



Texas General Land Office

Community Development and Revitalization

“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”

~ Commissioner George P. Bush

Section 3 101



Agenda

- What is Section 3?
- Section 3 Triggers
- Best Practices
- Reporting & Recordkeeping
- Complaints
- Questions?

Presenter

Matt Betz, ICF



Icons



Future Training

Learning Objectives



After the training, Section 3 101 participants will:

1. Understand how Section 3 compliance is defined and when it is required
2. Understand fundamentals of implementing Section 3 compliance
3. Understand contract requirements, good faith effort documentation, and safe harbor and compliance determinations

Key Resources



DIGITAL RESOURCE MANUAL: SECTION 3 101

SECTION 3

HUD funds tend to be one of the largest sources of federal investment in distressed communities and typically result in new employment, training, and contracting opportunities. Section 3 regulations are designed to direct those opportunities to local residents and businesses and while HUD has identified numeric goals specific to each of the three major target activities (hiring, training, and contracting), it is understood that situations don't always allow for those goals to be met. However, even if the specific numeric goals of Section 3 can't be achieved, responsible parties must report their good faith efforts to comply.

Demonstrating good faith efforts for Section 3 regulations means showing what policies, procedures, and other general efforts are taken to reasonably incorporate Section 3 goals and practices into DR contract administration. Section 3 Plans are not required but can be useful for consolidating policies and procedures into a single document that can then be passed down to contractors and subcontractors. Below is a checklist of items that pertain to Section 3 compliance:

Key Point
A Section 3 plan, while not statutorily required, demonstrates good faith efforts to comply with Section 3 regulations that can be easily passed on to contractors and subcontractors.

CDBG-DR

SECTION 3 101 BRIEF

Section 3 Compliance Triggers

HUD's Employment Opportunity requirements for CDBG-DR funded projects are commonly referred to as "Section 3 requirements." These regulations establish inclusive hiring, training, and procurement practices that prioritize local disadvantaged individuals and communities.

CDBG-DR subrecipients should understand Section 3 requirements and when they apply to CDBG-DR funded projects and programs. Section 3 compliance is triggered when subrecipients receive \$200,000+ in CDBG-DR funding for construction related activities **or** for individual construction contracts of \$100,000 or more.

To better understand these dollar thresholds, consider these important points:

- Contracts for Section 3 covered projects are not cumulative. The requirements of Section 3 apply to each individual contract that meets the thresholds.
- Section 3 requirements apply to recipients of Housing and/or Community Development funds exceeding \$200,000 combined from all sources in any one year. Section 3 covers the any portion of those funds for any activity that involves housing construction, rehabilitation, or public construction.

Application of Federal Regulations
GLO requires subrecipients to apply the principles of [24 CFR 135](#) (generally referred to as "Section 3"):

- Utilize CDBG-DR funds to create economic opportunities for local residents and businesses;
- Demonstrate good faith efforts in hiring, training, and contracting with disadvantaged individuals and businesses; and
- Monitor compliance with all contractors and all Section 3 requirements, including recordkeeping, and goals.

What is Section 3?



“To ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons” **24 CFR Part 135.1(a)**



What is Section 3?

Section 3 is specific to HUD funding and is designed to generate

(1) New employment

(2) Training

(3) Contract opportunities for low- or very-low income residents and vicinity businesses



History of Section 3



Timeline

- **1968:** Established as a provision of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)
- **1995:** Regulated by the provisions of 24 CFR 135



Similar Regulations



Similar Regulations that differ from Section 3

- EEO – Equal Opportunity Employment
- DBRA – Davis Bacon and Related Acts
- MBE – Minority Owned Business Enterprises
- WBE – Women Owned Business Enterprises
- HUBS – Historically Underutilized Businesses (*TX-specific*)

Goals & Measurable Outcomes



To the greatest extent feasible (24 CFR 135.30), subrecipients should aim for the following goals:

- $\geq 30\%$ of the aggregate number of new hires shall be Section 3 residents
- $\geq 10\%$ of the total dollar amount of all covered construction contracts shall be awarded to Section 3 Business Concerns
- $\geq 3\%$ of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 Business Concerns

