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Creating Economic Opportunities for Low- and Very Low-Income Persons
and Eligible Businesses Through Strengthened “Section 3” Requirements;
Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 135

[Docket No. FR-4893-P-01]

RIN 2529-AA91

Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Through Strengthened "Section 3" Requirements

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994. This proposed rule would update HUD's Section 3 regulations to address new programs established since 1994 that are subject to the Section 3 requirements and promote compliance with the requirements of Section 3 by recipients of Section 3 covered financial assistance, while also recognizing barriers to compliance that may exist, and strengthening HUD's oversight of Section 3.

DATES: *Comment Due Date:* May 26, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of

Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5236, Washington, DC 20410; telephone 202-402-3468 (voice/TDD) (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800-877-8339. General email inquiries regarding Section 3 may be sent to: section3@hud.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

This proposed rule would update the regulations implementing Section 3. The purpose of Section 3 is to ensure that employment, training, contracting, 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 businesses that provide economic opportunities to low- and very low-income persons. As noted in the summary of this preamble, the regulations for Section 3 have not been updated in over 20 years. Since the regulations were last issued in 1994, new HUD programs have been established to which Section 3 applies. HUD's experience in administering Section 3 over the past 20 years has identified where HUD could improve the effectiveness of its regulations implementing Section 3. Recent efforts by HUD to improve Section 3 oversight without resorting to regulatory change (e.g., increased reporting compliance through grant competitions and establishment of a business registry) have not been as successful as HUD hoped. HUD concluded that regulatory changes are needed to more effectively strengthen Section 3 oversight and more effectively help recipients of HUD funds achieve the purposes of the Section 3 statute.

Summary of the Major Provisions of This Regulatory Action

The following provides an overview of the more significant provisions of this proposed rule.

Standard for Demonstrating Compliance "To the Greatest Extent Feasible." The proposed rule strives to achieve uniformity with the statutory standard to undertake "best efforts" to provide economic opportunities to Section 3 residents and businesses, and the statutory standard to ensure "to the greatest extent feasible" that opportunities for training, employment, and contracting are provided to Section 3 residents and businesses. HUD views these standards as essentially the same, and would remove the distinction in the existing codified regulations. HUD would only use the "to the greatest extent feasible" standard.

The proposed rule clarifies that recipients of HUD funds are required to demonstrate compliance, to the greatest extent feasible, by: (1) Establishing and

implementing policies and procedures designed to achieve compliance with the goals of Section 3 as reflected in HUD's regulations; (2) fulfilling the recipient responsibilities set forth at § 135.11 of the Section 3 regulations; and (3) either reaching or exceeding the minimum numerical goals for employment and contracting, or providing a written explanation as to why the goals were not met (for example, identifying barriers encountered that prevented the recipient from achieving targeted goals and actions that will be taken to overcome such barriers). HUD believes that this approach will provide recipients of HUD funds with more flexibility in planning how to meet their Section 3 obligations while holding them accountable when their actions do not result in compliance.

Revised Definition of "New Hire." The current Section 3 regulations establish a goal for 30 percent of new hires to be Section 3 residents, regardless of the length of time that the Section 3 resident is employed. As a result, the Section 3 regulations create a loophole, so to speak, by allowing contractors to hire Section 3 residents for relatively short periods of time and this short-term employment would meet the new hire requirement. This proposed rule would close this loophole by redefining a Section 3 new hire for contractors or subcontractors as a person who works a minimum of 50 percent of the average staff hours worked for the job category for which the person was hired throughout the duration of time that the work is performed on the covered project. For example, if a Section 3 resident is hired as a painter, and painters typically work 40 hours each week, the Section 3 resident must work a minimum of 20 hours each week during their employment on the project in order to be counted towards the recipient's minimum numerical goal for employment. HUD believes that this new definition will result in more meaningful employment opportunities for Section 3 residents and prevent contractors from making nominal efforts to comply with Section 3.

New Definition of "Section 3 Business." Currently, a "Section 3 Business" must meet one of the following three definitions: (a) The business is 51 percent or more owned by Section 3 residents; (b) the business employs at least 30 percent of the permanent, full-time employees who are Section 3 residents; (c) the business provides evidence of a commitment to subcontract 25 percent or more of the dollar amount of all subcontracts to

businesses that meet definitions (a) or (b).

This proposed rule would remove the third category, paragraph (c) of the current definition of a Section 3 Business in response to a pattern of misuse by contractors that initially indicated that they would award 25 percent of subcontracts to Section 3 businesses, in order to receive preference for contracts, but never provided contracts to them.

The proposed rule would add to categories (a) and (b) of the current definition of Section 3 Business the following categories in an effort to increase contracting opportunities for businesses that are owned by residents of public housing and to incentivize contractors to sponsor Section 3 residents to attend Department of Labor (DOL) or DOL-recognized registered apprenticeship programs. HUD would add the following categories to the definition of a Section 3 business: (1) The business meets the definition of a resident-owned business, as set forth in HUD's regulations at 24 CFR 963.5; and (2) the business demonstrates that at least 20 percent of its permanent full-time employees are Section 3 residents and the business either: (i) Sponsored a minimum of 10 percent of its current Section 3 employees to attend a DOL or DOL-recognized, State Apprenticeship Agency-approved, registered apprenticeship or pre-apprenticeship training program that meets the requirements outlined in DOL's Employment Training Administration (ETA) Training and Employment Notice 13-12¹; or (ii) 10 percent of the employees of the business are participants or graduates of a DOL YouthBuild program.²

Removal of Minimum Numerical Goal for Nonconstruction. Currently, the Section 3 regulations establish a minimum numerical goal that 3 percent of the total dollar amount of nonconstruction contracts shall be awarded to Section 3 businesses. Since there is no statutory basis for making a distinction between construction and nonconstruction contracts, and the interpretation of the nonconstruction goal has been problematic for recipients, HUD believes that a numerical goal of 10 percent of the total dollar amount of all covered contracts to Section 3 businesses, regardless of the type of contract or its dollar amount, will create more contracting opportunities for them.

¹ See http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5842.

² See http://www.doleta.gov/youth_services/youthbuild.cfm.

Introduction of New Term "Section 3 Local Area". The definitions of "Section 3 resident" and "Section 3 business concern" in the current Section 3 regulation do not limit eligibility to residents and businesses, respectively, residing or located in proximity to Section 3 covered projects or activities. As a result, a public housing resident or a Section 3 business from anywhere in the U.S. can receive preference whether or not they live or operate in the specific metropolitan area where the HUD-funded work is being carried out. To be more consistent with the Section 3 statute and congressional intent, this proposed rule clarifies that Section 3 residents and businesses must reside or be located, as applicable, in the *Section 3 local area*, which is defined as: (1) The primary statistical area where the Section 3 covered project or activity takes place, or (2) the nonmetropolitan county where the Section 3 covered project or activity takes place.

Section 3 Resident and Business Verification Procedures. The current Section 3 regulations do not require recipients to verify that a Section 3 resident or Section 3 business meets the applicable definitions in the regulations. Instead, residents and businesses are merely required to comply with whatever procedures recipients put in place, if such procedures exist. This proposed rule would continue to allow recipients to use their discretion for developing verification procedures. However, the proposed rule explicitly allows recipients to accept self-certifications from residents or businesses, or presume that residents residing in or businesses located in disadvantaged census tracts are eligible to receive the preference in hiring and contracting. To prevent ineligible persons or businesses from receiving Section 3 benefits, this proposed rule would require recipients that implement self-certification or presumed benefit procedures to verify that such self-certification or presumption policy is an acceptable approach by undertaking a sample of residents or businesses in the disadvantaged census tract or in areas which HUD funds are being expended for covered projects and activities.

Monitoring Payroll Data of Developers and Contractors. This proposed rule recognizes that the most successful recipients monitor payroll data to track new hires. In an effort to formalize a long-standing best practice, this proposed rule would require recipients that are administering projects that are subject to both Section 3- and Davis Bacon-covered requirements to monitor a contractor's payroll for changes in employment (*i.e.*, terminations,

retirements, transfers, and other new job vacancies) to proactively identify instances when Section 3 obligations are triggered. This practice should increase monitoring and oversight by recipients and improve contractor accountability. Further, since the Davis-Bacon regulation requires recipients administering covered projects to monitor payroll data for compliance with prevailing wage laws, adding this Section 3 requirement should result in minimal administrative burden.

Amending Agreements with Labor Unions. Recipients that are located in jurisdictions that are governed by bargaining agreements with labor unions typically have low rates of compliance with the minimum numerical goals for contracting because unions operate outside of Section 3 obligations. In fact, a review of project labor agreements in Chicago and New York City revealed that these documents do not make any reference to HUD requirements, including Section 3. This proposed rule would require recipients to amend all existing agreements with labor unions to ensure that Section 3 obligations are included and to prevent labor unions from obstructing the recipients' ability to achieve compliance.

Sanctions for Delinquent Section 3 Annual Reports. Achieving full compliance with Section 3 reporting requirements has been a challenge for many years. While recent efforts to enhance reporting rates have resulted in increased reporting by 60 percentage points, there has been minimal imposition of penalties on recipients that are delinquent with the current regulatory reporting requirements. A 2013 HUD Office of Inspector General (OIG) audit report of Section 3 found that HUD was not fully enforcing the Section 3 reporting requirements for public housing agencies (PHAs).³ The final audit report recommended that HUD's Office of Fair Housing and Equal Opportunity (FHEO) refer PHAs to HUD's Office of Public and Indian Housing (PIH) for the imposition of penalties for delinquent reporting. This proposed rule would extend this policy to all covered recipients and inform recipients that continuing failure to submit Section 3 annual reports may result in HUD denying or withholding subsequent funds.

Funding Threshold for Recipients of Section-3 Covered Housing and Community Development Financial Assistance. Another weakness with the

current Section 3 regulations is found in the interpretation that has been given to the funding threshold for recipients of housing and community development assistance (*i.e.*, funds allocated or awarded under the Community Development Block Grants (CDBG) program, HOME Investment Partnerships program (HOME program), Housing Opportunities for Persons With AIDS (HOPWA), Lead Hazard Control program, Sections 202 and 811 Supportive Housing programs, Project-Based Section 8, etc.). The existing threshold is based on the receipt of more than \$200,000 in covered funding. This proposed rule would establish a new threshold that is based on the *expenditure* of covered financial assistance.

Under this proposed rule, Section 3 requirements would apply to recipients of housing and community development financial assistance that plan to obligate or commit an aggregate amount of \$400,000 or more in Section 3 covered financial assistance to projects involving housing rehabilitation, housing construction, demolition, or other public construction during a given annual reporting period. HUD arrived at the \$400,000 threshold after analyzing 2013 data for recipients of CDBG assistance from the Integrated Disbursement and Information System (IDIS) to determine the expenditure dollar amounts on projects involving construction and rehabilitation that produced the greatest amount of economic opportunities for Section 3 residents and businesses. The data revealed that grantees that spent less than \$400,000 on construction and rehabilitation received less than 5 percent of total covered program funding and therefore generated an insignificant amount of subsequent jobs and contracts. The proposed threshold would exempt 37 percent of recipients of financial assistance awarded under programs administered by HUD's Office of Community Planning and Development (CPD) (*i.e.*, CDBG, HOME, and HOPWA programs, etc.). Currently just over 3 percent of these recipients are exempt under the existing threshold. As set forth above, HUD considered a number of alternate thresholds before selecting the proposed threshold of \$400,000. The new threshold is considered to be more effective because it would enable HUD to focus on those recipients that produce the majority of economic opportunities and for which there is a direct correlation between their expenditure of covered financial assistance and opportunities created for Section 3 residents and businesses.

Order of Priority Consideration for Recipients of Section 3 covered Housing and Community Development Assistance. To promote long-term hiring and create training positions for Section 3 residents, this proposed rule would give highest priority consideration for projects financed with housing and community development financial assistance to Section 3 businesses that will: (1) Retain a minimum of 75 percent of previously hired Section 3 residents and (2) provide a minimum of 50 percent of on-the-job training or registered apprenticeship opportunities to Section 3 residents.

Costs and Benefits

With respect to the costs and benefits of this rule, HUD has prepared a Regulatory Impact Assessment (RIA). The RIA assesses the likely costs and benefits of the proposed rule. The purpose of Section 3 is to provide jobs, including apprenticeship opportunities, to public housing residents and other eligible low- and very low-income residents of a local area, and contracting opportunities for businesses that substantially employ these persons. However, the Section 3 requirement itself does not create additional jobs or contracts. Instead, Section 3 redirects local jobs and contracts created as a result of the expenditure of HUD funds to Section 3 residents and businesses residing and operating in the area in which the HUD funds are expended. A reasonable estimate of the impact would be an additional 1,400 jobs provided to Section 3 residents, annually, and more than \$172 million in contracts to Section 3 businesses, as a result of increased oversight and clarification of program standards. In addition, with respect to incomes for tenants of public housing, the Federal rental subsidies provided to those tenants are expected to be reduced as a result of the creation of job opportunities resulting from the expenditure of Federal funds. Such a reduction of Federal subsidies could result in a reduction of \$19 million, annually.

If implemented as proposed, this proposed rule would result in a reporting and recordkeeping burden of 226,640 hours or \$7.3 million⁴ the first year and a reduction of administrative burden by – 10,000 hours or \$320,000 in succeeding years. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by congressional appropriations, and

³ See <http://www.hudoig.gov/reports-publications/audit-reports/hud-did-not-enforce-reporting-requirements-of-section-3-of>.

⁴ Average total compensation of all workers, BLS, March 2014. See <http://www.bls.gov/news.release/ecec.t01.htm>.

authorizing statutes that may impose such requirements as minimum or maximum grants. This proposed rule is not an economically significant rule as defined in Executive Order 12866 (Regulatory Planning and Review).⁵

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968) (Section 3) was enacted for the purpose of bringing economic opportunities, generated by the expenditure of certain HUD financial assistance, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of funds expended in low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the double benefit of creating new or rehabilitated housing and other facilities while creating jobs for the residents of these communities. Section 3 was amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), which required the Secretary of HUD to promulgate regulations to implement Section 3, codified at 12 U.S.C. 1701u. HUD's Section 3 regulations were promulgated through an interim rule published on June 30, 1994, at 59 FR 33880, and the regulations are codified in 24 CFR part 135.

