Meeting the Numerical Goals

- 10%
- 3%
- 30%

SECTION 3 COMPLIANCE REGULATORY AND IMPLEMENTATION TRAINING 2017

Welcome All and Thank You!

Time is something you never get back. Thank you for investing your’s in me.

Motivation, Inc.

Celebrating 25 Years in His Service

Founded in 1991
- Providing Section 3 Compliance and Management Services Since 1997
- Provided Technical Assistance Training to 38 State Public Housing and Community Development Agencies
- Represent PHA’s, Indian Tribes, Cities, Counties States, Contractors, Developers, and RAB’s
- Is a DOL Approved Service Provider/Instruction for Resident Training

About The Trainer

J. Keith Swiney:
- 33 years as a professional trainer
- 30 years in real estate asset/property management
- 30 years affordable housing (urban and rural)
- Owned three asset/property management firms
- 20 years Section 3 compliance experience
- 7 Section 3 Resident Owned Businesses created nationally since 1997

SECTION 3 FINAL RULE

“The rule is on hold until the change of Administration takes place. The new Administration will determine when (or if) it will move forward.”

Email response from Staci Gilliam, Former Director of the Office of Economic Opportunities and Section 3 (11/9/16)

Community Development?

Other than 10 slides, this entire training pertains to Community [Program] Development Recipients
Results v. Documentation

– You can NOT control the results of your Section 3 outreach and protocol.
– You CAN control the actions taken to comply and how you manage the data and documentation.
– If your agency fails to meet the numerical goals, you MUST be able to prove with tangible, articulate data, and activity logs everything done toward achieving compliance.

Where to Find Your Answers

1. 1998 CFR Title 24, Volume 1
3. HUD.GOV/Section 3 FAQ

Where Did Section 3 Originate?

Section 3 of the HUD (Civil Rights) Act of 1968 was signed into law by President LBJ and the regulation is parked at 24 CFR Part 135.

Burden of Compliance

– The Department acknowledges that compliance with Section 3 is not without cost or burden to recipients and contractors, but that burden, in large part, is imposed by statute
– The statute requires recipients, their contractors, and subcontractors, to provide, to the greatest extent feasible, economic opportunities to low- and very low-income persons

How Is Section 3 Triggered?

Section 3 “Preference” requirements are triggered by the need for new hires (whether individual employees or contractors or sub-contractors) for work on a project or activity assisted by HUD financial assistance covered by section 3.

What is “Preference”?

– All Section 3 Residents and Contractors MUST be qualified for the work they are applying for...
– The hiring/contracting entity sets the requirements
– If two competing people or contractors are equally qualified, the Section 3 resident or contractor MUST be awarded the job or contract (Price and other factors)
– If a Section 3 Preference is requested, the qualified entity MUST be awarded even if S3 forms not included
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.

- **10%** of the total dollar amount of annual Building Trades Contracts to Section 3 Concerns
- **3%** of the total dollar amount of annual “Other” Contracts to Section 3 Concerns
- Commits to **30%** New Hires annually for projects [135.30(c) & (d) Page 697]

### Who is a Section 3 Resident and How is Priority Provided?

**Section 3 (TIER I) Residents are:**
- ANY resident of HUD assisted housing, including:
  - PIH & Housing Choice Voucher
  - Substance Abuse Rehab
  - Domestic Violence Shelters
  - Transitional Housing
  - Homeless Shelters
  - Veterans Housing

**Section 3 (TIER II) Residents are:**
- Persons in the area where the HUD financial assistance is spent
- Including the metropolitan city or non-metropolitan county of the project
- Participants in Youthbuild programs

### What is a Section 3 Business and What Priority is Provided?

A business that:
1. Is **51%** or more owned and operated by Section 3 residents (ROB=Resident Owned Business);
2. Employs Section 3 residents for at least **30%** of its full-time, permanent staff (Commits to **30%** Section 3 New Hires); or
3. Provides evidence of a commitment to sub-contract to Section 3 business concerns or ROB, **25%** or more of the dollar amount of the awarded contract.

### How Is Section 3 Triggered?

Section 3 “Preference” is triggered by the need:

- **Notice**
- **Encouragement**
- **Facilitation**

Recipients submit bids or estimates and potential subs (Section 3 and Non) would have the opportunity to bid.
Providing Notice

All ads, flyers, and postings should contain this language:

“This opportunity is covered under Section 3 of the HUD Act of 1968”

Make certain you update your employment application in some form to include this wording and allow applicants to elect a Section 3 Preference.

