



Cumberland County Community Development

SECTION 3 IMPLEMENTATION GUIDE ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW INCOME PERSONS

PURPOSE

Cumberland County Community Development is required to comply with the Section 3 provision of the Housing and Urban Development Act of 1968. The purpose of this document is to provide an implementation guide pertaining to Section 3 requirements. The guide provides a description of the requirements and a copy of the forms that need to be completed for compliance.

BACKGROUND

Section 3 requires that, to the greatest extent feasible, training and employment opportunities arising out of a project assisted under a program providing direct federal financial assistance from the US Department of Housing and Urban Development (HUD) be given to low and very low income residents of the service area and, where appropriate, contracts for work in connection with the project be awarded to business concerns (firm) which are located in or owned in substantial part by persons residing in the area of the project.

DEFINITIONS

Section 3 residents are persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD's income limits (see application for current income limits). Low income is defined as 80% or below the area median income of the area. Very low income is defined as 50% or below the median income of the area. See accompanying Table for income limits set by HUD for the Cumberland County-Fayetteville area.

Section 3 business concern is a business / firm that is:

- fifty-one percent (51%) or more owned by Section 3 residents; or
- employs Section 3 residents for at least thirty percent (30%) of its full-time, permanent staff; or
- provides evidence of a commitment to subcontract to Section 3 business concerns, twenty-five percent (25%) or more of the dollar amount of the awarded contract.

New hire is any full-time employee that an individual company hires after the effective date of signing a contract of a Section 3 covered project.

Recipient. Cumberland County Community Development is the direct recipient of federal funding from the US Department of Housing & Urban Development (HUD).

Subrecipient is an organization receiving HUD funds from Cumberland County Community Development (recipient) for housing and community development related projects. It does not include contractors or any ultimate beneficiary under the HUD program to which Section 3 applies.

Contractor is a business with contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Subcontractor is a business which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Section 3 covered projects are those in which a *combined* (or aggregate) amount of covered funding meets the threshold (\$200,000 for subrecipients or \$100,000 for contractors/subcontractors) for investment in the following activities:

- Housing construction/rehabilitation (including lead hazard reduction)
- Demolition
- Public construction (example - roads, sewers, community centers, etc)
- Public facilities
- Economic Development Projects (job creation/retention)

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Section 3 covered assistance

- public housing development assistance provided pursuant to Section 5 of the 1937 Act;
- public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- public housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
- assistance provided under any HUD housing or community development program that is expended for work arising in connection with housing rehabilitation, construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Clause is the contract provision set forth in 24 CFR Part 135.383.

Service area is the area where a HUD-assisted project is located. It is a geographical area in which the persons benefiting from the Section 3 covered project reside. The service area does not extend beyond the corporate boundaries.

APPLICABILITY

Section 3 requirements apply to community development and housing assistance projects which are provided by Cumberland County Community Development via Community Development Block Grant (CDBG) funds, Home Investment Partnership Program (HOME) funds, or any other funds issued by the U.S. Department of Housing & Urban Development. 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. When employment or contracting opportunities are generated through HUD funded projects and activities that necessitate hiring additional personnel, the subrecipient must give preference to low and very low income persons and/or qualified Section 3 business concerns.

THRESHOLD

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. Section 3 requirements only apply when any of the following thresholds are reached:

- **Subrecipient threshold:** A subrecipient that receives community development or housing assistance covered by Section 3 for which the amount of HUD assistance exceeds \$200,000.
- **Contractor and subcontractor thresholds:** Section 3 requirements apply to contractors and subcontractors performing work on the Section 3 covered project(s) for which the total amount of HUD assistance exceeds \$100,000 (to include the contract and any subcontracts)-

Professional services contracts (e.g. architectural services) are covered under Section 3 provided that work to be performed by the professional is for work generated by the expenditure of Section 3 covered assistance or for work arising in connection with a Section 3 project (e.g. housing rehabilitation, housing construction, or other public construction project.).

