

City of Fargo
**Section 3
Compliance
Plan**

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Planning & Development

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INTRODUCTION

The City of Fargo (the “City”) and the entities to which it provides certain U.S. Department of Housing and Urban Development (HUD) funding must comply with Section 3 of the Housing and Urban Development Act of 1968 (“Section 3”), as mandated by law.

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are beneficiaries of HUD-provided housing assistance or who reside in the communities where the HUD funding is expended.

Entities working on Section 3 Covered Projects (as defined later in this Compliance Plan) must comply with HUD’s Section 3 regulations at [24 CFR Part 75](#).

This Compliance Plan (“Plan”) summarizes Section 3 requirements as they pertain to the HUD programs administered by the City. The Plan outlines what the City and its partners must do to comply with Section 3 and identifies the record-keeping and reporting requirements that must be met.

SECTION 3 FREQUENTLY ASKED QUESTIONS

1. Which projects are covered by Section 3?

A Section 3 Covered Project is any project involving the construction, reconstruction, conversion, or rehabilitation of housing or public infrastructure that receives HUD assistance in excess of \$200,000 from any combination of the following programs:

- CDBG (Community Development Block Grant)
- Disaster Recovery
- ESG (Emergency Solutions Grant)
- HOME (HOME Investment Partnerships Program)
- HOPWA (Housing Opportunities for Persons with AIDS)
- HTF (National Housing Trust Fund)
- NSP (Neighborhood Stabilization Program 1, 2, and 3)
- Public Housing Capital Fund
- RAD (Rental Assistance Demonstration)
- Section 202 or 811

Section 3 applies to the entire project regardless of which costs are being paid with the HUD assistance. For example, assume a project combines \$300,000 of HOME funding with \$120,000 of owner’s cash reserves for a total project cost of \$420,000. Even if the developer chooses to pay the \$120,000 contract for heating system replacement with cash reserves, the entire project, including the heating contractor, is required to comply with Section 3.

The project is considered to be the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

2. Who must ensure compliance with Section 3?

The following recipients of HUD funding must ensure compliance with Section 3:

- The City
- Subrecipients of HUD funding including the project’s developer, owner, or sponsor
- Contractors and Subcontractors of all tiers and contract sizes

The following contracts are exempt from compliance with Section 3:

- Materials-only contracts for the purchase of supplies without installation
- Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self- Determination and Education Assistance Act (25 U.S.C. 5307) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111)

3. What does Section 3 require?

Section 3 Covered Projects must strive, to the greatest extent feasible, to meet the following Section 3 Benchmarks:

- 25% of total labor hours are worked by Section 3 Workers; and
- 5% of total labor hours are worked by Targeted Section 3 Workers

Hours may be reported based on good-faith estimates.

It is also required for Subrecipients and Contractors to undertake and document efforts they made to strive to meet Section 3 Benchmarks to the greatest extent feasible. Examples include, but are not limited to:

- Target advertising for training and employment specifically to residents of public housing.
- Target advertising for training and employment to the Neighborhood Service Area of the project.
- Advertise in local media and social media.
- Provide direct, on-the-job training (including apprenticeships).
- Assist with indirect training, e.g., arranging for, contracting for, or paying tuition for off-site training.
- Provide technical assistance to help Section 3 Workers compete for jobs (e.g., resume assistance, coaching).
- Inform advocates for small businesses of possible contracting opportunities associated to this project.
- Provide technical assistance to help Section 3 Business Concerns to understand and bid on contracts.
- Divide contracts/subcontracts into smaller jobs to facilitate participation by Section 3 Business Concerns.
- Hold or participate in one or more job fairs.
- Conduct outreach, engagement, or referrals with the state one-stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

However, the Section 3 regulations at 24 CFR Part 75 do not *require* the employment of Section 3 Workers or the contracting of Section 3 Business Concerns; Section 3 Workers and Section 3 Business Concerns are not exempt from meeting the qualifications for the position or the specifications of the contract.

What if the Section 3 Benchmarks are not met?

If the Section 3 Covered Project fails to meet Section 3 Benchmarks, the Subrecipient must provide satisfactory documentation as to how it made efforts to meet Benchmarks to the greatest extent feasible and why it was not possible. Written justification should describe the outreach efforts that were taken, barriers encountered, and any other relevant information that will allow HUD to make a determination regarding Section 3 compliance.

The City must review every pay request for compliance with Section 3 regardless of the source(s) of funds in the request. Absolutely no funds shall be released for payment from any source until the City has communicated that Section 3 compliance has been satisfied.

4. Who is a Section 3 Worker?

A Section 3 Worker is any individual who fits at least one of the following categories:

- Currently or when hired in the last five years meets the definition of low-income (i.e., annual individual income is at or below HUD-defined 80% of area median income for one-person household)
- Employed by a Section 3 Business Concern
- Is a participant in the U.S. Department of Labor's YouthBuild programs

To determine if an individual meets the definition of a Section 3 Worker or Targeted Section 3 Worker, use the Worker Certification Form (found on the City of Fargo's Section 3 webpage).

5. Who is a Targeted Section 3 Worker?

A Targeted Section 3 Worker is a Section 3 Worker who fits at least one of the following categories:

- Employed by a Section 3 Business Concern
- Currently lives or when hired within the last 5 years lived within the Neighborhood Service Area of the project, which is defined as either:
 - An area within one mile of the Section 3 Covered Project, OR
 - If fewer than 5,000 people live within one mile, within a circle centered on the Section 3 Covered

Project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census

- Currently is or when hired within the last five years was a resident of public housing or housing assisted with project-based or tenant-based Section 8 rental assistance; or
- Currently is or when hired within the last five years was a participant in the U.S. Department of Labor's YouthBuild program

6. What is a Section 3 Business Concern?

A Section 3 Business Concern is a business that can provide evidence that they meet (or have met within the last 6 months) at least one of the following criteria:

- At least 51% owned and controlled by Section 3 Worker(s);
- At least 75% of labor hours over the prior three-month period are performed by Section 3 Workers; or
- At least 51% owned and controlled by current residents of public housing or housing assisted with project-based or tenant-based Section 8 rental assistance.

