.

- (B) Contractor and subcontractor thresholds. The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds $200,000; and the contract or subcontract exceeds $100,000.

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(C) Threshold met for recipients, but not contractors or subcontractors. If a recipient receives section 3 covered housing or community development assistance in excess of $200,000, but no contract exceeds $100,000, the section 3 preference requirements only apply to the recipient.

(b) Applicability of section 3 to entire project or activity funded with section 3 assistance. The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) Applicability to Indian housing authorities and Indian tribes. Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) Other HUD assistance and other Federal assistance. Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms Department, HUD, Indian housing authority (IHA), Public housing agency (PHA), and Secretary are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of “section 3 business concern” in this section.

Contract. See the definition of “section 3 covered contract” in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection
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with section 3 covered projects (as described in §135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

_Housing authority (HA)_ means, collectively, public housing agency and Indian housing authority.

_Housing and community development assistance_ means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

_Housing development_ means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD’s public and Indian housing program regulations codified in 24 CFR Chapter IX.

_HUD Youthbuild programs_ mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 13800), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

_Indian tribes_ shall have the meaning given this term in 24 CFR part 571.

_JTPA_ means the Job Training Partnership Act (29 U.S.C. 179(a)).

_Low-income person._ See the definition of “section 3 resident” in this section.

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Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

1. For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

2. For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

_New hires_ mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for “section 3 covered projects,” as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

_Recipient_ means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, 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, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.


Section 3 business concern means a business concern, as defined in this section—

1. That is 51 percent or more owned by section 3 residents; or
(2) Whose permanent, full-time employees include persons, 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

(3) That provides evidence 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 set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 clause means the contract provisions set forth in §135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1987 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1987 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1987 Act;

(4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and amelioration of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontracts (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and amelioration of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See §135.40. Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) A low-income person, as this term is defined in section 3(b)(2) of the 1987 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1987 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) A very low-income person, as this term is defined in section 3(b)(2) of the 1987 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1987 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary’s findings that
§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; provided however, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) Certification of compliance with part 135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally, the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant’s certification unless there is evidence substantially challenging the certification.

(b) Statement of purpose in NOFAs. (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed $200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.
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(c) Section 3 as NOFA evaluation criteria. Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) Procurement standards for States and local governments (24 CFR 85.36)—(1) General. Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) Flexible Subsidy Program. Multifamily project mortgagees in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) Procurement standards for other recipients (OMB Circular No. A-110). Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(c) Federal labor standards provisions. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates. HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(d) Approved apprenticeship and trainee programs. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) Compliance with Executive Order 11246. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended
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by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) General. (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(b) Training and employment. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) Numerical goals for section 3 covered public and Indian housing programs. Recipients of section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) Numerical goals for other HUD programs covered by section 3. (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
(11) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and

(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 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 for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) Safe harbor and compliance determinations. (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the operations of its contractors and 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 generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(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 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in §135.30;

(d) Assisting and actively cooperating with the Assistant Secretary 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.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in §135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at §135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist
§135.34 Preference for section 3 residents in training and employment opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) 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); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) 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;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) Eligibility for preference. A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in §135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) Eligibility for employment. Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§135.36 Preference for section 3 business concerns in contracting opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments
for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) 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

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

(iii) Other section 3 business concerns.

(b) Eligibility for preference. A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in §135.5.

(c) Ability to complete contract. A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170l(a) (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to ensure to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR
§ 135.40 Providing other economic opportunities.

(a) General. In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) Other training and employment related opportunities. Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility" "bridge" and trainee positions to fill vacancies; hiring section 3 residents in management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) Other business related economic opportunities. (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 983 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) Purpose. The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this
Office of Asst. Secy., Equal Opportunity, HUD

§ 135.74

part, and the procedures governing the Assistant Secretary’s review of a recipient’s or contractor’s compliance with the regulations in this part.

(b) Definitions. For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in §135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term “recipient” shall have the meaning set forth in §135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under §135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.74 Section 3 compliance review procedures.

(a) Compliance reviews by Assistant Secretary. The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) Form of compliance review. A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient’s or contractor’s compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where compliance review reveals noncompliance with section 3 by recipient or contractor. Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) Continuing noncompliance by recipient or contractor. A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD financial assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.
§ 135.76

Debarment, suspension and limited denial of participation pursuant to HUD’s regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) Conducting compliance review before the award of assistance. Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Consideration of complaints during compliance review. Complaints alleging noncompliance with section 3, as provided in §135.76, may also be considered during any compliance review conducted to determine the recipient’s conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) Who may file a complaint. The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) Where to file a complaint. A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

(c) Time of filing. (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) Contents of complaint.—(1) Written complaints. Each complaint must be in writing, signed by the complainant, and include:

(1) The complainant’s name and address;

(2) The name and address of the respondent;

(3) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) Amendment of complaint. Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) Resolution of complaint by recipient. (1) Within ten (10) days of timely filing of a complaint that contains complete
information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient’s contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation, with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(6) Informal resolution of complaint by Assistant Secretary—(1) Dismissal of complaint. Upon receipt of the recipient’s written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) Informal resolution. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) Effective date of informal resolution. The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) Sanctions. Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) Investigation of complaint. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary’s discretion, the investigation would further the purposes of section 3 and this part.

