“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”

~ Commissioner George P. Bush
Section 3 101

Agenda

• What is Section 3?
• Section 3 Triggers
• Best Practices
• Reporting & Recordkeeping
• Complaints
• Questions?

Presenter
Matt Betz, ICF

Icons
Future Training
After the training, Section 3 101 participants will:

1. Understand how Section 3 compliance is defined and when it is required
2. Understand fundamentals of implementing Section 3 compliance
3. Understand contract requirements, good faith effort documentation, and safe harbor and compliance determinations
Key Resources

Section 3 Compliance Triggers

HUD’s Employment Opportunity requirements for CDBG-DR funded projects are commonly referred to as “Section 3 requirements.” These regulations establish inclusive hiring, training, and procurement practices that prioritize local disadvantaged individuals and communities.

CDBG-DR subrecipients should understand Section 3 requirements and when they apply to CDBG-DR funded projects and programs. Section 3 compliance is triggered when subrecipients receive $200,000+ in CDBG-DR funding for construction related activities or for individual construction contracts of $100,000 or more.

To better understand these dollar thresholds, consider these important points:

- Contracts for Section 3 covered projects are not cumulative. The requirements of Section 3 apply to each individual contract that meets the thresholds.
- Section 3 requirements apply to recipients of Housing and/or Community Development projects exceeding $200,000 combined from all sources in any one year. Section 3 covers the any portion of those funds for any activity that involves housing construction, rehabilitation, or public construction.

Application of Federal Regulations

GLO requires subrecipients to apply the principles of 24 CFR 135.130 (generally referred to as “Section 3”):

- Utilize CDBG-DR funds to create economic opportunities for local residents and businesses;
- Demonstrate good faith efforts in hiring, training, and contracting with disadvantaged individuals and businesses; and
- Monitor compliance all contractors as all Section 3 requires recordkeeping, and goals.

Section 3 Brief

Section 3 Brief

Detailed information on how Section 3 compliance is applied to CDBG-DR funded projects.

Key Point

A Section 3 plan, while not statutorily required, demonstrates good faith efforts to comply with Section 3 regulations that can be audited by the contractor and subcontractors.

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What is Section 3?

“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, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons” 24 CFR Part 135.1(a)
Section 3 is specific to HUD funding and is designed to generate
(1) New employment
(2) Training
(3) Contract opportunities for low- or very-low income residents and vicinity businesses
History of Section 3

Timeline


- **1995**: Regulated by the provisions of 24 CFR 135
Similar Regulations that differ from Section 3

- EEO – Equal Opportunity Employment
- DBRA – Davis Bacon and Related Acts
- MBE – Minority Owned Business Enterprises
- WBE – Women Owned Business Enterprises
- HUBS – Historically Underutilized Businesses (TX-specific)
Goals & Measurable Outcomes

To the greatest extent feasible (24 CFR 135.30), subrecipients should aim for the following goals:

• ≥ 30% of the aggregate number of new hires shall be Section 3 residents

• ≥ 10% of the total dollar amount of all covered construction contracts shall be awarded to Section 3 Business Concerns

• ≥ 3% of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 Business Concerns
Applicability of Section 3

Section 3 Covered Funding

- If Section 3 is triggered, all requirements apply to the entire project, including other funding sources that involve new employment, training, or contracting for:
  - Housing rehabilitation (including lead-safety)
  - Housing construction, reconstruction, and demolition
  - Public construction

- Note that “entire project” includes professional service contracts

- Subrecipients are responsible for their own Section 3 compliance, as well as their contractors and subcontractors
Activity Triggers

CDBG-DR Section 3 Triggers

- New Construction, Reconstruction, & Rehabilitation
- Demolition
- Infrastructure Development
Dollar Amount Triggers

• Subrecipient CDBG-DR project funding ≥$200,000

• Individual construction contracts ≥$100,000 (24 CFR §135.30)

• If a contract or project triggers Section 3, all subcontractors must also comply

• Contact GLO if you have questions about whether Section 3 applies
### Example of Section 3 Applicability

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDBG-DR</td>
<td>$600,000</td>
</tr>
<tr>
<td>HOME</td>
<td>$150,000</td>
</tr>
<tr>
<td>NSP</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

*For housing construction, rehabilitation, and other public construction activities*
Subrecipients’ Responsibilities

• Subrecipients and contractors actually provide economic opportunities to low-income persons and qualified Section 3 businesses – to the greatest extent feasible (§135.30)

• “Economic opportunity” is not a guarantee, but entails reasonable access and fair notification

• Subrecipients facilitate training & employment of eligible Section 3 residents and businesses through:
  o Jobs
  o Trainings
  o Procurements
Keys to Compliance

- 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) annually or prior to final draw
True or False
Subrecipients must submit their own summary reports as well as those of their contractors and their subs when reporting on Section 3 compliance to the GLO

TRUE
Test Your Knowledge

True or False
A construction contract over the $100,000 threshold can be divided to avoid becoming a Section 3 covered project

False
Contracts cannot be arbitrarily divided to avoid compliance thresholds. However, Section 3 compliance is not triggered if a single contractor legitimately wins two or more separate, CDBG-DR funded contracts with a combined value of $100,000+.
Section 3 Best Practices

• Inform subrecipients and contractors about Section 3 obligations

• Notify Section 3 residents and business about economic opportunities

• Evaluate potential bidders for Section 3 compliance during contract selection

• Implement verification and/or certification procedures for residents and businesses
Section 3 Best Practices

