



Economic Opportunities For Low-Income People (24 CFR 135): Understanding Section 3

*HUD Requirements for Local Government and Non-profit Subrecipients
Housing & Urban Development Act of 1968 (12
U.S.C. 1701u) (Section 3) (Title 24-HUD, Chapter 1)*

HUD Section 3 Overview

- ❖ Purpose of Section 3
- ❖ Eligible Beneficiaries/ Opportunities
- ❖ Applicable Situations/ Triggers
- ❖ Responsible Entities
- ❖ Obligations
- ❖ Definitions
- ❖ Rule revisions expected

HUD Section 3: Purpose

Generate

- ❖ new employment,
- ❖ training,
- ❖ contract opportunities
for low- or very-low income
residents and vicinity businesses.

HUD Section 3 Beneficiaries

Eligible for Hiring and Contracting Preferences:

- ❖ Section 3 residents and businesses
- ❖ Low and very low-income persons
- ❖ People living in neighborhoods near HUD-funded construction project.

HUD Section 3 Beneficiaries: Target groups

- ❖ Low- and very low-income persons (24 CFR 135)
- ❖ For training & employment
 - ❖ Public & Assisted housing residents
 - ❖ Residents of affected project neighborhood
 - ❖ Youth-build program participants
 - ❖ Homeless
- For contracting
 - ❖ Section 3 businesses, who match the definition



Economic Opportunities

- ❖ Jobs and Employment
- ❖ Job Training
- ❖ Contracts and Business

“Opportunity” involves reasonable access and fair notification, not a guarantee.

Applicable Situations: Triggers

Section 3-covered funding

- ❖ Grant or contract funds originating from HUD,
- ❖ For construction, rehabilitation, or demolition.
- ❖ Requirements for entire project, including other funding sources, involving:
 - New employment, training, or contracting for
 - Housing rehab (including lead-safety)
 - Housing construction, reconstruction, demolition,
 - Public construction

Applicable Situations: Covered programs

HOME funds: if Project receives

- CHDO Set-Aside
- Assistance or financing involving: new/
reconstruction, rehabilitation, or demolition

Does not apply

If assistance or financing does not involve

- ❖ New Construction/ Reconstruction,
- ❖ Rehabilitation, or
- ❖ Demolition

Applicable Situations: Covered programs

Applies to:

Emergency Solutions Grants Program (ESG)

- Any construction, rehabilitation, or demolition
- Notice of funding availability

Does not apply if:

- Neither funded by HUD nor involving any construction, rehab or demolition

Applicable Situations: Covered programs

Applies to:

- Community Development Block Grant (CDBG) Disaster Recovery Programs
 - New/ Reconstruction/ Rehabilitation
 - Demolition
 - Infrastructure Development

Does not apply (if not construction-related)

- CDBG Disaster Recovery -- Homebuyer Assistance

Applicable Situations: Covered programs

Applies to

Office of Colonia Initiatives (OCI)

- Self Help Centers (reported through Texas Department of Rural Affairs)

Does not apply to

- ❖ Office of Colonia Initiatives – “Bootstrap”
- Housing Trust Fund (non-HUD)

Applicable Situations: Covered programs

Neighborhood Stabilization Program (NSP)
involving

- New/ Reconstruction or Rehabilitation
- Demolition

Does not apply:

- In absence of Construction/ Reconstruction, Rehabilitation, or Demolition

HUD Section 3 Inapplicable Situations

Does not apply to these programs:

- ❖ Texas Homeownership Division
 - Homebuyer Assistance
 - MCC (MORTGAGE CREDIT CERTIFICATE)
 - NFMC (National Foreclosure Mitigation Counseling)
- ❖ Section-8-only PHAs
- ❖ 811 Project Rental Assistance



Section 3 Thresholds

Recipient & Subrecipient \geq \$200,000

(Contractor \geq \$100,000 (24 CFR §135.3))

HUD recipient obligating funds for projects involving construction.

Threshold covers all projects under subject recipient.

- ❖ For covered contracts, subrecipients must submit Section 3 Report for themselves and their contractors.

Responsible Entities

Who bears responsibility to comply?