(ii) Intimidatory or retaliatory acts prohibited. No recipient or other person 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 any manner in an investigation, proceeding, or hearing under this part. The identity of
§ 135.90

complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) Judicial relief. Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

APPENDIX TO PART 135

1. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into “first source” hiring agreements with organizations representing section 3 residents.

(2) Sponsoring a HUD-certified “Step-Up” employment and training program for section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside.
I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.
(2) Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.
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(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments...
development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a
temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and Sec. 905.201(a)(6).)
(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.
(17) Undertaking job counseling, education and related programs in association with local educational institutions.
(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.
(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.
(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.
II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).
(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.
(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.
(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.
(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.
(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.
(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.
(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
(15) Developing a list of eligible section 3 business concerns.
(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.
(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.
(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
(21) Actively supporting joint ventures with section 3 business concerns.
(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.
III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the “contracting party”) for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) Small Purchase Procedures. For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:
--- the section 3 covered contract to be awarded with sufficient specificity;
--- the time within which quotations must be submitted; and
--- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitations for Bids). Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns,
and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—
(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and
(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

<table>
<thead>
<tr>
<th>Total Bid Price</th>
<th>X Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000 or less</td>
<td>Lowest responsive bid</td>
</tr>
<tr>
<td>$100,000 - $300,000</td>
<td>(9% of total bid price or $9,000)</td>
</tr>
<tr>
<td>$300,000 - $500,000</td>
<td>(8% of total bid price or $16,000)</td>
</tr>
<tr>
<td>$500,000 - $700,000</td>
<td>(7% of total bid price or $21,000)</td>
</tr>
<tr>
<td>$700,000 - $1 million</td>
<td>(6% of total bid price or $25,000)</td>
</tr>
<tr>
<td>$1 million - $2 million</td>
<td>(5% of total bid price or $40,000)</td>
</tr>
<tr>
<td>$2 million or more</td>
<td>(4% of total bid price or $60,000)</td>
</tr>
</tbody>
</table>

When the lowest responsive bid is less 10% of that bid or $9,000.
When the lowest responsive bid is:

- At least $100,000, but less than 9% of that bid, or $16,000.
- $200,000.
- At least $200,000, but less than 8% of that bid, or $21,000.
- $300,000.
- At least $300,000, but less than 7% of that bid, or $24,000.
- $400,000.
- At least $400,000, but less than 6% of that bid, or $25,000.
- $500,000.
- At least $500,000, but less than 1 1/2% of that bid, or $40,000.
- $7 million or more................. 1 \( \frac{1}{2} \)\% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.
(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the
The greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.
Steps for Section 3 Compliance

1. Include the section 3 clause in all advertisements for RFQ/RFP and bid documents.

2. Check HUD registry for Section 3 businesses located in the county in which the project is taking place: [https://portalapps.hud.gov/Sec3BusReg/BRegistry/What](https://portalapps.hud.gov/Sec3BusReg/BRegistry/What). Share CDBG bid opportunities with those businesses. Keep documentation of any correspondence with Section 3 businesses.

3. Include the “Intent to Comply with Section 3 Requirements” form with all procurement documents. “Intent to Comply with Section 3 Requirements” form must be signed by bidders and returned with bid documents.

4. If a Section 3 business submits a bid for an opportunity associated with the CDBG project, the recipient (city/county) must be given priority to the greatest extent feasible. Refer to the CDBG Management Guide/Section 3 overview for the order of priority that Section 3 businesses should be given.

5. Describe Section 3 requirements at pre-bid and pre-award meetings. Document through notes, meeting minutes, etc. that this discussion took place.

6. Include Section 3 clause with ALL contracts associated with the CDBG contract.

7. At the time the recipient and contractor enter an agreement, identify if any new employment/training opportunities will result from the CDBG funded project.
   a. If no employment/training opportunities will result from the project, keep documentation from the contractor/subcontractor to substantiate this.
   b. If employment/training opportunities will result from the project, send notice of the opportunities to the Iowa Chapter of the National Association of Housing and Redevelopment Officials (NAHRO), as described in the Management Guide/Section 3 overview.
      i. Use the Sample Section 3 Employment Notice provided in the Management Guide/section 3 overview as a template.
      ii. In addition to sharing with NAHRO, review additional strategies for reaching Section 3 residents and determine what additional efforts can be taken to reach Section 3 residents.
      iii. Inform contractors/subcontractors of hiring and training preferences to be given to Section 3 residents and order of priority as described in the Management Guide
      iv. Provide “Section 3 New Hire Compliance Report” and “Sample Format for Section 3 Employee Interviews” to contractor/subcontractors to use during the hiring process.
v. Inform contractors/subcontractors to provide the recipient copies of any Section 3 notice posted at a worksite pursuant to 24 CFR 135.38:

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

8. Collect Section 3 data on an annual basis from every contractor and subcontractor using the “Section 3 New Hire Compliance Report” form found in the CDBG Management Guide and on the website.

