

Iowa Finance Authority

Federal Cross-Cutting Requirements: Section 3: Economic Opportunities for Low Income Residents

Webinar: April 5, 2011

Section 3

Summary of Course

- Purpose
- History Background
- Applicability
- Section 3 Resident
- Section 3 Business
- Numerical goals and Safe Harbor
- Complaints and compliance review
- Reporting and record keeping

Purpose of Section 3

To ensure that economic opportunities resulting from HUD financial assistance will be directed to low and very low-income persons - particularly those receiving government assistance for housing.

§ 135.1

History/Background

- 1968 – Became a provision of the HUD Act (12 U.S.C. 1701u - Section 3)
- 1969 - Expanded coverage to other HUD programs
- 1974 – CDBG Program Included
- 1980 – Amended to change location preference
- 1992 – Clarified coverage and facilitated implementing regulations

History – (continued)

- 1992 Amendments:
 - Identified intended beneficiaries
 - Established priorities for preferences
- 1994 – Interim Rule issued to establish standards and procedures: 24 CFR § 135

Applicability

- **Public and Indian Housing**
 - Development assistance
 - Operating assistance
 - Modernization assistance

- **Housing and Community Development**
 - Housing rehabilitation (including lead-based paint abatement)
 - Housing construction
 - Other public construction

§ 135.3

Thresholds

- Public and Indian Housing Threshold:

No financial threshold; applies to the first Federal dollar spent

- Housing and Community Development Threshold (includes by HOME & CDBG):

Recipient/Project - \$200K Federal funds

Contractor/Subcontractor - \$100K Federal funds per project

Applicability to Entire Project

- Section 3 requirements apply to the entire project or activity, regardless of whether it is fully or partially funded.

(Example: leveraged private funds associated with HOPE VI or CDBG.)

- Section 3 requirements also apply to Indian Housing Authorities.

§ 135.3(b)

How does Section 3 apply?

Employment opportunities generated by section 3 covered assistance

PIH assistance: All employment opportunities.

- *Housing & Community Dev.: Employment associated with building trades, including management and administrative support, architectural, engineering and professional services*

Section 3 Resident

- *Public Housing Resident, or*
- **Resident of metro area or non metro county** in which the Section 3 covered assistance is expended, and who qualifies as a low-income or very low-income person.
 - *Low income - 80% median area income of that area*
 - *Very low income 50% median area income of that area*

§ 135.5

Section 3 Business Concern

- 51% or more owned by Section 3 Residents, or
- Employs Section 3 employees for at least 30% of its full-time, permanent staff; or
- Provide evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract

Requirements for HUD NOFAs

- All notices of funding availability issued by HUD covered by Section 3 include a provision stating its applicability
- Applicants for HUD funds must certify compliance with Section 3 regulations

§ 135.9

Procurement Standards

Section 3 regulations do not supersede the general requirement that (material only) procurement transactions be conducted in a competitive manner.

Consistent with 24 CFR § 85.36(c)(2), Section 3 encourages a **geographic preference** in the evaluation of bids.

§ 135.11(a)

Federal Labor Standards

Trainees hired under Section 3 may work subject to HUD determined prevailing wage rates and ratios of apprentices to journeymen in approved training programs.

§ 135.11(c)

Minority Business Enterprise

- A minority business enterprise shall be required to present Section 3 certification to receive preference.
- Section 3 of the HUD act is **race-neutral**.
- The preference provided by this federal act is based on income and location.

Collective Bargaining Unions

Contracts awarded on Section 3 governed projects are made without regard to affiliation to any Collective Bargaining Union.

Executive Order 11246

- The recipient shall ensure full compliance with E.O. 11246 - equal treatment without regards to race, religion, color or ethnic background.
- The recipient shall ensure that all contractors and subcontractors participating on Section 3 governed projects comply with E. O. 11246.

§ 135.11(e)

Numerical Goals

- Goals apply to the entire amount of Section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (Oct 1 to Sept 30)
- Goals represent minimum numerical targets

§ 135.30(e)

Numerical Goals (continued)

Employment:

30 percent of new hires annually
(counted for up to 3 years).

Applies to:

- PIH Programs
- Firms managing 500+ units w/housing assistance
- Community Development Assistance

§ 135.30(b)

Numerical Goals (continued)

Contracts

- 10 percent of the total \$ amount of all Section 3 covered contracts for building trades work.
- 3 percent of the total \$ amount of all other Section 3 covered contracts.

§ 135.30(c)

Safe Harbor and Compliance

- A recipient that meets numerical goals will be considered in compliance.
- A recipient that has **not** met the numerical goals has the burden of demonstrating why.
- All documented efforts taken to assist Section 3 residents and businesses will be considered.

