



## **A Compliance Guide to Section 3 of the Housing and Urban Development Act of 1968**

### **Economic Opportunities for Low and Very Low Income Persons**

#### **Purpose**

The City of Fayetteville Community Development Department administers programs that are funded from federal funds received directly from the Department of Housing and Urban Development (HUD) for housing and community development activities. Recipients and subrecipients of these funds must ensure that all federal requirements are followed. The purpose of this guide is to define the Section 3 requirements that must be met for compliance.

#### **Background**

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that is designed to ensure HUD funds invested in housing and community development activities also provide employment opportunities for low and very low income people. Section 3 requires that, to the greatest extent feasible, job training and employment opportunities arising out of a project assisted under a program providing direct federal financial assistance from the U. S. Department of Housing and Urban Development (HUD) be given to low or very low income residents (Section 3 residents) of the service area and, where appropriate, contracts for work in connection with the project be awarded to Section 3 business concerns.

In summary, the obligations of Section 3 are:

1. Provide outreach/training for Section 3 residents, and report on the outreach and training undertaken.
2. To the greatest extent feasible hire and train Section 3 residents, and report on employees and new hires.
3. To the greatest extent feasible contract with Section 3 businesses (Section 3 business concern), and report on contracts and subcontracts.

#### **Definitions**

- *Section 3 residents:* Public housing residents or 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 and qualifies as a low-income person.
- *Determining income levels:* Low income is defined as 80% or below the median income of an area. Very low income is defined as 50% or below the median income of an area.
- *Section 3 business concern:* A business that is 51% or more owned by Section 3 residents; or one that employs Section 3 residents for at least 30% of its full-time,

- permanent staff; or one that provides evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract.
- *New hire*: A full-time employee for a new permanent, temporary or seasonal position that is generated from the expenditure of HUD funds covered by Section 3 regulations.
  - *Recipient*: City Community Development Department is the direct recipient of federal funding from the U. S. Department of Housing and Urban Development (HUD).
  - *Subrecipient*: An organization receiving HUD funds from the City's Community Development Department (recipient) for housing and community development related projects.
  - *Contractor*: 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*: 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 project*: Includes the construction, reconstruction, conversion or rehabilitation of a housing (including reduction and abatement of lead-based paint hazards), other public housing which includes buildings or improvements (regardless of ownership) assisted with housing and community development assistance.
  - *Section 3 covered assistance*: Public housing development assistance as 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 as provided pursuant to Section 14 of the 1937 Act; and 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 and improvements, regardless of ownership).
  - *Service area*: The area where a HUD-assisted project is located. It is a geographical area in which the person benefiting from the Section 3 covered project resides. *The service area does not extend beyond the city limits.*
  - *Section 3 clause*: The contract provision set forth in 24 CFR Part 135.383.

### **Applicability**

Section 3 requirements apply to community development and housing assistance projects funded by Community Development Grant Block (CDBG) funds and Home Investment Partnership Program (HOME) funds. A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), housing construction, or other public construction such as street repair, sewage, line repair or installation, updates to building facades, etc.

Section 3 requires that when employment or contracting opportunities are generated because such projects or activities undertaken by a subrecipient of covered HUD financial assistance necessitates the employment of additional personnel through individual hiring or awarding contracts, the subrecipient must give preference to hiring low and very low income persons and/or businesses owned by these persons or that substantially employ these persons within the City of Fayetteville.

### **Recipient Responsibilities Pursuant to Section 3**

The City of Fayetteville Community Development Department, being a unit of local government, is a recipient of Section 3 funds. "Recipient" refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient. Each recipient (and their covered subrecipients, contractors, and subcontractors) are required to comply with the

requirements of Section 3 for new employment, training or contracting opportunities resulting from the expenditure of covered funding. If the expenditure of covered funding does not result in new employment, contracting or training opportunities, the requirements have not been triggered.

### **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 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 assistance exceeds \$100,000; and the contract and subcontract exceeds \$100,000.

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 issues for the purchase of materials, supplies, or equipment, unless installation “work” is involved.

- **Threshold met for subrecipients, but not contractors or subcontractors:** If a subrecipient 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 operation of the subrecipient (see Responsibilities).

### **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, effective June 30 1994, 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 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 procedure includes 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.

### **Compliance Time Period**

July 1<sup>st</sup> through June 30<sup>th</sup> of the following year.

For those projects that have received a release of funds from HUD, Section 3 information that reflects hiring and contracting in the above reporting period should be submitted to the City Community Development Department by no later than July 15<sup>th</sup> or completion of the work; whichever comes first.