9. Use contractor and subcontractor to report Section 3 efforts and accomplishments annually to IEDA (by December 31st) Reports are submitted through iowagrants.gov.

10. Keep documentation of outreach efforts to Section 3 businesses and Section 3 residents on file for project monitoring.
Section 3 clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
Sample Section 3 Employment Notice

*(Instructions: Send notice to the Iowa Chapter of NAHRO for distribution to public housing authorities)*

(Insert Locality’s name) is preparing to carry out the (insert Name of Project) through the use of Community Development Block Grant Funds. In the implementation of this project the following job types are available:

(Insert List of Job Classifications to be used during project)

All job openings will be posted at (local government office or list other posting locations). To the greatest extent feasible, employment and training positions will be made available to qualified persons who permanently reside in (Insert the County’s or local municipality name as Section 3 area).

Persons qualified for the jobs listed should register at the following location:

(Insert location where applicant should apply and any application instructions)

For questions on this employment opportunity, please contact:

(Insert contact & contact information)
INTENT TO COMPLY WITH SECTION 3 REQUIREMENTS
(To be provided with procurement documents and returned with all submitted bids)

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:

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

**Note: If your business meets the definition of a Section 3 business, you may register as a Section 3 Business through HUD’s website here: https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness

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.

Please complete the following:

1. If awarded a contract for this CDBG funded project, do you anticipate hiring new employees to complete the project? (Hiring would be specific to this project)

   □ Yes  □ No  If yes, please estimate the number of employees to be hired:_________

2. Is your business a Section 3 Business?   □ Yes   □ No

3. Is the bidder willing to consider hiring Section 3 residents for future employment opportunities that are a direct result of this CDBG funded project?

   □ Yes  □ No

4. Is the bidder willing to consider subcontracting with Section 3 Businesses for this project?

   □ Yes  □ No
I understand that this contracting opportunity is subject to HUD Section 3 requirements (24 CFR Part 135). I have read and understand the Section 3 requirements as generally described above and presented in the Section 3 contract language included in the procurement documents for this project. If awarded a contract, the business commits to following Section 3 requirements, as they apply to this project. If awarded a contract for this project, the business agrees to provide reports to (insert City/County) on Section 3 efforts and accomplishments.

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<th>Name of Contractor/Subcontractor</th>
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Section 3 Business Certification

- To be completed by the business claiming Section 3 business status.

All contract and subcontracts awarded on Section 3 covered projects must be reported in aggregate on the Section 3 Summary Report. For all businesses reported as being Section 3 businesses, documentation of their status must be retained in the project files. IEDA considers this form adequate documentation of Section 3 status.

HUD contracts awarded to the State of Iowa and/or a recipient (City/County) with more than $200,000 in HUD funds are “Section 3 covered projects”. Any contractors, with which they contract for more than $100,000 on these projects, are required to report on all contracts they make both with Section 3 business concerns and with businesses that are not Section 3 business concerns.

This form is a tool to determine and document the Section 3 business status. Documentation of the status of Section 3 Businesses should be retained in the project files.

Business being certified:

Company: __________________________________________________________

Address: __________________________________________________________

Project information:

Project Name: _______________________________________________________

Project Address: _____________________________________________________

Section 3 determination

1. Is your business owned (51% or more) by individuals whose household incomes are NO GREATER THAN 80% of median family income OR by individuals that are public housing residents?

*Please reference https://www.iowaeconomicdevelopment.com/Community/downloads (under recipient income Requirements and Census Information) to determine if employee is less than 80% of the current area median income.

( )Yes ( )No

2. Do 30% (or more) of your full time, permanent employees have household incomes that are NO GREATER THAN 80% of median family income, or within three years of the date of first employment with the business concern were Section 3 residents?

( )Yes ( )No

3. Will you subcontract more than 25% of this contract with a qualified business that is either 51% owned by Section 3 residents or 30% or more of its employees are Section 3 residents?

( )Yes ( )No
If any of the questions above are marked “yes”, the business qualifies as a Section 3 business.

I certify that the above statements are true, complete, and correct to the best of my knowledge and belief.

