Complying with Section 3 Requirements for State & Entitlements CDBG Grantees - 7/21/11

COLLEEN GROGAN MOORE: Good afternoon, everyone. And thank you for joining us today for this webinar on complying with Section 3 requirements for state and entitlement CDBG grantees. My name is Colleen Grogan Moore. I'm with ABT Associates. And we've been working with HUD and our other presenters today to develop this webinar, as well as some more in-depth training on this topic that will be offered in September.

We have nearly 800 people registered for the webinar today. So I'm going to review a few details on how this will work and then I'll introduce our presenters.

So as you probably know, the webinar is scheduled to last approximately 90 minutes. As you heard at the start of our broadcast, all of the callers -- due to the large number of callers on the line today, all of the callers are on mute so that your questions will be submitted -- will not be submitted verbally. And I'll get to that in just a moment.

If you're having any audio difficulties -- of course if you're having audio difficulties, you may not be able to hear me, but it is best to try to use a telephone instead of your computer, if you're having any problem. We have given our participants today the option of using either their telephone or their computer, but if you find you're having any problems, you should use the telephone number that's provided when you logged into the webinar today.

The webinar will be recorded. It is being recorded right now and it will be made available for viewing and for downloading. You will also receive a follow-up message tomorrow with that link, but it may take a few days for the HUD team to post it. We also will show the link on your screen in just a moment.

With respect to questions, you're welcome to submit questions throughout the webinar. As I mentioned, we won't be able to take questions verbally. We also request that you do not submit your questions through the chat function of go to webinar. It's very difficult to read those questions and to -- in order for us to get a prompt response.

And so we have set up a separate e-mail account. You see it on your screen. It's section3questions@abtassoc.com, And you can submit those questions both during the webinar today and also following the webinar. We will plan to monitor that account for the next seven days and we'll pass along those questions to our colleagues at HUD for responses.

Again, the slides, the attachments, and the webinar recording will be posted at the link that you see on your screen. That's on the HUD website. And as I mentioned, this may take a few days for the HUD team to post those.

So now, I'm going to introduce to you the presenters that we have with us today. We have David Shaffer. David is the executive director of the All Mission Indian Housing Authority in

California and has extensive experience in training on Section 3 requirements. He's been doing that for more than a decade.

We also have with us Sabrina Riley-Randolph from the City of Valdosta, Georgia. Sabrina will share her experience in planning and implementing an effective Section 3 program.

In addition, we're very happy to have with us Rafiq Munir. He's joining us from the HUD Office of Fair Housing and Equal Opportunity. And that office, as most of you know, has responsibility for monitoring compliance with Section 3 requirements and actually providing quite a bit of information to grantees around the country who administer programs to which the Section 3 requirements apply.

We also have with us Eva Fontheim from the HUD Office of Block Grant Assistance. The HUD Office of Block Grant Assistance is actually sponsoring this event today for the CDBG grantees.

And then myself, I'll be moderating. And we will be, as I mentioned, taking your questions. We will leave -- plan to leave about 20 minutes at the end of the presentation and get to as many questions as we can. Any questions we're unable to get to during this presentation, we will attempt to get those responses directly from HUD and hope to post those questions and answers following the webinar, as soon as those responses can be assembled.

So with that, I am going to turn over the presentation to David Shaffer and he will review the agenda and then get on with the rest of the presentation.

DAVID SHAFFER: Thank you, Colleen. Good afternoon, everyone. Thank you for taking time this afternoon to talk about the Section 3 regulation. On the screen right now is the agenda that we'll get through this afternoon. Some of the objective -- the major objective of the seminar today is to help you develop an understanding of the requirements of the Section 3 Act, as well as providing some technical assistance in developing and implementing a successful Section 3 program.

As we're all aware, HUD awards billions -- excuse me -- billions of dollars to local governments, public and Indian housing agencies, for profit and nonprofit housing assisting agencies, PHAs, development agencies. And these funds are all targeted to the neighborhoods that have the most pressing needs for housing and economic assistance.

In today's seminar, like I said, we're going to try to help you put your plans together and meet the goals and objectives of the Section 3 regulation.

I'm also going to spend a few minutes at the beginning of my remarks giving you a little history lesson on how we got to Section 3 as it stands today.

Third item on the agenda, we're going to go through the definitions, make sure everyone has a good working knowledge of what a Section 3 resident is, what a Section 3 business is, and what a Section 3-covered activity would be.

And also, we're going to spend a good amount of time talking about your responsibilities in enforcing the maximum feasible effort in attaining Section 3 goals. We're going to talk about when it's applicable for Section 3, what thresholds are applied to CDBG recipients, as well as talking about some strategies for implementation.

We have other speakers that are going to come on and talk about some of their initiatives. And we're going to talk about the barriers that are out there facing Section 3 and hopefully provide you some tips for overcoming those barriers. And as Colleen said, we're going to leave time at the end of the session for your question-and-answer period.

These HUD funds that we're receiving can have a tremendous economic impact on low-income areas that are serviced by the grants that you are administering. In order to really maximize the impact of these grants, HUD does require that all recipients of these funds comply with the Section 3 Act of 1968. And the guts of the legislation is that any recipient of the HUD funds has to provide the maximum feasible effort to provide economic opportunities to residents of the community being served and the businesses that serve those communities.

Developing a Section 3 plan is -- it's a complicated process to really address all the issues, as far as job training, employment, and entrepreneurial opportunities. It does require a huge commitment not only from the grantees and administrator of these programs but also the contractors that we work with on a daily basis. And Section 3 is primarily a instruction-oriented program, and so that's the major audience that we're trying to reach out to with our Section 3 implementation efforts.