Section 3 covered contracts do not include contracts issued for the purchase of materials, supplies, or equipment, unless installation “work” is involved.

NUMERICAL GOALS

If a subrecipient, contractor or 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.

Federal regulations set numerical goals for all HUD jurisdictions for the hiring / training of Section 3 residents and contracting with Section 3 business concerns on HUD assisted projects. If the following numerical goals are not reached, subrecipients, contractors and subcontractors shall demonstrate a “Good Faith Effort” to achieve the numerical goals.

Training and Employment: Goals are based on the percentage of new hires.

1. Housing assistance: employ Section 3 residents as 10% of the aggregate number of new hires for each year over the duration of the Section 3 project.
2. Community development assistance: Employ Section 3 residents as 30% of the aggregate number of new hires for each year over the duration of the Section 3 project.

Contracts: Each contractor and subcontractor that meets the threshold requirements may demonstrate compliance with the requirements of Section 3 by committing to award Section 3 business concerns:

1. At least 10% of the total dollar amount for all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public housing, housing construction and other public construction.
2. At least 3% of the total dollar amount of all non-construction contracts covered under the Section 3 requirements.

Section 3 residents are not guaranteed employment and Section 3 business concerns are not guaranteed contracting opportunities. Section 3 residents must demonstrate that they meet the qualifications for new employment opportunities created as a result of the expenditure of covered assistance. Likewise, Section 3 business concerns must submit evidence to the satisfaction of the party awarding the contract to demonstrate that they are responsible firms and have the ability to perform successfully under the terms and conditions of the proposed contract.

Contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. Preference to Section 3 business concerns means that a recipient's or contractor's procurement procedures include methods to provide preference to Section 3 business concerns. Accordingly, if a Section 3 business concern is a responsible bidder, but their bid price is slightly higher than a non-Section 3 firm, the subrecipient agency may give preference to the Section 3 business in an effort to meet its numerical goals annually.

REPORTING PERIOD

Quarterly - July 1st through June 30th

The above range of dates identifies the reporting periods that all subrecipients, contractors, and subcontractors shall report efforts to meet the numerical goals of Section 3. The Section 3 Business Actual Work Force Breakdown report will need to be completed and submitted quarterly to the Cumberland County Community Development by the dates specified below.

ANNUAL REPORT

CCCD will collect information from the Business Actual Work Force Breakdown report to submit an annual Section 3 report to HUD as part of its Consolidated Annual Performance Report (CAPER) of each year. All reports shall be submitted on HUD Form 60002. An additional copy of the annual HUD Form 60002 for CDBG and for HOME projects will be submitted to FHEO at the time of the CAPER submission.

CCCD will receive and maintain records to document compliance with the Section 3 Program objectives. At a minimum, records will include specific information and documentation to demonstrate whether the numerical goals were met and that the subrecipient and contractors/subcontractors carried out their responsibilities.

RESPONSIBILITIES

A) Subrecipient

1. A subrecipient must comply with Section 3 requirements in its operation. This responsibility includes:
 - a. Notifying Section 3 residents and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids / proposals for available contracts and jobs opening with the subrecipient;
 - b. Notify potential contractors of Section 3 requirements;
 - c. Include the Section 3 Clause in all applicable contracts;
 - d. Document action(s) taken to meet the numerical goals.
 - e. Complete and submit the following reports when the assistance exceeds \$200,000: *Subrecipient – Contract Award Summary Report.*

Subrecipients have a responsibility to “ensure compliance” of their contractors and subcontractors. This means that a subrecipient must:

- f. Notify contractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in all contract documents;
- g. Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
- h. Respond to Section 3 complaints;
- i. Cooperate with Cumberland County Community Development and HUD in obtaining compliance of contractors and subcontractors when allegations are made of non-compliance.
- j. Complete and submit the following reports when the assistance exceeds \$200,000: *Subrecipient - Contract Award Summary Report.*