In the 20 years that have lapsed since HUD promulgated the current set of Section 3 regulations, significant legislation has been enacted that affects HUD programs that are subject to the

requirements of Section 3 and that are not adequately addressed in the current Section 3 regulations. This legislation includes, but is not limited to the following: reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105–276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372, approved January 4, 2011), and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–347, approved January 4, 2011), and, more recently, reforms made to HUD's public housing by the Rental Assistance Demonstration program authorized by the act appropriating 2012 funding for HUD, the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011).

HUD has sought to strengthen compliance with Section 3 by concentrating on oversight, outreach, and technical assistance. As part of this assistance, HUD has issued guidance related to applicability, recipient thresholds, and administrative procedures.⁶ These steps increased recipient reporting from 20 percent to over 80 percent. The increase in reporting led to a corresponding increase in reported jobs for Section 3 residents to 21,600 (50 percent of all new hires) and an increase in reported contracts awarded Section 3 businesses to \$675 million.⁷

While these efforts have facilitated increased compliance with Section 3, they have not resulted in full compliance with Section 3, nor do such efforts relieve HUD of its good governance responsibility to update its

Section 3 regulations, now 20 years old, to ensure that the regulations capture new funded programs and current funding policies and practices.

In August 2010, HUD hosted a Section 3 Listening Forum⁸ that brought together recipients of HUD Section 3 covered financial assistance, advocates, Section 3 residents and businesses, and other stakeholders to highlight “best practices” and to discuss barriers to implementation across the country. The forum offered recipients of Section 3 covered financial assistance the opportunity to identify challenges they were facing with their efforts to comply with Section 3. Forum participants stated that the existing Section 3 regulations are not sufficiently explicit about specific actions that could be undertaken to achieve compliance; that the existing regulations do not clearly describe the extent to which recipients may require subrecipients, contractors, and subcontractors to comply with Section 3; and actions that recipients may take to impose meaningful sanctions for noncompliance by their subrecipients, contractors, and subcontractors.

As noted earlier, in 2013, HUD's OIG conducted an audit to assess HUD's oversight of Section 3, in response to concerns about economic opportunities that were provided (or should have been provided) by the expenditure of financial assistance under the American Reinvestment and Recovery Act (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The audit found that HUD was not fully enforcing the reporting requirements of Section 3 for recipients of Fiscal Year 2009 Recovery Act Public Housing Capital funds from HUD.⁹ HUD's OIG made several recommendations to address its findings. The following chart lists HUD OIG's recommendations for HUD and describes whether each recommendation is addressed by this proposed rule.

Recommendation #:	Recommendation	Addressed in Proposed Rule
1A.	Implement the new HUD–60002 [Section 3 Summary Report] submission and tracking system that has been in development, as well as the planned system enhancements.	This recommendation will provide FHEO the vehicle to impose the proposed sanctions for delinquent reporting described in § 135.23(f) and to address concerns with the reliability of data previously submitted by recipients.
1B.	Establish procedures to follow up on missing and inaccurate information on HUD–60002 submissions.	See Recommendation 1C.

⁵ See <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

⁶ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3.

⁷ Source: 2010 Section 3 annual summary report data (Form HUD 60002).

⁸ See <https://nhlp.org/files/09%20Section%203%20Barriers%20and%20best%20practices%208>

⁹ See <http://www.hudoig.gov/reports-publications/audit-reports/hud-did-not-enforce-reporting-requirements-of-section-3-of-2024%20d10%20Final%20with%20attachment.pdf>.

⁹ See: <http://www.hudoig.gov/reports-publications/audit-reports/hud-did-not-enforce-reporting-requirements-of-section-3-of-2024%20d10%20Final%20with%20attachment.pdf>.

Recommendation #:	Recommendation	Addressed in Proposed Rule
1C.	Establish procedures regarding when to refer to Public and Indian Housing (PIH) any public housing authorities (PHAs) that fail to make required submissions or corrections.	FHEO has developed procedures for reviewing HUD-60002 submissions and established the steps that will be taken to refer PHAs to PIH when Section 3 reports are inaccurate or delinquent. Pursuant to this proposed rule, FHEO will expand the implementation of these procedures to all recipients of Section 3 covered financial assistance and make subsequent referrals for appropriate action to all HUD program offices.
1D.	Resolve issues with CPD and complete the process to publish final regulations for 24 CFR Part 135.	This regulatory action represents FHEO's efforts to comply with this recommendation.
1E.	Require the six housing authorities in this finding that reported Section 3 noncompliance to provide justification or support that they met the [minimum numerical] goals. If they cannot show compliance, enter into a voluntary compliance agreement to bring their Section 3 programs into compliance, or refer them to PIH for repayment of the \$26 million that should have been used for Section 3.	FHEO has incorporated this recommendation into its enforcement actions at § 135.99 and the sanctions for noncompliance at § 135.27.

For the reasons set forth above, through this rule, HUD proposes to revise its Section 3 regulations at 24 CFR part 135 in a manner designed to better fulfill the goal of Section 3.

II. This Proposed Rule

In order to provide better parameters for achieving the goals of Section 3, this proposed rule: communicates how recipients may meet minimum numerical goals for employment and contracting opportunities; provides other direction to recipients of Section 3 covered financial assistance and their contractors in order that they may more effectively comply with Section 3; vests more discretion and responsibility with recipients on how to verify the eligibility of Section 3 residents and businesses for employment and contracting opportunities; and articulates procedures for complaint processing. This rule organizes the regulations of 24 CFR part 135 into five subparts: Subpart A—General Provisions; Subpart B—Additional Provisions for Public Housing Financial Assistance; Subpart C—Additional Provisions for Housing and Community Development Financial Assistance; Subpart D—Additional Provisions for Recipients of Competitively Awarded Section 3 Financial Assistance; and Subpart E—Enforcement.

General Provisions—Subpart A

Subpart A—General Provisions contains those provisions applicable to all Section 3 covered financial assistance, whether public housing financial assistance, housing and community development financial assistance, or competitively awarded financial assistance, including the following: definitions of terms applicable to compliance with Section 3 (§ 135.5); demonstration compliance

with the “greatest extent feasible” requirement (§ 135.7); description of official Section 3 policies and procedures to be developed and implemented by recipients (§ 135.9); recipient responsibilities under Section 3 (§ 135.11); a general description of minimum numerical goals for employment and contracting opportunities (§ 135.13); the procedures for verifying the eligibility of Section 3 residents and Section 3 businesses (§ 135.15); descriptions of written agreements and contractors that must be entered into by the recipient and its subrecipients, contracts, or subcontractors before the disbursement of any Section 3 covered financial assistance (§ 135.17 and § 135.19); an overview of certifications of compliance with this part (§ 135.21); description of annual reporting requirements (§ 135.23); a summary of recordkeeping responsibilities and HUD’s authority to have access to records demonstrating compliance with this part (§ 135.25); an outline of sanctions that may be imposed for noncompliance with this part (§ 135.27); and communication of other Federal requirements that may apply during the administration of Section 3 covered projects and activities (§ 135.29).

Section 135.3 of the existing regulations, which addresses the scope of applicability of the requirements of Section 3, would be removed by this proposed rule. The applicability of Section 3 would now be addressed by the following: (1) The definitions of “housing and community development financial assistance” and “public housing financial assistance” in § 135.5; (2) the individual applicability sections for public housing financial assistance and housing and community development financial assistance, in § 135.31 and § 135.51, respectively; and

(3) the thresholds that trigger applicability of Section 3, which are addressed in § 135.33, and § 135.53. HUD believes that placing this information in the subparts associated with each type of Section 3 covered financial assistance will prevent recipients from inadvertently referring to the wrong requirements.

Section 135.3 of the proposed rule describes the Secretary’s delegation of authority to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) to implement and oversee compliance with the requirements of Section 3. This delegation of authority is unchanged from § 135.7 of the existing regulations. While FHEO has the overall authority for carrying out Section 3 obligations within HUD, monitoring and oversight takes place in coordination with various HUD program offices, such as PIH, CPD, Healthy Homes and Lead Hazard Control (HHLHC), Housing, etc.

Section 135.5 of the proposed rule provides the definitions of terminology used throughout the regulation (as it is in the existing regulations), introduces new definitions, revises definitions contained in the existing regulations, and removes definitions that are no longer applicable. Some of the newly defined terms include: “construction,” “contracting opportunities,” “numerical goals,” “priority consideration,” “professional services,” “project-based rental assistance,” “public housing financial assistance,” “rehabilitation,” “routine maintenance,” “service area,” and “Section 3 local area.” The terms “housing and community development financial assistance,” “new hires,” “Section 3 business (formerly Section 3 business concern),” “Section 3 covered financial assistance,” and “Section 3 resident” have been revised with the objective of improving the

understanding of their meanings. The following existing defined terms are proposed to be removed: “annual contributions contract,” “HUD YouthBuild programs,” “Job Training Partnership Act.”

Section 135.7 of the proposed rule addresses how recipients may demonstrate compliance to the greatest extent feasible. The 1968 statute established two standards for achieving compliance with the requirements of Section 3. PHAs and their contractors and subcontractors were required to make their “best effort,” consistent with existing Federal, State, and local laws and regulations to provide economic opportunities to Section 3 residents and businesses. On the other hand, programs that receive housing and community development assistance are required to ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with housing rehabilitation, housing construction, or other public construction are given to Section 3 residents and businesses. HUD’s 1994 interim rule, published on June 30, 1994, at 59 FR 33880, established HUD’s position that there is very little difference in the common meaning of these statutory standards. Further, the Section 3 statute requires every recipient and contractor that generates economic opportunities from the expenditure of Section 3 financial assistance, regardless of the HUD program from which the assistance is derived, to provide these economic opportunities to low- and very low-income persons and the businesses that employ them. Accordingly, this rule maintains one standard for achieving compliance. Recipients, as defined in § 135.5, are required, to the greatest extent feasible, to target low- and very low-income persons for employment and training opportunities funded with Section 3 financial assistance, and businesses that are either owned by or substantially employ such persons.

Section 135.7 provides that while reaching the minimum numerical goals is one way to demonstrate compliance with the statute’s “greatest extent feasible” requirement, compliance to the greatest extent feasible is demonstrated by the recipient, first and foremost, establishing and implementing procedures and strategies by which the recipient and, where applicable, its subrecipients, contractors and subcontractors will comply with the requirements set forth in § 135.11. This section also provides that where a recipient is unable to reach the

minimum numerical goals set forth in the subpart associated with the type of financial assistance provided, (§ 135.35 and § 135.55, respectively) such inability does not necessarily mean that the recipient did not undertake efforts to meet these goals. Accordingly, a recipient that does not reach the minimum numerical goals will be required to provide a written justification explaining: (1) Why it was unable to meet these goals; (2) the impediments the recipient encountered; and (3) the actions the recipient will take to address identified impediments in the future. For instance, if a recipient held a job fair to hire Section 3 residents for jobs in specific building trades (e.g., plumbers, electricians, welders, etc.) for an upcoming construction project, HUD may consider the recipient to be in compliance with Section 3 even if none of the participants of the job fair had the requisite job qualifications for the positions to be filled. HUD will take such justifications into consideration when making final compliance determinations. Written justifications that do not contain a valid explanation for why the recipient did not reach the minimum numerical goal may result in a finding of noncompliance.

Section 135.9 of the proposed rule presents a new means of strengthening Section 3 compliance. This section would require the recipient to develop and adopt official policies and procedures to implement the requirements of Section 3, as a means of demonstrating compliance with the “greatest extent feasible” requirement, as provided in § 135.7. This section provides that official policies and procedures must include at a minimum, steps that the recipient will take to: inform subrecipients and contractors about Section 3 obligations; evaluate potential bidders for Section 3 compliance during contract selection; notify Section 3 residents and businesses about economic opportunities; implement verification and/or certification procedures for residents and businesses; provide priority consideration to qualified Section 3 residents and businesses; monitor subrecipients and contractors for compliance; establish consequences for noncompliance; and utilize local community resources to meet its Section 3 requirements. The preceding list presents the minimum steps that the recipients’ policies and procedures should address, but recipients should include in official policies and procedures any additional steps tailored to their funding practices and operations that would increase

compliance with Section 3. Section 135.9 provides that updates to official policies and procedures shall discuss the relative success of the immediate past policies and procedures and how any changes are aimed to better promote compliance with Section 3.

This section further requires that to the extent a recipient must prepare a strategic plan, action plan, or other such plan in accordance with HUD program regulations, such plans must include a general description of the recipient’s official Section 3 policies and procedures. This section provides that if a recipient is not required to submit official plans to HUD—such as public housing plans, strategic or annual action plans, or other similar plans—the recipient’s official Section 3 policies and procedures shall be developed as an independent document at the time that Section 3 covered financial assistance is awarded and updated every 5 years thereafter.

Section 135.11 describes steps that all recipients must take to implement the requirements of Section 3, and describes steps that would be unique to recipients of public housing financial assistance and housing and community development financial assistance.

Section 135.13 of the proposed rule addresses the minimum numerical goals, generally, and provides that the goals apply to the aggregate number of employment and contracting opportunities generated by the expenditure of the Section 3 covered financial assistance. Specific minimum numerical goals are set forth in the subpart associated with the type of financial assistance provided; i.e., § 135.35 and § 135.55, respectively. This section removes the current requirement that 3 percent of the total dollar amount of nonconstruction contracts shall be awarded to Section 3 businesses since there was no statutory reason to make a distinction between construction and nonconstruction contracts. HUD believes that requiring recipients to award 10 percent of the total dollar amount of all covered contracts to Section 3 businesses regardless of the type or dollar amount of the contract will result in more potential contracting opportunities for Section 3 businesses.

Section 135.11 of the proposed rule describes the responsibilities of the recipient for complying with the requirements of Section 3 and ensuring the compliance of their subrecipients, contractors, or subcontractors, who have the same responsibilities as the direct recipient. This section responds to requests that HUD more clearly identify specific actions that a recipient is to undertake to demonstrate compliance

with Section 3. These responsibilities reflect best practices that are being implemented by successful recipients, and will result in a reduction of an estimated 10,000 hours of administrative burden annually. The actions listed in this section would replace the list of examples of efforts that recipients may undertake to demonstrate compliance with Section 3, which are found in Appendix A to the existing regulations.