Signature: __________________________________________________________

Print Name: _________________________________________________________ Date___________
SECTION 3
NEW HIRE COMPLIANCE REPORT

The US Department of Housing & Urban Development ("HUD") requires the recipient to collect information on every person hired in connection with Section 3 projects to ensure compliance with Federal regulations.

As part of (enter your community here)’s Section 3 program your firm is required to report the number of employees hired in connection with a Section 3 Project who are Section 3 Eligible. Complete this form by entering the names and addresses of all new hires and by indicating whether they are Section 3 eligible. A Section 3 resident is:

1. A public housing resident; OR
2. An individual who lives within the _________ and whose income falls within the guidelines for low or very low income. See attached table.

This form must be completed by all subcontractors working on a Section 3 project, defined as a contract that exceeds $100,000, even if the subcontractor is not a “Section 3 Business.”

INSTRUCTIONS FOR EMPLOYERS:

1. Enter the name and address of every new employee hired in connection with the Section 3 Project on the following list. (Add additional sheets if necessary).

2. For new employees hired, determine whether each new hire is Section 3 eligible by asking the employee the following questions upon hiring:
   a. Are you a resident of public housing?
      □ YES
      □ NO
   
   If the answer is “YES,” please skip questions “b” and “c”.
   If the answer is “NO,” please follow up by asking question “b”.

   b. Are you a resident of _________
      □ YES
      □ NO
   
   If the answer is “NO,” this person is not a Section 3-eligible resident. Therefore, there is not a need to ask question “c”.

   c. In the last 12 months, was your household income (meaning the total for everyone in your family earning income) NOT GREATER THAN the amount listed based on your household size?
      □ YES
      □ NO
   
   If YES, have the employee complete the certification form (Exhibit 1) and attach this to your submission.
SECTION 3
NEW HIRE COMPLIANCE REPORT

3. Indicate whether each new hire is Section 3 eligible by checking the appropriate box next to their name and address on Section 3 New Hire Report. Indicate “Y” for Yes and “N” for No.

4. Indicate the Job Category using the following codes:

- Professionals P
- Technicians T
- Office and Clerical OC
- Sales S
- Trades T
- Labor L
- Service Workers SW
- Other Other

5. An authorized representative of the firm must certify the accuracy and completeness of the information provided by signing this form where indicated.

6. Subcontractors who have direct agreements with _______ regarding a Section 3 covered project are responsible for collecting the Section 3 New Hire Report from all applicable contractors and sub-contractors performing on a Section 3 covered project.

7. If there were NO new hires for the report period, please document by checking the box and providing an authorized signature for your company.
SECTION 3
NEW HIRE COMPLIANCE REPORT

Project Name: ________________________________________________________________

Project Address: _____________________________________________________________

Developer Name (if applicable): ________________________________________________

General Contractor Name: ____________________________________________________

Name of Firm Completing This Form: __________________________________________

This Firm is a (check one): ___________________________________________________

☐ Subcontractor
   Contract Amount: $____________________

☐ Professional Services Consultant
   Contract Amount: $____________________

Contracts and subcontracts made with vendors to solely provide supplies and/or materials are not subject to
the HUD Section 3 requirements. However, where such vendors also install such supplies and materials,
said contracts and subcontracts above $100,000 shall be subject to the HUD Section 3 requirements.
## SECTION 3
NEW HIRE COMPLIANCE REPORT

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<th>NAME OF NEW HIRE</th>
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<th>Section 3 Eligible?</th>
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If there were NO new hires for the report period, please document by checking the box and providing an authorized signature for your company.

☐ I certify that there were no new hires during the reporting period

___/___/____ to ___/___/____

mm / dd / yyyy  mm / dd / yyyy

Name: ____________________________________________  Date: ________________

(please print)

Title: ____________________________________________

(please print)

Signature: ________________________________________

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief.
Sample Format for Section 3 Employee Interviews

Date:

Dear Employee:

Please provide the information requested on this form that we can verify to the Iowa Economic Development Authority that your employment here is achieving the goals of Section 3 of the Housing and Urban Development Act of 1968. This information will be placed in your confidential personnel file and will be available only to a limited number of authorized persons. For assistance or further information, please see ______________________________. Thank you.

(Company Official)

Sincerely,

________________________________
(Company Official)

NOTE: Median Income Limits Table is on the reverse side of this form.
(use limits from IEDA website)

Step 1: Are you a resident of public housing?

_________Yes ____________No

*If the answer to Step 1 is “Yes,” you have completed the form. No further information is needed.

*If the answer to Step 1 is “No,” please refer to Steps 2 and 3.

Step 2: On the Median Income Limits Table, find the county in which you live and the size of your family (count yourself and all family members living at home). Use this information to arrive at the corresponding income level.