A business must complete a Section 3 Business Concern Eligibility Certification (included as part of the Entity Profile Package forms that are found on the City of Fargo's Section 3 webpage) for the City to determine whether or not it is a Section 3 Business Concern.

All employees of a Section 3 Business Concern are Section 3 Workers and Targeted Section 3 Workers.

7. What are the City's responsibilities?

The City must ensure compliance with Section 3 requirements. This includes:

- Assist subrecipients and contractors on Section 3 Covered Projects to be educated on and comply with Section 3.
- Monitor the performance of subrecipients and Contractors on Section 3 Covered Projects with respect to their meeting the objectives and requirements of Section 3.
- Include Section 3 requirements in any subrecipient agreement for a Section 3 Covered Project.
- Submit Section 3 data annually to HUD and maintain supporting documentation.

If the project contains multiple HUD sources, not all of which are administered by the City, then each agency must separately administer Section 3 compliance and reporting for their respective HUD funding sources. One agency shall not administer Section 3 for all HUD funding sources unless all HUD sources are administered by one agency.

8. What are the Subrecipient's responsibilities?

The Subrecipient (developer/owner/sponsor) must, to the greatest extent feasible, ensure that contracting, employment, and training opportunities arising in connection with the Section 3 Covered Project are provided to Section 3 Business Concerns and Section 3 Workers, both in their own operations and that of all their contractors and subcontractors. This includes:

- Implement procedures designed to notify potential Section 3 Workers about training and employment opportunities and potential Section 3 Business Concerns about contracting opportunities generated by a Section 3 Covered Project.
- Ensure that all bid and contract documents related to Section 3 Covered Projects clearly indicate the project is subject to Section 3. All potential respondents should be educated about their responsibilities under Section 3. All bid solicitations and contract documents must include the Section 3 Clause.
- Ensure the compliance of all contractors on a Section 3 Covered Project. Contracts must not be entered into with entities that have violated Section 3 requirements.
- Collect, review for accuracy, and submit all required Section 3 documentation to the City as outlined in the Documentation and Reporting section below.

9. What are the Prime Contractor's responsibilities?

Section 3 Prime Contractors must, to the greatest extent feasible, ensure that contracting, employment, and training opportunities arising in connection with the Section 3 Covered Project are provided to Section 3 Business Concerns and Section 3 Workers, both in their own operations and that of all their subcontractors. This includes:

- Implement procedures designed to notify potential Section 3 Workers about training and employment opportunities and potential Section 3 Contractors (subcontractors) about contracting opportunities generated by a Section 3 Covered Project.
- Ensure that all bid solicitations and subcontracts related to Section 3 Covered Projects clearly indicate the project is subject to Section 3. All potential respondents should be educated about their responsibilities under Section 3. All bid solicitations and contracts must include the Section 3 Clause.
- Ensure the Section 3 compliance of all their subcontractors, regardless of the size of the contract. Subcontracts must not be entered into with entities that have violated Section 3 requirements. Likewise, all subcontractors are responsible for the lower tier subcontractors underneath them.
- Collect, review for accuracy, and submit all required Section 3 documentation to the Subrecipient as outlined in the Documentation and Reporting section below.

DOCUMENTATION & REPORTING

All required forms can be found on the City of Fargo's Section 3 webpage at <https://fargond.gov/city-government/departments/planning-development/community-development-neighborhoods/section-3>

The **Subrecipient** (developer/owner/sponsor) shall be responsible for compiling and submitting the following documentation to the City:

- Due upon execution of the **Subrecipient Agreement**:
 - Entity Profile Package for the Subrecipient
 - Copy of bid package that includes the required Section 3 Clause

The **Prime Contractor** shall be responsible for compiling and submitting the following documentation to the Subrecipient. The Subrecipient shall be responsible for reviewing for accuracy and submitting to the City:

- Due upon execution of the **contract with Prime Contractor**:
 - Entity Profile Package for the Prime Contractor
 - A Schedule of Contracts providing the following:
 - Name and contact information for each subcontractor (all tiers)
 - Identification of any "materials-only" contracts
 - The total dollar amount of all contracts, which must match the general contract
 - Copy of the contract that includes the required Section 3 Clause
- Due upon execution of **each contract with each subcontractor**:
 - Entity Profile Package for each subcontractor
 - Copy of each subcontract that includes the required Section 3 Clause
- Due upon **each pay request** (regardless of funding source or which costs are being requested):
 - Section 3 Work Hours and Outreach Efforts Form for time period of pay request
 - The "Time Log" section must include every employee, from all tiers and subcontracts, who has worked on the project since the last pay request. (Certified payroll with employee hours may be provided in lieu of the Time Log form.)
 - Add attachments to the "Outreach Efforts" section that provide proof of outreach efforts (e.g., copies of direct mail solicitations, email and internet outreach efforts, formal advertisements, flyers or brochures, sign-in lists from job fairs and other public meetings, and agendas and/or meeting notes from meetings with contractors).
 - Section 3 Worker Certification Form for each reported employee

- Can be completed by employer or employee
- Only need to provide once per employee working on the project
- Must use appropriate HUD-defined area median income limits

SECTION 3 CLAUSE

All Section 3 covered contracts must include the following 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 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are beneficiaries of HUD housing assistance or who reside in the communities where the HUD funding is expended.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, 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 75 regulations.
- C. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.
- D. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.