As provided in § 135.11, the listed responsibilities apply to all recipients and have been expanded to ensure that: (1) Section 3 residents and businesses are notified about economic opportunities, (2) payroll data is monitored for new hires on projects that are subject to wage rates determined under the Davis Bacon Act (40 U.S.C. 3141 *et seq.*), (3) labor unions are notified about Section 3 obligations, (4) existing collective bargaining or project labor agreements with labor unions are amended to acknowledge HUD and Section 3 obligations, (5) procedures are developed by public housing agencies to comply with the earned income disregard and resident-owned business provisions set forth at 24 CFR part 963, and (6) contractor selection procedures employ Section 3 compliance measures.

Section 135.13 of the proposed rule addresses the minimum numerical goals, generally, and provides that the goals apply to the aggregate number of employment and contracting opportunities generated by the expenditure of the Section 3 covered financial assistance. Specific minimum numerical goals are set forth in the subparts associated with the type of financial assistance provided (§ 135.35 and § 135.55). This section removes the current requirement that 3 percent of the total dollar amount of nonconstruction contracts shall be awarded to Section 3 businesses since there was no statutory reason to make a distinction between construction and nonconstruction contracts. As noted earlier in this preamble, HUD believes that requiring recipients to award 10 percent of the total dollar amount of all covered contracts to Section 3 businesses regardless of the type or dollar amount of the contract will result in more potential contracting opportunities for Section 3 businesses.

Section 135.15 of the proposed rule would require a recipient to verify that residents and businesses seeking employment and contracting opportunities generated by the expenditure of Section 3 covered financial assistance are in fact Section 3 residents and businesses as defined in § 135.5. This section does not dictate the

manner of verification of the eligibility of Section 3 residents and businesses, but instead allows the recipient to decide how verification should be undertaken. HUD is aware that verifying Section 3 eligibility for residents and businesses often requires recipients to review and maintain confidential and sensitive personal information. In order to address concerns that have emerged regarding the secure handling of confidential information, this section of the proposed rule provides that a recipient may allow residents and businesses to self-certify their eligibility, and to presume that residents or businesses that are located in, or provide economic opportunities to persons that reside in a neighborhood, census tract, or area designated by HUD are eligible to receive Section 3 priority consideration absent evidence to the contrary. Both of these practices may be used if the recipient conducts procedures to verify that a sample of self-certified or Section 3 presumed benefit residents and businesses meet one of the regulatory definitions. Descriptions of procedures for verifying a sample of self-certified or Section 3 presumed benefit residents and businesses will be provided in guidance materials after the publication of the final rule. This guidance will assist recipients with determining sample size, selecting self-certified beneficiaries for verification, identifying the type of evidence that may be requested, and steps that may be taken in the event that false certifications are discovered.

Section 135.17 of the proposed rule stipulates that a written agreement must be executed by the recipient and any of its subrecipients, contractors, or subcontractors before the recipient disburses any Section 3 covered financial assistance to them. The purpose of this section is to both emphasize the responsibilities that subrecipients, contractors, and subcontractors have in complying with Section 3 and to assist the recipient in ensuring the compliance of these entities.

Section 135.19 of the proposed rule contains provisions to be included in contracts with developers, contractors, and subcontractors and the Section 3 clause language that is currently found in § 135.38 of the existing regulations.

Section 135.21 of the proposed rule addresses certifications of compliance. This section would require a recipient to annually submit to HUD a certification documenting compliance with Section 3, including the compliance of any subrecipients, contractors, or subcontractors. This section provides that, where applicable,

certifications may be submitted as part of a submission of annual strategic plans, consolidated plans, or public housing plans, or as part of a submission of an application for a competitively awarded grant, cooperative agreement, or other submissions.

Sections 135.23 and 135.25 of the proposed rule contain reporting and recordkeeping requirements, now found in § 135.90 and § 135.92 of the existing regulations. Section 135.23 continues to require the submission of Section 3 annual reports, and clarifies that, going forward, the time frame applicable for Section 3 reports should coincide with the recipient's local program or fiscal year. If the recipient does not have a local program or fiscal year, the Section 3 report shall follow the federal fiscal year (*i.e.*, October 1 through September 30). Since the timely submission of Section 3 reports continues to be an issue, the proposed rule would provide procedures for HUD to sanction recipients for delinquent or missing reports. Any sanction imposed would be in accordance with the requirements of the Section 3 regulations or a notice of funding availability (NOFA) governing the program under which the Section 3 covered financial assistance is provided. Section 135.23 of the proposed rule also specifically requires a State or county recipient to submit to HUD an annual report regarding compliance with Section 3 in its own operations and in those of its subrecipients, contractors, and subcontractors. Section 135.25 of the proposed rule contains the requirement in existing § 135.92 that HUD shall have access to records, reports, and other documents recipients maintain to demonstrate compliance with Section 3, and it adds examples of such records.

Section 135.27 of the proposed rule describes sanctions for noncompliance with the requirements of Section 3, and provides that these sanctions may include requiring additional certifications or assurances of compliance; repayment of Section 3 covered financial assistance; ineligibility for future HUD financial assistance; withholding HUD financial assistance; or suspension, debarment, or limited denial of participation in HUD programs pursuant to 2 CFR part 2424, where appropriate.

Section 135.29 of the proposed rule clarifies that neither the Section 3 statute nor the Section 3 regulations supersede the employment and wage provisions of the Davis-Bacon Act or requirements of bona fide Federal or State apprentice or training programs.

Additional Provisions for Public Housing Financial Assistance—Subpart B

Subpart B addresses demonstration of compliance that would be unique to recipients of public housing financial assistance or PHAs.

Section 135.31 of the proposed rule provides that PHAs that receive public housing financial assistance, as defined in § 135.5, are subject to the provisions in subpart B in addition to those in subpart A. This section also provides that the requirements in subpart B apply to all new internal and external employment and training opportunities resulting from the expenditure of public housing financial assistance (*i.e.*, those within the PHA and with its subrecipients, contractors, or subcontractors). Further, this section clarifies that the requirements of Section 3 apply to the entire project or activity that is funded with public housing financial assistance regardless of whether the activity is fully- or partially-funded with Section 3 covered financial assistance.

Section 135.33 of the proposed rule would continue to maintain HUD's position that a monetary or unit threshold in public and Indian housing programs is not consistent with the Section 3 statute. Section 3 applies to public and Indian housing operating assistance, development assistance and modernization assistance, which covers virtually all PHA projects and activities. Additionally, the Section 3 statute is very specific about the residents and businesses to which PHAs and their contractors and subcontractors must give preference. These residents and businesses are tied to the housing development for which the assistance is expended, or another development managed by the PHA. HUD believes that the statute's expansive coverage of public and Indian housing projects and activities indicates that any attempt to diminish the coverage would be inconsistent with the statute. Notwithstanding, HUD will make efforts to implement measures to reduce administrative burden for PHAs whose expenditure of covered financial assistance did not trigger Section 3 obligations, but who still are required to submit annual reports, by only requiring the submission of an electronic certification.

Section 135.35 would maintain the minimum numerical hiring goals for public housing financial assistance. PHAs, as well as any subrecipients, contractors, or subcontractors, would be required to employ, to the greatest extent feasible, Section 3 residents as 30

percent of new hires, both within the agency and with its contractors. HUD chose to maintain this minimum numerical goal even though a review of recent national aggregated data indicated that recipients are exceeding the employment goal by 10 to 20 percentage points. HUD OIG's 2013 Section 3 Audit report advises that concerns exist regarding the reliability and accuracy of the data previously submitted into the Section 3 Summary Reporting System. In light of such information, HUD is not changing at this time the current minimum numerical goals based on the previously reported data. The reliability of subsequent data submitted will be addressed when HUD implements its new Section 3 Summary Reporting System in FY 2015.

The rule would establish that for a Section 3 resident to be considered a new hire by a contractor or subcontractor, the Section 3 resident must work, during the resident's employment with a contractor or subcontractor, a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project. For instance, if electricians employed on a particular Section 3 covered project work an average of 40 hours each week, Section 3 new hires in this category must work a minimum of 20 hours each week throughout the duration of time that the category of work is performed on the covered project to be counted towards the recipient's minimum numerical goal for employment.

Section 135.35 would also establish the minimum numerical contracting goals for public housing financial assistance. Under this section, PHAs, as well as any subrecipients, contractors, or subcontractors, would be required to award, to the greatest extent feasible, at least 10 percent of the total dollar amount of all subsequent contracting or subcontracting opportunities to Section 3 businesses. This proposed rule would remove the current 3 percent minimum numerical goal for contracts that do not involve construction or rehabilitation. Instead, this proposed rule seeks to ensure that 10 percent of the total dollar amount of all covered contracts (including contracts for professional services) will be awarded to Section 3 businesses. Since there is no statutory basis for making a distinction between construction and nonconstruction contracts, and the interpretation of the nonconstruction goal has been problematic for recipients, HUD believes that requiring recipients to award 10 percent of the total dollar

amount of all covered contracts to Section 3 businesses regardless of the type is easier to administer and will result in more opportunities for Section 3 residents and businesses. In establishing this minimum numerical goal, HUD reviewed aggregated data submitted by recipients, which indicated that only 13.3 percent of recipients are meeting both of the current minimum numerical goals for contracting. However, 17.4 percent of recipients would meet the proposed numerical goal for all covered contracts. HUD is not changing the minimum numerical contracting goal for the same reasons that HUD is not changing the minimum numerical hiring goal.

Section 135.37 of the proposed rule would revise the priority consideration given when hiring Section 3 residents and in awarding contracts to Section 3 businesses. The proposed rule provides that PHAs must give priority consideration to a Section 3 resident or business when equally qualified for the work under consideration. Priority consideration may be given to Section 3 residents or businesses when they are minimally qualified.

Additional Provisions for Housing and Community Development Financial Assistance—Subpart C

Section 135.51 of the proposed rule provides that recipients of housing and community development assistance, as defined in § 135.5, are subject to the provisions in subpart C in addition to those in subpart A. Section 135.51 of the proposed rule addresses the applicability of Section 3 to housing and community development financial assistance. This section provides that Section 3 only applies to economic opportunities that arise from the expenditure of housing and community development financial assistance involving the demolition, rehabilitation, or construction of housing, public buildings, facilities, infrastructure, or other public construction or rehabilitation-related projects and activities. While HUD always considered demolition projects to be a part of rehabilitation activities, this proposed rule makes the applicability of Section 3 to demolition explicit. This section also clarifies that professional service contracts are subject to the requirements of this part, provided that the work to be performed arises in connection with a Section 3 covered project (*i.e.*, housing rehabilitation, housing construction, or other public construction project).

Consistent with the Section 3 statute, § 135.51 exempts housing and community development financial

assistance that is used for acquisition, routine maintenance, operations, administrative costs, and project rental assistance contracts (PRAC) from compliance with Section 3 because these are not considered construction or rehabilitation activities. This section also exempts Indian tribes and tribally designated housing entities from complying with Section 3 requirements if the Indian tribe has adopted, and is complying with, tribal employment and contract preference laws (including regulations and tribal ordinances) in accordance with section 101(k) of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and 24 CFR 1000.42. This section also exempts Indian tribes and other tribal entities from Section 3 requirements if they are subject to Indian preference requirements under section 7(b) of the Indian Self-Determination and Education Assistance Act. HUD recognizes that both tribal preference and Indian preference requirements already often require Indian tribes, tribally designated housing entities, and other tribal entities, to apply local preferences in employment and contracting in projects receiving assistance under NAHASDA and other grant programs for the benefit of Indians, such as the Indian CDBG program. This exemption reduces administrative burden for tribal grantees that have expressed concerns to HUD about the difficulty of complying with Section 3 requirements while also complying with Indian and tribal preference requirements.

Section 135.53 of the proposed rule replaces the current threshold for recipients that administer housing and community development assistance. HUD has reassessed the policy behind the existing threshold and has decided to propose a new threshold requirement that is based on the total expenditures (rather than receipt or per-project). This change recognizes that it is the expenditure of covered financial assistance (not the receipt) that produces economic opportunities for Section 3 residents and businesses. Under this proposal, the threshold would be based on the aggregate expenditure of \$400,000 of housing and community development financial assistance on construction related activities. In the section of this preamble entitled "Summary of Major Provisions of this Regulatory Action," HUD described in detail the basis for selection of the \$400,000 threshold.

Section 135.55 of the proposed rule establishes the minimum numerical hiring goals that recipients of housing and community development financial

assistance must meet to demonstrate compliance, to the greatest extent feasible, with the Section 3 statute and Section 3 regulations. Similar to the numerical goals established for public housing financial assistance, this section provides that recipients of housing and community development financial assistance must, to the greatest extent feasible, have its contractors and subcontractors employ Section 3 residents as 30 percent of direct new hires. This section also provides, similar to § 135.35, that in order for a Section 3 resident to be considered a new hire by contractors and subcontractors, the Section 3 resident must work, during the resident's employment with a contractor or subcontractor, a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired, throughout the duration of time that the category of work is performed on the covered project. For instance, if brick masons employed on a particular Section 3 covered project work an average of 40 hours each week, Section 3 new hires in this category must work a minimum of 20 hours each week to be counted towards the recipient's minimum numerical goal for employment.

With respect to contracting opportunities, this section provides that recipients of housing and community development financial assistance, as well as their subrecipients, contractors, and subcontractors, must, to the greatest extent feasible, award at least 10 percent of the total dollar amount of all contracts to Section 3 businesses, similar to § 135.35. This proposed rule removes the requirement that 3 percent of the total dollar amount of nonconstruction contracts will be awarded to Section 3 businesses in an attempt to reduce administrative burden. Instead, this proposed rule seeks to ensure that 10 percent of the total dollar amount of all covered contracts (including contracts for professional services) will be awarded to Section 3 businesses. HUD makes this change in § 135.55 for the same reasons presented for the identical change in § 135.35.

Section 135.57 of the proposed rule establishes the orders of priority consideration for employment and contracting opportunities for housing and community development financial assistance and adds additional categories for priority consideration for businesses that promote job retention and training opportunities.

Additional Provisions for Recipients of HUD Competitive Grant Financial Assistance—Subpart D

Subpart D of this proposed rule, clarifies the scope of applicability of Section 3 to HUD NOFAs. This section would replace the existing regulatory section, § 135.9.

