

NC Housing Finance Agency

# Section 3 Guidance

## Local Jobs Initiative

*Applies to Projects Committed Prior to November 30, 2020*



HOME

## **Section 3 Information and Terminology**

*This guidance applies only to projects committed prior to November 30, 2020*

### **Section 3 of the Housing and Urban Development Act of 1968**, as amended (12 U.S.C. 1701u)

Section 3 and regulations at 24 CFR Part 135 ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very-low income individuals, especially recipients of government assistance for housing, and to business concerns they own or that employ them.

### **Who Must Comply with Section 3 Requirements?**

Section 3 applies to employment opportunities generated (jobs created) as a result of projects receiving federal HUD (HOME Investment Partnership Program (HOME)) funding through NCHFA, whether those opportunities are generated by the owner, contractor, or subcontractor. The requirements of Section 3 apply to all projects or activities associated with federal (HOME) funding.

Section 3 applies to NCHFA programs as follows:

- Awards, individual contracts, and subcontracts for more than \$100,000.

### **Section 3 Service Area**

The Section 3 service area is the metropolitan area (MSA) or non-metropolitan county where a HUD-assisted project for housing is located.

### **Section 3 Resident**

Section 3 residents are new hires that are:

- Residents of public housing
- Persons who live in the MSA or non-metropolitan county where a HUD-assisted project is located and have a gross household income less than 80% of the area median income.

Remember that many day-laborers may meet the definition of Section 3 residents.

Participants of YouthBuild Programs in the service area may also qualify. More information as well as the listing of YouthBuild grant recipients can be found on the Department of Labor Employment and Training Administration's [website](#).

### **Section 3 Business Concern**

A business can be classified as a Section 3 business if:

- At least 51% or more owned by Section 3 residents,
- The businesses' permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- The business provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business concern as defined in the first two bullets.

### **Section 3 Numerical Goals and Compliance**

The measurement of compliance with Section 3 regulations is the percentage of contracts awarded to Section 3 businesses, and the employment Section 3 residents. The Section 3 goals apply to contract awards in excess of \$100,000 in connection with Section 3 HOME funded eligible properties, and it applies to all Covered Parties (owner, contractor, and subcontractor).

If it is not feasible to meet the minimum goals, the Covered Parties must be prepared to provide an explanation and documentation as to why the goals were not met.

- At least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction;
- At least 3% of the total dollar amount of all other Section 3 covered non-construction contracts (i.e. professional services) to Section 3 businesses; and
- At least 30% of the aggregate number of new hires, and to provide training to those new hires. Employment goals are based on “new hires” which is defined as full-time employees for permanent, temporary, or seasonal employment opportunities. *Day laborers that are low-income area residents could be considered Section 3 Residents.*

### **What is a Good Faith Effort?**

Good faith effort means that an owner, contractor or subcontractor must take concrete steps to expand resident training and employment opportunities, such as making residents aware of available training and employment positions, encouraging residents to participate in the job application process, and actually employing Section 3 area residents.

With respect to business participation, a good faith effort means identifying businesses located within the boundaries of the Section 3 covered project area, making them aware of contracting opportunities, encouraging the participation of affected businesses in the procurement process, and actually awarding contracts to these Section 3 business concerns if qualified.

### **Section 3 Implementation**

Section 3 must be implemented in a manner consistent with existing Federal, State, and local laws. Section 3 does not supersede these laws, nor do these laws cancel or override the Section 3 obligation.

- Employment – Section 3 is race neutral, directed at low income and very-low income persons.
- Procurement - Despite the method of procurement used, the solicitation of bids/proposals and the final contract documents must include notice of Section 3 obligations (including reporting) and include the Section 3 Clause, on all contracts and subcontracts in excess of \$100,000.

### **Forms and Reporting Requirements**

- Owners and general contractors must submit to NCHFA the Section 3 Local Jobs Initiative Compliance Certification. prior to receiving the Final Commitment Letter.
- Owners and general contractors must submit to NCHFA the Section 3 Local Jobs Initiative Plan (see below) after the general contract has been awarded.

- Owners AND general contractors must submit the Section 3 Local Jobs Initiative Year-End Monitoring Report by 01/10 for each prior calendar year that the project is under construction or rehabilitation.
- Prior to the end of the grant period or closing, the **owner** is required to submit to NCHFA the Section 3 Summary Report. The information needed for this report must be gathered from all contractors and subcontractors that were awarded contracts in excess of \$100,000.

## **Section 3 Local Jobs Initiative Compliance Certification**

- ❖ *To be completed and returned to NCHFA prior to issuance of the Final Commitment Letter*
- ❖ *Only applies to projects committed prior to November 30, 2020*

This applies to the owner of multi-family rental and the general contractor with contracts over \$100,000 in HUD (HOME) funding.

The undersigned owner of multi-family rental and general contractor are committed to comply with the Section 3 Act, and the Section 3 regulations. NCHFA will work with the owner and general contractor to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 businesses, and to provide employment and training to Section 3 residents. Furthermore, the owner and general contractor hereby agree to implement at least the following actions directed at increasing the utilization of lower income residents and Section 3 businesses within the project area.