Applicability of Section 3



Section 3 Covered Funding

- If Section 3 is triggered, all requirements apply to the entire project, including other funding sources that involve new employment, training, or contracting for:
 - Housing rehabilitation (including lead-safety)
 - Housing construction, reconstruction, and demolition
 - Public construction
- Note that “entire project” includes professional service contracts
- Subrecipients are responsible for their own Section 3 compliance, as well as their contractors and subcontractors

Activity Triggers



CDBG-DR Section 3 Triggers

New Construction,
Reconstruction, &
Rehabilitation

Demolition

Infrastructure
Development



Dollar Amount Triggers



- Subrecipient CDBG-DR project funding \geq \$200,000
- Individual construction contracts \geq \$100,000 (24 CFR §135.30)
- If a contract or project triggers Section 3, all subcontractors must also comply
- **Contact GLO if you have questions about whether Section 3 applies**

Example of Section 3 Applicability



Subrecipient Budget	
Funding Source	Amount
CDBG-DR	\$600,000
HOME	\$150,000
NSP	\$75,000

Covered by Section 3*

**For housing construction, rehabilitation, and other public construction activities*

Subrecipients' Responsibilities



- Subrecipients and contractors actually provide economic opportunities to low-income persons and qualified Section 3 businesses – to the greatest extent feasible
(§135.30)
- “Economic opportunity” is not a guarantee, but entails reasonable access and fair notification
- Subrecipients facilitate training & employment of eligible Section 3 residents and businesses through:
 - Jobs
 - Trainings
 - Procurements

Keys to Compliance



- Assist & cooperate with HUD on compliance
- Do not contract with Section 3 regulation violators, as identified by HUD
(24 CFR 135.72)
- Document Section 3 compliance actions
- Submit Section 3 Summary Reports (HUD 60002) annually or prior to final draw

Test Your Knowledge



True or False

Subrecipients must submit their own summary reports as well as those of their contractors and their subs when reporting on Section 3 compliance to the GLO



Test Your Knowledge



True or False

A construction contract over the \$100,000 threshold can be divided to avoid becoming a Section 3 covered project

X False

Contracts cannot be arbitrarily divided to avoid compliance thresholds. However, Section 3 compliance is not triggered if a single contractor legitimately wins two or more separate, CDBG-DR funded contracts with a combined value of \$100,000+

Section 3 Best Practices



- Inform subrecipients and contractors about Section 3 obligations
- Notify Section 3 residents and business about economic opportunities
- Evaluate potential bidders for Section 3 compliance during contract selection
- Implement verification and/or certification procedures for residents and businesses

Section 3 Best Practices



- Provide priority consideration to qualified Section 3 residents and businesses
- Monitor contractors for compliance and establish consequences for noncompliance
- Utilize local community resources to meet Section 3 requirements



Section 3 Target Groups



- Low- and very low-income persons (24 CFR 135)
- For training and employment activities: (24 CFR 135.34)
 - Public & Assisted housing residents
 - Residents of affected project neighborhood
 - Youth-build program participants
 - Homeless, if project assisted under McKinney Act (42 U.S.C. 11301 et seq.)
- For contracting:
 - Section 3 businesses (that match the definition)

Defining Section 3 Residents



1. Residents of Public and Indian Housing (24 CFR 135.5); *or*
2. Low-income individuals (80% or below HUD AMI), including homeless, that reside in the metropolitan area (MSA) or nonmetropolitan county in which the Section 3 covered assistance is expended (24 CFR 135.5)

Verifying Section 3 Residents



1. Verify resident lives in public housing or receives Section 8 Housing Voucher

OR

2. Verify employee's annual wages or salary are at, or under, the HUD-established income limit for a one-person family in Texas
3. Consider participants in HUD YouthBuild programs (**24 CFR 135.34**)



Good Faith Efforts & Compliance



Section 3 Goal

- Reach or exceed minimum numerical goals for employment and contracting opportunities, as provided in **§135.13** and either **§135.35** or **§135.55**