### **Responsibilities**

#### **A. Subrecipient**

1. A subrecipient that receives community development or housing assistance covered by Section 3 has the responsibility to comply with Section 3 requirements in its own operations. 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; and
  - e. Complete and submit the *Certificate of Understanding of Section 3 Form* before the project begins and the *Subrecipient Section 3 Contractor Award Summary Report* and the *Subrecipient Section 3 Project Summary Report* at the end of the reporting period or at the end of the project, whichever comes first, when the assistance exceeds \$200,000.
2. Subrecipients have a responsibility to "ensure compliance" of their contractors and subcontractors. This means that a subrecipient must:
  - a. Notify contractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in all contract documents;

- b. Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violations of the requirements of 24 CFR Part 135.
- c. Respond to Section 3 complaints;
- d. Cooperate with City Community Development Department and HUD in obtaining compliance of contractors and subcontractors when allegations are made of non-compliance; and
- e. Complete and submit the *Subrecipient Section 3 Contractor Award Summary Report* and the *Subrecipient Section 3 Project Summary Report* at the end of the reporting period or at the end of the project, whichever comes first, when the assistance exceeds \$200,000.

## **B. Contractors**

A contractor must comply with Section 3 requirements and this responsibility includes:

- 1. Notify subcontractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in subcontract documents;
- 2. 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;
- 3. Maintain records that document a good faith effort to utilize Section 3 residents and business concerns. This is required of both the contractor and subcontractor;
- 4. Document action (s) taken to meet the numerical goals;
- 5. Complete and submit the *Certificate of Understanding of Section 3 Form, Section 3 Bidder's Certification Form, and Section 3 Business Certification Form* prior to bid opening; and
- 6. Complete and submit the following reports/forms when the assistance exceeds \$100,000: *Section 3 Business Estimated Work Force Breakdown(at the beginning of the project), Section 3 Business Actual Work Force Breakdown(at the end of project or reporting period), Section 3 Business Certification Form(to document if subcontractors hired are Section 3 businesses) and Income Certification Form for Section 3 Residents ( if low income residents of Fayetteville submit a job application for a new hire position.*

## **C. City Community Development Department**

City Community Development shall assist the subrecipient, contractor and subcontractors by performing the following activities:

- 1. Notifying all applicants for CDBG and other HUD funded projects of the Section 3 applicability;
- 2. The Section 3 Clause shall be included in all applicable bids and contracts;
- 3. Providing clarification of the Section 3 requirements;
- 4. Providing the appropriate guidelines and forms;
- 5. Assisting subrecipients, contractors and subcontractors with notifying Section 3 residents and business concerns of new opportunities as outlined in "Good Faith Effort";
- 6. Monitoring, verifying and notifying with regard to compliance;
- 7. Moderate Section 3 complaints;
- 8. Collect all applicable forms and reports; and
- 9. Report all required data to HUD (form HUD-60002).

### **Good Faith Effort**

The City Community Development Department shall verify that the contractor and subcontractor have completed a variety of the following tasks to demonstrate its good faith effort to comply with Section 3 requirements. Subrecipients, contractors, and subcontractors shall retain all records associated with all attempts to provide a good faith effort and provide the City and HUD with said records upon request.

Construction may not commence until the City Community Development Department has recognized that the subrecipient, contractor, and subcontractor have demonstrated a “good faith effort” to meet the numerical goals of Section 3.

Failure to be recognized as demonstrating a “good faith effort” 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**

Examples of actions demonstrating a “good faith effort” targeting the recruitment of Section 3 residents and business concerns include:

1. 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 the City of Fayetteville . Low income residents or businesses owned by a low income resident of Fayetteville are encouraged to apply.”
2. Said notice shall be provided for at least two weeks.
3. Said notice shall contain the name, mailing address, telephone number, and website of the contracting firm.
4. Said notice may be included in any advertising in local media, 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.
5. Said notice may be provided to contractor’s labor organizations or representatives advising the contractor’s commitments under the 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.
6. Said notice may also be posted at the job site.
7. Said notice may be directly distributed to an eligible list of Section 3 business concerns, should a contractor or subcontractor maintain such list.
8. Said notice may be directly distributed to agencies that administer HUD Youthbuild Programs.

### **City Community Development Department**

The City Community Development Department will assist all contractors and subcontractors to comply with the “good faith effort” requirement by allowing subrecipients, contractors, and subcontractors the opportunity to post job notifications on City property (e.g. Community Development Department, etc.)

### **Recipient Records and Reports**

Examples of records to be maintained are:

- Copies of advertisements for training and employment;
- Lists of Section 3 residents who applied or otherwise expressed an interest in training positions or employment;
- Copies of solicitations or requests for proposals;
- Documentation of pre-construction conferences;
- Records of bid evaluations and selections;
- Correspondence or other documentation related to Section 3 grievances;
- Photographic evidence of displayed signs; and
- Copies of letters to community organizations

### **Section 3 Clause Insert**

The City Community Development Department shall include the “Section 3 Clause” in all applicable covered bids, complete and distribute the appropriate forms prior to the opening of bids and entering into contracts.

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 works 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 the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take the 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 the 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 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 noncompliance through an internal process, the City Community Development Department encourages submittal of such complaints to its office.

A complaint of noncompliance 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. The City Community Development Department 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.

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

If a complainant wishes to have his or her concerns considered outside the City Community Development Department, a complaint may be filed with:

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

The compliant must be received no later than 180 days from the date of the action or omission upon which the compliant is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.