- The owner must submit to NCHFA at the end of construction the Section 3 Summary Report.

The following four actions do not apply to subcontractors but **do apply** to the owner of Multi-Family Rental (owner) and to the general contractor if the contract > \$100,000:

- A. To submit a Section 3 Local Jobs Initiative Plan to NCHFA after the general contract has been awarded.
- B. To make a good faith effort to ensure that all Section 3 business concerns within the project area are notified of pending subcontractual opportunities over \$100,000.
- C. To maintain records, including copies of correspondence, memoranda, etc., which document all the steps taken to recruit lower income residents and subcontractors from within the Section 3 area.
- D. To maintain and provide the information requested on the Section 3 Local Jobs Initiative Year-End Monitoring Report related to employment and training records of Section 3 residents, and contracts awarded to Section 3 businesses.

In addition to the award and general contract being greater than \$100,000, if there are subcontracts greater than \$100,000, the general contractor must relay the following information:

- E. To attempt to recruit from within the Section 3 area lower income residents through: local advertising media, signs place at the proposed site for the project, and communication with local Public Housing Authorities, community organizations and public and private institutions operating within or serving the area.
- F. To maintain a list of all lower income area residents who have made application for employment either on their own or on referral from any source, and to employ such persons, if otherwise eligible and **if a vacancy exists**.
- G. To include this Section 3 Compliance Certification in all bid documents and contracts over \$100,000 in addition to the Section 3 Clause.
- H. To maintain and provide the information requested on the Section 3 Summary Report related to employment and training records of Section 3 residents, and contracts awarded to Section 3 businesses.
- I. To seek the assistance of NCHFA program staff, where necessary, in implementing the Section 3 Compliance Plan. Subcontractors work with the General Contractor instead of NCHFA regarding questions and reporting.

### **Goals for Contracting and Employment:**

To demonstrate compliance with Section 3 regulations, the following numerical goals apply:

- to award at least **10 percent** of the total dollar amount of construction contracts to Section 3 businesses;
- to award at least **3 percent** of the total dollar amount of non-construction contracts (i.e. professional services) to Section 3 businesses; and
- to direct at least **30 percent** of the newly created employment to Section 3 residents.

If the parties with awards/contracts/subcontracts greater than \$100,000 determine it is not feasible to meet the minimum goals as set forth above, they must be prepared to provide an explanation and documentation as to why the goals were not met.

We the undersigned, have read and fully agree to this Section 3 Compliance Certification, and become party to the full implementation of this program.

**Owner:**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**General Contractor:**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Example Components of a Section 3 Local Jobs Initiative Plan**

*Only applies to projects committed prior to November 30, 2020*

***A plan must be created and submitted if you are the Owner and by the General Contractor with a contract > \$100,000. This plan is in narrative form.***

Below are some suggestions for inclusion in your Section 3 Local Jobs Initiative Plan. This is not an exhaustive list of how to implement your plan.

- Identify the project by name, address, and owner.
- List what you will do to attempt to recruit Section 3 residents. What type of advertising will you undertake - posters, flyers?
- List what organizations you will contact about Section 3 resident employment opportunities. Specifically, will you contact the local Public Housing Authority and other community organizations?

- List who you will contact to recruit Section 3 businesses and how you will get the word out about pending subcontractual opportunities over \$100,000.
- List that you will include the Section 3 Local Jobs Initiative Compliance Certification and Section 3 Clause in all contracts over \$100,000.
- List that you will submit the Section 3 Local Jobs Initiative Year-End Monitoring Report to the NCHFA by 01/10 of each prior calendar year that the project is under construction.
- List that you will submit the Section 3 Summary Report to the NCHFA prior to the 2<sup>nd</sup> disbursement of funds.
- Sign and date your Section 3 Local Jobs Initiative Plan before submitting to the NCHFA.
- Attach any flyers, posters, or supporting documentation to your Section 3 Local Jobs Initiative Plan.

*This is to be included in all contracts/subcontracts over \$100,000*

### **Section 3 Clause**

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants

for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## **Section 3 Local Jobs Initiative Resident Certification**

To be signed by the Section 3 Resident and retained in the project files. (Do not return to NCFHA)  
***This form is only to be used by projects committed prior to November 30, 2020***

All employees working on Section 3 covered projects must be reported in aggregate on the Section 3 Summary Report with their Section 3 resident status. For all employees reported as being Section 3 residents, documentation of their status must be retained in the project files. NCHFA considers this form adequate documentation of Section 3 status.

"Low income" resident means they earn below 80% of the median income for a household of their size in their area. To identify the income limit for your area, use the county income limit located on [HUD's website](#).

*Instructions to employer:* Complete this form for every employee that is a Section 3 resident, with resident signature. **Retain this form in project files.**

Employee Name: \_\_\_\_\_

Employee Address: \_\_\_\_\_

Employee Telephone Number: \_\_\_\_\_



- Is the Employee a public housing resident? Y ( ) N ( ) If yes, name of development \_\_\_\_\_

*(public housing is owned by a Public Housing Authority – PHA)*

- Is the employee a Section 3 resident because they are a low-income individual in the county/MSA of the project? Y ( ) N ( )

Annual family income last year: \_\_\_\_\_

Number of people in household: \_\_\_\_\_

County Median Income: \_\_\_\_\_ (Locate the county and use the 80% chart for the household size. Obtain this figure from the chart located on [HUD's website](#).)