Compliance Coverage

1. Developer/Eng./GC
   Count full contract $$$ and new hires
2. 1st Tier Subs
   Count some $ maybe
3. 2nd Tier Subs
   Count very few $ maybe
4. Labor
   Hope for S3 new hires

Small Agency
Two Signature Two Contracts

A true example of how two signatures and two contracts can give a small agency full compliance:

90 Unit PHA with approx. $400K total funding annually
   – One large contract annually of approx. $60,000
   – G/C hired one S3 person to work on the project
   – The G/C signed the S3 Self Cert form qualifying as a S3B 30% employer
   – One Cleaning Contract to a resident

Mid to Large Agency
One Signature One Hire

A true example of how one signature on one contract with one S3 hire can create full compliance:

1800 Unit PHA with a single redevelopment project
   – One large contract annually of approx. $10.5M
   – G/C hired one S3 person to work with developer
   – The G/C signed the S3 Self Cert form qualifying as a S3B 30% employer so the entire contract is now S3 covering the 10%, 3% and 30% in one signature

Full Project Encumbrance Despite Funding Sources

– Applicability of section 3 to entire project or activity funded with section 3 assistance. [135.3(3)(C)(bi)]

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.

What is and is Not Covered

– Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure

– “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
Section 3 requires that recipients not only include low- and very low-income persons in these recruitment and solicitation efforts, but that, in fact, **extra or greater efforts be undertaken** to make these persons aware of the existence of the economic opportunities. **Encourage their application** for these opportunities, and **Facilitate the employment of, or award of contracts** to these persons.

### HUD’s Definition

By to the Greatest Extent Feasible, the Department means that **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.

### Targeting Opportunities

The 1992 Act amends section 3 to require that in providing preference to low- and very low-income persons, recipients, contractors, and subcontractors **must first target for job opportunities to smaller groups within the broad category of low-income persons, such as public housing residents.**

### 24 CFR Part 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, ....

### What Isn’t Required

Section 3 does **NOT** require the creation of economic opportunities for low- and very low-income persons, or for anyone, simply for the sake of creating economic opportunities. Section 3 requires that when employment or contract opportunities are generated because a project or activity will be undertaken...

### Preference MUST be Provided

by a recipient ...the employment of additional personnel through individual hiring or the awarding of contracts for work, the **recipient must** give preference in hiring to low- and very low-income persons..., and contracting to businesses owned by these persons or that substantially employ low- and very low-income persons.
Covered Projects

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement 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 is Neutral

Without regard to gender and/or race.

What Programs are Covered?

Section 3 applies to HUD funded expenditures from Public and Indian Housing assistance for:
- Development
- Operations
- Modernization

What PIH Contracts are Section 3?

- All housing owned or managed by a PHA
- There are no dollar thresholds for Public and Indian Housing assistance
- Section 3 applies to all activities regardless of the dollar amount
- The requirements also apply to all contractors regardless of the dollar amount of the contract

Funds Covered by Community Development

Any project whole or in part (Based on the applicable thresholds) funded using:
- Community Development Block Grants (CDBG)
- HOME Funds
- Homeless Assistance Funds

Section 3 and M/W/DBE

There is no direct relationship between:
- Minority Owned Businesses
- Women Owned Businesses
- Disadvantaged (8a) Owned Businesses

*It Does give preference to American-Indian Owned Businesses and Enterprises in contracting
Motivation, Inc. 678.794.3066

What Work is Covered by Community Development?

Section 3 applies to HUD funded Community Development Program funds provided to state and local governments for:
- Housing Rehab
- Housing Constr.
- Other Public Construction Projects

What Multi-Family (MF) Programs are Covered?

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 by committing to employ section 3 residents as:
- 30% of the aggregate number of new hires

MF Mortgagers must provide Preference to Section 3 Business Concerns during construction work [135.11(2)]

Housing & Community Development Recipients

(A) Recipient thresholds [135.3(3)(ii)]

The requirements of this part apply to Recipients of other housing and Community Development programs for which the amount of the assistance exceeds $200,000.

(B) Contractor and subcontractor thresholds [135.3(3)(iii)]

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. However, the Recipient MUST meet compliance on every dollar they spend or award despite the contract value.

Housing & Community Development Recipients

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 [135.32(f)]

Housing & Community Development Recipients

- The State or county must inform units of local government to whom funds are distributed of the requirements of Section 3
- Assist local governments and their contractors in meeting the requirements and monitor the performance of local governments with [135.32(f)]
Other Federal Agencies to Comply with Section 3

1. Federal Highway Administration (DOT)
2. Environmental Protection Agency
3. Department of Commerce

What The Regulation Doesn’t Fully Address

There are two major areas of concern when addressing Section 3 at ground level:
1. State and Local Procurement Laws
2. Labor (Union) Contracts

1. State and Local Procurement Laws
   – 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.

What The Regulation Doesn’t Fully Address

2. Unions and Labor Contracts
   The regulation requires Labor Unions to meet the regulation. See the Section 3 Clause 135.38(C)
   Apprenticeship programs are covered in the regulation and may be utilized but may not fully meet the requirements

   § 135.11 (2) (d) Other laws governing training, employment, and contracting

Procurement Requirements

§ 135.11(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. (HUD Procurement Handbook 7460.8 REV 2:)

Compliance Goals for H&CD

State and Local governments must:
– Attempt to meet numerical goals
– At their own discretion establish a priority to recipients of government assistance with a;
– Preference to section 3 persons in the area of the project, Youthbuild, the homeless then other section 3 residents [135.34(1)(iv)]

Resident Self-Certification

A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference. [135.5]

Find 5 employees of the Jurisdiction-wide (AHA) ROB: "Residents Work, LLC" ROB president, resident services coordinator and President/CEO of Mo-Inc.
A Resident Owned Business (ROB) is any legally formed business, meeting all the state and local requirements to engage in its declared type of business
– That ROB must be 51% or more owned and operated by Section 3 residents
– That resident can come from Tier I or Tier II
– There is no requirement that ROB employ any Section 3 persons

Businesses shall self-certify as to their qualification for Section 3 “preference.” If in doubt, supporting evidence may be requested.