As I said, Section 3 is the HUD Act of 1968, and the history of it actually goes back to the urban unrest of the mid '60s. The Kerner Commission study came out and they called for legislation that would stimulate job and business opportunities for residents of public housing and assisted housing and in distressed urban areas. The result of this study was the Section 3 of the HUD Act of 1968. And it was utilized vigorously through the great society of initiatives of building housing and subsidizing urban development.

When it was originally passed, it was strictly a geographic preference. They didn't preference the residents of certain areas and business located in certain areas. And this legislation has been on the books since 1968, but it was significantly modified in 1995. It was overhauled from being a geographic preference to being an economic preference. And rather than give geographic preference to residents and businesses, we were going to look at people's economic status and business's economic status and began to give preferences to them.

Legislation also clarified some of the ambiguity of what were HUD covered activities and what type of opportunities that we should be providing to the recipients. As I said, it was designed to direct employment, training, and contracting opportunities to the targeted areas.

The slide up now is the language out of the regulation which states the goal of the regulation. We're out there to ensure that employment and other economic opportunities generated by the grants that we're receiving go to the greatest extent feasible and consistent with the local and federal laws. We're going to direct assistance to low- and very low-income persons, particularly those that are residing in government assisted housing and to business concerns, that provide economic opportunities to those low-income individuals.

Section 3 really is a two-fold goal program. We have a hiring goal. We're trying to employ individuals in these areas. And we also have an independent contracting goal that we're going to be utilizing Section 3 businesses in the area.

The term "the greatest extent feasible" is difficult to know when you have achieved it, but you know if you're making those type of efforts to maximize participation in the program. For your agency, maximum feasible effort may mean we need to go back and review our procurement policies, our own hiring policies in-house because you in fact, are also a Section 3 recipient and should be employing Section 3 hiring practices. But for procurement, internal policies, you may want to reevaluate how you do the small purchases.

You want to always include Section 3 businesses in that outreach when you make a small purchase. How are you going to address the Section 3 regulation when putting out your sealed bids for major construction projects? And also how are you going to address Section 3 compliance issues with your competitive proposals when you're doing professional services or even construction activities via the competitive proposal method? Also, a minimum effort should include adopting a Section 3 implementation plan at your agency outlining your policies and your procedures of implementing a program.

The regulation is 24 CFR 135 the Section 3 regulation. And that regulation does establish goals that our agencies are trying to achieve, but it doesn't really tell you how to do those goals. And that's partly by design. I think this regulation does allow a lot of local initiatives, local affiliations that you may already have in place, and I think it was HUD's acknowledgement of what works in Chicago may not work in Boise.

And it really allowed for a lot of local design. So it's up to you really to come up with an implementation plan and a strategy that serves the residents and the Section 3 businesses of your area.

As I mentioned, HUD funds are often one of the largest sources of federal investment in some of our distressed areas. And an effective Section 3 program really doubles the use of those funds. We're able to recycle those federal funds in terms of wages that are going to be spent in businesses in the local community. And if we emphasize Section 3 businesses, we're also incubating some of these smaller businesses in these distressed areas, which also will lead to further employment opportunities.

The increased emphasis is on compliance with Section 3 requirements to create jobs and economic opportunities, by that we mean HUD is emphasizing this more and it's become a requirement. For years I think many of us ignored Section 3. I think it's back on the front burner. So it's an issue that should be part and parcel with all your economic initiatives that you're doing through CDBG programs.

Before we get into detail on what Section 3 requires and what the expectations are for a successful program, I want to go over a few things what Section 3 is not. Section 3 is not a race or gender program. Many of our agencies do have a minority business enterprise and women business enterprise -- some even disadvantaged business enterprise goals that we set in our contracting efforts.

Section 3 should not be confused with those. Section 3, as I mentioned, is strictly an economic-based preference. There's no correlation between being minority-owned, women-owned, and Section 3. In fact, you'll find a lot of businesses that you've done business with in the past that are majority owned will, in fact, be defined as a Section 3 business when we get to that definition section of the program.

Section 3 is also not an entitlement for eligible individual and businesses. When you're hiring -- or trying to implement Section 3 hiring, all applicants must meet the requirements of the job. We don't lower standards because it's a Section 3 applicant. Same thing is true with businesses.

Although we're doing an additional outreach and trying to encourage them to participate, they still must meet all the terms and conditions of the contract that we award, including insurance requirements, state worker comp requirements, a bid in performance bonds, and also the Davis-Bacon or other labor standards that have been associated with your project.

It's not only applicable to the direct recipients. You are also responsible for subrecipients' compliance with Section 3. Much like in contracting, all the provisions that we put in the general contractor's license are also to be referred to in all subcontractor license. So if you're a state agency, you're still ultimately responsible for the Section 3 performance of your grantees.

And if you're a recipient of a grant, you are then in turn responsible for the compliance of any contracts or other subrecipients that you award. And as I said, it's not anything to do with WBE/MBE; but most importantly, it's not an optional requirement. This is a federal regulation. And a lot of times contractors feel that -- or even agencies, that they can pick and choose if they want to do this. But my recommendation is that community development agencies implement Section 3 and enforce it as we would labor standards. It's an equally important piece of legislation.

As I mentioned earlier, Section 3 is primarily aimed at the construction trades and the things that will be covered as Section 3-covered contracts when you award them are any housing renovation or rehabilitation activities that you'd be undertaking, new construction activities, infrastructure, road work, water and sewer or any of the public facilities that you may receive grants for. These are all going to be Section 3-covered activities.

What is not covered is if you're using any funds to buy supply or material type contracts. Those are not Section 3-covered contracts, but anything that involves labor on site or services will be a Section 3-covered contract, if it's over the thresholds that we'll talk about in a few moments. .