Document Good Faith Efforts to Comply

- Document efforts to train and hire Section 3 residents and businesses (**§135.7**)
- Establish policies/procedures to achieve compliance (**§135.9**)
- Fulfill Section 3 responsibilities as defined by **24 CFR 135** (**§135.11**)

Justifying Non-compliance



- If subrecipients cannot meet minimum numerical goals, they bear the burden of demonstrating why it was not possible, including:
 - Efforts to comply with Section 3
 - Barriers to Section 3 goals
 - Other relevant information to support HUD's compliance determination
- Section 3 reports containing all zeros (without sufficient justification) are in noncompliance with the “greatest extent feasible” test **(24 CFR §135.30)**
- Subrecipients should write a written justification if they cannot meet Section 3 goals

Hiring & Training Compliance



- Notify eligible residents & businesses about employment, training, & contracting opportunities:
 - Jobs
 - Apprenticeships
 - Access to educational opportunities
- Include Section 3 eligibility language in all job postings
- Include a Section 3 Employee Self-Affirmation Form in all job postings

Subrecipient and contractors actually provide economic opportunities to low-income persons and qualified Section 3 businesses – to the greatest extent feasible (§135.30)

Hiring Compliance



- Use the “Texas Workforce Commission” service to post jobs to WorkInTexas.com
- Post all job opportunities to Glassdoor, Indeed, and CraigsList
- Advertise job opportunities via social media, including LinkedIn and Facebook
- Record proof-of-postings for all job postings to project file



Training Compliance



- Conducting training throughout the community and providing information about Section 3 requirements
- Attending trainings and providing assistance to residents referred by local workforce centers, community colleges, public housing authority, and community groups, and those who attend job fairs (when available)



Section 3 Business Concerns



Types of Section 3 Business Concerns

- $\geq 51\%$ owned by Section 3 residents; **OR**
- $\geq 30\%$ permanent, full-time employees that are or were Section 3 residents within three years of the date of first employment; **OR**
- Demonstrated efforts to subcontract $>25\%$ of the dollar amount of all subcontracts to businesses that meet the qualifications described above; **OR**
- Applicants selected to carry out HUD Youthbuild programs (**24 CFR 135.36; 42 USC 12899**).

Verifying Section 3 Business Concerns



Applying for Section 3 Business Concern Status

- Businesses can apply for certification and addition to the HUD registry at <http://www.hud.gov/Sec3Biz>

OR

- Businesses can demonstrate eligibility by self-certifying to the contractor or subrecipient (standardized forms should be provided)

Procurement



- Include entire “Section 3 Clause”, verbatim, in all covered solicitations and contracts (24 CFR 135.38)
- Include a Section 3 Business Certification Packet in all covered contract solicitations
- Notify contractors and potential contractors of Section 3 responsibilities
 - Facilitate training & employment of eligible Section 3 residents and businesses
 - Record proof-of-postings for all solicitations to project file

Test Your Knowledge



True or False

An existing employee who moves into a new position funded entirely by CDBG-DR must be evaluated as a potentially Section 3 resident

X False

Section 3 only applies to new hires and does not apply to existing employees who migrate to CDBG-DR funded positions

Reporting



- For covered contracts, subrecipients must submit Section 3 Reports for themselves and any contractors and subs, summarizing Section 3 compliance efforts
- The report details any impediments to Section 3 compliance and resulting actions to address them
- Subrecipients submit reports to GLO (1) quarterly and (2) annually
- Subrecipients may choose to require more frequent reporting from contractors if desired



Recordkeeping



Subrecipients must make the following available (24 CFR 135.25)