Step 3: Answer this question:

Is your family’s total income above or below the amount listed for your county and family size? (Check one)

______ABOVE ______BELOW
Frequently Asked Questions (FAQs)

Section 3 of the Housing & Urban Development Act of 1968

GENERAL QUESTIONS

1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

2. What does “To the Greatest Extent Feasible Mean?”

By to the “Greatest Extent Feasible”, the Department means the every effort must be made to comply with the regulatory requirements of Section 3. By this, the Department means that recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, 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.

3. 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 where the Section 3 covered assistance is expended.

4. 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 criteria:

a) 51 percent or more owned by Section 3 residents; or

b) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire*; or

c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to business concerns that meet one of the first two qualifications above.

*Example: Alysha was an unemployed Section 3 resident that was first hired by ABC Company on January 1, 2011. She received a raise of $2,500 in March 2012, thereby boosting her household income above the local low income level. ABC Company may continue to count Alysha as one of their Section 3 employees until December 31, 2013 (i.e. within three years of the date of first hire).

5. 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. Section 3 regulations were designed to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and the businesses that employ these persons, within their community regardless of race and/or gender.

To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD’s Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at: http://portal.hud.gov/portal/page/portal/HUD/program_offices/sdb.

6. How are “low-income" and very low-income determined?

Low- and very-low-household income limits are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the median income for each locality by household size or the number of people residing in one house. HUD income limits may be obtained from: http://www.huduser.org/portal/datasets/il.html

7. What are “metropolitan areas” and “non-metropolitan counties?”
Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget. A non-metropolitan county means any county outside of a metropolitan area.

A current list of MSAs can be found at: http://www.census.gov/population/www/metroareas/metrodef.html

8. What is a “new hire”?

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

9. Can laid-off workers that are “re-hired” as a result of a HUD-funded project considered new hires?

Yes. Any employee that was not on the payroll of a recipient, developer, or contactor on the day that Section 3 covered assistance was provided can be counted towards the Section 3 minimum numerical goal for employment.

10. 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.

11. 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 (i.e., a PHA; unit of State or local government; property owner; developer; etc). It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 resident.

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

Public Housing Authorities (PHAs) regardless of size or number of units are required to comply with Section 3. One exception is PHAs that only receive or administer tenant-based Housing Choice (Section 8) Vouchers and do not utilize any of the financial assistance described above. Although they are exempt, compliance with Section 3 is encouraged.
Section 3 also applies to recipients of more than $200,000 from housing and community development programs. The following are a list of examples of such funds:

- Community Development Block Grant (CDBG)
- 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
- Economic Stimulus Funds (including CDBG-R and CFP Supplemental)
- 202/811 Grants
- Lead Hazard Control Grants

*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.

13. Can a non-profit organization be considered a “business concern” for the purposes of Section 3?

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

14. 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**

15. What is Section 3 covered assistance?

Section 3 covered assistance includes:

- Public and Indian Housing Operating Subsidy; Capital Funds; or Modernization assistance; and

- Housing and community development assistance expended for housing rehabilitation, housing construction, or other public construction.
16. 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 and Indian housing (PIH) programs. The requirements of Section 3 apply to all PIH programs regardless of the amount of assistance received from HUD.

The Section 3 requirements apply to recipients of Housing and/or Community Development Assistance exceeding $200,000 combined from all sources in any one year. Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction.

For example, a city receives $600,000 for CDBG, $150,000 in HOME Funding, and $75,000 in NSP funding. This represents a total of $825,000 in housing and community development assistance. As such, any construction or rehabilitation activities funded by the city using those funds is covered by Section 3.

17. Do the requirements of Section 3 apply to grantees on a “per project” basis?

No. Any agency that receives covered assistance that exceeds $200,000 is required to comply with the requirements of Section 3 whenever any projects involving housing construction, rehabilitation, or other public construction are administered, regardless of the actual dollar amount of covered assistance that is invested into the individual project/activity.

18. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3.

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

All contracts (or subcontracts) funded with Public and Indian Housing assistance, regardless of dollar amount or 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 that receive covered contracts in excess of $100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.
20. What responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?

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.

21. Do the Section 3 requirements apply to material only contracts?

No. Section 3 does not apply to material only contracts or those that do not require any labor. For example, a contract for office or janitorial supplies would not be covered by Section 3. In this example, Section 3 would be encouraged but not required. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered.

22. Are maintenance projects covered by Section 3?

Yes, but only for PIH funded programs administered by Public Housing Authorities.

23. Does the 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.

24. Are demolition projects covered by the requirements of Section 3?

Yes. Recipients of Section 3 covered assistance should make efforts to award a minimum of ten percent of the total dollar amount of all demolition contracts to Section 3 businesses.

25. 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.

26. Does Section 3 apply to new 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.

27. Does Section 3 apply to new hiring by a Public Housing Authority?

Yes. Section 3 applies to all Public and Indian Housing capital, operating or development funds; therefore, new hiring done by the PHA (regardless of the position) is covered by Section 3.