The thresholds as they apply to CDBG recipients are, your grant has to be over $200,000 in order for Section 3 to apply. If you're receiving under $200,000, we encourage you to enforce the spirit of Section 3, but there is no compliance requirement. So if you receive over $200,000, a contractor or subcontractor would have to have an agreement in excess of $100,000 for you to implement Section 3 requirements on that contractor.

Public housing agencies have a $1 threshold, but if you're a community development agency, you have much higher thresholds before the requirement kicks in and you have to begin compliance.

An example of this is on the next slide. If the state of Alaska should receive $3.1 million in CDBG program funding for the year, Section 3 will be applied to all construction contracts generated from that funding because the recipient received more than the $200,000. Furthermore, if a township received $210,000 from the state, all their activities would also be Section 3-covered activities, regardless of the project size. This would even include contracts that were below the $100,000 because of the size of the grant to the agency.

As I mentioned a couple of times already, it is aimed at the construction trades, carpentry, masonry. Anyone who has tools of the trade in their hand is going to be a Section 3-covered job. One thing with Section 3 hires, they are also entitled to the full wages that have been declared appropriate for the job either through the Davis-Bacon wage decision or HUD determined wage rates.

Many of these trades will have minimum qualifications -- a drug testing requirement, education requirements, training requirements. Those are typically in place and our Section 3 applicant would have to meet the requirements of the job. In reality, a lot of our Section 3 hires end up in the labor classification, but those too are also covered by Davis-Bacon wage legislation.

One thing with contractors, before you sign the contract you ought to sit down and talk about jobs that are going to be generated and include some type of agreement with them on a per trade basis. Section 3 only covers new jobs that are being generated as a result of a contract. If the contractor is not hiring anybody as a result of receiving the CDBG contract, they are, in fact, somewhat in compliance with Section 3.

If they're going to go out and hire individuals, then they should be working with your agency as far as the employment listing that you may have or with an affiliate of yours that you've established a partnership with. But all construction trades, including laborers, are Section 3-covered positions. Next slide, please.

Another area of opportunity for Section 3 compliance is with our professional service contracts. We would usually obtain professional services via the competitive proposal method of procurement. Section 3 ought to be one of your evaluation criteria when determining which offerer is most advantageous to your agency. We're real familiar with putting terms like experienced, qualifications, price, approach to the work. Any time you put an RFP out, compliance with Section 3 should be one of your criteria.

In fact, the regulation recommends at least 15 percent of your overall evaluation points be associated with Section 3. And oftentimes these are the opportunities because these contracts are negotiable. On a sealed bid we're hoping for compliance. We're making good presentations that are pre-bid, but ultimately we're going to be governed by price.

When we're doing a competitive proposal method, you can negotiate positions with these contractors. You may have people in your communities that have some background that can benefit from an opportunity with an architectural engineering firm, legal firms, or management support and consultant firms. So you should look at each contract, not just the construction contracts, as a Section 3 opportunity.

Sealed bid, again as I said, it's more difficult, but we're going to get into some strategies for enforcing Section 3 with the sealed bidding shortly.

I wanted to go through a few definitions with you today. Section 3 resident, there is a couple ways that a Section 3 -- or an individual can be a Section 3 resident, but they must meet the low-income definitions as established by your local communities. All residents of public housing are considered automatically Section 3 residents. They have qualified income status in order to get into public housing.

Other low-income people not residing in public or assisted housing can also be considered a Section 3 income, if they qualify as a low or very low-income person. Each one of your community public housing agency has established income guidelines based on family size, and you can utilize those thresholds to determine who is and who is not low-income.

When determining Section 3 eligibility based on income, though, you have to keep in mind that it's household income. So it's not just the individual who's applying. In order to be a Section 3 resident, their household income must be below the thresholds established as a low-income individual. Next slide, please.

In order to maintain this database of applicants, your agency will need to develop a certification program. When contractors come in and say, "I want to comply with Section 3. What carpenters do you have out there?" we ought to be in a position to give them a list of potential applicants. And one of the first steps in doing that is having in your files a certification form that that individual certifies that they meet the income criteria.

Regulation does not require what level of evidence that we're going to require, what supporting documentation. That is solely up to your agency. You can go anywhere from the honor system on this to requiring tax information from the previous year. It's really up to you when you develop your implementation plan to determine what documentation you're going to require in order for someone to certify that they're a Section 3 applicant.

Also with the certification form, I'd recommend that you have a application form that would detail their experience levels, levels of education, familiarity with different tools, etc., so that we're able to recommend quality applicants to the contractors in order to comply with Section 3.

From experience, nothing will kill a Section 3 program quicker than if we're sending applicants to contractors that don't meet the qualifications, that aren't willing to do the job, and more quit within days of being hired. So that's where the burden is on you to make sure that there's an evaluation of the applications coming in and that we're making good, solid references to the contractors and vendors, the recipients of the funds.

So our goal with the hiring, as I said, is we're trying to hire 30 percent of all new hires being generated from this contract should be Section 3 residents. The other goal, as I mentioned earlier, is contracting with Section 3 businesses. And much like keeping a database of Section 3 residents, your agency is going to have to develop a program to certify who and who is not a Section 3 business.

One recommendation I can give you is to talk to your local public housing agencies because they too are also implementing Section 3, and they may have a certification program in place already. And you can enter into an inter-governmental agreement and can utilize a single Section 3 certification program.

Section 3 businesses, there's a couple of ways that a business can be a Section 3 business. Number one is that they're 51 percent owned by a low-income individual. These are the new and emerging businesses in your communities, start-up businesses. And we should be making an emphasis and contacting and working with those because they do hire local residents, for the most part.

The second way a business can be considered a Section 3 business is if 30 percent of their current workforce is or was low-income within three years of the date of their hire. And this is the regulation's way of rewarding companies that have made an effort in the past to train and employ low-income people. And you will find a good number of businesses in your community will fall into this criteria.

