

**Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible
Businesses through Strengthened “Section 3” Requirements
Proposed Rule
Docket No. FR-4893-P-01**

Specific Questions for Comment

While HUD welcomes comments on all aspects of this proposed rule, HUD specifically requests comments on the following:

1. To address a loophole in the current regulation that does not limit jobs, training, and contracting opportunities to Section 3 residents residing and Section 3 businesses located within the proximity of the covered project or activity, this proposed rule introduces a new term “Section 3 local area” to clarify that in order for Section 3 residents and businesses to receive priority consideration they must be residing or located within the metropolitan area or nonmetropolitan county where the Section 3 covered financial assistance is expended. HUD seeks comment on whether this clarification may adversely impact Section 3 residents and businesses located in neighboring jurisdictions, particularly when no Section 3 businesses are located in the Section 3 local area, and in rural communities where Section 3 residents in adjacent counties may be the most qualified job applicant. See § 135.5.
2. The proposed rule revises the definition of a Section 3 business to remove the third category of the existing definition, which refers to businesses that can provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to other Section 3 businesses. This revision is made in response to complaints that the commitment presented an easy loophole for some businesses, and

did not equate to a legal obligation. HUD solicits comment on the removal of this third category. See § 135.5.

3. The proposed rule seeks to provide incentives to contractors that retain Section 3 residents who were hired to work on previous projects, and to provide apprenticeship opportunities to Section 3 residents by adding two new categories to the orders of priority consideration for projects that are financed with housing and community development assistance at § 135.57. HUD solicits comment on the proposed orders of priority consideration.
4. For the reasons presented in the preamble, HUD is maintaining the existing minimum numerical goals for employment and construction contracts. HUD seeks comments on whether other proposed minimum numerical goals for employment and contracting would be more appropriate.
5. The proposed rule would replace the 3 percent minimum goal for the total dollar amount of all building trades and professional service contracts associated with construction (formerly referred to, respectively, as construction and nonconstruction contracts) with a goal of 10 percent. HUD seeks comment on whether the proposed goal that applies to building trades and professional services would result in any unintended consequences. See § 135.37 and § 135.57.
6. For the reasons presented in this preamble, under the “Summary of the Major Provisions of this Regulatory Action,” the proposed rule would change the threshold for recipients of housing and community development financial assistance to cover recipients that plan to obligate or commit \$400,000 or more of annual expenditures of covered funds on construction or construction related projects. HUD believes that the

expenditure of funds is a better indicator of the type and amount of economic opportunities that HUD funds create. The proposed threshold applies Section 3 to all construction and construction related projects (regardless of the dollar amount invested into individual projects) if a grantee plans to spend \$400,000, or more, of covered HUD funding during the reporting period. HUD seeks comment on whether an alternate threshold would be more appropriate or equally effective to the proposed \$400,000 threshold. In the table below, HUD sets out alternative expenditure thresholds and the percentage of funding that would be covered. While HUD believes that the proposed expenditure threshold of \$400,000 is the appropriate threshold and would best enable the Department to focus on those recipients that produce the majority of economic opportunities, HUD would consider a different threshold but no lower than \$400,000. HUD would consider a high threshold but no higher than \$1 million. Although the \$1 million threshold would capture almost 85 percent of the funding, which HUD finds reasonable and acceptable, HUD believes the \$400,000 threshold, which would cover more than 95 percent of the funding, 10 percentage points higher than a \$1 million threshold, presents the better approach, but HUD welcomes comment on the thresholds. Further, HUD seeks comment on whether alternative thresholds (e.g., a threshold that applies Section 3 to all construction related projects if a grantee *receives* a certain amount of HUD funding, or a threshold that would only apply Section 3 to projects or activities that are receiving some minimum amount of housing and community development financial assistance) are more appropriate.

Expenditure level	\$250K	\$300K	\$400K	\$500K	\$750	\$1M

Recipients Below	265	329	440	542	703	816
% of those below	22.3%	27.7%	37.0%	45.6%	59.1%	68.6%
Recipients Above	924	860	749	647	486	373
% of those above	77.7%	72.3%	63.0%	54.4%	40.9%	31.4%
% change # of recipients	4.2%	5.4%	9.3%	8.6%	13.5%	9.5%
% of covered funding	98.3%	97.5%	95.7%	93.6%	89.0%	84.4%

Threshold level	Expenditure	Recipients	% Covered
	Excluded	Excluded	
\$250K+	\$35,622,322.04	265	98.3%
\$300K+	\$53,260,584.53	329	97.5%
\$400K+	\$91,850,709.06	440	95.7%
\$500K+	\$137,962,427.28	542	93.6%
\$750K+	\$237,242,870.83	703	89.0%
\$1M+	\$335,799,935.66	816	84.4%

7. In order for a Section 3 resident to be counted as a new hire, the proposed rule would require a resident to work, during employment as a new hire, a minimum of 50 percent of the average staff hours worked for the job category for which the resident was hired, throughout the duration of time that the category of work is performed on the covered project. HUD seeks comment on whether this proposed change effectively addresses concerns that were raised about contractors that hired Section 3 residents for short time frames for purposes of circumventing meaningful compliance with Section 3. See § 135.35 and § 135.55.

8. HUD seeks comment on the specific challenges for State CDBG grantees with meeting Section 3 goals and how HUD can assist in addressing these challenges in this proposed rule.
9. HUD solicits comments from Indian tribes, tribally designated housing entities, and other tribal entities on its proposal to exempt them from Section 3 compliance when they adopt, and are complying with, tribal employment and contract preference laws (including regulations and tribal ordinances) in accordance with section 101(k) of NAHASDA (25 U.S.C. 4111(k)), or are subject to Indian preference requirements under section 7(b) of the Indian Self-Determination and Education Assistance Act. See § 135.519(b)(3).
10. HUD seeks comment on ways that recipients can demonstrate compliance with Section 3 in communities that are governed by agreements that prohibit work by non-labor union workers.
11. HUD seeks comment on requirements or goals that should apply to contractors whose expenditure of covered financial assistance will only enable them to sustain their current workforce and will not result in new employment, training, or subcontracting opportunities.
12. HUD solicits comment on goals or strategies for training opportunities that the proposed rule should address.
13. HUD seeks comment on whether the proposal to require recipients to incorporate compliance with Section 3 into procurement procedures for responsive and responsible bidders creates an undue burden on recipients? See § 135.37(a)(3), § 135.57(a)(4), and § 135.11(b)(9).

In 2012, HUD implemented a Section 3 Business Registry Pilot Program in five metropolitan areas as a potential resource to help recipients meet, or exceed, the minimum numerical goals for contracting and reduce administrative burden in identifying section 3 businesses. Under the pilot program, businesses that met one of the definitions of a “Section 3 Business” self-certified their status with HUD, and were placed into a database to be used by recipients, developers, contractors, and others to notify these businesses about the availability of Section 3 contracting opportunities. See www.hud.gov/sec3biz. In 2014, HUD expanded the Section 3 Business Registry nationally. HUD seeks comments about this registry and ways that HUD should incorporate its usage into the Section 3 requirements.