**To be signed by the Section 3 Resident**

I certify that the above statements are true, complete, and correct to the best of my knowledge and belief.

Name (signature) \_\_\_\_\_

Name (printed) \_\_\_\_\_

Employer (printed) \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

**Section 3 Business Certification** - to be completed by the business claiming Section 3 business status

All contract and subcontracts awarded on Section 3 covered projects must be reported in aggregate on the Section 3 Summary Report. For all businesses reported as being Section 3 businesses, documentation of their status must be retained in the project files. NCHFA considers this form adequate documentation of Section 3 status.

Recipients funded with HUD (HOME) funding, and any contractors or subcontractors with which they contract for more than \$100,000, are required to report on all contracts they make both with Section 3 business concerns and with businesses that are not Section 3 business concerns.

This form is a tool to determine and document the Section 3 business status. **Documentation of the status of Section 3 Businesses should be retained in the project files.**

**Business being certified**

Company: \_\_\_\_\_

Address: \_\_\_\_\_

**Project information**

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

**Section 3 determination**

- Is your business owned (51% or more) by individuals whose household incomes are NO GREATER THAN 80% of Area Median Income (AMI)? Use the median income listed on [HUD's website](#).  
( ) Yes      ( ) No
  
- Do 30% (or more) of your full time, permanent employees have household incomes that are NO GREATER THAN 80% of Area Median Income (AMI), or within three years of the date of first employment with the business concern were Section 3 residents? Use the median income listed on [HUD's website](#).  
( ) Yes      ( ) No
  
- Will you subcontract more than 25% of this contract with a qualified business that is either 51% owned by Section 3 residents or 30% or more of its employees are Section 3 residents?  
( ) Yes      ( ) No

If any of the questions above are marked "yes", the business qualifies as a Section 3 business.

I certify that the above statements are true, complete, and correct to the best of my knowledge and belief.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

### Section 3 Local Jobs Initiative Year-End Monitoring Report

*This form is only to be used by projects committed prior to November 30, 2020  
Must be submitted by January 10<sup>th</sup> covering the prior year during construction/rehabilitation.*

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Owner/General Contractor (*circle*)

List your award or contract amount: \_\_\_\_\_

Approximate date of award or contract: \_\_\_\_\_

Please attach answers to the following questions:

1. Have you included the Section 3 Local Jobs Initiative Compliance Certification and Section 3 Clause in all your contracts over \$100,000?
2. List what you have done to attract Section 3 residents for employment opportunities. Have you created any flyers or posters? If you have, where did you display or send them to be displayed?
3. If you are the general contractor and your contract is > \$100,000, have you engaged in any day-labor for the project? If you have, and the laborer was a Section 3 resident, did you have the laborer complete the Section 3 Local Jobs Initiative Resident Certification form?
4. List the organizations and agencies you have contacted about employment or subcontractual opportunities that are > \$100,000 and for Section 3 businesses.
5. List the general contractor and subcontractors for the project to date. List the contract amount and identify the Section 3 businesses.
6. Are you obtaining signed Section 3 Business Certification forms for your files for contracts > \$100,000?

In addition to the questions above, please attach any flyers, posters or additional information.

Remember to keep up with the Section 3 requirements for your organization/company and to keep in contact with your subcontractors (and general contractor if not identity of interest). It is more difficult to obtain the Section 3 data after project completion.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### Section 3 Local Jobs Initiative Year-End Monitoring Report

*Only applies to projects committed prior to November 30, 2020  
Must be submitted by January 10th of each year during construction/rehabilitation.*

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Owner/General Contractor (*circle one*)

List your award or contract amount: \_\_\_\_\_

Approximate date of award or contract: \_\_\_\_\_

Please attach answers to the following questions:

1. Have you included the Section 3 Local Jobs Initiative Compliance Certification and Section 3 Clause in all your contracts over \$100,000?
2. List what you have done to attract Section 3 residents for employment opportunities. Have you created any flyers or posters? If you have, where did you display or send them to be displayed?
3. If you are the general contractor and your contract is > \$100,000, have you engaged in any day-labor for the project? If you have, and the laborer was a Section 3 resident, did you have the laborer complete the Section 3 Local Jobs Initiative Resident Certification form?
4. List the organizations and agencies you have contacted about employment or subcontractual opportunities that are > \$100,000 and for Section 3 businesses.
5. List the general contractor and subcontractors for the project to date. List the contract amount and identify the Section 3 businesses.
6. Are you obtaining signed Section 3 Business Certification forms for your files for contracts > \$100,000?

In addition to the questions above, please attach any flyers, posters or additional information.

Remember to keep up with the Section 3 requirements for your organization/company and to keep in contact with your subcontractors (and general contractor if not identity of interest). It is more difficult to obtain the Section 3 data after project completion.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_