If I'm a contractor with 10 employees and I determine that three of my employees, current employees, were low-income when I hired them, I can qualify as a Section 3 business. So a lot of companies that are resistant to implementing Section 3 in your communities may, in fact, be some of the biggest supporters once they've learned that they, in fact, qualify as a Section 3 business.

A third method of becoming a Section 3 business is if you can certify that you've committed over 25 percent of your contract that you're receiving on two other Section 3 businesses. So there's a number of ways companies can be Section 3 businesses. You need to maintain the database. So if a company comes in and says, "I want to comply with the Section 3 contracting goals. Could you give me a list of Section 3 electrical firms in our community?" you need to be able to generate those, much like we did in the past with minority contractors and women-held businesses.

Unfortunately, in those days the state or the city maintained the list, but with the Section 3 regulation, it's pretty much each agency is going to develop their own certification program. However, there's nothing in the regulation that would prohibit agencies from banning together and coming up with a regional or a state association certification program.

So those are the three ways a company can be a Section 3 business. And much like the resident certification, you are required to have some sort of business certification where they would state what type of preference they're requesting, either that they're low-income owned, the 30 percent rule I just mentioned, or if they're going to subcontract out their efforts. They will certify this and submit it.

And much like the resident, it can be a self-certification honor system or you could require some supporting data from that contractor in order to approve their certification position. These forms are not HUD-mandated forms. It's actually up to each locale to come up with their own certification forms.

I think I've already mentioned these two major points already and that the Section 3 resident must meet all the qualifications for the positions being filled. My only word of warning is don't let vendors and contractors up the qualifications excessively for a Section 3 resident that they're not making other applicants go through. They're not requiring background checks or criminal checks, but they are because they're a public housing resident. They need to be treated uniformly as all applicants.

And also with Section 3 business concerns, as I said, in addition to meeting all the terms and condition of the contract, they also have to pass your analysis -- your bid analysis that they are, in fact, responsible contractors and have the technical ability and capacity to perform the scope of the work called for in the contract documents.

I mentioned previously the numeric goals. These are the benchmarks that we're trying to achieve. And we will report on our progress on these benchmarks through the HUD 60002 form. But the goal we're trying to achieve is that 30 percent of all new full-time hires should be qualified Section 3 residents.

So not every hire has to be, but we should encourage it that the ultimate goal at the end of the day, if we hired 20 people through our programs, that at least six of them would have been Section 3 residents. That's the hiring goal. Separate contracting goal is that 10 percent of your contract dollars that come out of your activity budget line item should be going to Section 3 businesses for all trades work.

But in order to really count these goals, you need to have that certification program in place because there's no way to say how many dollars went to Section 3 businesses, if you haven't certified the Section 3 businesses. So, 10 percent of your construction dollars. Additionally, three percent of all your other contracts, your architectural, engineering, your legal contracts, any other outside consultants that you may bring in, we have a three percent goal.

So those are the three numeric goals that are established in regulation. Some agencies have actually upped these goals in order to enforce Section 3 even further. California agencies have adopted a 50 percent hiring goal and a 20 percent contracting goals.

When you're doing the hiring goals, one thing I recommend on your bid forms when you put out, I require the contractors to list the employees that currently work with them at the time of the bid opening. So I -- it's my way to ensure that they do not go out and get a contract from us, go out and staff up, and then come into your agency and say, I'm not hiring anyone.

So if you're able to get a snapshot picture of who works for that company at the time of the bid, should they get the job, you'll be able to know if new names show up on the payroll reports that they should have gone through the Section 3 hiring process.

As far as the 10 percent contracting goal, a lot of that will be achieved through the use of subcontractors. That's why it's very important that not only at your pre-bid when you're talking to your general contractors, that word get down to the subcontractors as well that they are to achieve Section 3 goals, similarly.

For the next couple of slides I just want to talk about what your responsibilities are as it affects Section 3. I did talk about going back and looking at your policies and procedures, doing a good outreach effort with contractors, etc., but first of all, developing the procedures, how you're going to comply with Section 3.

Have an action plan that officially and formally adopts the goals that you're trying to achieve and developing an outreach program that notifies the Section 3 residents in your communities and the businesses about training and employment opportunities. I think community development agencies could be holding a contractor orientation, not only to explain Section 3 but other contracting requirements and just how to do business with our agencies.

We can be making presentations at community meetings and getting the word out. We do need to implement those procedures of notification with residents and contractors. We need to be working with other providers in our community to facilitate some training and employment.

And I think that's one of the most important things with Section 3 is to collaborate with other service providers in our communities, be it the community college, Workforce Investment Act people, Goodwill, Job Link. All these other agencies are doing the same thing that we're attempting to do, and they're working with our same client base. So developing those partnerships, getting into formal agreements with them, could really minimize what you need to do with Section 3 and utilize the other agencies that are already in place there.

So you're responsible for facilitating the training and employment out there. You're also responsible for maintaining adequate documentation to show what efforts that you've made to comply with these requirements and what are the results of those efforts; and also the identification of any impediments that you've reached that prohibited you from meeting the end established goals for the programs.

But minimally I would put out a notice to the Section 3 residents in the area about employment opportunities and also a general notice to the business concerns in the community explaining what Section 3 is and how they could participate in those contracting opportunities.

Other responsibilities, as I said, are to facilitate the training. Very few of us are in the training business any longer, but other organizations are and those are the partnerships we need to develop. Notifying the contractors and the developer of the regulations, and also putting additional information into our bid packages.

The Section 3 clause that's referred to in the third bullet point here is Article 40 of the HUD general conditions. And that's the only language that the HUD documents provide on Section 3. That alone doesn't really explain what our expectations are of those contractors. So you should be supplementing your bid documents with a Section 3 acknowledgement form to make sure they understand what it is.

