

Community Frameworks

SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP) SECTION 3 Information Guide

OVERVIEW

In 1968, Congress passed a law requiring groups receiving federal funds for housing and community development to provide economic opportunities to low-income people. The ultimate goal of Section 3 of the Housing & Urban Development Act of 19681 is to *encourage the training and hiring of low-income people*. Section 3 requires that, to the greatest extent feasible, economic opportunities generated by federal funding associated with housing and community development be given to low- and very low-income persons and to businesses that provide economic opportunities to those persons.

As a recipient of HUD funds, Community Frameworks is required to comply with Section 3. Community Frameworks Self-Help Homeownership Opportunity Program (SHOP) affiliates/affiliates, as subrecipients of those funds, are also required to comply. This guide will lay out the Section 3 compliance responsibilities of SHOP affiliates.

Please note that for many SHOP affiliates, Section 3 compliance responsibilities exceed those triggered by a SHOP award. If your organization receives federal funds (HOME, CDBG, SHOP, etc.) in excess of \$200,000 for any *housing* project, you are required to meet Section 3 obligations for the aggregate amount of federal funding, *regardless of the size of your SHOP award*. Community Frameworks, however, will only require that you report to us on compliance activities *related* to the SHOP award. Although compliance requirements are the same for a federally funded housing and community development activities, this Informational Guide is primarily concerned with Section 3 compliance related to SHOP.

THRESHOLDS

An organization must report to Community Frameworks on Section 3 compliance if the SHOP award exceeds \$200,000 for any project that includes SHOP funded infrastructure of more than \$200,000. It need not report to Community Frameworks if SHOP assistance for infrastructure for a project does not exceed \$200,000 in SHOP funds (for all new SHOP). Community Frameworks, and HUD, define a **“project”** as an application that is requested, funded, utilized, and closed out. For example, an Affiliate submits a SHOP Infrastructure application to CF for \$105,000. CF funds this with earmarks from two different SHOP years (or one year, but in many cases two or more years are necessary) and the infrastructure is completed, the funds are spent. No Section 3 is triggered for these SHOP funds. The next year the same affiliate comes in with a request for \$105,000 for further infrastructure improvements in the same development, they want to do 10 more housing units. Again, the Section 3 requirement is not activated. So, even though these funds are spent in the same development, the original request was approved, funded and closed out. It would be much too difficult to go back and try to make the original project compliant with Section 3.

In a different scenario, the affiliate applies for \$105,000 for infrastructure and work has started, funds have been drawn, but not all is spent by the time they decide they need, and have sufficient earmarks for, \$105,000 of additional funding. The affiliate wants to use part of the additional to complete the infrastructure but the rest will be used for acquisition reimbursement. Even though the entire amount of the two grants, \$210,000, is NOT being used for infrastructure, the original

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request was for infrastructure therefore all of the funds are now added up to total more than \$200,000 for the “project” and Section 3 will apply to all of the funds requested.

If you enter into any contract for a project exceeding \$100,000 with any **one** contractor, that contractor is subject to Section 3 compliance and reporting requirements. In these cases, the contractor must keep track of Section 3 activities and report them to you. In all other cases, your organization is responsible for compliance and reporting on the activities of your contractors and subcontractors.

SECTION 3 COMPLIANCE REQUIREMENTS

Section 3 requirements are based on the relationships defined below:

- ◆ Section 3 Residents. All public housing residents and all people who are members of families earning 80% and/or Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below <http://www.huduser.org/DATASETS/il.html>
- ◆ Section 3 Businesses. Any business concern that: (a) is 51% or more owned by Section 3 Residents; (b) for whom at least 30% of permanent full time employees are Section 3 Residents; or (c) that provides evidence of a commitment to subcontract at least 25% of the dollar amount of all subcontracts to businesses that meet the qualifications in (a) or (b) above.

Affiliates who receive SHOP funds in excess of \$200,000 for any project *must* demonstrate compliance with Section 3 requirements by meeting *either* of the following two numerical goals related to providing training and employment to Section 3 Residents and contracting opportunities to Section 3 Businesses.

