



# 7 Section 3

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## 7 Section 3

This subsection outlines the requirements and procedures to be followed to ensure that the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) — colloquially “Section 3” — are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to Low- and Very Low-Income Persons, particularly those who are either grantees or subrecipients of government assistance for housing or residents of the community in which the federal assistance is spent.

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and Very-Low-Income Persons and Section 3 Business Concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

This subsection addresses the requirements outlined in 24 CFR Part 75 (the “Final Rule”), and subrecipients or contractors seeking any further guidance, clarification, or context regarding any topics covered in this subsection should refer to that specific regulation. Any contracts or agreements executed, or projects for which assistance or funds were committed, prior to the Final Rule Effective Date of November 30, 2020, are still required to adhere to all requirements outlined in 24 CFR Part 135 (the “Old Rule”).

### 7.1 Applicability of Section 3

A “**Section 3 Project**” is any project that involves housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total HUD-funded amount of assistance to the project exceeds a threshold of **\$200,000**. The “project” is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing; and applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in 24 CFR 75.3. Section 3 requirements do not apply to (1) Materials Supply Contracts (24 CFR 75.3(b)); or (2) Indian and Tribal Preferences (24 CFR 75.3(c)).

### 7.2 Other Requirements of Section 3

To the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, subrecipients must ensure that, within the metropolitan area (or nonmetropolitan county) in which the project is located: (1) *employment and training*

*opportunities* arising in connection with Section 3 Projects are provided to Section 3 Workers; and (2) *contracts for work* awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers.

Once their respective plan has been fully developed, it is recommended that subrecipients formally adopt the resulting Section 3 plan and maintain a signed copy within the project files.

### 7.2.1 Employment and Training

Where feasible, priority for *opportunities and training* should be given in the following order to:

1. Section 3 Workers residing within the Service Area or Neighborhood of the Project; and Employed by a Section 3 Business Concern
2. Participants in U.S. Department of Labor [YouthBuild programs](#)

### 7.2.2 Contracting Requirements

Where feasible, priority for *contracting opportunities* should be given in the following order to:

1. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Service Area or Neighborhood of the Project
2. YouthBuild programs

### 7.2.3 Labor Hours and Worker Categorizations

One of the principal features rolled out as part of the Section 3 Final Rule was that tracking and reporting would be now focused upon labor hours rather than new hires. This change was designed to prioritize local employment and promote employee retention. As a result, subrecipients and contractors are expected to track and report upon the total number of **labor hours worked** by: (1) Section 3 Workers, (2) Targeted Section 3 Workers, and (3) All workers overall.

A “**Section 3 Worker**” is an individual that currently (or at time of hire in the past 5 years) fits at least *one* of the following criteria: (1) Low- or Very Low-Income as established by HUD’s income limits, (2) Employed by a Section 3 Business Concern, or (3) a YouthBuild participant.

A “**Targeted Section 3 Worker**” is a Section 3 Worker who meets any of the three aforementioned criteria and *in addition* also meets one of the two following criteria:

1. Is employed by a Section 3 Business Concern
2. Currently (or at time of hire in the past 5 years) fits at least one of the following categories:
  - a. Living within the Service Area or the Neighborhood of the Project
  - b. A YouthBuild participant

To this end, the workers for a Section 3 project can be categorized or grouped in the following diagram:



#### 7.2.4 Section 3 Measurement Ratios and Benchmarks

Contractors and subrecipients must attempt to reach the Section 3 benchmarks and targets as established by 24 CFR Part 75.23(b)(3) and Federal Register Notice 2020-19183:

- Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Section 3 Workers:

$$\frac{\textit{Section 3 Worker Labor Hours}}{\textit{Total Labor Hours}} \geq 25\%$$

- Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Targeted Section 3 Workers, as defined at §75.21(a):

$$\frac{\textit{Target Section 3}}{\textit{Total Worker Labor Hours}} \geq 5$$

In the absence of evidence to the contrary, subrecipients and contractors of covered funding will be considered in compliance with Section 3 Safe Harbor (24 CFR 75.23) if the established benchmarks regarding the above ratios are reported to be met. Subrecipients that fail to meet the minimum numerical goals outlined above must also report upon the specific qualitative efforts that they have employed in pursuit of the numerical goals.