And also in the bid forms just make -- require them to project what their hiring and contracting goals are so that when the bids come in, you're able to evaluate Section 3 compliance via the bid documents. So I think all of us need to really be evaluating our bid packages and our request for proposals that we put out and add additional Section 3 documentation to show the emphasis that your agency is placing on this and also as a means of increasing compliance with the program.

And obviously, acknowledge we're going to award contracts to Section 3 businesses. There are recommendations in the legislation as far as some of the preferences that we can provide. I'm a little hesitant to get into those because sometimes they conflict with the state and local law, but some housing authorities have adopted what we call the X factor, which allows awards to Section 3 businesses above and beyond the amount that a non-Section 3 business amount would have bid, things like that that you can do to preference points.

And as I mentioned earlier, the small purchases under your threshold, if you pick and choose who's going to bid the job, you also control Section 3 participation to a great degree in that type of contracting effort.

Like I said, we're going to document actions. If you haven't reached the goals, HUD would like to see what efforts did you make to ensure that you did attempt to do the maximum feasible efforts.

You're also required to submit the 60002 reporting form. And Rafiq I think is going to address this later in the presentation. This is due once a year. And it's also due for every open program that you are currently running. So if you have two open CDBGs, each one of them will be filed separately. And this report is filed electronically. .

If you're a state or a county agency that distributes funds to subrecipients, you're the one that's going to be overseeing the Section 3 compliance and emphasizing that they include Section 3-covered language in their solicitation documents as well.

The slide up now is the annual performance report. As I said, it's due once a year. If you have a scheduled CAPER report time, that's when you'd submit it. If you have no open programs but you still have funds you're expending, the regulation says this is due January 10th of each year. But for recipients of community development funds, just submit it along with your annual performance report for the program.

Online submission website is up on the screen right now. As we've discussed in the past with HUD, this form has to be able to be filled out 100 percent and submitted. There's no save function. You're really doing three activities on this report. You'll be reporting on the hiring goals, reporting on all the hires that have been generated as a result of these HUD funds. How many of those hires were Section 3?

And you're going to be reporting on these hires on a per trade basis. So it's important once you have contractors under contract that you place some of the burden of reporting this on them with their monthly payroll submittals or whatever so that when it's time to prepare these reports, that you have the information at your fingertips. And the same with the contracting efforts as well.

The second part of that report form deals with your contracting efforts, the 10 percent goal. And then the third part of that report will be involved with your good-faith effort. They're going to ask you to check, have you done outreach? Have you had community meetings? And then there's a spot for other where you can mention anything else that you've done to maximize your participation in Section 3.

The regulation does point out that there are consequences to recipients of HUD funds for failure to comply with Section 3. Some of those sanctions may be the contract could get terminated. Contract could be suspended until the adoption of an effective Section 3 program or -- it says debarment. I don't think anyone's yet been debarred for noncompliance with Section 3, but that is allowed for in the legislation.

And also business or a Section 3 resident can file a complaint, if your agency is not in compliance with Section 3. We're seeing more and more of this in public housing as residents get more informed about Section 3. They're holding housing authorities accountable and shortly I'm sure it will be in your arena as well.

So if businesses feel that they're Section 3 and they're not getting that certification or that preference from your agency, they can turn around and file a complaint. If HUD finds that the complaint has merit, they're going to stand in and enforce some type of remedial action in order to comply with Section 3. So it's better to have something in place, preventative medicine rather than reactive medicine when it comes to implementing Section 3.

Okay. How does Section 3 apply? I've given a few examples on this slide here. Section 3 will apply to any grantee. Start off with -- presumption is the contractor is awarded five separate contracts of $60,000. Section 3 is going to apply to the grantee since the total grant was more than $200,000. So regardless of how those contracts were divided up, the grantee is still responsible for achieving those goals with Section 3.

The contractor may not share that responsibility because they're a contractor, but overall the program. So it's kind of tough and we're holding the agency accountable but the contractor not, but through effective contract enforcement and administration, the overall program goals will be reported to by the grantee or the agency. So the grantee in this scenario is still responsible for meeting the Section 3 goals of 10 percent of its contract awards should be going to qualified Section 3 businesses.

Another scenario where a subrecipient is awarded $175,000 to develop a house and hires a general contractor for $130,000 of that grant, in this case the subrecipient is exempt from Section 3 reporting requirements and enforcement since their grant was under $200,000. And since the recipient is not required to participate in Section 3, the contractor in this case would also be exempt, even though he's over the $100,000 because the program itself not a Section 3-covered activity.

It's a rule of thumb, though, if you're going to be implementing Section 3 on your larger contracts in the threshold, if you do it across the board, even if it's a contract that may be bumping up or right below the threshold, the uniformity of enforcing Section 3 really helps the long-term ability of your agency and the contractors' awareness of it and their willingness to take it seriously.

Some of the strategies for implementing Section 3, as I mentioned earlier, network and collaborate with your local housing authority. Every contract they do construction-wise is Section 3. They have already developed some partnerships that you could piggyback on, or if not, as I said, the WIA programs, the community colleges, Goodwill, Job Link, all those are good partners to implement Section 3.

All of your agencies should designate a Section 3 coordinator. And by that I mean not someone that has to do all the work but someone that coordinates to make sure the procurement department, the community relations, whatever -- however you're organized. Everyone should have a slice of the Section 3 responsibility pie. But someone at your agency ultimately has to have overall responsibility to make sure that the reports are done and that the goals are being implemented.

Also, we talked about adopting and executing a Section 3 plan that describes all your policies, procedures, your implementation strategies. And I also recommend that your board of commissioners or who oversees your organization formally adopt this policy. And that way it's easier to enforce it with contractors, if it's part of the agency and the contracting policy of the organization.