§ 135.30(d)

HOME Recipient Responsibilities

- Notifying residents
- Notifying contractors and incorporating Section 3 clause
- Facilitating training and employment of residents
- Awarding contracts to Section 3 Businesses
- Assisting with compliance among contractors
- Documenting actions to comply
- Attempt to reach numerical goals

§ 135.32

Preference for Training and Employment

Order of priority for Housing and Community Development Programs

- Category 1 – Residents in the service area or neighborhood
- Category 2 – **Participants in HUD's** Youthbuild program
- Category 3 -Homeless persons in the service area
- Category 4 – Other Section 3 Residents

§ 135.34(a)(2)

Preference for Section 3 Business Concerns

Order of priority for Housing and Community Development programs

- Category 1 – Section 3 businesses that provide jobs and training for local residents.
- Category 2 – Applicants selected to administer HUD Youthbuild programs.
- Category 3 – Other Section 3 business concerns.

§ 135.36(a)(2)

Eligibility for employment and contracting

A Section 3 resident must meet the qualifications of the position to be filled.

§ 135.34(c)

A Section 3 business concern must have the ability and capacity to perform successfully under the terms and conditions of the proposed contract.

§ 135.34(a)(2)

Section 3 Clause

All section 3 covered contracts shall include the Section 3 clause found at 24 CFR § 135.38 in its entirety, verbatim – parts A through G.

§ 135.38

Compliance Reviews

- Conducted for selected recipients and contractors to determine compliance
- Consists of a comprehensive analysis and evaluation of compliance
- Recipient will be advised of deficiencies for remediation
- Continued noncompliance may result in debarment, suspension and limited denial of participation pursuant to 24 CFR § 24

§ 135.74

Section 3 Complaints

Who May File a Complaint?

- Section 3 Resident
- Section 3 Business Concern
- A Representative for either of the above

§ 135.76(a)

Where Is A Complaint Filed?

- Iowa Finance Authority OR
- Assistant Secretary for FHEO
U.S. Department of Housing and Urban Development
451 7th Street, Room 5100
Washington, DC 20410

§ 135.76(b)

When Must a Complaint Be Filed?

Not later than 180 days from the occurrence.

(Unless an extension is approved by the assistant secretary for fair housing and equal opportunity)

§ 135.76(c)

What Information Is Needed In The Complaint?

- Complainant's name and address
- Respondent's name and address
- Description & date of complaint
- Corrective action sought

NOTE: HUD may seek corrective remedies to ensure compliance.

§ 135.76(d)

Issues For Non-Compliance

Failure to:

- Meet numerical goals;
- Ensure that contractors and subcontracts comply with Section 3;
- Notify Section 3 Business Concerns about contracting opportunities;
- Notify potential contractors about Section 3 requirements;

Issues For Non-Compliance (continued)

Failure to:

- Incorporate the Section 3 Clause in solicitations or contracts;
- Train and/or employ Section 3 Residents;
- Award contracts to Section 3 Business Concerns
- Provide preference for Section 3 Residents and Section 3 Businesses

Resolution of Complaint

- The recipient has **30 days** after receipt of complaint to submit a written response if they believe the complaint **lacks merit**.
- The recipient has **60 days** to resolve the matter with the complainant if they determine the complaint **has merit**.

§ 135.76(e)

Resolution of Complaint (continued)

- HUD will dismiss the complaint if it fails to present a valid allegation.
- HUD will attempt to obtain a voluntary resolution if the complaint is valid.
- HUD will impose a resolution if voluntary resolutions fail.
- Resolution(s) may be appealed within 15 days for further consideration.

§ 135.76(f)

Resolution of Complaint (continued)

- Sanctions that may be imposed include debarment, suspension and limited denial of participation.
- HUD may investigate a complaint directly.
- Retaliatory acts against the complainant are prohibited.
- Complainant may exercise the right to seek redress through judicial procedures.

§ 135.76(g) to (j)

Reporting & Recordkeeping

- Recipients are required to submit an annual report to IFA for the purpose of determining the effectiveness of Section 3. (HUD Form 60002); Part of HOME close out report
- HUD shall have access to all records, reports and other documents that are maintained to demonstrate compliance with Section 3.

§ 135.90 to 135.92

Where to get more information

- www.iowafinanceauthority.gov
- Regulation 24 CFR Part135:
www.gpoaccess.gov/cfr/index.html
- HUD Website-
www.hud.gov/offices/ftheo/section3/section3.cfm

Questions and Answers