As provided in proposed new § 135.71, Section 3 applies to competitively awarded (1) public housing financial assistance, and (2) housing and community development financial assistance that is anticipated to generate significant economic opportunities.

Section 135.73 provides that each NOFA that is subject to the requirements of Section 3 shall describe the selection criteria and points to be awarded.

Section 135.75 requires recipients of competitive Section 3 covered financial assistance to sign assurances of compliance with Section 3, and provides that applicants that are awarded competitive funds will be monitored on their compliance with Section 3, and their progress in carrying out the strategies described in the narrative statements submitted with their application package. Section 135.77, prohibits any recipient with outstanding findings of noncompliance with Section 3 from receiving additional competitively awarded financial assistance.

Enforcement—Subpart E

Subpart E of this proposed rule contains the complaint and compliance review provisions currently found in subpart D of the existing part 135 regulations. This subpart also clarifies that voluntary compliance agreements that are drafted to address findings of noncompliance shall seek to protect the public interest, provide denied economic opportunities to Section 3 residents and businesses, and may include the provision of damages and other relief for those injured by the recipient's noncompliance.

III. 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. As discussed, the current threshold is based on the receipt of covered funds,

not its expenditure. 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.

Expenditure level	\$250K	\$300K	\$400K	\$500K	\$750	\$1M
Agencies Below	265	329	440	542	703	816
% of those below	22.3%	27.7%	37.0%	45.6%	59.1%	68.6%
Agencies Above	924	860	749	647	486	373
% of those above	77.7%	72.3%	63.0%	54.4%	40.9%	31.4%
% change # of agencies	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 excluded	Agencies excluded	% Covered
\$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).

14. 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.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded,

ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule revises the existing part 135 regulations that have not been revised or updated since 1994, with the intention to make them less burdensome, and more effective and, therefore, help to contribute to job creation for low-income persons. As noted earlier in this preamble, HUD has prepared an initial RIA that addresses the costs and benefits of the proposed rule. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800–877–8339.

Environmental Impact

This proposed rule is a policy document that sets out regulatory requirements and standards for complying with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the

private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule proposes to update HUD’s Section 3 regulations in 24 CFR part 135, for which the objective is to increase employment opportunities for low-income persons and businesses that are owned by or employ such persons, by requiring that they be considered for employment, including training positions, and contracting opportunities that are generated by the expenditure of certain HUD financial assistance. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 businesses.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that are recipients of Section 3 covered financial assistance and must comply with this proposed rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities. In fact, streamlined procedures in the proposed rule and HUD’s recent implementation of a national Section 3 Business Registry will reduce the current administrative burden for grantees by a net – 10,000 hours or \$320,000 annually.¹⁰

Notwithstanding HUD’s determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

¹⁰ Average total compensation of all workers, BLS, March 2014. See <http://www.bls.gov/news.release/eccec.t01.htm>.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This proposed rule does not have federalism implications

and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and

a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. HUD anticipates only marginal additional impact of this rule on document preparation time. Recipients are required already to provide HUD with reports documenting Section 3 activities under the existing interim regulations. The additional time to submit the new proposed information required by the rule is minimal. The burden of information collection in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN EXISTING REGULATION VERSUS THIS PROPOSED RULE

Section reference in proposed rule	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Existing regulation (hours)		Proposed rule (hours)	
				Total estimated annual burden	One-time burden not reoccurring annually (in hours)	Incremental burden	One-time burden—not reoccurring annually
Section 3 resident and business verification (§ 135.15)	2,000	1	80	160,000	0	¹¹ – 80,000	0
Maintain lists of eligible Section 3 residents and businesses (§ 135.11)	2,000	2	40	160,000	0	¹² – 80,000	0
Notify Section 3 residents and businesses about the availability of economic opportunities (§ 135.11)	2,000	2	20	80,000	0	¹³ – 20,000	0
Post signs or notices at job sites (§ 135.11)	2,000	10	1	20,000	0	0	0
Ensure that bid solicitations acknowledge Section 3 obligations (§ 135.11)	2,000	1	0.5	0	1,000	0	0
Monitor the payroll data of developers and contractors (§ 135.11)	2,000	1	40	N/A	N/A	80,000	0
Incorporate Section 3 factors into contractor selection procedures (§ 135.11)	2,000	1	40	N/A	N/A	0	80,000
Amend and renegotiate existing collective bargaining agreements, PLAs, etc., as appropriate (§ 135.11)	500	1	40	N/A	N/A	0	20,000
Coordinate with DOL, Youth Build, etc. (§ 135.11)	1,000	1	40	N/A	N/A	40,000	0
Draft written subrecipient agreements (§ 135.17)	1,110	1	24	N/A	N/A	0	26,640
Include the Section 3 Clause in covered contracts (§ 135.19)	2,000	1	0.5	1,000	0	0	0
Develop official Section 3 policies and procedures (§ 135.9)	5,000	1	40	0	200,000	0	100,000
Annual Certifications of compliance (§ 135.21)	5,000	1	0.5	2,500	0	0	0
Provide priority consideration to Section 3 residents and businesses (§ 135.37 and § 135.57)	1,000	2	10	20,000	0	0	0
NOFA certification of compliance (§ 135.71(d))	500	1	0.5	250	0	0	0
Reporting requirements (§ 135.23)	5,000	5	10	250,000	0	0	0
Recordkeeping requirements (§ 135.25)	5,000	1	40	200,000	0	50,000	0
Complaint investigations (§ 135.95 and § 135.97)	30	1	80	2,400	0	0	0
Right to review letter of findings (§ 135.99(c))	5	1	8	40	0	0	0
Total Burden				896,190	201,000	– 10,000	226,640

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the

¹¹ Due to the recent expansion of the national Section 3 Business Registry, HUD estimates a decrease in the original 80 hours that it estimated for this activity. As such, administrative burden for covered recipients is reduced.

¹² See footnote 1.

¹³ See footnote 11.

information collection requirements in the proposed rule regarding:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Whether the proposed collection of information enhances the quality,

utility, and clarity of the information to be collected; and

- (4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the

information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR-4893) and must be sent to:

HUD Desk Officer, Office of
Management and Budget, New
Executive Office Building,
Washington, DC 20503, Fax number:
202-395-6947

and

Colette Pollard, HUD Reports Liaison
Officer, Department of Housing and
Urban Development, 451 7th Street
SW., Room 2204, Washington, DC
20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects in 24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

■ Accordingly, for the reasons described in the preamble, and under the authority of 42 U.S.C. 3535(d), HUD proposes to revise 24 CFR part 135 to read as follows:

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

- Sec.
- 135.1 Purpose.
- 135.3 Delegation of authority.
- 135.5 Definitions.
- 135.7 Compliance to the greatest extent feasible.
- 135.9 Official Section 3 policies and procedures.
- 135.11 Recipient responsibilities.
- 135.13 General minimum numerical goals.
- 135.15 Verification of Section 3 resident and Section 3 business status.
- 135.17 Written agreements.
- 135.19 Contracts and Section 3 clause.
- 135.21 Certifications of compliance.
- 135.23 Reporting requirements.
- 135.25 Recordkeeping and access to records.
- 135.27 Sanctions for noncompliance.
- 135.29 Other Federal requirements.

Subpart B—Additional Provisions for Public Housing Financial Assistance

- 135.31 Applicability.
- 135.33 Public housing agency unit thresholds.
- 135.35 Minimum numerical goals.
- 135.37 Orders of priority consideration for employment and contracting opportunities.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

- 135.51 Applicability.
- 135.53 Funding thresholds that trigger Section 3 compliance.
- 135.55 Minimum numerical goals.
- 135.57 Orders of priority consideration for employment and contracting opportunities.

Subpart D—Additional Provisions for Recipients of Competitively Awarded Financial Assistance

- 135.71 Applicability.
- 135.73 Applicant selection criteria.
- 135.75 Section 3 compliance for NOFA grantees.
- 135.77 Resolution of outstanding Section 3 matters.

Subpart E—Enforcement

- 135.91 Cooperation in achieving compliance.
- 135.93 Conduct of investigations

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

§ 135.1 Purpose.

(a) *Section 3.* The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.

1701u) (Section 3) is to direct, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, training, employment, contracting, and other economic opportunities generated by the expenditure of certain HUD financial assistance to:

(1) Low- and very low-income residents of the neighborhood or neighborhoods where the Section 3 covered financial assistance is expended, particularly those that receive assistance from the Federal government for housing; and

(2) The businesses that are owned by, or substantially employ, low- or very low-income residents of the neighborhood or neighborhoods where the Section 3 covered financial assistance is expended.

(b) *Part 135.* The purpose of this subpart is to establish the standards and procedures by which all recipients of Section 3 covered financial assistance and their subrecipients, contractors, and subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient may meet the requirements of Section 3.

§ 135.3 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary of the Department of Housing and Urban Development, pursuant to Section 3, and described in this part, are delegated to HUD's Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary for Fair Housing and Equal Opportunity is further authorized to redelegate functions and responsibilities in this part to other employees of HUD. However, the authority to issue or waive regulations of this part may not be redelegated by the Assistant Secretary. Monitoring and enforcement may be carried out in coordination with the HUD program office that provided Section 3 covered financial assistance to recipients, and the imposition of sanctions shall be in accordance with the requirements of the regulation or NOFA governing the program under which the Section 3 covered financial assistance is provided, as set forth at § 135.27.

§ 135.5 Definitions.

For purposes of this part, the terms in this section have the meanings provided in this section. The terms *Department*, *HUD*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

Applicant means any entity which makes an application to HUD for Section 3 covered financial assistance,

and includes but is not limited to, any State, unit of local government, PHA, public housing commission, Indian tribe, tribally designated housing entity, or other public agency, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property owner, property manager, resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO).

Business means a business entity formed in accordance with State law, and licensed as appropriate under State, county or municipal law to engage in the type of business activity for which it was formed.

Awarding Agency means the recipient or subrecipient that awards Section 3 contracting opportunities.

Complainant means the party that files a complaint with the Assistant Secretary alleging that a recipient has failed or refused to comply with the regulations of this part.

Complaint means an allegation of noncompliance with the requirements of this part as provided in subpart E.

Construction, unless inconsistent with or otherwise defined in the regulation or NOFA governing the program under which the Section 3 financial assistance is provided, means the act or process of building houses, roads, public buildings, infrastructure, and other structures.

Contract. See the definition of "contracting opportunities" in this section.

Contracting opportunities subject to the requirements of Section 3 means contracts or subcontracts for work awarded in connection with Section 3 covered projects and activities. Contracting opportunities include, but are not limited to: Demolition, rehabilitation, housing construction, other public construction, architectural design, legal representation, or other services directly related to construction and rehabilitation activities. In addition, for public housing financial assistance, contracting opportunities include, but are not limited to, facilities maintenance, landscaping, painting, professional services, police and security, equipment servicing, janitorial services, and extermination. This term does not include material-only contracts; *i.e.*, contracts that are awarded for supplies without installation, demolition, rehabilitation, or other construction activities.

Contractor means any entity that enters into a contract or agreement to

perform work generated by the expenditure of Section 3 covered financial assistance for a recipient, subrecipient, or another contractor, or for work in connection with Section 3 covered projects or activities, including contracts for services, but excluding contracts for supplies or materials that do not involve installation, rehabilitation, or construction.

Department of Labor or *DOL* refers to the U.S. Department of Labor.

Department of Labor YouthBuild program is a nonresidential, community-based alternative education program that provides classroom instruction and occupational skills training to at-risk individuals ages 16 to 24. The classroom training leads to a high school diploma or a general education development or other state-recognized equivalency diploma. The occupational skills training component provides YouthBuild participants with industry-recognized certifications in construction or other occupations. The construction skills training component teaches skills through a program to build or rehabilitate housing for low-income or homeless individuals and families in their communities.

Economic Opportunities Generated by Section 3 Covered Financial Assistance Means

(1) Training, employment, or other opportunities generated by the expenditure of Section 3 covered financial assistance as such term is defined in this section. Examples of economic opportunities may include, but are not limited to: Jobs (including training positions or on-the-job training opportunities), skills development (*e.g.*, computer classes, secretarial courses, etc.), registered apprenticeships, and business development; or

(2) Other training opportunities; and contracting opportunities for building trades, professional services, and other activities directly associated with demolition, rehabilitation, or construction.

Housing and community development financial assistance subject to the requirements of Section 3 means Section 3 covered financial assistance, provided in the form of a grant, loan, cooperative agreement, or contract, expended for housing demolition, rehabilitation, or construction, or the construction or rehabilitation of public facilities, infrastructure, or buildings and provided, or otherwise made available, from such HUD financial assistance. HUD housing or community development programs subject to the requirements of Section 3 include, but are not limited to, the following

programs: The Community Development Block Grants (CDBG) program, authorized by title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); the HOME Investment Partnerships program, authorized by the HOME Investment Partnerships Act (42 U.S.C. 12701 note); the HUD homeless assistance programs authorized under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*); the Housing Opportunities for Persons With AIDS (HOPWA) program, authorized by the AIDS Housing Opportunity Act, subtitle D of title VII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 note); disaster recovery grants (DRG), as authorized by appropriations acts; the Supportive Housing for the Elderly program, authorized by Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); the Supportive Housing for Persons with Disabilities program, authorized by Section 811, subtitle B of title VIII of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 8013); the Project-Based Rental Assistance programs authorized by Section 811, subtitle B of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); the Healthy Homes and Lead Hazard Control programs, as authorized by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) and Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*); and any housing and community development programs that HUD designates as covered by Section 3 and announced by HUD as such through a **Federal Register** notice, notice of funding availability, or announcement posted on HUD's Section 3 Web site(s). Housing and community development financial assistance does not include financial assistance provided for mortgage insurance.

Indian tribe means a tribe that is a federally recognized tribe or a State recognized tribe as defined in 25 U.S.C. 4103(13).

Low-income person means a person as defined in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437(b)(2)), or a person whose median household income does not exceed 80 percent of the median household income within the metropolitan area or nonmetropolitan county where the Section 3 covered project or activity is located.

Metropolitan area means the primary metropolitan statistical area (PMSA), as established by the Office of Management and Budget (OMB).