- ❖ HUD-funded housing rehab, construction, or other public construction, project owners.
- ❖ Recipients
- ❖ Subrecipients,
 - ❖ contractors,
 - ❖ subcontractors

Obligations & Responsibilities

Subrecipients' Section 3 Responsibilities (24 CFR 135.32)

- Section 3 Clause – in contracts, solicitations
- Notifications – to community
- Employment & Training – for low-income



Obligations & Responsibilities

Include “Section 3 Clause”

in all covered solicitations and contracts (24 CFR 135.38), specifying that work performed under the contract adheres to Section 3 requirements.

Obligations & Responsibilities

Notifications

- ❖ Notify eligible residents & businesses about employment & contracting opportunities.
- ❖ Notify contractors and potential contractors of Section 3 responsibilities.

Obligations & Responsibilities

Facilitate training & employment of eligible Section 3 residents and businesses.

- ❖ Jobs
- ❖ Apprenticeships
- ❖ Access to educational opportunities
- ❖ Subrecipient and contractors actually provide economic opportunities to low-income persons and qualified Section 3 businesses – to the greatest extent feasible (§135.30).

Subrecipients' Obligations & Responsibilities

- ❖ Assist & cooperate with HUD on compliance.
- ❖ Do not contract with Section 3 regulation violators, as identified by HUD (24 CFR 135.72).
- ❖ Document Section 3 compliance actions.
- ❖ Submit Section 3 Summary Reports (HUD-60002), either annually or prior to final draw.

Obligations & Responsibilities

Reporting Obligations

- ❖ Subrecipients report to TDHCA on their own behalf and that of their contractors

Section 3 Definitions

(24 CFR 135.5)

Section 3 Residents:

- ❖ Low-income individuals (80% of HUD AMI) living in metro area (MSA) or non-metro county area of project (not only public housing residents).
- ❖ Hiring preferences to meet Section 3 requirements
 1. Homeless, if project assisted under McKinney Act (42 U.S.C. 11301 et seq.) (highest preference)
 2. Low-income housing authority residents in local MSA
 3. HUD Youthbuild program participants
 4. Other low-income residents in the vicinity or county.

Section 3 Definitions

Section 3 Business:

- ❖ Owned 51% or more by Section 3 residents;
 - Or, at least 30% of employees qualify as Section 3 (or within 3 years of the date of first employment with the business were section 3 residents).
- ❖ Or commits to subcontract $\geq 25\%$ of dollar value of project contracts to Section 3 eligible businesses.
- ❖ & Gives hiring preference to those who meet these conditions and for participating in HUD Youthbuild programs (24 CFR 135.36; 42 USC 12899).

Section 3 Definitions

Numerical Goals for subrecipients & contractors
 (“greatest extent feasible” test, 24 CFR §135.30)

- ❖ 30% of total number of new hires
- ❖ 10% of all covered construction contracts, awards to Section 3 business concerns.
- ❖ 3% of all covered non-construction contracts, awards to Section 3 business concerns.

Failure to meet numerical goals requires explanation from subrecipient.

Section 3 Definitions

Good Faith Efforts to Comply

- ❖ Demonstrate “greatest extent feasible” (§135.7)
- ❖ Establish Policies/ procedures to achieve compliance (§135.9): Inform contractors, evaluate bidders, notify/ verify residents, priority consideration, consequences, use local resources
- ❖ Fulfill responsibilities, see previous point (§135.11)
- ❖ Reach or exceed minimum numerical goals for employment and contracting opportunities, as provided in § 135.13 and either § 135.35 or § 135.55; or
- ❖ Written justification for not meeting goals: impediments, actions taken, steps to overcome in future



HUD's 2015 Revisions Proposed for 24 CFR 135

2015 Revisions Proposed for 24 CFR 135

Subrecipient requirements may change, subject to when new rule becomes effective.

❖ Resolves ambiguities

- ❖ Clarifies responsibilities
- ❖ Specific steps to comply
- ❖ Requires written policies and procedures

❖ Incorporates into the rule

- ❖ “Best practices”
- ❖ Guidance and reporting instructions

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Reporting:

Written justification explaining efforts to meet numerical goals and impediments confronted.

§135.7(b)(4)

Specified summary includes:

- ❖ Impediments encountered;
- ❖ Actions taken to address impediments;
- ❖ Steps that might overcome impediments in the future.