1. **New Hires**. Each year of the SHOP grant term, at least 30% of new hires (aggregate FTEs who are permanent, temporary, or seasonal workers) must be Section 3 Residents. “New hires” refers to full-time employees for permanent, temporary or seasonal employment opportunities. If the business is not able meet this requirement, it has the burden of demonstrating why it was not feasible to meet the numerical goal. Such justification may include impediments encountered despite action taken. *It is important to note that if applicants are not qualified for a position, the business is under no obligation to hire them.* This includes *all* new hires, regardless of the positions’ relationship to the SHOP-financed activity.

2. ***Contracts**. Meet HUD’s contracting requirement (the “minimum numerical target for contracting”) that Section 3 businesses receive least 10% of the building trades’ contracts for the project, and at least 3% of the total amount for all non-building trade contracts including professional services like appraisals, legal work, architectural plans, and engineering.

3. Give contracting priority to these 3 categories:

* A “Covered Contract” is any contract awarded in connection with a SHOP-financed project (even if not paid for by SHOP funds), except contracts solely for supplies and materials that do not pay labor costs for installation, construction, etc.

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- a. Section 3 businesses that provide “economic opportunities for Section 3 residents in the service area or neighborhood” of the project.
- b. Applicants carrying out HUD Youthbuild programs.
- c. other Section 3 businesses.

Businesses and Affiliates can recruit Section 3 residents within public housing developments and from the neighborhoods where the HUD-SHOP assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

Community Frameworks does not interpret the Section 3 statute in such a way that allows family labor contributions to meet either the New Hire or Contracts requirement. However, we do believe that the self-help housing opportunities provided by all SHOP affiliates meets the spirit of Section 3 if not the letter of the three numerical goals, and therefore that a careful explanation from the affiliate can demonstrate how each affiliate provides substantial training-related “economic opportunities” to its families. SHOP affiliates will be given an opportunity to provide this explanation in compliance reports to our organization’s staff.

MONITORING AND REPORTING

SHOP affiliates receiving awards in excess of \$200,000 for any project will be responsible for keeping records documenting all Section 3 compliance activities and for reporting those activities to Community Frameworks.

As mentioned earlier, if any one contractor receives \$100,000 or more in a **SHOP-financed contract**, that contractor is *required* by the Section 3 statute to complete its own Section 3 compliance report and submit it to the SHOP affiliate.

Community Frameworks will require that each SHOP affiliate report at least once a year on Section 3 compliance using the form HUD-60002 is included at the end of this information guide.

SECTION 3- COMPLIANCE PLAN SUBMISSIONS

Each SHOP applicant will be required to submit a Section 3 compliance plan outlining how it intends to meet the requirements described in this guide. The plan should describe the concrete steps each organization will take to meet the New Hire and Contracts requirements and other steps, if applicable, that will be taken to provide economic opportunity to low- and very-low income people and Section 3 Businesses. Your plan should include the following:

- ◆ A description of how your organization will attempt to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contact with other community organizations and public or private agencies operating within the Section 3 project area, or similar methods;

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- ◆ Information as to whether your organization will or does participate(s) or provide(s) a program that promotes/provides training or employment of Section 3 residents;
- ◆ Information as to whether your organization will or does participate(s) or provide(s) a program that promotes/provides awarding of contracts to business concerns that meet the definition of Section 3 businesses;
- ◆ Other steps by which your organization will attempt to comply with Section 3.

A Section 3 Compliance Plan need not be lengthy (1-3 pages is sufficient), but it should be as detailed as possible.

SECTION 3 CLAUSES

The following are examples of recommended language appropriate for contracts:

- 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 of 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*

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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 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*
- H. *Section 3 of the Housing and Community Development Act of 1968 Compliance in the Provision of Training, Employment, and Business Opportunities:
The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from HUD and 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 requires that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.*

FOR MORE INFORMATION

If you have questions about Section 3 compliance or about Community Framework's Section 3 requirements, do not hesitate to contact Christina Mejia, SHOP Program Manager, at (360) 377-7738 ext 24 or Alan Trunnell, Senior Housing and Community Developer at (360) 377-7738 ext. 21.

A sample Section 3 Compliance Plan can be found on the U.S. Department of Housing and Urban Development's website at: <http://www.hud.gov/offices/fheo/section3/sect3plan.pdf>.