



Harris County Section 3 Frequently Asked Questions

What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of 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.

When does Section 3 apply?

The Section 3 requirements apply to recipients of HUD funding (such as Harris County and its subrecipients) exceeding \$200,000 combined from all sources in any one year. Section 3 covers the expenditure of any portion of those funds for any activity that involves demolition, construction or rehabilitation project. For contractors and subcontractors, Section 3 applies for work arising in connection with HUD-funded new construction, rehabilitation or demolition projects in an amount that exceeds \$100,000. The following are examples of HUD funds which would require Section 3 compliance:

- Community Development Block Grant (CDBG)
- Community Development Block Grant – Disaster Recovery (CDBG-DR)
- HOME Investment Partnership
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Economic Development Initiative (EDI)/Brownfield Economic Development Initiative Grants
- Housing Opportunities for Persons with AIDS (HOPWA)
- Homeless Assistance Grants (ESG)
- University Partnership Grants
- Economic Stimulus Funds (including CDBG-R and CFP Supplemental)
- 202/811 Grants
- Lead Hazard Control Grants

If the HUD-funded project is for demolition, construction or rehabilitation and exceeds \$200,000, but no single contractor is awarded more than \$100,000, then the Section 3 requirements do not apply to the contractor. This means the hiring and contracting by Harris County or its subrecipients that is related to work arising in connection with the HUD-funded new construction, rehabilitation or demolition project would be subject to the Section 3 regulations.

Once it is determined that Section 3 applies to a project, the requirements apply to all contracts for work arising in connection with HUD-funded construction, rehabilitation or demolition projects over \$100,000, including those that are not funded with HUD funds.

What does “To the Greatest Extent Feasible” Mean?



“To the Greatest Extent Feasible” means that every effort must be made to comply with the regulatory requirements of Section 3. By this, recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, this may mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 residents and businesses for these types of economic opportunities.

What does the term “Section 3 Resident” mean?

A Section 3 Resident is:

1. A public housing resident; or
2. A low- or very low-income person residing in Harris County where the Section 3 covered assistance is expended.

What does the term “Section 3 Business Concern” mean?

Section 3 Business Concerns are businesses that can provide evidence that they meet one of the following criteria: a) 51% or more owned by Section 3 residents; or b) At least 30% of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire; or c) Provides evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to business concerns that meet one of the first two qualifications above.

Do I qualify as Section 3?

Individuals or businesses qualify as Section 3 if they meet the definition of “Section 3 Resident” or “Section 3 Business Concern”, as defined above. Individuals or businesses who wish to self-certify should provide the necessary documentation that Harris County requires under its certification procedures.

How are “low-income” and “very low-income” determined?

Low- and very-low-household income limits are determined annually by HUD. These limits are typically established as the following:

- “**Low-income**” would mean the household income is approximately 80% or less of the median income for each locality by household size or the number of people residing in one house.
- “**Very low-income**” would mean that the household income is approximately 50% or less of the median income for each locality by household size or the number of people residing in one house.

HUD income limits may be obtained from: <http://www.huduser.org/portal/datasets/il.html>

What are examples of acceptable evidence to determine eligibility as a Section 3 resident?

Harris County requires residents that qualify as Section 3 to complete and submit the *Harris County Section 3 Resident Self-Certification Form*. The resident seeking preference in hiring must be able to demonstrate they meet the criteria of a Section 3 Resident. Acceptable backup documentation may include, but is not limited to, the following:

- Proof of residency in a public housing development;
- Evidence of participation in a HUD Youth build program operated in Harris County where the Section 3 covered assistance is spent;



- Evidence that the individual resides in the Section 3 area and is a low or very low-income person, as determined by local HUD income limits.

What are examples of acceptable evidence for determining eligibility as a Section 3 Business Concern?

Harris County requires business that qualify as Section 3 Business Concerns to complete and submit the *Harris County Section 3 Business Concern Self-Certification Form*. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

- 51% or more owned by Section 3 residents;
- Has permanent, full time employees at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- Has a commitment to sub-contract in excess of 25% of the total dollar award of all sub-contracts to be awarded to such businesses described above

How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise or HUB programs?

Section 3 and MBE/WBE or HUB are two entirely separate programs. However, recipients and contractors working on HUD-funded projects may be required to comply with both.

Minority Business Enterprise (MBE) means a business enterprise that is minority-owned or owned by socially and economically disadvantaged persons. A Women Business Enterprise (WBE) is a business enterprise that is women-owned. Pursuant to 2 CFR 200.321 recipients and contractors must take all affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Section 3 is both race and gender neutral. The preferences identified under Section 3 are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents, and the businesses that employ these persons, within their community regardless of race and/or gender.

Can contracting with MBE/WBE Businesses or HUB count towards Section 3 contracting goals?

No. Section 3 and MBE/WBE are two entirely separate programs. Only MBEs/WBEs or HUBs that also qualify as Section 3 Business Concerns and meet the eligibility criteria set forth in the regulation can be counted towards the minimum goals for Section 3 contracting opportunities.

How does Section 3 differ from Davis-Bacon requirements?