28. 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 total amount of HUD assistance received. Example: the City of Mountain View, 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.

City of Mountain View is subject to Section 3 requirements because they received over $200,000 in housing and community development funds. However, only the funds expended for Section 3 covered activities must comply with the requirements of Section 3. Therefore, the expenditure of the $180,000 is covered by Section 3. The remaining $30,000 that was used for fair housing counseling and a revolving loan fund is not covered by Section 3.

29. Are contracts cumulative for reaching the Section 3 threshold?

No. Contracts for Section 3 covered projects are not cumulative. The requirements of Section 3 apply to each individual contract that meets the thresholds.

For example, if a recipient agency awards 3 housing rehabilitation contracts (at $36,000; $50,000; and $20,000 for a cumulative total of $106,000) to one contractor for three different projects within a twelve month period, the contractor is not required to comply with the requirements of Section 3 because none of his contracts met the $100,000 threshold. Accordingly, the responsibility for meeting the requirements of Section 3 would remain with the recipient agency that awarded the contracts.
CONSISTENCY WITH OTHER LAWS

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

Yes. Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with local laws and regulations. Accordingly, recipients of Section 3 covered assistance are required to develop strategies for meeting both the regulatory requirements at 24 CFR Part 135 and any other applicable statutes or regulations.

31. What is the relationship between Section 3 and Davis Bacon requirements?

Compliance with Section 3 must be achieved consistent with the requirements of Davis-Bacon. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a–7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work.

32. 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 race and gender neutral. A minority and/or woman owned 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 HUD Office of Small and Disadvantaged Business Utilization at 202-708-1428.
RECIPIENT RESPONSIBILITIES

33. 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. These responsibilities include but may not be necessarily limited to the following.

- Designing and implementing procedures to comply with the requirements of Section 3 in order to comply with Section 3: Recipient agencies must take an active role in ensuring Section 3 compliance. The first step is designing or planning and implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3.

- Facilitating the training and employment of Section 3 residents: The recipient agency must act as a facilitator, connecting Section 3 residents to training and employment opportunities.

- Facilitating the award of contracts to Section 3 business concerns: The recipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity building training.

- Ensuring Contractor and Subcontractor Awareness of Section 3 Goals and Responsibilities: The recipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.

- Ensuring Compliance and Meeting Numerical Goals: Recipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; Penalizing non-compliance; Providing incentives for good performance; and Refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

- Reporting Requirements: Recipient agencies must document all actions taken to comply with the requirements of Section 3: Recipient agencies must submit a Section 3 Annual Summary Report (Form HUD-60002) for all covered
funding to the Office of Fair Housing and Equal Opportunity. Section 3 reports shall be submitted electronically online at: www.hud.gov/section3.

34. What are good strategies for targeting Section 3 residents and businesses?

In order to target Section 3 residents and businesses, recipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities to be instrumental for reaching the employment and contracting goals.
It is recommended that recipient agencies establish procedures to certify Section 3 residents and Section 3 business concerns and incorporate some form of preference for employment and contracting opportunities. Thereafter, they should maintain a list of eligible residents and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available. Refer to the Section 3 Regulations at 24 CFR Part 135.32 for a listing of responsibilities and the Appendix to the Section 3 regulations for additional examples of effective strategies.

35. Are funds provided to recipients so that they can comply with the requirements of Section 3?

No. Since Section 3 requirements are only triggered when the normal expenditure of covered funds results in employment, training, or contracting opportunities, there is no need for the Department to provide funds to meet the recipient responsibilities set forth in the regulation.

36. Does Section 3 require recipient agencies to create new (or unnecessary) 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 that are owned by these persons or that substantially employ them.

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

Section 3 is not an entitlement program, there are no guarantees. Residents and businesses must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.
Section 3 requirements provide preference to Section 3 residents and business concerns, but not a guarantee.

38. Are recipients, developers, and contractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?

Recipients, developers, 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 are defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients, developers, and contractors are encouraged to provide long-term employment.

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

Typically, the Department does not grant any exemptions or waivers related to Section 3.

40. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

No. Recipients are not required to request noncompliant contractors make payments into a fund.

Providing employment, training, and subcontracting opportunities to Section 3 residents and businesses must be the primary goal of developers/contractors. However, such a fund can be used in very specific instances as a penalty for noncompliance.

SECTION 3 PREFERENCE

41. How can a prospective Section 3 resident or business certify that they meet the eligibility requirements?

The individual or business must contact the agency or developer that they are seeking employment or contracting opportunities from (i.e., the PHA, city, or local government). They should identify themselves as a Section 3 resident or business and provide whatever documentation that the recipient agency requires under their certification procedures.