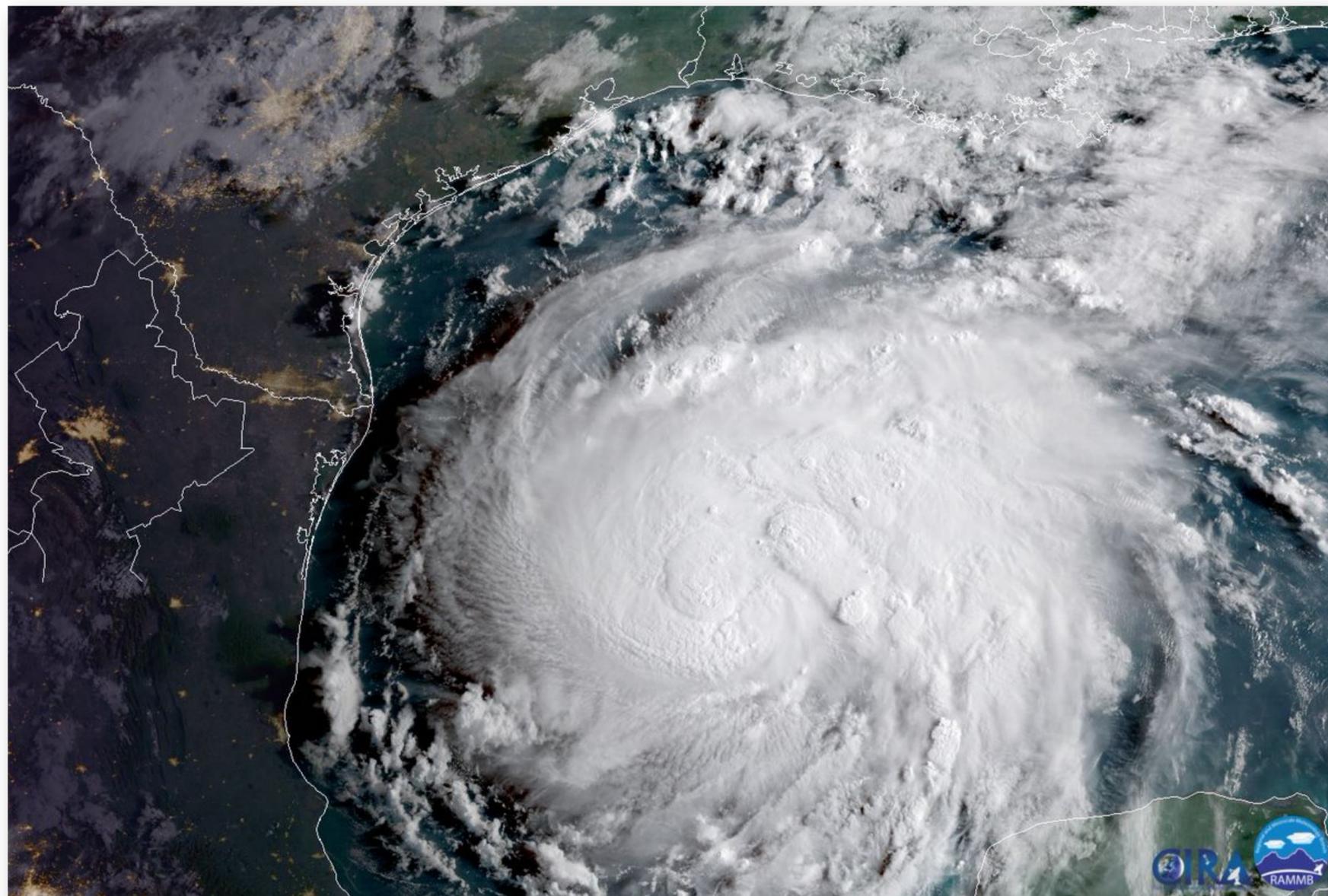
- Section 3 policies, procedures, guidance materials
- Lists of hired Section 3 residents and businesses
- Evidence of efforts to notify Section 3 residents and businesses about economic opportunities
- Payroll/proof of posting or other documentation verifying new hires
- Section 3 contracts, clauses, and assurances
- Evidence of efforts to comply with the terms of the Section 3 clause and to reach minimum numerical goals

Complaints



- May be filed by individuals on behalf of themselves or others
- May be filed by organizations on behalf of themselves or others
- May be submitted via telephone, email, or mailed letter
 - If written/typed, letters should include complainant's name, address, and signature if possible
- Must be submitted within 180 days of the alleged noncompliance
- May be filed with the HUD Assistant Secretary or the Recipient/Subrecipient's Section 3 Coordinator

Questions?



Survey



[Section 3 101 Survey](#)