Section 3 and Davis-Bacon are two entirely separate requirements. However, recipients and contractors working on HUD-funded projects may be required to comply with both. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5.

What is a “new hire”?

A new hire means a full-time employee for a new permanent, temporary, or seasonal position that is created as a direct result of the expenditure of Section 3 covered financial assistance.

Can laid-off workers re-hired as a result of a HUD-funded project be considered new hires?



Yes. Any employee that was not on the payroll of a recipient, developer, or contractor on the day that Section 3 covered assistance was provided can be counted towards the Section 3 minimum numeric goal for employment.

What is a Section 3 covered project?

A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

Is Section 3 compliance required for HUD-funded projects that do not involve demolition, construction, or rehabilitation?

No. However, Section 3 would be required for all professional services associated with demolition, construction, or rehabilitation work, including but not limited to consulting, architectural, engineering, administrative, construction management, or project management services associated with demolition, construction, or rehabilitation work.

Who is considered a recipient of Section 3 funding?

A recipient is any entity which receives Section 3 covered assistance, directly from HUD or from another recipient. This could include funding received from Harris County, one of its subrecipients, or Harris County property owners or developers who are recipients of federal funding.

What is Section 3 covered assistance?

Section 3 covered assistance includes housing and community development assistance expended for housing rehabilitation, housing construction, or other public construction.

If a project is not funded with any HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3. If a project is not funded by HUD in any way, then Section 3 does not apply.

What dollar threshold amounts apply to contractors/subcontractors?

For any Housing and/or Community Development funding, all contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.

What are the Section 3 minimum numeric goals?

The minimum numeric goal for employment is 30% of the aggregate number of new hires shall be Section 3 residents, i.e., 3 out of 10 new employees needed to complete a Section 3 covered project/activity shall be Section 3 residents.

The minimum goals for contracting are:

- Ten percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with demolition, construction, rehabilitation, and other public construction, shall be awarded to Section 3 businesses; and
- Three percent of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses



What responsibilities do contractors or subcontractors have if they receive Section 3 covered contracts?

If the contractor/subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 Residents and Business Concerns. The same numeric goals apply to contractors and subcontractors (i.e., 30% of new hires, 10% of construction contracts, and 3% of non-construction contracts). In addition, the contractor/subcontractor must notify Harris County or Harris County's subrecipients about their efforts to comply with Section 3 and submit any required documentation.

Does Section 3 apply just to prime contractors, or does it also apply to any subcontractors?

Section 3 applies to any contract that is considered a "Section 3 covered project" and that will exceed \$100,000. The Section 3 requirement will flow down to all lower-level subcontractors, unless the contract value will not exceed \$100,000.

Do the Section 3 requirements apply to material-only contracts?

No. Section 3 does not apply to material-only contracts or projects that do not require any labor or are not associated with demolition, construction, or rehabilitation. For example, a contract for office or janitorial supplies would not be covered by Section 3. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered.

Are there exemptions for Section 3?

HUD does not grant any exemptions for Section 3. Section 3 is always required for any HUD-funded demolition, construction, or rehabilitation project.

Is Section 3 optional?

Efforts to comply with Section 3 are not optional. The Section 3 numeric goals are minimum targets that must be reached in order for HUD to consider a recipient, contractor, or subcontractor as in compliance. Recipients, contractors, and subcontractors are required to make best efforts, to the greatest extent feasible, to achieve the numeric goals for employment and contracting. If a recipient, contractor, or subcontractor fails to fully meet the Section 3 numeric goals, they must adequately document the efforts taken to meet the numeric goals.

Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?

Yes, reduction and abatement of lead-based paint hazards does constitute housing rehabilitation and is covered by Section 3.

Are demolition projects covered by the requirements of Section 3?

Yes. Recipients of Section 3 covered assistance should make efforts to award a minimum of 10% of the total dollar amount of all demolition contracts to Section 3 businesses.

Are professional service contracts covered under Section 3?

Yes, the term Section 3 covered contract includes professional service contracts associated with construction, such as architectural, engineering, legal services, construction management, project management, accounting, marketing, consulting, etc.

Are contracts cumulative for reaching the Section 3 threshold?



No. Contracts for Section 3 covered projects are not cumulative. The requirements of Section 3 apply to each individual contract that meets the thresholds.

Does Section 3 require recipients, contractors, or subcontractors to create new (or unnecessary) training, employment, and contracting opportunities?

Recipients, contractors, and subcontractors are not required to create jobs or subcontracting opportunities for Section 3 Residents and Business Concerns simply for the sake of creating them. Section 3 requires that when employment or contracting opportunities are generated because a Section 3 covered project necessitates the new hiring or subcontracting, preference in hiring must be given to low- and very low- income persons, and preference in subcontracting must be given to businesses that are owned by these persons or that substantially employ them.

Are Section 3 Residents or Business Concerns guaranteed employment or contracting opportunities under Section 3?

Section 3 is not an entitlement program, there are no guarantees. Residents and businesses must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking. Section 3 requirements provide preference to Section 3 Residents and Business Concerns, but not a guarantee.

Are Section 3 Business Concerns only certified to receive preference in the community in which they are located?

