

# Frequently Asked Questions / Items You Should Know about Section 3

## 1. What is Section 3?

Section 3 is a part of the U.S. Department of Housing and Urban Development (HUD) Act of 1968. This Act and HUD Regulation **24 CFR Part 135** ensures that employment and other economic opportunities generated by certain HUD financial assistance shall be directed to public housing residents, individuals of low to very low income, and to business concerns that provide economic opportunities to these individuals.

## 2. Who qualifies as a Section 3 resident?

A person must meet one of the following definitions to qualify as a **Section 3 resident**. This person must be:

- a. a public housing resident; or
- b. an individual who resides in the metropolitan area where the Section 3 assistance is being expended and who is:
  1. low income; or
  2. very low income; or
- c. a person seeking the training and employment preference provided by Section 3;
- d. a person receiving unemployment benefits or other government subsidies;
- e. returning veterans, recent college or vocational school graduates, women in non-traditional careers.

## 3. Will I be required to pay prevailing wages to my resident employees?

Yes. Unless a resident employee is working under an approved apprenticeship and training program, that employee must be paid the prevailing wage for their particular work classification.

## 4. What defines a person of low and very low income?

A person of **low-income**, as defined in *Section 3(b)(2) of the 1937 Housing Act (42 USC 1437a(b)(2)) and 24 Code of Federal Regulations (CFR) part 135* of HUD regulations, means families (including single persons) whose incomes **do not exceed 80% of the median income** for the area.

A person of **very low-income**, as defined in *Section 3(b)(2) of the 1937 Housing Act (42 USC 1437a(b)(2)) and 24 Code of Federal Regulations (CFR) part 135* of HUD regulations, means families (including single persons) whose incomes **do not exceed 50% of the median income** for the area.

### CHART 1

# IN HOUSEHOLD	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
<b>Very Low-Income</b>	\$21,500	\$24,550	\$27,650	\$30,700	\$33,150	\$35,600	\$38,050	\$40,500
<b>Low-Income</b>	\$34,400	\$39,300	\$44,200	\$49,100	\$53,050	\$57,000	\$60,900	\$64,850

\*2010 Median Family Income for Ohio: \$61,400 (www.huduser.org)

Based on Chart 1, an employee residing within a 2-person household, with a very low-income salary of \$24,550 or less, would qualify as a Section 3 resident because their income is less than 50 percent of the median family income. An employee residing within a 6-person household, with a low-income salary of \$57,000 or less, would also qualify as a Section 3 resident because their income is less than 80 percent of the median family income.

If you do not wish to use employees' annual salaries to determine whether they meet criteria as a Section 3 resident, you can use their hourly wages to determine their eligibility, also.

## **CHART 2**

# IN HOUSEHOLD	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
VERY LOW-INCOME	\$10.34	\$11.80	\$13.29	\$14.76	\$15.93	\$17.11	\$18.29	\$19.47
LOW-INCOME	\$16.53	\$18.89	\$21.25	\$23.61	\$25.50	\$27.40	\$29.29	\$31.18

\*Note: Hourly rates were calculated by dividing each of the salaries in Chart 1 by the total number of work hours in a year (i.e. \$61,400/2,080 = \$29.52)

Looking at Chart 2, an employee residing within a 2-person household, with a very low-income hourly wage of \$11.80 or less, would qualify as a Section 3 resident. An employee residing within a 6-person household, with a low-income hourly rate of \$27.40 or less, would also qualify as a Section 3 resident

In order to determine the number of members an employee has within their household, you may utilize personnel records such as tax records and/or other payroll data (i.e., state and federal exemptions), insurance/beneficiary records or emergency contact persons provided by the employee.

### **5. What is a Section 3 covered project?**

*A Section 3 project* means any project assisted by any programs administered by HUD in which financial assistance is provided to support housing, urban planning, development, redevelopment or renewal of public and community facilities and new community development.

This includes the construction, reconstruction, conversion or rehabilitation of housing and other public housing construction, which includes building or improvements assisted with housing or community development assistance.

### **6. What is a Section 3 covered contract?**

*A Section 3 covered contract* is a contract or subcontract (including professional services) awarded by a recipient or contractor for work generated by Section 3 covered assistance, or from work arising in connection with a Section 3 Project.

### **7. A. Are any contracts not covered in the Section 3 regulations?**

Yes. Section 3 does not include the following types of contracts:

- Contracts for the purchase of supplies.
- Contracts for the purchase of materials.