Neighborhood, unless otherwise defined in the regulation or NOFA governing the program under which the Section 3 financial assistance is provided, means Zip codes or other geographical locations within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation;

New hires mean full- or part-time employees for permanent, temporary, or seasonal employment opportunities. This term refers to any employee who:

(1) Was not on the payroll of the recipient, subrecipient, contractor, or subcontractor administering Section 3 covered financial assistance funds on behalf of the recipient at the beginning of the award of Section 3 covered financial assistance; or

(2) Any person hired by an entity on a per-project basis as a result of a Section 3 covered project or activity.

NOFA means a notice of funding availability issued by HUD for discretionary grant funding that is awarded competitively to eligible applicants.

Nonmetropolitan county means rural counties or any other county outside of a metropolitan area.

Numerical goals means minimum numerical targets that recipients, subrecipients, contractors, or subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient reach, or exceed, in order to demonstrate compliance with this part. These goals are not construed as quotas, set-asides, or a cap on the provision of economic opportunities, and may be exceeded.

Other HUD programs subject to the requirements of Section 3 means HUD programs, other than HUD programs providing public housing financial assistance, that provide covered housing and community development financial assistance, as defined in this section.

Priority consideration means that recipients, subrecipients, contractors, or subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient must give, to the greatest extent feasible, training, employment, or contracting opportunities to *Section 3 residents* or *Section 3 businesses* as defined in this section in accordance with the appropriate orders of priority consideration related to the Section 3 covered financial assistance, as provided in § 135.37 and § 135.57. Priority consideration should not be construed to be a quota or set-aside

program, or an entitlement to economic opportunities such as a particular position or contract.

Professional services means non-building trade services that are performed in connection with construction and rehabilitation activities, including but not limited to: architecture, professional engineering, structural engineering, land surveying, mapping, project management, planning, design, accounting, and other related services, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

Project-based rental housing assistance means rental assistance contracts provided under section 8(b)(1) of the U.S. Housing Act of 1937 or section 8(b)(2) of U.S. Housing Act of 1937 as it existed immediately prior to October 1, 1983.

Public housing has the meaning that this term is given in 24 CFR 5.100 or 24 CFR 963.5.

Public housing financial assistance subject to the requirements of Section 3 means any HUD financial assistance, subject to minimum unit thresholds specified in § 135.33, that is provided through the following HUD assistance:

(1) Annual contributions for low income housing projects provided pursuant to Section 5 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c);

(2) Capital fund project assistance provided pursuant to Section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1473g);

(3) Operating subsidy provided pursuant to Section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1473g);

(4) Competitively awarded HUD public housing financial assistance for activities that will result in new employment, training, or contracting opportunities, under such programs as the Family-Supportive Service Coordinator (FSS), or Resident Opportunity Supportive Service (ROSS) grant funding;

(5) Emergency funds, for example, authorized for emergency capital repair of public housing or public housing facilities;

(6) Financial assistance made available under an appropriations act such as financial assistance provided for the Choice Neighborhoods program; and

(7) Such other financial assistance designated by HUD as public housing financial assistance covered by Section 3 as announced through a **Federal Register** notice, NOFA, or announcement on HUD's Section 3 Web site.

Public housing project has the meaning given this term in 3(b)(1) of the United States Housing Act of 1937.

Public housing resident has the meaning given this term in 24 CFR 963.5.

Recipient means:

(1) Any entity that receives Section 3 covered financial assistance directly from HUD, including but not limited to: Any State, unit of local government, public housing agency (PHA), public housing commission, Indian tribe, tribally designated housing entity, or other public agency, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property owner, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association. The term "recipient" also includes any subrecipients, successor, assignee, or transferee of such entity.

(2) "Recipient" does not include any ultimate beneficiary under a HUD program to which Section 3 applies (for example an individual or family receiving a housing rehabilitation grant financed with HOME assistance) and does not include contractors and subcontractors, but as provided in this part, contractors and subcontractors are subject to compliance with this part.

Rehabilitation, for the purposes of this regulation, means improvements or interventions taken to improve or restore the structural condition, architectural components, energy performance, or environmental quality of an existing building, dwelling, unit, or structure that are taken to improve its safety, aesthetics, or suitability for use. For project-based rental assistance contracts, including project-based Section 8, Section 202, and Section 811 properties, this definition shall apply when performed as part of a recapitalization event where Reserve for Replacement funds are utilized. Examples include replacement of roofing, gutters, electrical, plumbing, heating systems, flooring, windows, doors and concrete.

Routine maintenance, for the purposes of this regulation, means activities that do not materially add to the value of the building, appreciably prolong its useful life, or adapt it to new uses. Examples include: Painting, caulking, sealing, repairing minor components, including work required to prepare units for new tenants upon turnover, or other activities planned and performed at regular intervals normally established by manufacturers or associations. In the case of project-based

rental assistance contracts these planned activities include the work described in the required Project Capital Needs Assessment (PCNA).

Section 3 means Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

Section 3 business means a business that is located in the Section 3 local area as defined in this section and that is able to demonstrate one of the following:

- (1) Meets the definition of “resident-owned” business in 24 CFR 963.5;
- (2) The business is 51 percent or more owned by Section 3 residents;
- (3) The permanent, full-time employees of the business include persons, at least 30 percent of whom are Section 3 residents; or
- (4) The business demonstrates that at least 20 percent of its permanent full-time employees are Section 3 residents and the business either: sponsored a minimum of 10 percent of its current Section 3 employees to attend a DOL or DOL recognized State-Apprenticeship Agency approved, registered apprenticeship, or a pre-apprenticeship training program that meets the requirements in outlined DOL/ETA Training and Employment Notice 13–12; or that 10 percent of its employees are participants or graduates of a DOL YouthBuild program. For the purposes of determining Section 3 business eligibility only, Section 3 residents include persons who:

(i) Met the definition of Section 3 resident, provided in this section, at the time the resident was hired or became an owner, or met such definition within the 3 years before the business sought certification; or

(ii) Graduated from a DOL, State approved, or YouthBuild training program within the 3 years before the business sought certification; and

(iii) Eligibility as a Section 3 business only applies as long as the businesses’ employees continue to meet the definition of a Section 3 resident set forth in this part.

Section 3 clause means the contract provisions set forth in § 135.17.

Section 3 covered financial assistance means HUD loans, grants, or other financial assistance provided under:

- (1) Public housing financial assistance as defined in this section; and
- (2) Housing and community development financial assistance as defined in this section.

Section 3 covered project or activity means any project or activity that is funded by Section 3 covered financial assistance.

Section 3 local area is the:

(1) Primary metropolitan statistical area where the Section 3 covered project or activity takes place; or

(2) Nonmetropolitan county where the Section 3 covered project or activity takes place.

Section 3 resident means an individual residing in the Section 3 local area who can document that he/she is:

- (1) A public housing resident;
- (2) A participant in a DOL YouthBuild program;
- (3) A member of a family that receives federal housing assistance; or
- (4) An individual who meets the HUD income limits for determining the eligibility of low- and very low-income persons for HUD assisted housing programs within the metropolitan area or nonmetropolitan county.

Service Area, unless defined in the regulation or NOFA governing the program under which the Section 3 covered financial assistance is provided, means the area to be served by a Section 3 covered project or activity.

Subcontractor means any entity (other than a person who is an employee of the contractor) that has a contract with a contractor to undertake a portion of the contractor’s obligation to perform work generated by the expenditure of Section 3 covered financial assistance, or arising in connection with a Section 3 covered project or activity.

Subrecipient means

(1) An entity that receives Section 3 covered financial assistance from a recipient or other subrecipient of Section 3 covered financial assistance to carry out a Section 3 covered project or activity on the recipient’s or other subrecipient’s behalf. This term includes, but is not limited to: any unit of State, county or local government, public housing agency (PHA), public housing commission, Indian tribe, tribally designated housing entity, or other public agency, public or private nonprofit organization, private agency, institution, mortgagor, developer, limited dividend sponsor, builder, property owner, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association. Subrecipients also include any successor, assignee, or transferee of any such entity.

(2) “Subrecipient” does not include any ultimate beneficiary under a HUD program to which Section 3 applies (for example an individual or family receiving a housing voucher) and does not include contractors or subcontractors, but as provided in this

part, contractors and subcontractors are subject to compliance with this part.

Tribally designated housing entities have the meaning this term is given in 25 U.S.C. 4103(22).

Very low-income person means the definition for this term set forth in Section 3(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)), or persons whose household income does not exceed 50 percent of the median household income within the metropolitan area or nonmetropolitan county where the Section 3 covered project or activity is located.

§ 135.7 Compliance to the greatest extent feasible.

(a) *General*. In accordance with the findings of Congress, as stated in section 3 of the Housing and Urban Development Act of 1968, economic opportunities offer an effective means of empowering low- and very low-income persons residing in the metropolitan area where HUD financial assistance is expended. Recipients, as defined in § 135.5, are required, to the greatest extent feasible, to ensure that employment and training opportunities funded with Section 3 covered financial assistance be provided to low- and very low-income persons, and that contracts are awarded to businesses that are either owned by, or substantially employ such persons.

(b) *Demonstrating compliance to the greatest extent feasible*. Absent evidence to the contrary, recipients of housing and community development assistance that meets the funding threshold set at § 135.53 and PHAs shall demonstrate compliance with Section 3 and the requirements of this part by:

(1) Establishing policies and procedures to achieve compliance with Section 3, as provided in § 135.9;

(2) Fulfilling its responsibilities, as specified in § 135.11; and either

(3) Reaching or exceeding each minimum numerical goal for employment and contracting opportunities, as provided in § 135.13 and either § 135.35 or § 135.55; or

(4) If the minimum numerical goals for employment and contracting are not met, providing written justification explaining the extent of efforts taken to meet the minimum numerical goals and the impediments confronted in trying to meet the minimum numerical goals. Such justifications must include, at a minimum, a summary of: impediments encountered; actions taken to address the identified impediments; and an identification of steps that may be successful in overcoming impediments in the future. Justifications provided by recipients will be taken into

consideration by HUD when making compliance determinations.

(c) *Compliance monitoring and enforcement.* (1) When determining if efforts taken by recipients demonstrate compliance with Section 3, to the greatest extent feasible, HUD shall review:

(i) Policies and procedures, as specified in § 135.9 developed by the recipient to ascertain the extent to which they present measures for achieving compliance with Section 3; and

(ii) The extent to which the recipient fulfilled its responsibilities, as specified in § 135.11; and either:

(A) Whether the minimum goals at § 135.35 or § 135.55 were met; or

(B) Whether written justifications for not meeting the minimum goals explain the extent of efforts taken to achieve the goals of Section 3, identify the impediments encountered, the actions taken to address the identified impediments, and steps that may be successful in overcoming impediments in the future. Justifications provided by recipients will be taken into consideration by HUD when making compliance determinations.

(2) Recipients that fail to comply with the requirements of this part are subject to sanctions for noncompliance in accordance with the requirements of the regulation or NOFA governing the program under which the Section 3 covered financial assistance is provided, as set forth at § 135.27.

§ 135.9 Official Section 3 policies and procedures.

(a) *Official Section 3 policies and procedures.* (1) All recipients that plan to undertake Section 3 covered activities must develop and adopt official policies or procedures to implement the requirements of this part in accordance with the “to the greatest extent feasible” requirement as set forth at § 135.7. Official policies and procedures shall be updated as appropriate.

(2) Official policies and procedures must include, at a minimum, steps that the recipient will take to: inform subrecipients and contractors about Section 3 obligations; evaluate potential bidders for Section 3 compliance during contract selection; notify Section 3 residents and businesses about economic opportunities; implement verification and/or certification procedures for residents and businesses; provide priority consideration to qualified Section 3 residents and businesses; monitor subrecipients and contractors for compliance; establish consequences for noncompliance; and utilize local community resources to

meet its Section 3 requirements. The preceding list is not inclusive of all elements that recipients should include in official policies and procedures.

Updates to official policies and procedures shall discuss the relative success of the immediate past policies and procedures and how any changes are aimed to better promote compliance with Section 3.

(3) Section 3 official policies and procedures shall be incorporated into any strategic and annual plans required of recipients of HUD covered assistance by HUD program regulations.

(i) Recipients of Section 3 covered funding shall include a general description of their Section 3 official policies and procedures in required recipient plans, such as public housing plans required by HUD regulation in 24 CFR part 903, strategic and annual action plans required by HUD regulations in 24 CFR parts 91 and 570, or other similar plans that may be required under other covered HUD programs.

(ii) If a recipient is not required to submit official plans to HUD such as public housing plans required by regulations in 24 CFR part 903, strategic or annual action plans required by regulations in 24 CFR parts 91 or 570, or other similar plans, the recipients’ official section 3 policies and procedures shall be developed as an independent document at the time that Section 3 covered financial assistance is awarded and updated every 5 years thereafter.

(4) Official policies and procedures shall be available for review by HUD, Section 3 residents and businesses, and the general public upon request.

§ 135.11 Recipient responsibilities.

(a) *General.* Recipients have the responsibility for monitoring and ensuring compliance with this part in their own operations, and ensuring compliance in the operations of their subrecipients, contractors, or subcontractors. The use of subrecipients, contractors, or subcontractors does not relieve a recipient of its responsibility. Recipients are also responsible for determining the adequacy of performance under subrecipient agreements or procurement contracts, and for taking appropriate action when performance problems arise.

(b) *Specific responsibilities for all recipients.* Recipients shall comply with the following requirements:

(1) Develop and implement official Section 3 policies and procedures in accordance with § 135.9.

(2) Maintain lists of eligible Section 3 residents and businesses that have asked to receive priority consideration for training, employment, contracting, or other economic opportunities.

(3) Notify Section 3 residents and businesses that have asked to receive priority consideration about the availability of new employment, training, contracting, or other economic opportunities created as a result of the expenditure of Section 3 covered financial assistance.

(i) Recipients must ensure that all communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act.

(ii) Notifications shall be made in accordance with “HUD’s Final Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” published in the **Federal Register** on January 22, 2007 at 72 FR 2732 (or other subsequent updated guidance).

(4) Ensure that priority consideration is provided to Section 3 residents and businesses in accordance with the orders of priority consideration set forth at §§ 135.37 and 135.57.