No. While certification is locality specific, a Section 3 Business Concern that is located outside of the immediate Harris County jurisdiction may be counted toward efforts to meet the minimum numeric goals. However, preference should not be provided to a Section 3 that is not located in the Harris County jurisdiction if a local Section 3 Business Concern has also submitted a qualified bid for a contract and is capable of completing the work.

Does a business have to be incorporated to be considered a Section 3 eligible business?

A Section 3 Business Concern can be any type of business, such as a sole proprietorship, partnership or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.

Does preference to a Section 3 Business Concern mean that the Section 3 Business should be selected, regardless of price?

No. As provided in 2 CFR 200.404, costs must be fair and reasonable. Pursuant to 2 CFR 200.320, for sealed bids, award shall be made to the lowest, responsive, and responsible bidder. However, in accordance with 24 CFR Appendix to Part 135, Harris County may, when feasible, opt to provide consideration to a contractor's Section 3 status prior to contract award. Preference in the award of Section 3 covered contracts that are awarded under a sealed bid or Invitation for Bid (IFB) process shall be in accordance with Harris County's Section 3 Policy and Harris County Federal Procurement Policies & Procedures.

Does preference to a Section 3 Business Concern mean that the Section 3 Business Concern should be selected, even if it does not meet the technical requirements?

No. As provided in 2 CFR 200.320, contract awards shall only be made to responsive and responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract.

Are the numerical goals the same as set-asides and quotas?



No. A set-aside guarantees that a specific portion of funds will be provided to a protected class. Section 3 goals are minimum numeric targets that a recipient of HUD Section 3 covered financial assistance must try to reach to attain compliance with Section 3.

What should contractors do if they fail to meet the minimum numeric goals set forth in the regulation?

Contractors must adequately document all efforts taken to comply with the requirements of Section 3, and explain why, despite their efforts “to the greatest extent feasible”, the minimum numerical goals were not met. Harris County will take each contractor’s explanation into consideration when making compliance determinations.

What are the recordkeeping requirements for contractors?

The documentation should demonstrate efforts taken towards the achievement of the Section 3 numerical goals, including efforts taken to comply with the employment, training, and contracting requirements of Section 3, the results of actions taken, impediments encountered, and other relevant information. Contractors shall maintain on file all records and backup documentation related to efforts to comply with Section 3 hiring and subcontracting requirements, including but not limited to printed advertisements (newspapers, trade publications, and etc.), job postings, mailouts, notices, flyers, publications, statements of compliance from subcontractors, etc., in connection with the contract. Contractor shall, upon request, provide such records to Harris County, its staff, or its designees. All documentation related to Section 3 should be maintained for 7 years.

Are contractors or developers required to submit Section 3 reports directly to HUD?

No. Subrecipients, contractors, subcontractors, and/or developers should not submit Section 3 reports to HUD. Only direct recipients (such as Harris County) are required to submit Section 3 reports to HUD. Contractors should maintain adequate documentation to demonstrate compliance with Section 3 and forward information to Harris County or its subrecipient, as directed or upon request.

Are contractors or developers required to submit Section 3 reports to Harris County?

Yes. Subrecipients, contractors, subcontractors, and/or developers are required to submit reports on Section 3 compliance status and efforts regarding Section 3 implementation using the Harris County prescribed processes, reporting methods, and form(s). Reports may require information on actual Section 3 hiring and subcontracting activity, listing of new hires, employee data, copies of executed contracts, and any relevant documentation. Contractors should maintain adequate documentation to demonstrate compliance with Section 3 and forward information to Harris County or its subrecipient, as directed or upon request.

How do I comply with Section 3?

Instructions on compliance with Section 3 will be detailed in the solicitation packages. At a minimum, contractors are required to complete and submit the *Harris County Section 3 Utilization Plan & Statement of Compliance*.

What forms are required for Section 3?

When responding to a Harris County solicitation, contractors must complete and submit the *Harris County Section 3 Utilization Plan & Statement of Compliance*. Contractors who intend to self-perform as a Section 3 Business Concern must also submit the *Harris County Section 3 Business Concern Self-Certification Form*.

Harris County residents who qualify under Section 3 must submit the *Harris County Section 3 Resident Self-Certification Form* in order to receive preference in hiring.



Who can file a complaint that alleges non-compliance with the requirements of Section 3?

Any Section 3 Resident or Section 3 Business Concern (or authorized representative) seeking employment, training, or contracting opportunities generated by Section 3 covered assistance may file a complaint using form HUD 958. The HUD 958 complaint form, filing instructions, and mailing addresses may be obtained at: www.hud.gov/section3

Where should Section 3 complaints be submitted?

Section 3 complaints must be filed at the appropriate FHEO Regional Office where the violation occurred. Please visit www.hud.gov/offices/fheo to obtain the address and telephone number for FHEO regional offices.

Is there a time limit for filing a Section 3 complaint?

Yes. Section 3 complaints must be filed no later than 180 days from the date of the action or omission upon which the complaint is based.

Contractors and firms with additional questions regarding Section 3 requirements are encouraged to read the federal regulations for Section 3 under 24 CFR 135