Both of these contracts must meet the requirements of the Section 3 regulations if the supply or material is going to be installed by the supplier.

### **B. Is there a monetary threshold that determines a Section 3 covered contract?**

No. There are no thresholds for Public and Indian Housing assistance. Section 3 applies to all activities regardless of the dollar amount.

**8. Should all contracts issued for a Section 3 project include a Section 3 clause?**

Yes. All contracts, purchase orders and subcontracts must include a Section 3 clause.

**9. What should be included in the Section 3 clause?**

The Section 3 clause must include the following:

- a. A description of the work being performed and a reference that the work is subject to Section 3 requirements.
- b. A statement that all parties to this contract agree to comply with **24 CFR Part 135**. It must also state that by executing the contract, all parties certify that they are not under any contract or other impediment that would prevent them from complying with this regulation.
- c. A statement that all parties agree to notify each labor organization or representation of workers that have a collective bargaining agreement/understanding of their commitment to Section 3.

This notice must be posted in a conspicuous place at the work site. The notice shall identify:

- Section 3 preference;
  - Minimum numbers of hires and job titles for each preference; position;
  - Apprenticeship and training programs being offered; qualifications for each program;
  - Name, address, and contact number of the person responsible for taking the applications for these positions; and
  - An anticipated starting date of work.
- d. A statement that all parties agree to include the Section 3 clause in all subcontracts and will take appropriate action to promptly resolve any and all violations brought to their attention. The statement should also specify that no contract or subcontract would be awarded to a company that has knowingly violated **24 CFR Part 135**.
  - e. A statement that all vacant employment positions were not filled to circumvent their obligations under **24 CFR Part 135**. This includes:
    - 1) positions selected after contract award; and
    - 2) positions filled by individuals other than Section 3 residents.
  - f. A statement that each contractor and/or subcontractor understands that noncompliance with **24 CFR Part 135** may result in:
    - Sanctions (i.e. business suspension from doing business with DMHA for three years)
    - Termination of contract for default;
    - Debarment from HUD programs; and
    - Suspension from HUD programs.

- g. A statement that all parties understand that wages paid to resident employees under this contract must comply with the prevailing wages, unless a resident under question is a part of an approved apprenticeship/training program. Prevailing wages and apprenticeship payment schedule applicable to a particular job should be attached.

**10. What is the definition of a Section 3 business concern?**

*A Section 3 Business Concern* is a business concern:

- 1) That is 51% or more owned by a Section 3 resident; or
- 2) Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within 3 years of the date of the first employment with the business concern have been Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to a business concern that meets the qualifications in paragraph 1) or 2) above.
- 4) When it is formed as a part of a *Section 3 joint venture*. In this venture Section 3 business concern should:
  - Be responsible for a clearly defined portion of the work to be performed and hold management responsibilities; and
  - Perform at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

**11. What are “preferences” in the regulation and how do preferences relate to residents and businesses?**

- 24 CFR Part 135 states that contractors and subcontractors must direct their efforts to provide training and employment opportunities to Section 3 residents and/or business concerns. Their efforts to award contracts to Section 3 business concerns are in the following order of preference/priority:

Section 3 Residents – Public Housing Programs:

- 1) Residents of the housing development for which the Section 3 assistance is expended;
- 2) Residents of other public housing developments managed by Dayton Metropolitan Housing Authority;
- 3) Other Section 3 area residents.

Section 3 Residents – Housing and Community Development Programs:

- 1) Section 3 residents residing in the area or neighborhood in which the Section 3 project is located;
- 2) Homeless individuals residing in the Section 3 area or neighborhood;
- 3) Other Section 3 area residents (i.e. persons receiving unemployment benefits or other government subsidies, returning veterans, recent college or vocational school graduates, women in non-traditional careers, etc.)

Preference may be provided to residents of other governmental housing assistance programs, such as Section 8 Program residents.

Businesses – Public Housing Programs:

- 1) 51% or more of business is owned by a resident of the development; or
- 2) 51% or more of business is owned by a resident of another development;
- 3) A business that is 51% or more owned by a Section 3 resident or whose permanent, full-time workforce includes no less than 30% Section 3 residents; or a business that subcontracts in excess of 25% of the total amount of subcontracts to Section 3 business concerns.

Businesses – Housing and Community Development Programs:

- 1) A business concern that provides economic opportunities to Section 3 residents in the area or neighborhood of the Section 3 project;
- 2) Other Section 3 area residents.