(5) Monitor the payroll data of developers, contractors, and subcontractors throughout the project or activity, to ensure that new employment opportunities are made available consistent with the requirements of this part. This requirement only applies to projects or activities that are subject to wage rates determined under the Davis Bacon Act (40 U.S.C. 3141 *et seq.*).

(6) Ensure that all bid solicitations associated with Section 3 covered projects or activities acknowledge the applicability of Section 3 to the project or activity and communicate the selected contractor’s obligation to comply with the requirements of this part to prospective bidders. Some examples include: notifying prospective contractors about Section 3 applicability during pre-bid meetings or conferences; requiring bidders to certify that they have received a copy of the recipient’s Section 3 policies/procedures; etc.

(7) Ensure that subrecipients, contractors, or subcontractors enter into written agreements consistent with § 135.17, and include the Section 3 clause at § 135.19, as appropriate.

(8) Ensure that notices or signs acknowledging Section 3 obligations and advertising vacant employment,

training, contracting, or subcontracting opportunities are posted in places where they can be clearly seen by both current employees and prospective applicants for economic opportunities.

(i) At a minimum, such notices shall include the following: anticipated dates that work will begin and end; anticipated number and type of job vacancies available; anticipated number and type of registered apprenticeship or training opportunities offered; anticipated dollar amount and type of subcontracting opportunities; application and bidding procedures; required employment and subcontracting qualifications; and the name and contact information for the person(s) accepting applications.

(ii) Notifications shall be in accordance with “HUD’s Final Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” published in the **Federal Register** on January 22, 2007 at 72 FR 2732 (or other subsequent updated guidance).

(9) If applicable, ensure that new or existing subrecipient or contractor selection procedures, including those developed in accordance with 24 CFR part 85; assess the responsible bidder’s previous compliance and ability to:

(i) Retain Section 3 hires for employment opportunities;

(ii) Comply with Section 3 requirements; and

(iii) Provide training opportunities for Section 3 residents.

(10) If applicable, ensure that labor unions are notified about recipient’s and contractor’s obligations to comply with the requirements of this part. Collective bargaining agreements, project labor agreements or other agreements between labor unions and recipients, or subrecipients that are established, or revised, after [EFFECTIVE DATE OF FINAL RULE], shall ensure that projects generated from the expenditure of Section 3 covered financial assistance provide employment, registered apprenticeship, training, contracting, or other economic opportunities to Section 3 residents and businesses in a manner that is consistent with this part.

(11) Coordinate with local DOL Workforce Investment Boards, YouthBuild grantees, or other State or Federal training programs to ensure that Section 3 residents and businesses are notified about the availability of federal training opportunities.

(12) Document actions taken to comply with the requirements of this part; the results of actions taken; sanctions imposed upon subrecipients,

contractors, subcontractors, or subcontractors; impediments encountered; actions taken to address the identified impediments; and steps that may be successful in overcoming impediments in the future.

(c) *Responsibilities specific to PHAs.* In addition to the responsibilities set forth in paragraph (b) of this section, PHAs must comply with the following additional requirements:

(1) PHAs are required to monitor successful bidders for compliance with descriptions provided in qualified bid proposals.

(2) Develop appropriate procedures to comply with the earned income disregard requirements; and

(3) Develop procedures to set-aside eligible contracting opportunities for public housing resident-owned businesses that are consistent with 24 CFR part 963, as appropriate.

(d) *Responsibilities specific to recipients of housing and community development financial assistance.* In addition to the responsibilities set forth in paragraph (b) of this section, recipients of housing and community development financial assistance must comply with the following additional requirements:

(1) Where practicable, recipients are required to monitor successful bidders for compliance with descriptions provided in qualified bid proposals.

(2) Recipients must ensure that qualified local Section 3 businesses are included on lists of preferred or recommended contractors when such lists are provided to homeowners for rehabilitation loan or grant programs. The recipient or subrecipient may count any Section 3 businesses that are selected by homeowners towards their minimum numerical goals annually. The recipient is not required to count any non-Section 3 businesses that are selected by homeowners toward the total amount of contracts awarded to Section 3 businesses annually.

§ 135.13 General minimum numerical goals.

(a) *Calculation of goals.* The minimum numerical goals established in this part apply to the aggregate number of employment and contracting opportunities generated by Section 3 covered financial assistance during each annual reporting period as defined at § 135.23(b).

(b) *Minimum numerical goals.* (1) Recipients of public housing financial assistance shall, to the greatest extent feasible, reach the minimum numerical goals set forth at § 135.35.

(2) Recipients of housing and community development financial

assistance shall, to the greatest extent feasible, reach the minimum numerical goals set forth at § 135.55.

(3) Recipients of competitively awarded Section 3 covered financial assistance shall, to the greatest extent feasible, reach the minimum numerical goals set forth in the subpart associated with the type of financial assistance provided, §§ 135.35 and 135.55, respectively.

(c) *Inability or failure to meet goals.* Recipients that are unable or fail to meet minimum numerical goals must provide to HUD a written justification as to why the goals were not met, as provided in § 135.7(b)(4). Justifications provided by recipients will be taken into consideration by HUD when making compliance determinations.

§ 135.15 Verification of Section 3 resident and Section 3 business status.

(a) *General.* Recipients of Section 3 covered financial assistance are required to verify that residents and businesses seeking the employment and contracting opportunities offered by the recipient meet the definitions of Section 3 residents and Section 3 businesses at § 135.5 prior to providing priority consideration for employment, training, contracting, or other economic opportunities. Unless otherwise directed by HUD, recipients may use their own discretion for developing specific verification procedures for Section 3 residents and Section 3 businesses.

(b) *Section 3 residents.* (1) A recipient may allow persons to self-certify that they are a Section 3 resident as defined in § 135.5 provided that the recipient conducts procedures to verify a sample of self-certified Section 3 residents.

(2) A recipient may presume a person that can provide evidence that they reside within a neighborhood, zip code, census tract, etc. that has officially been identified by HUD is eligible to receive priority consideration as a Section 3 resident absent evidence to the contrary.

(3) A recipient may require information verifying that a person meets the definition of a Section 3 resident. Examples of evidence of eligibility include but are not limited to: evidence of receipt of Federal housing assistance; evidence of receipt of other Federal subsidies or Federal assistance programs; Federal tax returns; proof of residence in a neighborhood, zip code, census tract, or other area that has officially been identified by HUD.

(4) A recipient shall impose sanctions upon individuals who make false claims or representations regarding their income eligibility, residence, or other factors in order to be determined a

Section 3 resident. In addition, the recipient will refer such individuals to the HUD Office of Inspector General.

(c) *Section 3 businesses.* (1) A recipient may allow a business to self-certify that they are a Section 3 business as defined in § 135.5, provided that the recipient conducts procedures to verify a sample of self-certified Section 3 businesses.

(2) A recipient may presume that a business meets the eligibility criteria if the business provides evidence that it is located within a neighborhood, zip code, or census tract that has been identified by HUD; or if the business is able to provide evidence that it substantially employs residents from neighborhoods, zip codes, or census tracts identified by HUD, absent evidence to the contrary.

(3) A recipient may require information verifying that a business meets the definition of a Section 3 business. Examples of evidence of eligibility for priority consideration as a Section 3 business may include: Federal tax returns for workers, owners, or businesses; payroll data; employee-self-certification statements; articles of business ownership; evidence that owners or employees received housing or other Federal subsidies within 3 years from the date that the business sought designation as a Section 3 business.

(4) A recipient shall impose appropriate sanctions upon businesses that make false claims or representations regarding their eligibility, business location, eligible employees, or other factors in order to be determined a Section 3 business. In addition, the recipient will refer such individuals to the HUD Office of Inspector General.

§ 135.17 Written agreements.

(a) *General.* Before disbursing any Section 3 covered financial assistance to subrecipients that may administer all or a part of Section 3 covered financial assistance on- behalf of a recipient, the recipient must ensure that the parties enter into a written agreement to facilitate compliance with the requirements of this part.

(b) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the subrecipient is asked to assume on behalf of the recipient, the type of Section 3 covered project or activity that is to be undertaken, or the dollar amount of the contract. Recipients are responsible for enforcing the provisions of written agreements, including imposing sanctions upon subrecipients for noncompliance. This section

specifies the minimum provisions that must be included in written agreements and contracts.

(c) [Reserved].

(d) [Reserved].

(e) *Subrecipient agreements.*

Agreements between the recipient and the subrecipient must:

(1) Describe the subrecipient's plan for implementing Section 3 and meeting the numerical hiring and contracting goals; ensuring eligibility of Section 3 residents and businesses; and monitoring contractor compliance. This description must provide enough detail to provide a sound basis for the recipient to monitor performance under the agreement;

(2) Specify the duties set forth in this part that the subrecipient will undertake;

(3) State that the subrecipient will incorporate the Section 3 clause, as provided in § 135.19, into all contracts or subcontracts, memoranda of understanding, cooperative agreements, or similar legally binding arrangements, ensure that contractors and subcontractors certify their compliance at the time of contract award, and monitor parties for compliance, as appropriate;

(4) Specify other responsibilities as needed to ensure that the subrecipient or contractor complies with all requirements at §§ 135.23 and 135.25;

(5) Specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the recipient in meeting its recordkeeping and reporting requirements for Section 3; and

(6) Provide for a means of enforcement and describe the sanctions for failure to comply with this part.

§ 135.19 Contracts and Section 3 clause.

(a) *General.* Before disbursing any Section 3 covered financial assistance to contractors or subcontractors that may administer all or a part of Section 3 covered financial assistance on- behalf of a recipient, the recipient must ensure that the parties enter into a contract to facilitate compliance with the requirements of this part.

(b) *Provisions in contracts.* The contents of the contract may vary depending upon the dollar amount of the contract. Recipients are responsible for enforcing the provisions of contracts, including imposing sanctions upon contractors or subcontractors for noncompliance. This section specifies the minimum provisions that must be included in contracts.

(c) *Contracts of \$200,000 or above.* Contracts of \$200,000 or more shall

include the Section 3 clause at § 135.19 in its entirety.

(d) *Contracts less than \$200,000.* Contracts of less than \$200,000 shall include provisions A, B, C, F, H, and M of the Section 3 clause at § 135.19.

(e) Where required, the following Section 3 clause shall be included in contracts:

Section 3 Clause

A. The work to be performed under this contract, subcontract, memorandum of understanding, cooperative agreement or similar legally binding agreement, is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (Section 3). The purpose of Section 3 is to ensure, to the greatest extent feasible, that training, employment, contracting, and other economic opportunities generated by Section 3 covered financial assistance shall be directed to low- and very low-income residents of the neighborhood where the financial assistance is spent, particularly to those who are recipients of government assistance for housing, and to businesses that are either owned by low- or very low-income residents of the neighborhood where the financial assistance is spent, or substantially employ these persons.

B. The parties to this contract, subcontract, memorandum of understanding, cooperative agreement, or similar legally binding agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract or subcontract memorandum of understanding, cooperative agreement or similar legally binding agreement the parties certify that they are under no contractual or other impediment that would prevent them from complying with the requirements of 24 CFR part 135.

C. The contractor agrees to identify current employees on its payroll when the contract or subcontract was awarded who will be working on the Section 3 covered project or activity and certify that any vacant employment opportunities, including training positions, that are filled:

1. After the contractor is selected; and
2. With persons other than those that meet the definition of a Section 3 resident, were not filled to circumvent the contractor's Section 3 obligations.

D. The contractor agrees to maintain records documenting Section 3 residents that were hired to work on previous Section 3 covered projects or activities that were retained by the contractor for subsequent Section 3 covered projects or activities.

E. The contractor agrees to post signs advertising new employment, training, or subcontracting opportunities that will be available as a result of the Section 3 covered projects and activities in conspicuous places at the work site where potential applicants can review them.

F. The contractor agrees to hire, to the greatest extent feasible, Section 3 residents as 30 percent of new hires, or provide written justification to the recipient that is consistent with § 135.7(b)(4), describing why it was unable to meet minimum numerical hiring

goals, despite its efforts to comply with the provisions of this clause.

G. The contractor agrees that in order for a Section 3 resident to be counted as a new hire, the resident must work a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project.

H. The contractor agrees to award, to the greatest extent feasible, 10 percent of the total dollar amount of subsequent subcontracts awarded in connection with the Section 3 covered project or activity to Section 3 businesses, or provide written justification that is consistent with § 135.7(b)(4) describing why it was unable to meet that goal, despite their efforts to comply with the provisions of this clause.

I. The contractor agrees to notify Section 3 residents and businesses about the availability of new employment, training, or contracting opportunities created as a result of the receipt of Section 3 covered financial assistance, as stipulated by the awarding agency.

J. The contractor agrees to verify the eligibility of prospective Section 3 residents and businesses for employment, training, or subcontracting opportunities, in accordance with the recipient's policies and procedures.

K. The contractor agrees to provide priority consideration to eligible residents and businesses in accordance with 24 CFR 135.37 or 24 CFR 135.57, as applicable.

L. The contractor agrees to notify potential bidders on subcontracts that are associated with Section 3 covered projects and activities about the requirements of Section 3, and include this Section 3 clause in its entirety into every subcontract awarded.

M. The contractor agrees to impose sanctions upon any subcontractor that has violated the requirements of this clause in accordance with the awarding agency's Section 3 policies and procedures.

N. The contractor agrees to comply with all monitoring, reporting, recordkeeping, and other procedures specified by the awarding agency.

O. If applicable, the contractor agrees to notify each labor organization or representative of workers with which the recipient, subrecipient, or contractor has a collective bargaining or similar labor agreement or other understanding, if any, about its obligation to comply with the requirements of Section 3 and ensure that new collective bargaining or similar labor agreements provide employment, registered apprenticeship, training, subcontracting, or other economic opportunities to Section 3 residents and businesses, and to post notices in conspicuous places at the work site advising the labor union, organization, or workers' representative of the contractor's commitments under this part.

P. Failure to comply with this clause shall result in the imposition of sanctions. Appropriate sanctions for noncompliance may include: Requiring additional certifications or assurances of compliance; termination or cancellation of the contract, subcontract, memorandum of understanding, cooperative agreement, or similar legally

binding arrangement for default; refraining from entering into subsequent contracts, subcontracts, memoranda of understanding, cooperative agreements, or similar legally binding arrangement; repayment of funds, and withholding a portion of contract awards, subcontracts, memoranda of understanding, cooperative agreements, or similar legally binding arrangements.