Some of the questions that we've heard in the past why people aren't complying are here. And we all know there's a million barriers out there to stop a Section 3 program, but that's our job as administrators to identify these barriers. And oftentimes, a barrier can be turned into a Section 3 opportunity, but oftentimes we hear that the contractors are complaining or that the Section 3 requirements are too big or too complicated.

Some strategies to overcome this, I mentioned earlier. Look at your bid packages. See if you can provide more concise direction on what we're expecting out of these contractors when they submit a bid. Reevaluate your pre-bid conferences to emphasize the importance that your agency is placing on this matter.

Don't do a pre-bid meeting where you get up and say, "By the way, this is a Section 3-covered contract," and then move on to the next agenda item. The contractors are not even going to write that down, but if you have a five or 10-minute presentation on Section 3 at each of your pre-bids, they're going to walk away from that meeting saying, "This issue means something to this agency and I better comply."

We talked about setting clear numeric goals based on actual contract amounts. Every contract is going to have different opportunities. Some may have no opportunities. You really should do almost a risk analysis of each one of your contracts to see which one provides the most Section 3 opportunities. In order to meet that goal, sometimes you need to overreach on certain contracts because other jobs you're going to be unable to reach those goals.

And lastly, put these requirements in writing. Have the contractors sign some type of certification that these are my hiring goals. Have them provide copies of their subcontract agreements to your agency. If it's a Section 3 business, have them sign a first source hiring agreement with your agency. Should a job open up, your Section 3 listing will be the first place they go to.

Also, as far as putting it in writing, any collaboration you do with these other partners I mentioned earlier, all of those should have a memorandum of understanding developed to lay out your role and their role in case management and employment and referral areas so that we don't lose potential opportunities because we're not talking with our partner agencies.

So it's not that complicated, if you explain it well. As I said earlier, having an annual contractor orientation in the community is not a bad idea either. It not only explains Section 3, contractors will complain about other things being complicated, be it labor standards or anything. So how to do business with your agency orientation is a good process and I've done them in the past. The number of bids I got went tremendously up and my compliance issues went tremendously down.

This is often a common issue. Our contractors don't take Section 3 seriously. They'll say what's in it for me? And when they don't see it working out for them, they're not going to take it seriously. Make them take it seriously. Let them know this is a term of the contract. It's not a feel good program.

Put some added emphasis on their responsibility. As I mentioned, each progress draw that they submit to you, have them submit a Section 3 hire report for that month, and a final report. Cover Section 3 at your progress meetings.

When you see that there's noncompliance, put it in writing. Ask them how they're going to comply because you noticed they've done three hires and none of them were Section 3. How are they going to comply?

We need to be the MBWA -- management by walking around -- being out on these work sites, counting heads, and making sure that the contractors -- that if we're taking it seriously, the contractors will take it seriously. We're going to be auditing Section 3 internally, obviously the contractors will as well. And if we have acts of noncompliance going on, you can restrict that contractor from bidding future work.

Four definitions give us a responsible contractor. One of the definitions revolves around compliance with public policy. If you have a contractor that's not complying with public policy, he, in fact, can be deemed a nonresponsible bidder for future jobs, or if they're totally ignoring Section 3, you don't have to award contracts to them. And as we said earlier, this can be grounds for a debarment or limited denial issue from HUD.

Our contractors or small businesses, they use the same crew for all the work. They do not have new hires. And that's true, especially in today's economy. Contractors are actually trying to keep their existing crews together and not lose them.

A couple things to keep in mind here. That may be a Section 3 company already through that 30 percent of their workforce is or was low-income and a lot of the contracting crews have been laid off so much. Half their workforce was low-income last year. So we'll get -- if they're using that as an excuse to see if they are, in fact, a certified business; that 100 percent of their contract is Section 3-covered contract.

Talk to them. Negotiate on these new positions. It's good politics. Some arm-twisting may be necessary on your behalf on creating some positions, but we're out there to make sure that we're doing the greatest extent feasible. And you'll know you had success if one out of the three new hires is a Section 3 resident and if 10 percent of your dollars is going to those Section 3 businesses.

So with that I'm going to turn it over to Rafiq, and he is going to address some of the initiatives that are underway at HUD.

RAFIQ MUNIR: Okay. Good afternoon. First, on behalf of our Assistant Secretary for Fair Housing and Equal Opportunity, John Trasvina, as well as our Director of the Economic Opportunity Division, Staci Gilliam Hampton, I'd like to express our appreciation to the participants of today's webinar. I understand we have over 600 folks online.

Next, I'd like to thank Dave for that excellent overview of the program. Early in his presentation Dave mentioned the current departmental emphasis on the program. I'd like to remind the audience that job creation remains one of the most important issues of the day, given the persistent level of unemployment. That said, let's review a few initiatives that the department is currently undertaking.

On the slide you see outlined several points, the first being an increase in the Section 3 reporting rates, as well as overall compliance and enforcement for noncompliance. In 2009 a notice was sent out to many recipient agencies that they were delinquent in reporting. As a result of that, we experienced a significant increase. And we're currently -- it resulted in a 60 percent increase in reporting rates. We're also taking aggressive actions in instances of noncompliance.

Second is an emphasis on training and technical assistance; activities such as today's event; on-site training; and one-on-one training. We realized that in order to make this program effective, a recipient agency's contractors and the intended beneficiaries must be knowledgeable about the program. There has to be a chemistry between all three parts to make this work.

Next, we are looking to revise our reporting form, the HUD 60002. We realize that the current form presents some shortcomings, and we're actively pursuing a revision which will encumber a complete system update. We anticipate the new form will auto-populate many of the factors that you currently fill out, such as your identification, name, address, so on and so forth, as well as the amount of funding that you receive.