B) Contractors

- 1) Notify subcontractors of their responsibilities under Section 3 including, but not limited to, incorporating Section 3 Clause in subcontract documents;
- 2) Refrain from contracting with subcontractors for whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
- 3) Maintain records that document a good faith effort to utilize Section 3 residents and business concerns. This is required of both contractor and subcontractor;
- 4) Document action(s) taken to meet the numerical goals;

- 5) Complete and submit the *Section 3 Business Certification Form* prior to bid opening;
- 6) Complete and submit the following reports/forms when the assistance exceeds \$100,000: *Section 3 Business Actual Work Force Breakdown, Section 3 Business Certification Form, and Income Certification Form for Section 3 Residents* should low income residents of Cumberland County submit a job application for a new hire position.
- 7) Section 3 signage is required for construction projects (multi-family, more than one unit). The sign must be large enough to be visible from the street. The sign must: (a) identify the name of the housing development; (b) state "This is a HUD Section 3 Project"; and (c) provide contractor contact information including name and a telephone number.

C) Cumberland County Community Development

Cumberland County Community Development shall assist the subrecipient, contractors and subcontractors by performing the following activities:

- 1) Notify all applicants for CDBG and other HUD funded projects of the Section 3 applicability;
- 2) "Section 3 Clause" shall be included in all applicable bids and contracts;
- 3) Provide training and certification including workshops, presentations, educational materials, targeted mailings, etc;
- 4) Provide the appropriate guidelines and forms;
- 5) Assist-subrecipients, contractors and subcontractors with notifying Section 3 residents and business concerns of new opportunities as outlined in "Documenting Section 3 Efforts";
- 6) Monitor, verify and notify with regard to compliance;
- 7) Moderate Section 3 complaints;
- 8) Collect all applicable forms and reports;
- 9) Report all required data to HUD.

DOCUMENTING SECTION 3 EFFORTS

Cumberland County Community Development shall verify that the contractor and subcontractor have completed a variety of the following tasks to comply with Section 3 requirements. Subrecipients, contractors and subcontractors shall retain all records associated with complying with Section 3 requirements and provide Cumberland County Community Development and HUD with said records upon request.

Construction may not commence until a utilization plan has been submitted along with the grant application.

Failure to document Section 3 efforts may result in penalties including disbarment from submitting bids on future HUD funded projects and penalty of payment.

If the subrecipient, contractor and subcontractor have 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.

Subrecipient, contractor and subcontractor

The subrecipient, contractor/subcontractor must:

1) Target recruitment of Section 3 residents and business concerns by:

- a. Notice of vacant training and employment positions arising out of work to be performed under Section 3 covered projects with lower income project area residents shall contain the following statement: "In compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, training and employment opportunities arising out of a project assisted under a program providing direct financial assistance from the U.S. Department of Housing and Urban Development shall be given, to the greatest extent feasible, to lower income residents or businesses owned by lower income residents of Cumberland County. Low income residents or business owned by a low income resident of Cumberland County are encouraged to apply".
- b. Said notice shall be provided for at least two (2) weeks.
- c. Said notice shall contain the name, mailing address, telephone number, and website of the contracting firm.
- d. Said notice may be included in any policy manual, newsletter, website, annual report, and be posted on employee bulletin boards accessible to all employees at each location where construction work is performed.
- e. Said notice may be provided to contractor's labor organizations or representatives advising the contractor's commitments under "Section 3 Clause". Said notice may be disseminated to local newspapers, websites, radio advertising, neighborhood publications, minority publications, trade publications and associations, apprenticeship and training liaison, and any other locations.
- f. Said notice may also be posted at the job site.
- g. Said notice may be directly distributed to an eligible list of Section 3 Business Concerns, should a contractor or subcontractor maintain such list.
- h. Said notice may be directly distributed to agencies that administer HUD Youthbuild programs.

Cumberland County Community Development

Cumberland County Community Development will assist all contractors and subcontractors to comply with documenting Section 3 requirements by undertaking the following:

1. Allow subrecipients, contractors and subcontractors the opportunity to post job notifications on county property (e.g. Community Development Department, etc.)