§ 135.21 Certifications of compliance.

(a) *Annual certifications.*—(1) *Recipient certifications.* (i) A recipient shall submit annual certifications to HUD documenting its acknowledgement of obligations to comply with the requirements of this part in its own operations and those of its subrecipients, contractors, subcontractors, and others that may be administering Section 3 covered financial assistance on behalf of the recipient. Certifications shall be submitted in accordance with the requirements of the regulation or NOFA governing the program under which the Section 3 covered financial assistance is provided.

(ii) HUD may require recipients to provide additional documentation or assurances as evidence of compliance with the requirements of this part prior to the acceptance of annual certifications. HUD may refuse to accept any certification when there are reasonable grounds to believe that the recipient is not in compliance with the requirements of this part.

(2) *Subrecipients, contractors and subcontractors.* (i) Subrecipients, contractors, and subcontractors shall certify their compliance by entering into a written agreement with the recipient, as specified at § 135.17 or contract that contains the Section 3 clause provided at § 135.19.

(ii) [Reserved]

(b) [Reserved]

§ 135.23 Reporting requirements.

(a) *Recipient reporting requirements.* (1) Each recipient shall submit to HUD an annual report documenting the recipient's compliance with Section 3 in such form and with such information as HUD may request. The purpose of the report is to summarize efforts undertaken by the recipient and accomplishments (or lack thereof) towards meeting the employment and contracting goals set forth at § 135.11.

(i) The report will include an accounting of all new hires, as defined at § 135.5, and Section 3 new hires employed as a result of the expenditure of Section 3 covered financial assistance in a manner that allows HUD to determine if the minimum numerical goal for employment was met during the reporting period.

(ii) The report will also account for the total dollar amount of contracts awarded as a result of the expenditure of Section 3 covered financial assistance during the reporting period, and the dollar amount of those contracts that were awarded to Section 3 businesses in a manner that allows HUD to determine if the minimum numerical goal for contracting was met.

(iii) The report must include a written justification consistent with § 135.7(b)(4) if a recipient failed to meet the minimum numerical goals during the reporting period.

(2) Only recipients are required to submit Section 3 annual reports to HUD. HUD will not accept reports from subrecipients, contractors, or subcontractors administering Section 3 covered financial assistance on behalf of a recipient.

(b) *Reporting periods.* Unless otherwise indicated, a recipient's reporting period shall coincide with their local program of fiscal year.

(c) *Report due dates.* (1) Unless otherwise indicated, all Section 3 annual reports shall be submitted to HUD's Office of Fair Housing and Equal Opportunity. Where the program providing the Section 3 covered assistance requires submission of an annual performance report, the Section 3 report will be submitted with that annual performance report. If the program providing the Section 3 covered assistance does not require an annual performance report, the Section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier.

(2) HUD may grant an extension of the due date for a Section 3 annual report for good reason based on a recipient's demonstration of the inability, through no fault of its own, to meet the reporting due date.

(d) *Electronic submission.* Unless otherwise specified, Section 3 annual reports shall be submitted electronically through online reporting systems as specified by HUD.

(e) *Data collection.* Data presented in a Section 3 annual report shall be used to make determinations regarding the recipient's efforts to ensure compliance with the requirements of Section 3 in its own operations, and those of its subrecipients, contractors, or subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient. Data from Section 3 annual reports may be used to produce reports for the Secretary, for the Executive Branch, Congress, housing professionals, the general public, and

others that may benefit from the information provided in such reports.

(f) *Sanctions for delinquent reports.* (1) Recipients that fail to submit Section 3 annual reports by the reporting due date may be sanctioned in accordance with the requirements of the regulation or NOFA governing the program under which the Section 3 covered financial assistance is provided.

(2) Continuing failure to submit Section 3 annual reports may result in HUD denying or withholding HUD financial assistance.

(g) *Subrecipient reporting.* A state or county recipient that distributes Section 3 covered financial assistance to subrecipients shall compile data regarding compliance with the requirements of this regulation in its own operations, and in the operations of its subrecipients, contractors, and subcontractors into one annual report to HUD in a manner that allows HUD to make an accurate determination regarding the State or county recipient's efforts to ensure compliance during the reporting period. Subrecipients are not required to submit annual reports directly to HUD.

(h) *Availability of Section 3 reports.* All Section 3 annual reports submitted to HUD in accordance with the requirements of this part will be made available to the public upon request.

§ 135.25 Recordkeeping and access to records.

HUD shall have access to all records, reports, documents, contracts, or other items that are maintained by a recipient to demonstrate compliance with the requirements of this part, in the recipient's own operations or those of its subrecipients, contractors, or subcontractors. These records include, but are not limited to: Section 3 policies, procedures, and other guidance materials; lists of Section 3 residents and businesses; evidence of efforts to notify Section 3 residents and businesses about the availability of employment training, contracting, or other economic opportunities; payroll data or other similar documentation verifying new hires; copies of Section 3 contracts, clauses, and assurances; evidence of efforts taken by contractors or subcontractors to comply with the terms of the Section 3 clause and efforts taken to reach the minimum numerical goals; and other data, evidence or materials deemed by HUD as demonstrating compliance with the requirements of this part.

§ 135.27 Sanctions for noncompliance.

Sanctions imposed on recipients that fail to comply with any of the

requirements of this part shall be in accordance with the requirements and procedures concerning the imposition of sanctions or resolutions set forth in the regulations governing the program under which the Section 3 financial assistance is provided. Appropriate sanctions for noncompliance may, depending on the regulation governing the program under which the Section 3 financial assistance was provided, include: requiring additional certifications or assurances of compliance; repayment of HUD financial assistance; ineligibility for HUD financial assistance; withholding HUD financial assistance; or suspension, debarment, or limited denial of participation in HUD programs pursuant to 2 CFR part 2424 where appropriate.

§ 135.29 Other Federal requirements.

Compliance with Section 3 and the regulations of this part does not supersede other Federal requirements that may be applicable to the execution of HUD programs.

(a) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under the Davis-Bacon Act and with implementing DOL regulations, including those at 29 CFR parts 1, 3 and 5. Additionally, maintenance activities on public housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, for maintenance laborers and mechanics engaged in this work.

(b) *Use of apprentices.* Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to a bona fide apprenticeship program registered with the DOL Office of Apprenticeship, or a state apprenticeship agency recognized by that Office, or pursuant to a trainee program approved by the DOL Employment and Training Administration, under the conditions specified in DOL regulations at 29 CFR 5.5(a)(4). Apprentices and trainees may be utilized only to the extent permitted under either DOL regulations or, for work subject to HUD-determined or adopted prevailing wage rates consistent with HUD policies and guidelines. The allowable use of apprentices and trainees includes adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in the approved program.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 135.31 Applicability.

(a) *General.* The requirements of Section 3 apply to training, employment, contracting and other economic opportunities arising from the expenditure of *public housing financial assistance*, as defined in § 135.5. This subpart communicates provisions to be implemented by PHAs in addition to those set forth in subpart A.

(b) *Scope of applicability.* (1) The requirements of this subpart apply to all new employment and training opportunities that are generated as a result of the expenditure of public housing financial assistance.

(2) The requirements of this subpart apply to all contracting opportunities (including contracts for professional services) that are funded with Section 3 public housing financial assistance, regardless of whether the Section 3 project is fully- or partially-funded with Section 3 covered financial assistance. Accordingly, if any amount of Section 3 covered financial assistance is invested into Section 3 covered projects or activities, the requirements of this subpart apply to the entire project.

§ 135.33 Public housing agency thresholds.

There are no thresholds for Section 3 public housing financial assistance. The requirements of this subpart apply to Section 3 public housing assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this subpart apply to all subrecipients, contractors, or subcontractors performing work in connection with projects and activities funded by public housing Section 3 covered financial assistance, regardless of the dollar amount of the contract or subcontract.

§ 135.35 Minimum numerical goals.

(a) *Employment opportunities.* (1) PHAs must employ, to the greatest extent feasible, Section 3 residents as 30 percent of direct new hires within the public housing agency (PHA). Employment opportunities are not limited to those related to construction and rehabilitation and may include, but are not limited, to the following employment opportunities: management, administrative, accounting, food services, case management, information technology, facilities maintenance, janitorial, daycare, construction, etc.

(2) PHAs must direct their subrecipients, contractors, subcontractors, and others that may be

administering Section 3 covered financial assistance on the PHA's behalf to employ, to the greatest extent feasible, Section 3 residents as 30 percent of its direct new hires.

(3) For a Section 3 resident to be considered a new hire by a contractor or subcontractor, the Section 3 resident must work, during its employment with the contractor or subcontractor, a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project.

(b) *Contracting opportunities.* (1) PHAs must award, to the greatest extent feasible, to Section 3 businesses at least 10 percent of the total dollar amount of all contracting opportunities generated from the expenditure of Section 3 covered financial assistance.

(2) PHAs must direct their subrecipients, contractors, subcontractors, and others that may be administering Section 3 covered financial assistance on the PHA's behalf to award, to the greatest extent feasible, to Section 3 businesses at least 10 percent of the total dollar amount of all subsequent contracting or subcontracting opportunities.

§ 135.37 Orders of priority consideration for employment and contracting opportunities.

(a) *General.* (1) Priority consideration should not be construed to be a quota or set-aside program, or an entitlement to economic opportunities such as a particular position or contract.

(2) Section 3 residents must possess the same job qualifications, skills, eligibility criteria, and capacity as other applicants for employment and training opportunities being sought.

(3) Section 3 businesses must be selected in accordance with the procurement standards of 24 CFR 85.36, including price, ability and willingness to comply with this part, and other factors, to be considered lowest responsible bidders on contracting opportunities being sought.

(4) A PHA may give priority consideration to a Section 3 resident or business if such resident or business is qualified for the respective employment or contracting opportunity.

(5) A PHA must give priority consideration to a Section 3 resident or business when that Section 3 resident or business is equally qualified with other individuals or businesses to which the PHA would offer employment or contracting opportunities.

(b) *Order of priority consideration for Section 3 residents in employment and*

training opportunities. A PHA, its subrecipients, contractors, and subcontractors shall direct their efforts to provide employment and training opportunities generated from the expenditure of Section 3 covered financial assistance to Section 3 residents in the following order of priority consideration:

(1) Residents of the public housing project or projects where the Section 3 covered financial assistance is expended.

(2) Residents of other public housing projects managed by the PHA that is spending Section 3 covered financial assistance.

(3) Section 3 residents participating in DOL YouthBuild programs.

(4) Other Section 3 residents in the Section 3 local area, including individuals and families receiving Section 8 housing choice vouchers.

(c) *Order of priority consideration for Section 3 businesses in contracting opportunities.* A PHA, its subrecipients, contractors, and others shall direct their efforts to award contracting and subcontracting opportunities to Section 3 businesses in the following order of priority consideration:

(1) Section 3 businesses that are 51 percent or more owned by residents of the public housing project(s) where the Section 3 covered financial assistance is expended; or whose full-time, permanent workforce is comprised of 30 percent or more of residents of the public housing project(s) where the Section 3 covered financial assistance is expended.

(2) Section 3 businesses that are 51 percent or more owned by residents of any public housing projects administered by the PHA; or whose full-time, permanent, workforce is comprised of 30 percent or more of residents of any public housing projects managed by the PHA.

(3) Grantees selected to carry out DOL YouthBuild programs.

(4) Any other Section 3 business in the Section 3 local area.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 135.51 Applicability.

(a) *General.* This subpart communicates provisions that must be implemented by recipients of Section 3 housing and community development financial assistance in addition to those set forth in subpart A. Section 3 applies to training, employment, contracting (including contracts for professional services), and other economic opportunities arising in connection with

the expenditure of housing and community development financial assistance that is used for projects involving:

(1) Housing rehabilitation (including demolition);

(2) Housing construction; or

(3) Other public construction (including the demolition, rehabilitation or construction of other public buildings, facilities, or infrastructure).

(b) *Exemptions.* (1) The following is a list of some activities and projects that are exempt from the requirements of this subpart. This is not intended to be an all-inclusive list of activities that may be exempt from the requirements of this subpart.

(2) Covered housing and community financial assistance used for acquisition, routine maintenance, operations, administrative costs, and project rental assistance contracts (PRAC) is exempt from the requirements of this subpart.

(3) Indian tribes and tribally designated housing entities shall comply with the responsibilities set forth in subpart A and in this subpart. However, Indian tribes and tribally designated housing entities that adopt, and are complying with, tribal employment and contract preference laws (including regulations and tribal ordinances) in accordance with Section 101(k) of Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111(k)) shall also be deemed to be in compliance with this subpart. Indian tribes, tribally designated housing entities, and other tribal entities that are subject to the Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) shall also be deemed to be in compliance with this subpart. The requirements of this subpart apply to Indian tribes that have not adopted tribal preference laws for employment and contracting in accordance with Section 101(k) of NAHASDA, and Indian tribes, tribally designated housing entities, and tribal entities that are not subject to Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act, in the same manner as other recipients of housing and community development financial assistance set forth in subpart C of this part.

§ 135.53 Funding thresholds that trigger Section 3 compliance.

(a) *Funding thresholds for recipients and subrecipients.* (1) The requirements of this subpart apply to recipients of housing and community development

financial assistance that plan to obligate or commit an aggregate amount of \$400,000 or more in Section 3 covered financial assistance on projects involving demolition, housing rehabilitation, housing construction, or other public construction during an annual reporting period.

(2) The \$400,000 funding threshold is comprised of the combined expenditure of all sources of housing and community development financial assistance set forth in § 135.5.

(b) *Applicability of Section 3 requirements to individual projects.* (1) Where the thresholds set forth in paragraph (a) of this section are met, the requirements of this subpart apply to all Section 3 projects and activities that are funded with housing and community development financial assistance, regardless of the specific dollar amount invested into the Section 3 covered project or activity.

(2) The requirements of this subpart apply to the entire project that is funded with Section 3 covered financial assistance, regardless of whether the Section 3 project is fully- or partially-funded with housing and community development financial assistance. Accordingly, if any amount of Section 3 covered financial assistance is invested into a project involving housing demolition, rehabilitation or construction, or the rehabilitation or construction of public buildings, facilities, or infrastructure, the requirements of this subpart apply to the entire project, both HUD and non-HUD funded portions.