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Recipient Requirements (§135.9(a)(2))

- ❖ Official policies and procedures must include steps that recipient will take to:
 - ❖ inform subrecipients and contractors about Section 3 obligations;
 - ❖ evaluate potential bidders for Section 3 compliance during contract selection;
 - ❖ notify Section 3 residents and businesses about economic opportunities;

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Recipient Requirements (§135.9(a)(2))

- ❖ Official policies and procedures
 - ❖ implement verification and/or certification procedures for residents and businesses;
 - ❖ provide priority consideration to qualified Section 3 residents and businesses;
 - ❖ monitor subrecipients and contractors for compliance; establish consequences for noncompliance; and

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Recipient Requirements (§135.9(a)(2))

- ❖ Official policies and procedures
 - ❖ Utilize local community resources to meet its Section 3 requirements.

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Recipient Responsibilities §135.11(b)(1-12)

1. Develop written Section 3 policies and procedures
2. Maintain lists of eligible residents and businesses for priority consideration for training, employment, contracting
3. Accessible notification of Section 3 residents and businesses that have asked to receive priority consideration (disabled, LEP)
4. Ensure priority consideration is provided

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Recipient Responsibilities §135.11(b)(1-12)

5. Monitor Davis Bacon payroll data, for employment opportunity requirements
6. Solicitations require bidders to certify receipt of policies
7. Subrecipients, contractors, subcontractors written agreements consistent with §135.17, and include Section 3 clause §135.19
8. Post notices, visible by employees and applicants, about Section 3 obligations and opportunities

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Recipient Responsibilities §135.11(b)(1-12)

9. Contractor selection process assesses the responsible bidder's previous compliance with Sec. 3 hiring & training
10. Notify labor unions about recipient's and contractor's obligations.
11. Coordinate with local Workforce Boards, YouthBuild grantees, or government programs to notify residents and businesses are notified about federal training opportunities.
12. Document actions to comply with requirements; results; sanctions imposed; impediments encountered; actions to address impediments; and steps to overcome impediments in the future.

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Verify Section 3 residents & businesses §135.15

- ❖ Applicants must qualify before receiving priority consideration for employment, training, contracting, or other economic opportunities.
- ❖ Documentation detailed in rule.
 - ❖ New: allows zip code location evidence.

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Recipient Responsibilities

§135.11(d)(1-2)

- 1) Recipients monitor for compliance with descriptions in qualified bid proposals.
- 2) List of preferred contractors provided to homeowners for rehabilitation loans include qualified local Section 3 businesses.

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Written Agreements §135.17

- ❖ Required between recipient & subrecipient, before disbursing Sec. 3 covered funds
- ❖ Facilitate compliance with rule
 - ❖ Describe subrecipient's compliance plan
 - ❖ Basis for recipient to monitor subrecipient
 - ❖ Specify: duties, responsibilities, documents, enforcement

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Section 3 Clause expanded - §135.19(e)

- ❖ Focus on neighborhood receiving assistance
- ❖ Identify current employees and vacancies
- ❖ Specific records to keep
- ❖ Definition of “new hire”
- ❖ Numeric goals and narrative justifications
- ❖ Community notifications
- ❖ Acknowledgement of written policies

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Threshold §135.53

- ❖ **\$400,000 of commitments**
- ❖ Threshold refers to recipient and all projects funded by that recipient with Section 3-covered funds.
- ❖ Any Section 3-covered funding in a project draws the entire project into coverage.
- ❖ No exemptions for contractors

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- ❖ **Numerical Goals and “New Hires”**
§ 135.55
- ❖ New hire: must work, with the contractor, a minimum of 50% of average staff hours for the category, throughout the time that work is performed. (defines §135.23(a)(1)(i))
- ❖ Must report the ratio:
 - ❖ All new hires, compared to Section 3 new hires

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Records subrecipients must make available

§135.25 Recordkeeping and access to records.

- ❖ Section 3 policies, procedures, guidance materials;
- ❖ Lists of Section 3 residents and businesses;
- ❖ Evidence of efforts to notify Section 3 residents and businesses about economic opportunities;
- ❖ Payroll or other documentation verifying new hires;
- ❖ Section 3 contracts, clauses, and assurances;
- ❖ Evidence of efforts to comply with the terms of the Section 3 clause and to reach minimum numerical goals;
- ❖ Etc.

Conclusions

Section 3 promotes:

- ❖ Optimal public benefit per expenditure.
- ❖ Informing low-income people about employment and training opportunities.
- ❖ Targeted improvement of economic prospects for low-income residents.
- ❖ New rule incorporates “best practices” and resolves some ambiguities in old rule.

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