In all cases, the individual selected must be able to provide evidence that they are responsible and have the ability to successfully complete the terms and conditions of the contract.

12. DMHA’s Goals for Section 3:

<i>SECTION 3 EMPLOYMENT GOALS</i>		
<b>Who Must Comply</b>	<b>Area of Focus</b>	<b>Goal</b>
Contractors and any Tier Subcontractors	New Hires and Trainees	Minimum 30% of workforce
<i>SECTION 3 CONTRACTING GOALS*</i>		
<b>Who Must Comply</b>	<b>Area of Focus</b>	<b>Goal</b>
Contractors/subcontractors (construction)	Subcontract Awards	Minimum 10% of the total dollar amount of contract
Contractors/subcontractors (non-construction)	Subcontract Awards	Minimum 3% of the total dollar amount of contract

\*Double counting is allowed toward the overall Section 3 and MBE goals (for construction jobs - 35% of the contract award combined). For example, double counting takes place when a participating contractor/subcontractor is a certified WBE and a Section 3 business.

**13. Who must demonstrate compliance with 24 CFR Part 135?**

All recipients, contractors, and subcontractors working on a Section 3 covered project must demonstrate compliance with **24 CFR Part 135**.

**14. What are the recipient, contractor, and subcontractor responsibilities under this regulation?**

Each recipient has the responsibility to comply with 24 CFR Part 135, Section 3 Regulations, within his/her own operation; the recipient must have all contractors and subcontractors comply with this regulation also.

If the contractor/subcontractor has the need to hire new persons to complete Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct newly created employment and/or subcontracting opportunities to Section 3 residents and or business concerns.

Responsibilities include, but are not limited to:

Contractor/subcontractor

- a) Provide evidence of actions taken to employ and train Section 3 residents and award contracts to Section 3 business concerns;
- b) Implement procedures designed to notify Section 3 residents of any training and employment opportunities;
- c) Actively seek Section 3 residents as soon as new employment and/or training opportunities become available;
- d) Actively network with Section 3 qualified businesses in order to subcontract work on new projects;
- e) Actively collaborate with organizations in the community (local job and training centers, community colleges, etc.)
- f) Sponsor job informational meetings conducted by HA or contractor representative at the location of the future project site (generally, housing development);

PHA

- a) Notify all potential contractors/subcontractors of the requirements in this regulation; incorporate the Section 3 clause in all contracts and solicitations;
- b) Facilitate training and employment for Section 3 residents and award contracts to Section 3 business concerns;
- c) Provide the data base of the qualified Section 3 residents and business concerns;
- d) Ensure Section 3 compliance process for all contractors/ subcontractors;
- e) Document all Section 3 compliance actions.

**15. What types of economic opportunities are available under Section 3?**

**Examples include, but are not limited to:**

**Administrative Management:**

Accounting	Bookkeeping	Research
Payroll	Purchasing	Word Processing

**Construction:**

Architecture	Laborer	Drywall	Engineering
Carpentry	Painting	Iron Works	Heating
Demolition	Plumbing	Fencing	Plasterers
Electrical	Tile Setting	Bricklaying	Surveying
Cement Masonry	Brick Laying	Heating	Elevator Construction

**Services:**

Appliance Repair	Landscaping	Florist	Janitorial
Clerical	Marketing	Printing	Photography
Transportation	Carpet Install	Manufacturing	Catering

**16. Will I be monitored for Section 3 compliance?**

DMHA and HUD both have the right to audit all files related to 24 CFR Part 135, Section 3, for compliance.

DMHA will conduct periodic audits, monitoring all contractor and subcontractor files for Section 3 compliance. These audits will examine the contract files and/or employment records.

**17. Do I have to submit any records or reports to DMHA for Section 3?**

Yes. All contractors and subcontractors are required to submit the following forms in electronic format on the schedule identified below (electronic copies of editable forms will be available at DMHA website). You may also find these forms at the end of this document. Please refer to Supplemental Instruction to Bidder for guidelines on the form usage and applicability to your business.