§ 135.55 Minimum numerical goals.

(a) *Employment opportunities.* (1) Recipients of housing and community development financial assistance must direct its contractors and subcontractors employ, to the greatest extent feasible, Section 3 residents as 30 percent of direct new hires. For a Section 3 resident to be considered a new hire, the Section 3 resident must work, during the resident's employment with the contractor or subcontractor, a minimum of 50 percent of the average staff hours worked for the category of work for which they were hired throughout the duration of time that the category of work is performed on the covered project.

(2) Recipients of housing and community development financial assistance must ensure, to the greatest extent feasible, that 30 percent of any new hires within the agency that will primarily work on HUD-funded projects or activities involving demolition; housing rehabilitation; housing construction; demolition, rehabilitation,

or construction of other public buildings, facilities, or infrastructure; or construction and rehabilitation-related (professional service) projects and activities are Section 3 residents. For example, these positions may include electricians, plumbers, construction managers, general laborers, consultants, accountants, and architects.

(c) *Contracting opportunities.* (1) Recipients of housing and community development financial assistance must award, to the greatest extent feasible, at least 10 percent of the total dollar amount of all contracts to Section 3 businesses.

(2) Recipients of housing and community development financial assistance must, to the greatest extent feasible, have its subrecipients, contractors, and subcontractors that receive contracts for Section 3 covered projects and activities award at least 10 percent of the total dollar amount of all subsequent contracting and subcontracting opportunities to Section 3 businesses.

§ 135.57 Orders of priority consideration for employment and contracting opportunities.

(a) *General.* (1) Recipients of housing and community development financial assistance and their subrecipients, and contractors shall provide priority consideration to Section 3 residents and Section 3 businesses for new training, employment, and contracting opportunities generated as a result of the expenditure of Section 3 covered financial assistance.

(2) Priority consideration should not be construed to be a quota or set-aside program, or as an entitlement to economic opportunities such as a particular job or contract.

(3) Section 3 residents must possess the same job qualifications, skills, eligibility criteria, and capacity as other applicants for employment and training opportunities being sought.

(4) Section 3 businesses must be selected in accordance with the procurement standards of 24 CFR 85.36 or 24 CFR 84.40, as appropriate, including price, ability and willingness to comply with this part, and other factors, to be considered lowest responsible bidders on contracting opportunities being sought.

(5) Recipients of housing and community development financial assistance and their subrecipients, and contractors may give priority consideration to a Section 3 resident or business if such resident or business is qualified for the respective employment or contracting opportunities

(6) Recipients of housing and community development and their subrecipients, and contractors must give priority consideration to a Section 3 resident or business when that Section 3 resident or business is equally qualified with other individuals or businesses that would be offered employment or contracting opportunities.

(b) *Orders of priority consideration for employment and training opportunities.*

(1) Recipients of housing and community development financial assistance that meet the funding thresholds set forth at § 135.53 shall direct their efforts to provide training and employment opportunities generated from the expenditure of Section 3 housing and community development financial assistance, to Section 3 residents in the following order of priority consideration:

(i) Section 3 residents residing in the neighborhood or service area where the housing and community development financial assistance is spent;

(ii) Section 3 residents participating in DOL YouthBuild programs;

(iii) Section 3 residents residing in a neighborhood or service area within the Section 3 local area that has been officially identified by HUD;

(iv) Other Section 3 residents located in the Section 3 local area.

(2) Recipients of housing and community development financial assistance may, at their own discretion, provide priority consideration specifically to residents of public housing or recipients of other Federal assistance for housing, including individuals or families receiving Section 8 housing choice vouchers within the neighborhood where work on the Section 3 covered project or activity is located.

(c) *Orders of priority consideration for Section 3 businesses in contracting opportunities.* (1) Recipients of housing and community development financial assistance and their subrecipients, and contractors shall direct their efforts to provide contracting or subcontracting opportunities generated from the expenditure of housing and community development financial assistance to Section 3 businesses in the following order of priority consideration:

(i) Section 3 businesses that can provide evidence, to the satisfaction of the awarding agency, that a minimum of 75 percent of previously hired Section 3 residents residing in the service area of the project or neighborhood will be retained for the project.

(ii) Section 3 businesses that can provide evidence to the satisfaction of the awarding agency that a minimum of

50 percent of on-the-job training or registered apprenticeship opportunities will be provided to Section 3 residents in the neighborhood or area to be served by the Section 3 project or activity.

(iii) Section 3 businesses that are located in the neighborhood or service area where the Section 3 covered project or activity is located, and a minimum of 30 percent of its permanent full-time workforce is comprised of Section 3 residents residing in the neighborhood or service area where the Section 3 covered project or activity is located.

(iv) Grantees selected to carry DOL YouthBuild programs.

(5) All other businesses that are located in the Section 3 local area that meet the definition of Section 3 business in § 135.5.

Subpart D—Additional Provisions for Recipients of Competitively Awarded Section 3 Financial Assistance

§ 135.71 Applicability.

(a) *General.*—(1) *Competitively awarded assistance.* The requirements of this subpart apply to Section 3 covered financial assistance competitively awarded by HUD.

(2) *HUD Notices of Funding Availability (NOFAs).* (i) All HUD NOFAs announcing the availability of Section 3 covered financial assistance will provide notification of the requirements of Section 3.

(ii) For competitively awarded public housing financial assistance involving activities that are anticipated to generate significant employment, training, contracting, or other economic opportunities, regardless of the source or amount of the public housing financial assistance, HUD's NOFA will include a statement advising that successful applicants shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, ensure that employment, training, contracting, or other economic opportunities created as a result of the provision of financial assistance be directed to Section 3 residents and businesses consistent with the orders of priority consideration set forth at § 135.37.

(iii) For competitively awarded housing and community development financial assistance involving housing demolition, rehabilitation, or construction, or the demolition, rehabilitation or construction of other public buildings, facilities or infrastructure, HUD's NOFA will include a statement acknowledging that if the award of competitive financial assistance will result in the successful applicant receiving and planning to

obligate or commit Section 3 covered financial assistance that exceeds the thresholds set forth at § 135.53, the grantee is required to ensure that employment, training, contracting (including contracts for professional services), or other economic opportunities generated as a result of the provision of Section 3 covered financial assistance that is competitively awarded be directed, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, to Section 3 residents and businesses.

(3) *Exemption.* HUD NOFA competitions that primarily use volunteer labor, sweat equity, homeowners, or other beneficiaries to carryout construction or rehabilitation projects or activities are exempt from complying with the requirements of this subpart.

(b) [Reserved]

§ 135.73 Applicant selection criteria.

Where not otherwise precluded by statute, and where applicable, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has described in their applications their plans to train and employ Section 3 residents and contract with Section 3 business concerns in furtherance of the proposed activities. The program NOFAs for which Section 3 is applicable will include information regarding how Section 3 activities will be considered in rating the application.

§ 135.75 Section 3 compliance for NOFA grantees.

(a) *Certifications of compliance with this part.* Successful applicants must certify that they will comply with the requirements set forth in this part. A HUD office that awards Section 3 covered financial assistance may require execution of a certification that reflects the requirements and goals of the Section 3 covered financial assistance. The Assistant Secretary for the program office will accept an applicant's certification absent evidence to the contrary.

(b) *Monitoring and compliance.* Successful applicants shall be held accountable for complying with the requirements of this subpart; implementing strategies described in narrative statements; meeting annual reporting requirements; and will be subject to monitoring at the discretion of HUD.

§ 135.77 Resolution of outstanding Section 3 matters.

Applicants that have received a letter of finding from HUD identifying

noncompliance with Section 3 or that have received a sanction from HUD for noncompliance with Section 3, which has not been resolved to HUD's satisfaction before the application deadline, are ineligible to apply for competitive HUD funding. HUD will determine if actions taken to resolve the letter of findings or sanction taken before the deadline are sufficient to resolve the matter.

Subpart E—Enforcement

§ 135.91 Cooperation in achieving compliance.

(a) *General.* HUD recognizes that the success of ensuring that Section 3 residents and Section 3 businesses have the opportunity to benefit from employment, training, contracting, and other economic opportunities generated from Section 3 covered financial assistance depends on the cooperation and assistance of recipients and their subrecipients, contractors, and subcontractors. Accordingly, all recipients shall fully and promptly cooperate with monitoring reviews, compliance reviews, or complaint investigations undertaken by HUD.

(b) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with Section 3 in its own operations and those of its subrecipients, contractors, and subcontractors, consistent with § 135.25. Recipients shall submit to HUD timely, complete and accurate data at such times, in specified formats, and containing information determined by HUD to be necessary to ascertain whether the recipient has complied with this subpart.

§ 135.93 Conduct of investigations.

(a) *Periodic compliance reviews.* The Assistant Secretary or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site or remote reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify investigation in selected circumstances. The Assistant Secretary or designee shall initiate compliance reviews by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, normal program compliance reviews and monitoring

procedures shall identify appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(b) *Interdepartmental coordination.* Monitoring and enforcement may be carried out in coordination with the HUD program office that provided Section 3 covered financial assistance to the recipient being reviewed for compliance with Section 3.

(c) *Investigations.* The Assistant Secretary may conduct an investigation whenever a compliance or monitoring review, Section 3 annual report, complaint or any other information indicates a possible failure by a recipient to comply with this part, or that a recipient failed to ensure compliance with this part by its subrecipients, contractors, or subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient.

(d) *Who may file a complaint.* The following individuals and businesses may file a complaint alleging noncompliance of the requirements of Section 3 with the Assistant Secretary, personally or through an authorized representative:

(1) Any Section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of Section 3 covered financial assistance by a recipient, subrecipient, or contractor, or by a representative who is not a Section 3 resident but who represents one or more Section 3 residents;

(2) Any Section 3 business on behalf of itself, or as a representative of other Section 3 businesses similarly situated, seeking contract opportunities generated from the expenditure of Section 3 covered financial assistance from a recipient, subrecipient, or contractor, or by an individual representative of Section 3 businesses.

(3) The Assistant Secretary or designee shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(e) *When to file.* Complaints shall be filed within 180 days of the last occurrence of the alleged violation, unless the time for filing is extended by the Assistant Secretary for good cause shown. For purposes of determining

when a complaint is filed under this paragraph (c) of this section, a complaint mailed to HUD shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by HUD.

(f) *Where to file a complaint.* A complaint must be filed with the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC, 20410, or any FHEO Regional or Field Office, as stipulated by HUD.

(g) *Contents of complaint.* Each complaint must contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged violation in sufficient detail to inform HUD of the nature and date of the alleged violation of this part. HUD may provide assistance in drafting a complaint based on information received.

(h) *Amendment of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints, such as a clarification and amplification of allegations in a complaint, or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(i) *Notification.* The Assistant Secretary will notify the complainant and the recipient of the agency's receipt of the complaint within 10 calendar days.

(j) *Preliminary investigation.* (1) Within 30 calendar days of acknowledgement of the complaint, the Assistant Secretary will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(2) If the complaint is accepted, the Assistant Secretary will notify the complainant and the applicable HUD program office. The Assistant Secretary will also notify the recipient of the allegations and provide them an opportunity to make a written submission responding to, rebutting, or denying the allegations presented in the complaint.

(3) The recipient may send the Assistant Secretary a response to the notice of complaint within 30 calendar days of receipt. With the agreement of the Assistant Secretary, an answer may be amended at any time. The Assistant Secretary will permit answers to be amended for good cause shown.

(k) *Dismissal of complaint.* If the investigation reveals no violation of this part, the Assistant Secretary or designee will dismiss the complaint and notify the complainant and recipient.

(l) *Letter of finding.* If no informal resolution of the complaint or compliance review is reached, and the facts disclosed during a compliance review or an investigation indicate a failure by the recipient or its subrecipients or contractors to comply with the requirements of this part in its own operations or to ensure the compliance of subrecipients, contractors, or subcontractors that may be administering Section 3 covered financial assistance on behalf of the recipient, the Assistant Secretary will issue a letter of findings within 180 calendar days of receipt of the complaint or culmination of a compliance review. The letter of findings shall contain the following:

(1) Preliminary findings of fact and preliminary finding of noncompliance;

(2) The actions that must be taken to address the areas of noncompliance within a specified timeframe;

(3) A notice that a copy of the Final Investigative Report of HUD will be made available, upon request, to the recipient; and

(4) Provide complainants or recipients 30 days to respond to HUD's findings and resolve or remedy findings of noncompliance identified during the compliance review or investigation.

(m) *Right to review of the letter of findings.* (1) A complainant or recipient may request that a complete review be made of the letter of findings within 30 calendar days of receipt, by mailing or delivering to the Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.

(2) The Assistant Secretary will send by certified mail, return receipt requested, or other similar mail services, a copy of the request for review to the other party, if any. Such other party shall have 30 calendar days to respond to the request for review.

(3) The Assistant Secretary will either sustain or modify the letter of findings within 60 calendar days of the request for review. The Assistant Secretary's decision shall constitute the formal determination.

(4) If neither party requests that the letter of findings be reviewed, the Assistant Secretary shall send a formal written determination of noncompliance to the recipient and the appropriate

HUD program office that administers the Section 3 financial assistance provided within 14 calendar days of the expiration of the time period provided in paragraph (c)(1) of this section.

(n) *Voluntary compliance time limits.* If it has been determined that the matter cannot be resolved by voluntary means within 30 days HUD may proceed with sanctions as described at § 135.27.

(l) *Informal resolution of complaint investigations and compliance reviews.*

(1) *General.* It is the policy of HUD to encourage the informal resolution of matters. The Assistant Secretary may attempt to resolve a matter through informal means at any stage of a complaint investigation or compliance review.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Assistant Secretary will attempt to achieve a just resolution of the matter and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future.

(3) The terms of such an informal resolution shall be reduced to a written voluntary compliance agreement and signed by the recipient and the Assistant Secretary. Such voluntary compliance agreements shall seek to protect the public interest, provide denied economic opportunities to Section 3 residents and businesses, and may include the provision of relief for

those injured by the recipient's noncompliance.

(o) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in a compliance review, investigation or hearing under this part.

Dated: March 2, 2015.

Gustavo Velasquez,

Assistant Secretary for Fair Housing and Equal Opportunity.

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