In the new system all of that will be auto-populated so that you can go in and report the significance of what you experienced in the preceding 12 months. The department is interested in the amount of funding expended during the reporting period and the employment and contracting generated thereof.

Next, we are excited to administer the first-ever Section 3 coordination and implementation NOFA. If you are filling out an application for that funding, you should have received a notice that the closing date was extended to August 1st. The department has allocated approximately $600,000 to award approximately 12 grants in the amount of $50,000 to fund the position of a Section 3 coordinator. We have a significant number of applications already submitted, and we hope to entertain more in the future.

Next, we are also excited to launch our business registry program. This is a self-certification program that will be piloted in five areas. It's a pilot program for six months. And you can see the locations, L.A., D.C., Detroit -- Memphis is not one. It should be L.A., D.C., Detroit, New Orleans -- and the last site escapes me, but we hopefully will launch that program -- oh, Miami. I'm sorry. We hopefully will launch that program later this month or during the month of August.

And this program will allow Section 3 businesses to self-certify into a database whereby recipient agencies can conveniently go in, find the self-certified businesses, and announce bid competitions to those entities. This will hopefully facilitate increased Section 3 contracting. So this is a trial program. We hope to look at the results and consider launching this on a national basis, if successful.

Last but not least, we are currently working towards posting a proposed rule to replace the current regulations dated 1994 hopefully by the end of the fiscal year, if not the calendar year. So we are actively taking comments, concerns, input from our stakeholders and incorporating changes to the current regulations. We did host a listening forum back in the fall of last year and we carefully documented the input that our participants offered us. So we look forward to working towards making Section 3 -- making these enhancements to Section 3 in partnership with our recipient agencies.

With that said, I'd like to turn it over to our next presenter, who I believe is Sabrina Riley-Randolph from Valdosta, Georgia.

MS. RILEY-RANDOLPH: Okay. I would just like to say good afternoon to everyone. And I want to thank Colleen Moore and Abt for asking me to present information regarding our implementation process. I am the neighborhood development coordinator of the City of Valdosta. We administer the community development block grant or CDBG as an entitlement grantee for Georgia.

We receive roughly between $500,000 to $600,000 as an annual allocation. That is a relatively small entitlement compared to most of our counterparts. We had to find a way to meet the requirements of Section 3 while trying to stay within budget restraint and the capacity of our staff. I'm going to describe the five-step process that I took to follow our implementation process to give you sort of an overview of what I did to implement our plan.

The first step that I did was got some information regarding Section 3 and the components of the Section 3 designation. And that's what all of you are doing today. And that just means to make sure that you know what Section 3, what a Section 3 resident and a Section 3 business concern is.

Also, I found it was next to impossible to have an organized approach to a Section 3 program implementation plan without a plan. And that's why it's important to devise a really workable Section 3 plan for your organization that outlines everything that you want to accomplish and outlines all of your goals that you want to meet and also outlining what it is that, if they do not meet the goals, what you would expect from your contractors and participants.

If you do not have a Section 3 plan, it would be very advisable to draft a Section 3 implementation plan so that you'll know what you will be doing and what everyone is expected to do.

My next step -- and I also did this in conjunction with the first step. I determined and met with the division and departments within my organization that would have been a partner in the implementation of my Section 3 -- of the Section 3 plan. For example, in our division we work with engineering as far as their bids for certain projects.

If it's a public infrastructure project that could possibly have CDBG funding because that would fall under Section 3, our purchasing department, your grant administrator, your NSP coordinators, your CDBG coordinator, which would be me. And then if you have an economic development coordinator, to try to get with them to get some different employment opportunities that you can put in conjunction with your plan to put it in place.

The next step would be the third step I took was to determine and meet with agency partners outside of your organization that you're considering to be your partner in your implementation of your Section 3 plan. Now, for example, that would be -- I think it was mentioned -- local technical colleges or universities. They may have apprenticeship program, job training initiatives, your local housing authority, your local Department of Labor office, and GED testing facilities.

We currently have an MOU with Wiregrass Technical -- Georgia Technical College here in Valdosta. And they have the Work Ready program. And with Work Ready -- and people are probably familiar with this from the state of Georgia -- it allows you to gain a Work Ready certificate. And with that certificate you would have the door opened for a lot of employment opportunities. And also with the technical college component you would be able to bring in some GED preparation and other educational components of it.

The fourth step that I took was devise a plan of action. Now, since I mentioned we are a smaller entitlement, that just meant that I wanted to divide the different party areas up into manageable pieces. That way I could implement the program in waves instead of having one big meeting for the entire program area and have an excessive amount of people show up to the meeting and not have enough capacity to accommodate the turnout.

For example, we have Section 3 information sessions. The first set of sessions, because I knew if I opened it up to the whole city, we would have an excess amount of people so that I can see who would come out and about how many people to expect. Because I knew that the public housing residents were automatically considered a Section 3, we started with public housing. We worked with our public housing director and we had Section 3 information sessions for each of our three public housing areas in the city.

Once we did that, now we are about to actually mix them up, have the big city presentation for everyone that's in the jurisdiction that we have or will be within Section 3 compliance. But you break it up into pieces so that you don't have a big item that you have to do at one time. It will make it a lot more manageable. That's what we found.

And the final step that I would like to mention is whenever possible, try to use a Section 3 business concern. Once you have in place your whole plan that you determine how we're going to determine who a Section 3 business concern is, then you work within your organization. You work within your, like I mentioned before, your different departments that you work with, engineering, purchasing, anyone that has anything to do with it that you're going to have Section 3 related funding in.

Just keep in mind that you allow yourself to remember that Section 3 business concerns could possibly use. So this will allow you to look for any way in a contract or project to incorporate or utilize a Section 3 business.