42. Who is responsible for certifying that residents and businesses meet the regulatory definitions under Section 3?
The regulation allows recipient agencies to use their discretion for developing specific procedures to meet the requirements of Section 3. This includes establishing their own standards/processes for verifying eligibility of Section 3 residents and businesses (or not). Each recipient is also free to accept or reject the standards/process used by other recipients or pay for the services of a third party vendor to determine eligibility. While HUD does not endorse the services of private, third party vendors, recipient agencies may employ such services at their discretion.

43. What are examples of acceptable evidence to determine eligibility as a Section 3 resident?

HUD does not prescribe that any specific forms of evidence to establish Section 3 eligibility. 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 Youth build program operated in the metropolitan area (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 determined by local HUD income limits;

44. What are examples of acceptable evidence for determining eligibility as a Section 3 business?

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility. Sample certification documents can be found on the Section 3 website. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

- 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 total dollar award of all sub-contracts to be awarded to such businesses described above.

45. 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 may need to show proof of residency in the metropolitan area (or non-metropolitan county) and meet the HUD income requirements.
46. Can recipient agencies allow residents or businesses to “self-certify” that they meet the Section 3 eligibility requirements?

As previously mentioned, the regulation allows recipient agencies to use their own discretion to develop specific procedures for meeting the requirements of Section 3. Many recipient agencies choose to allow prospective Section 3 residents or businesses to self-certify their eligibility. The Department recommends that any self-certification should include a statement of penalty for falsifying information.

47. Are Section 3 business concerns only certified to receive preference in the community in which they are located?

No. While certification is locality specific, recipient agencies can count a Section 3 business that is located outside of its immediate jurisdiction towards their efforts to meet the minimum numerical goals. However, recipient agencies should not provide preference to a Section 3 that is not located in their jurisdiction if a local Section 3 business has also submitted a qualified bid for a contract and can complete the work to be done. Refer to the order of priority preference for Section 3 contract opportunities at 24 CFR Part 135.36.

48. 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. In order to meet the requirements of Section 3 and Federal Procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

49. Can contracting with MBE/WBE businesses count towards Section 3 contracting goals?

Section 3 is race and gender neutral. Only MBEs/WBEs that meet the eligibility criteria set forth in the regulation can they be counted towards the minimum goals for Section 3 contracting opportunities.

50. Does a business have to be incorporated to be considered a Section 3 eligible business?

A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.
ECONOMIC OPPORTUNITIES/NUMERICAL GOALS

51. How can residents and businesses locate recipient agencies that are required to comply with Section 3 in their area?

To find local recipients agencies, Section 3 residents or businesses should contact their local HUD office. To find your closest office, visit: www.hud.gov/localoffices

52. How can I find Section 3 businesses in my area?
Contact local recipient agencies to find Section 3 business concerns in your area.

53. 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 operating, capital, and modernization assistance, including management and administrative jobs, technical, professional, construction and maintenance 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, including management and administrative jobs, technical, professional, building trades and non-construction jobs, at all levels.

54. Are recipient agencies required to meet the Section 3 goals, or are they optional?

The Section 3 numerical goals are minimum targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make best 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 adequately document the efforts taken to meet the numerical goals (see Question #2 for a discussion of “to the greatest extent feasible”).

55. What are the Section 3 minimum numerical goals?

The minimum numerical goal for employment is thirty (30) percent of the aggregate number of new hires shall be Section 3 residents, annually - i.e., 3 out of 10 new employees needed to complete a Section 3 covered project/activity shall be Section 3 residents.

The minimum goals for contracting are:
- Ten (10) 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 (3) percent of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses

56. What is considered a Section 3 covered “non-construction” project?

Section 3 covered non-construction projects include maintenance contracts, including lawn care, re-painting, routine maintenance, HVAC servicing, and professional service contracts associated with construction (ex.: architectural, engineering, legal services, accounting, marketing, etc.).

57. What is considered "other" public construction?

Other public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc.

58. 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. Section 3 goals are minimum numerical targets that a recipient of HUD Section 3 covered financial assistance must try to reach to attain compliance with Section 3.

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

When a recipient agency or contractor meets the numerical goals, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

60. What should recipient agencies or contractors do if they fail to meet the minimum numerical goals set forth in the regulation?

Recipient agencies and their contractors must adequately document all efforts taken to comply with the requirements of Section 3, and explain why despite their efforts “to the greatest extent feasible”; the minimum numerical goals were not met.

The Department will take each agency’s explanation into consideration when making compliance determinations.
RECORDKEEPING AND REPORTING

61. What are the recordkeeping requirements of Section 3 recipient agencies?

Documentation of actions taken to comply with the employment, training and contracting 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.

62. Who is required to submit Section 3 reports?

Each direct recipient of Section 3 covered HUD financial assistance shall submit an annual report for the purpose of determining the effectiveness of Section 3. Section 3 summary reports, form HUD 60002, are required even if the recipient agency did not undertake any activities that triggered the requirements. Subrecipients, developers, and contractors should not submit Section 3 annual reports directly to the Department.