[135.36(b)]

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low- and very low-income persons, including permanent employment and long-term jobs
– Recipients and contractors are encouraged to have Section 3 residents make up at least 30% of their permanent, full-time staff

Section 3 business concern means a business concern, as defined in this section, ...
– (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

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.
Maintaining Good Records

- **24 CFR Part 135.92 - Economic Opportunities For Low- and Very Low-Income & Appendix’s Persons**

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 section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

Contracting Preference for Resident Owned Businesses

- **24 CFR 963.10 - Subpart B Contracting with Resident Owned Businesses-Eligible Resident-Owned Businesses**

To be eligible for the alternative procurement process provided by this part...the business concern must be:
(a) Legally formed business
(b) Resident-owned business as defined by this part
(c) Responsible (Ability) to complete the contract; and
(d) Limitation on alternative procurement contract awards of $1,000,000 or less

Contracting Preference for Resident Owned Businesses

- **24 CFR 963.3 - Subpart A Contracting with Resident Owned Businesses-Applicability**

The policies and procedures contained in this part apply to public housing developments that are owned by public housing agencies (PHAs) and that are covered by Annual Contributions Contracts (ACC) with the Department.

Contracting Preference for Resident Owned Businesses

- **Subpart B Contracting with Resident Owned Businesses-Alternative Procurement Process Method of procurement.**

In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses.

Contracting Preference for Resident Owned Businesses

- **Contract awards.**

An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), and the price normally paid for comparable supplies, services, or construction in the project area.
(c) **Contract Requirements.** Any contract entered into between a PHA and a resident-owned business under this part shall comply with...the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1)

**[HUD Procurement Handbook 7460.8 REV 2:](#)**

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**Contracting Preference for Resident Owned Businesses**

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**Critical Parts of the Regulations**

- Notify Section 3 businesses of contracting opportunities funded by section 3-covered assistance. [135.32(a)]

- Notify all potential contractors for section 3-covered projects of the section 3 contracting requirements and include the required section 3 clause [135.38] in all section 3-covered contracts [135.32(b)]

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**Critical Parts of the Regulations**

- Not award contracts to any contractor who has been found to have violated the section 3 requirements [135.32(d)]

- Take appropriate remedial action against contractors who fail to comply with the section 3 requirements (e.g., termination) [135.38]

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**Critical Parts of the Regulations**

- Assist and “Actively” cooperate with HUD in obtaining contractor/subcontractor compliance with section 3 requirements [135.32(d)]

- Document actions (including results and impediments) taken to comply with section 3 requirements [135.32(e)]

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**Critical Parts of the Regulations**

- Certify that the contractor did not circumvent the Section 3 employment opportunity requirements, if the contractor hired any persons not covered by Section 3 between the time the contractor was selected and the contract was executed. [135.38]

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**Critical Parts of the Regulations**

- Past compliance with the section 3 certification and qualification requirements must also be considered. [135.36(c)]

> You, as the recipient, must enquire of all contractors what the method of compliance was on previous HUD funded, covered assistance projects during procurement and certainly before award.
Residents Filing Complaints

- 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,
  2. A representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure.

Businesses Filing Complaints

- 3. A representative who is not a section 3 resident but who represents one or more section 3 residents;
- 4. 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;
- 5. An individual representative of section 3 business concerns.

Filing and Processing Complaints

- Each complaint must be in writing, signed by the complainant, and include:
  (i) The complainant’s name and address;
  (ii) The name and address of the respondent;
  (iii) 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.

- A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Regional Field Offices.

- 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.

- Additional Data supporting a complaint must be received by HUD within 60 or it may be closed.

- 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.

- 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 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.
Filing and Processing Complaints

To see the new report please follow this link:


Compliance and Review Process

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 assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided.

Reporting and Record Keeping

- 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 10th of each year or within 10 days of project completion, whichever is earlier.

- All CDP Recipients report with their CAPER

- All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

Getting it Done

implementation tips
**Solicitation Checklist**

- Mention Section 3 in legal ads for contracts
- Section 3 Clause in ALL solicitations
- Posting signs at the project sites
- All certification and action plan forms
- Assurance of compliance
- Prior compliance
- Resident self-certification

**Implementation Documentation**

- Document and save everything Section 3 including all:
  - Contacts
  - Phone logs
  - Training attendance sheets
  - Resident training curricula
  - Screen shot or print all web posts
  - Each contractors compliance when triggered
  - Document all names, addresses, applications, etc.

**Free One Year Electronic Follow up**

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