And that is my five-step process and that's about my time as well. So that's the five-step process that I use, and I will turn the panel back over to Ms. Moore.

MS. GROGAN MOORE: Thank you, Sabrina. We really appreciate your sharing your experience with implementing this for our participants today. The slide that's up now is a slide on resources for Section 3. It lists three different resources there, but in fact, the first one on the HUD website at www.HUD.gov/Section3 really gives you access to all the rest of this information. So as long -- if you have that particular link, you should be able to get to anything else that you would need in terms of additional information on Section 3, the regulations, the legislation, etc.

Okay. Now, we would like to go to some of the questions that we've received. And we received a number of questions. We certainly welcome you to submit additional questions, but I will refer to some of the questions that we've received already. And I'm going to ask Rafiq for help on some of these, and then of course our other panelists, if you have something to add, please go ahead and jump in.

Okay. The first question is, "In reference to income verification forms for evaluating income qualifications, do the income limits refer to the gross income or net for qualifying the individuals or business owners for Section 3 certification?"

MR. MUNIR: The income limits or income for qualification is the gross income. It is important to note that this would be a household income, a cumulative value for all income earners in the household. We realize that presents a challenge. The information is voluntary. If the individual is looking to benefit from some sort of preference that may be offered by the recipient agency, then they are required to submit whatever information that the recipient agency is asking for. In the simplest form, the information can be submitted without verification. However, if the recipient agency has the resources, they could do some preliminary or cursory examination of the information submitted.

MS. GROGAN MOORE: Okay. Thank you. The next one is a clarification. It says, "If I understand the definition correctly, Section 3 hires do not necessarily have to be residents of the community where the project is occurring. Is this correct?"

MR. MUNIR: Yes. That's correct. The audience, as I understand it, today are state CDBG recipients, as well as entitlement communities. And the criteria is that there is a order of priority preference in the regulations, but Section 3 residents can be a resident of a public housing development, as well as a resident -- a low-income resident, as HUD defines it, in the area in which the project is being developed. So the short answer is, no. It does not have to be a public housing resident.

MR. SHAFFER: They should be within the geopolitical boundaries of the agency that received the award in order to be a Section 3 resident. So if I'm from a city government, I'm receiving this CDBG award and a low-income person from outside my area, that person would not receive a preference over a resident of the community.

MS. GROGAN MOORE: Right. I think that's referred to in the order of priority; is that right, Rafiq?

MR. MUNIR: Yes. And just one caveat--for entitlement communities in a metropolitan area, the criteria for a Section 3 resident and its further expanse could be someone that's living in the metropolitan area. But prior to reaching out that far, you would exhaust the list of eligible Section 3 residents in the immediate community or in the jurisdiction that's awarding -- that has received the money, as they pointed out.

MS. RILEY-RANDOLPH: And you would list your tiered -- and that would be for your tier in your Section 3 plan as well; is that correct, Rafiq?

MR. MUNIR: I'm sorry. Can you repeat that?

MS. RILEY-RANDOLPH: And when you do your Section 3 plan, you list your tier within your status area, your jurisdiction of how -- of what the preference will be?

MR. MUNIR: I think that will be a good practice of specifying the -- I guess the order of priority, if you will, and that comes into play when there's all things being equal. So if you have two individuals both that qualify under the Section 3 income guidelines and one is either closer to the project site or meets some other criteria as specified in the regulations, you could -- that would be a good practice to list out the order of priorities by which you would give out the preference for employment and or contracting.

MS. GROGAN MOORE: Okay. Thank you. The next question is kind of a scenario. "If a contractor has laid off employees prior to obtaining a contract award and their policy is to call back laid off employees first but the newly awarded contract will not require them to call back all of the laid off workers, would the contractor have to hire back all of the laid off workers before initiating the hiring of a Section 3 applicant?"

MR. MUNIR: Okay. So you're talking about the policy of an individual contractor, I believe. And that's quite understandable. However, Section 3 regulations stipulate that 30 percent -- well, 10 percent -- I'm sorry -- 30 percent of the employment should be directed to Section 3 residents -- Section 3-eligible residents.

For an example, let's say you have a -- in fact, I got this question a while ago. A contractor called and indicated that they were awarded an NSP grant and that the project was 50 miles away. And he wanted to know how to comply with Section 3, given that he had essentially rehired the people that he had just laid off.

And the fact of the matter, if he had 10 people, three out of the 10 should be Section 3 eligible, meaning local low-income persons. So in this situation while the contractor was able to reemploy or rehire seven out of 10, the other three should have come from the locality where the project was being generated.

Now, no one is forcing a contractor to take a contract. So if it's their policy to rehire first and they're unwilling to comply with Section 3 by not trying to hire Section 3 residents, then they should not even go after that contract. But if they do go after the contract, Section 3 is a requirement. It's the cost of doing business. And from a business perspective, rehiring 70 percent of their workforce versus zero percent is a much more tenable option.

MR. SHAFFER: I was just going to add that I talked during my presentation about getting a list of core employees from the contractor who works for that contractor at the time so we were able to gauge who's new coming in after that date. But typically a core employee is someone who works for that contractor when work is available. So oftentimes a laid off worker will still be considered a core employee.

If it's a seasonal worker, they will not if they come and go with the contractor. But if they have a formal layoff and they've been receiving unemployment, we in fact should consider that a core employee. And oftentimes that individual has become a Section 3-eligible individual due to unemployment.

MR. MUNIR: I guess from a departmental perspective of a -- we have advised recipient agencies that looking at the payroll of the contractor in question prior to contract award to indicate who was on board and anyone that's rehired would be fall into the category of new hire.

MR. SHAFFER: Right.

MR. MUNIR: So I guess the consideration is that any person that's rehired as a result of that contractor would be -- fall under that new hire category, 30 percent of which should be Section 3 residents.