63. Where should Section 3 summary reports (Form HUD 60002) be submitted?

The Department has developed an online reporting system to allow grantees to submit Section 3 reports (form HUD 60002) directly to FHEO. Reports should be submitted online at: www.hud.gov/section3 from the Section 3 website.

64. After an agency submits its Section 3 report online, should a hard copy of the form also be submitted to HUD by fax, email, or mail?

No. Since the Department has an online reporting system, it is not necessary for agencies to submit hard copies (or paper copies) of reports to FHEO. The Department is making an effort to go “paperless” and wants to reduce paper submissions of Section 3 reports.

However, it is recommended that grantees retain a copy of their completed Section 3 reports on file and optionally submit them as an attachment to their annual performance report if applicable (CAPERS report for CDBG, HOME and ESG Programs).

65. Are contractors or developers required to submit Section 3 reports directly to HUD?

No. Contractors and/or developers should not submit Section 3 reports to HUD. Only direct recipients (agencies) are required to submit Section 3 reports to HUD. Contractors should maintain adequate documentation to demonstrate compliance.
with Section 3 and forward information to the direct recipient (i.e., the agency that awarded them a covered contract) as directed or upon request.

66. Should recipient agencies establish a reporting system for their contractors and subcontractors?

Yes, reports complied by contractors and subcontractors will assist the recipient agency in gathering the necessary data for submission to HUD.

67. When are Section 3 annual reports (Form HUD 60002) due?

Depending on the source of funding, annual reports should be submitted at one of three times:

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 form HUD60002 by January 10th.
- Grantees Awarded funding for Section 202/811 should submit form HUD 60002 by January 10th.
- Grantees Awarded funding for CDBG, HOME and/or ESG should submit form HUD 60002 at the same time they submit the CAPER report.
- Grantees Awarded funding for lead abatement activities should submit form HUD 60002 with their annual reports no later than September 30th.

68. Where can I find instructions for completing form HUD 60002?

Instructions for completing form HUD 60002 can be found on the Section 3 website at www.hud.gov/section3. Additional technical assistance for completing form HUD 60002 can be obtained by submitting an email request to section3@hud.gov.

69. How can a recipient agency request a copy, make corrections, or delete its own Section 3 annual report?

The recipient agency should submit an email request to section3@hud.gov. Requests should contain the agency’s name along with the year, grant number, and dollar amount of the report in question.

70. How can I obtain copies of 60002 reports for another local recipient agency?
Copies of 60002 reports for local recipient agencies for which you are not affiliated with can be obtained by completing and submitting a Freedom of Information Act (FOIA) request at: http://www.hud.gov/offices/ogc/foia/foiarequests.cfm.

71. Are agencies required to submit Form HUD 2516 to demonstrate compliance with Section 3?

No. Agencies are not required to submit Form HUD 2516 to demonstrate compliance with Section 3. In addition, while Form HUD 2516 does capture some Section 3 data, it is not sufficient to demonstrate overall compliance to the Department. The only form that should be submitted for Section 3 reporting requirements is form HUD 60002.

SECTION 3 COMPLAINTS

72. Who can file a complaint that alleges non-compliance with the requirements of Section 3?

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.

73. Where should Section 3 complaints be submitted?

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

74. Where can I find form HUD 958?

Copies of the Section 3 complaint form (HUD 958), filing instructions and mailing addresses may be obtained at: www.hud.gov/section3.

75. 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.

76. What happens during an investigation?

Once a timely complaint has been filed with the appropriate Regional Office, the Department will determine if the complaint has jurisdiction or is covered by Section 3 regulations. An investigator will be assigned the case and will notify the respondent about the complaint. The respondent has the option of resolving the complaint or
contesting it. If the respondent contests or denies the allegations of noncompliance contained in the complaint, the investigator will proceed to gather facts or evidence from both parties. Thereafter, the investigator will prepare a letter of findings and either make a determination of noncompliance or dismiss the complaint.

77. What happens if HUD determines a recipient is in noncompliance?

Pursuant to 24 CFR 135.76, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the Section 3 covered assistance is provided.

78. Can complainants appeal the initial decision made in a Section 3 complaint?

A complainant can submit a written appeal to the Assistant Secretary for Fair Housing and Equal Opportunity in Washington, DC within 15 days after the Regional Office makes its determination. Requests should be sent to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Room 5100
Washington, DC 20410

79. Where else can I file complaints alleging denied employment and contracting opportunities?

If you are denied employment and/or contracting opportunities, you may have standing to bring a complaint at HUD under Title VI of the Civil Rights Act and/or Section 109 of the Housing and Community Development Act of 1974.

You may also be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.
The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/