SECTION 3 CLAUSE INSERT

Cumberland County Community Development shall include the "Section 3 Clause" in all applicable covered bids and distribute the appropriate forms related to the below paragraph to all interested parties prior to the opening of bids and entering into contracts.

At a minimum, contractors shall complete the following tasks at the bid opening. Tasks shall be verified by Cumberland County Community Development prior to the bid opening. The tasks will ensure the contractor understanding of the applicability of Section 3 requirements to the project.

1. Complete the "Contractor Certification" form indicating the contractor's status as a Section 3 business concern and employment of Section 3 residents.
2. Complete the "Contracting Goals" form indicating the preliminary estimation of new employment or contracting opportunities generated due to the proposed HUD funded activity and the Section 3 numerical goals associated with training and employment opportunities.
3. Complete the "Preference for Section 3 Residents & Business Concerns" form demonstrating the contractor's understanding of Section 3 requirements.

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 implements 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 are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

COMPLAINT PROCEDURE

In an effort to resolve complaints generated due to non-compliance through an internal process, the Cumberland County Community Development encourages submittal of such complaints to its office.

A complaint of non-compliance shall be provided in writing and must contain the name of the complainant and a brief description of the alleged violation of 24 CFR Part 135.

Complaints must be filed within thirty (30) days after the complainant becomes aware of the alleged violation.

An investigation will be conducted if the complaint is found to be valid. Cumberland County Community Development will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and / or evidence pertinent to the complaint.

Cumberland County Community Development will provide written documentation detailing the findings of the investigation no later than thirty (30) days after the filing of the complaint.

If complainants wish to have their concerns considered outside the Cumberland County Community Development Department, a complaint may be filed in this manner:

Step One: Complaint: Complaints may be filed by any Section 3 resident on behalf of himself or herself, or as a representative of Section 3 residents, or by any Section 3 business concern on behalf of itself, or as a representative of Section 3 business concerns.

The complaint should be in writing, signed by the complainant, and include the complainant's name and address, the name and address of the respondent, and a description of the act or omission by the respondent. Complaints should be mailed to the following address:

Assistant Secretary for Fair Housing and Equal Opportunity
US Department of Housing & Urban Development
451 Seventh Street, SW
Washington, DC 20410

The 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.

Step Two: HUD Review: Within 10 days of timely filing of a complaint with complete information, the Assistant Secretary shall determine whether the allegation, if proven, qualifies as noncompliance with Section 3. If so, the complaint will be sent to the respondent for resolution.

Step Three: Response: If the respondent believes that the complaint lacks merit, the respondent 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 Assistant Secretary will make the final determination.

If the respondent determines that there is merit to the complaint, the respondent will have 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 respondent must notify the Assistant Secretary in writing of the terms of the resolution reached between the two parties. Both the respondent and the complainant must sign this notification.

If requesting an extension of the 60-day period, the respondent must submit the request in writing and include a statement explaining the need for the extension.

If the complaint is not resolved within the 60-day period (or more if extended), the complaint will be referred to the Assistant Secretary for resolution.

Step Four: HUD Review: Upon receipt of the respondent's written recommendation that there is no merit to the complaint, or upon failure of the respondent and complainant to reach resolution, the Assistant Secretary at HUD shall review the complaint. Where the complaint fails to present a valid allegation of noncompliance with Section 3, the Assistant Secretary will dismiss the complaint and notify the complainant of the reasons for the dismissal.

Where there is 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. If informal resolution fails, then the Assistant Secretary will impose a resolution and or sanctions on the respondent and complainant. The imposed resolution will become effective 15 days following notification to the respondent and complainant. A written appeal, describing the basis for the appeal, may be submitted to the Assistant Secretary prior to the expiration of the 15 days.

Sanctions that may be imposed on respondents found to be in noncompliance with Section 3 include debarment, suspension, and limited denial of participation in HUD programs.