**DOCUMENTS**

**SUBMISSION SCHEDULE**

**Bidder Packet Section 3 Documents**

Supplemental Instruction to Bidder	At the bidding
Section 3 Business Certification	Read before bidding
Section 3 Action Plan	At the bidding

**FORMS**

Sec3-001a – Business Concern Application	At the Bidding
Sec3-001b – Business Employee List	At the Bidding
Sec3-001c – Contractor Payroll Report	Weekly
Sec3-001d – Contractor Report	Monthly
Sec3-002a – Section 3 Resident Preference Claim Form (if hired new Section 3 employees/trainees)	Monthly
Sec3-002b – Resident or Employee Household Income (if hired new Section 3 employees/trainees)	Monthly
Sec3-001e – Strategy Commitment / Compliance Assessment	At the Bidding and Monthly
Sec3-010 – Contractor’s Employment and Training Compliance Report	Monthly
Sec3-011 – Contractor’s Compliance Review	End of Contract

In addition, contractors and subcontractors should maintain records to support their Section 3 compliance efforts. Examples of these records include the following:

- Copies of advertisements for training and employment;
- Lists of Section 3 residents who applied for positions or expressed an interest in employment;
- Copies of solicitation or RFPs;
- Documentation of pre-construction conference meetings;

- Records of bid evaluations and selections;
- Correspondence relating to Section 3 grievances/complaints;
- Photographic evidence of displayed signs;
- Copies of letters to community organizations; and
- Agenda and meeting minutes for outreach meetings held (if any).

**18. What if it appears as if I haven't complied with Section 3?**

Residents and businesses may, at any time, file a formal complaint with DMHA or HUD, if they feel a contractor is not complying with **24 CFR Part 135**.

All complaints will be handled as if they have merit. Contractors and subcontractors shall treat each complaint in the same manner. DMHA (and possibly HUD) will thoroughly investigate each complaint. Contractors and subcontractors are expected to resolve any issues brought to their attention in a timely manner. Guidelines for complaint filing and resolution are outlined in [Part 135.76] of the regulation.

If it is determined that a complaint has merit, a voluntary resolution by all parties is the suggested method to address the complaint. A complaint that cannot be voluntarily resolved may result in an administrative hearing.

**19. Can sanctions be imposed for noncompliance with the regulation?**

Yes. Sanctions can be imposed for failure to comply with **24 CFR Part 135**. Sanctions include, but are not limited to:

- Debarment from HUD programs;
- Suspension from HUD programs; and
- Limited denial to participate in HUD programs.

**20. How can I find Section 3 residents to work for me?**

- By recruiting in public housing communities and their surrounding neighborhoods and informing individuals about available training and job opportunities. Other examples of effective ways to bring jobs and people together: distributing flyers, posting signs, placing ads, and contacting resident organizations/local community development/employment agencies to find potential workers.
- Contact DMHA's Section 3 Coordinator at (937) 910-7633 to request the updated Section 3 Resident Outreach List of potential qualified public housing/Section 8 residents or Section 3 business concerns.
- You may also contact the Job Center at (937) 223-9909, the Dayton Urban League at (937) 220-6650 or East End Community Services at (937) 259-1898.

**21. How will I know if I am already employing Section 3 residents?**

Your company may already have hired individuals and or businesses that meet the requirements of this regulation. Using the chart under Paragraph 4, page 2, you can determine if any of your employees' salaries or hourly rates qualify them as a Section 3 employee. These individuals do not necessarily have to be residents of public housing or some other form of assisted housing.

**22. Are there other laws that govern training, employment, and contracting?**



Yes. Other laws and requirements that are applicable to the economic opportunities of Section 3 residents and Section 3 businesses include, but are not limited to:

- Procurement regulation **24 CFR 85.36**;
- Flexible subsidy program;
- Procurement standards for other recipients (*OMB Circular No A-110*);
- Federal labor standards provisions;
- Approved apprenticeship and trainee programs; and
- *Executive Order 11246* compliance.

**23. How can I get Section 3 certified?**

Please contact DMHA or visit DMHA website to obtain Section 3 Business or Resident Certification forms. You may also find them attached to this document (Section 3 Business Certification and sec3-002a and sec3-002b).

**24. What does a Section 3 Action Plan include?**

The Contractor finalizes their Section 3 commitment with the Section 3 Coordinator by submitting a signed action plan. This action plan will state:

- a brief description of the contract (disclosing the awarded dollar amount of the contract);
- the start and end dates of the contract;
- the agreed upon Section 3 commitment (i.e. New Section 3 hires and their percentage in the total employment pull, training/apprenticeship programs, or our least preferred option – cash donations);
- the frequency of the commitment (i.e. Cash donations – the number of cash donations and the schedule, if any, for submitting said donations);
- the duration of the commitment (i.e. for training/apprenticeship programs.)