- Provide priority consideration to qualified Section 3 residents and businesses

- Monitor contractors for compliance and establish consequences for noncompliance

- Utilize local community resources to meet Section 3 requirements
Section 3 Target Groups

- Low- and very low-income persons *(24 CFR 135)*

- For training and employment activities: *(24 CFR 135.34)*
  - Public & Assisted housing residents
  - Residents of affected project neighborhood
  - Youth-build program participants
  - Homeless, if project assisted under McKinney Act *(42 U.S.C. 11301 et seq.)*

- For contracting:
  - Section 3 businesses (that match the definition)
Defining Section 3 Residents

1. Residents of Public and Indian Housing (24 CFR 135.5); or

2. Low-income individuals (80% or below HUD AMI), including homeless, that reside in the metropolitan area (MSA) or nonmetropolitan county in which the Section 3 covered assistance is expended (24 CFR 135.5)
1. Verify resident lives in public housing or receives Section 8 Housing Voucher

   **OR**

2. Verify employee’s annual wages or salary are at, or under, the HUD-established income limit for a one-person family in Texas

3. Consider participants in HUD YouthBuild programs (24 CFR 135.34)
Good Faith Efforts & Compliance

Section 3 Goal
• Reach or exceed minimum numerical goals for employment and contracting opportunities, as provided in §135.13 and either §135.35 or §135.55

Document Good Faith Efforts to Comply
• Document efforts to train and hire Section 3 residents and businesses (§135.7)
• Establish policies/procedures to achieve compliance (§135.9)
• Fulfill Section 3 responsibilities as defined by 24 CFR 135 (§135.11)
Justifying Non-compliance

- If subrecipients cannot meet minimum numerical goals, they bear the burden of demonstrating why it was not possible, including:
  - Efforts to comply with Section 3
  - Barriers to Section 3 goals
  - Other relevant information to support HUD’s compliance determination

- Section 3 reports containing all zeros (without sufficient justification) are in noncompliance with the “greatest extent feasible” test (24 CFR §135.30)

- Subrecipients should write a written justification if they cannot meet Section 3 goals
Hiring & Training Compliance

- Notify eligible residents & businesses about employment, training, & contracting opportunities:
  - Jobs
  - Apprenticeships
  - Access to educational opportunities
- Include Section 3 eligibility language in all job postings
- Include a Section 3 Employee Self-Affirmation Form in all job postings

*Subrecipient and contractors actually provide economic opportunities to low-income persons and qualified Section 3 businesses – to the greatest extent feasible* (§135.30)
Hiring Compliance

- Use the “Texas Workforce Commission” service to post jobs to WorkInTexas.com
- Post all job opportunities to Glassdoor, Indeed, and CraigsList
- Advertise job opportunities via social media, including LinkedIn and Facebook
- Record proof-of-postings for all job postings to project file
Training Compliance

• Conducting training throughout the community and providing information about Section 3 requirements

• Attending trainings and providing assistance to residents referred by local workforce centers, community colleges, public housing authority, and community groups, and those who attend job fairs (when available)
Section 3 Business Concerns

Types of Section 3 Business Concerns

- ≥51% owned by Section 3 residents; OR

- ≥30% permanent, full-time employees that are or were Section 3 residents within three years of the date of first employment; OR

- Demonstrated efforts to subcontract >25% of the dollar amount of all subcontracts to businesses that meet the qualifications described above; OR

- Applicants selected to carry out HUD Youthbuild programs (24 CFR 135.36; 42 USC 12899).
Applying for Section 3 Business Concern Status

- Businesses can apply for certification and addition to the HUD registry at http://www.hud.gov/Sec3Biz

OR

- Businesses can demonstrate eligibility by self-certifying to the contractor or subrecipient (standardized forms should be provided)
Procurement

• Include entire “Section 3 Clause”, verbatim, in all covered solicitations and contracts (24 CFR 135.38)

• Include a Section 3 Business Certification Packet in all covered contract solicitations

• Notify contractors and potential contractors of Section 3 responsibilities
  o Facilitate training & employment of eligible Section 3 residents and businesses
  o Record proof-of-postings for all solicitations to project file
True or False
An existing employee who moves into a new position funded entirely by CDBG-DR must be evaluated as a potentially Section 3 resident

False
Section 3 only applies to new hires and does not apply to existing employees who migrate to CDBG-DR funded positions
• For covered contracts, subrecipients must submit Section 3 Reports for themselves and any contractors and subs, summarizing Section 3 compliance efforts

• The report details any impediments to Section 3 compliance and resulting actions to address them

• Subrecipients submit reports to GLO (1) quarterly and (2) annually

• Subrecipients may choose to require more frequent reporting from contractors if desired
Subrecipients must make the following available (24 CFR 135.25)

- Section 3 policies, procedures, guidance materials
- Lists of hired Section 3 residents and businesses
- Evidence of efforts to notify Section 3 residents and businesses about economic opportunities
- Payroll/proof of posting 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
Complaints

• May be filed by individuals on behalf of themselves or others

• May be filed by organizations on behalf of themselves or others

• May be submitted via telephone, email, or mailed letter
  o If written/typed, letters should include complainant’s name, address, and signature if possible

• Must be submitted within 180 days of the alleged noncompliance

• May be filed with the HUD Assistant Secretary or the Recipient/Subrecipient’s Section 3 Coordinator
Questions?
Survey

Section 3 101 Survey