## 7.3 Section 3 Reporting

### 7.3.1 Section 3 Measurement Ratios and Benchmarks

Per 24 CFR 75.25(a), for Section 3 Projects, the following metrics must be reported on:

1. The total number of labor hours worked
2. The total number of labor hours worked by Section 3 Workers
3. The total number of labor hours worked by Targeted Section 3 Workers

Eligibility of Labor Hours Reported — Section 3 Workers’ and Targeted Section 3 Workers’ labor hours may be counted for 5 years from when their status as a Section 3 Worker or Targeted Section 3 Worker is established. (24 CFR 75.25(a)(2))

Inclusion of Hours Reported — The labor hours reported must include the total number of labor hours worked on a Section 3 Project, including labor hours worked by any subrecipients, contractors, and subcontractors. The subrecipient or contractor may also elect to include any hours for Professional Services in the report (see below). (24 CFR 75.25(a)(3))

Basis of Hours Reported — OHCS and subrecipients may report their own labor hours related to the Section 3 project based on a good faith assessment of the labor hours of a full-time or part-time employee that meets Section 3 Worker qualifications based on the employer’s existing salary or time- and attendance-based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting. (24 CFR 75.25(a)(5))

Frequency of Reporting — Reports will be submitted to OHCS as part of project reporting. OHCS must provide these metrics to HUD through the Disaster Recovery Grants Reporting system when reporting on activity progress, at minimum annually or at the time of project completion. (24 CFR 75.25(c))

Professional Services — Professional Services contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours.

However, subrecipients, contractors, and subcontractors may report labor hours from Section 3 Workers and Targeted Section 3 Workers (the numerators in the outcome ratios) from Professional Services without including Professional Services in the Total Labor Hours worked (the denominator in both of the outcome ratios). The effect of this reporting structure is to give the subrecipient or contractor a bonus if they are able to report Section 3 hires in the Professional Services context.

It should also be noted that if a contract covers both Professional Services and other work and the subrecipient/contractor/subcontractor chooses not to report labor hours from Professional Services, the labor hours under the contract that are not from Professional Services must still be reported. (24 CFR 75.25(a)(4))

### 7.3.2 Additional Reporting Requirements/Qualitative Effort

If the subrecipient's reporting indicates that the Section 3 Benchmarks are not met, the subrecipient must report on the qualitative nature of its activities and those that its contractors and subcontractors pursued. Examples of such qualitative efforts include, but are not limited to, the following:

1. Applicant Outreach — Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers
2. Training and Apprenticeship — Providing training or apprenticeship opportunities
3. Employment Assistance — Providing technical assistance to help Section 3 Workers compete for jobs (e.g., resume assistance, coaching), or providing or connecting Section 3 Workers with assistance in seeking employment, including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services
4. Job Fairs — Holding one or more job fairs or sponsoring a job informational meeting in the Service Area/Neighborhood of the Project

5. Work Readiness & Retention — Providing or referring Section 3 Workers to services supporting work readiness and retention, such as work readiness activities, interview clothing, test fees, transportation, and child care
6. Educational Assistance — Providing assistance to apply for or attend community college, a 4-year educational institution, or vocational/technical training
7. Financial Literacy — Assisting Section 3 Workers to obtain financial literacy training and/or coaching
8. Business Concern Outreach — Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns
9. Competition Assistance — Providing Technical Assistance to help Section 3 Business Concerns understand and bid on contracts
10. Contract Sizing — Sizing, splitting, or dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns, particularly where economies of scale or efficiency of delivery are not factors (2 CFR 200.321(b)(3))
11. Bidder Viability Support — Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns
12. Business Registries — Promoting use of business registries designed to create opportunities for disadvantaged and small businesses
13. One-Stop Outreach — Providing outreach, engagement, or referrals with the state One-Stop System as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act of 2013

The above listing is not intended to be all inclusive. Subrecipients are encouraged to develop and tailor their specific qualitative efforts with the end goal of Section 3 benchmark achievement in mind. Clear, affirmative steps to achieve the established numerical goals must be taken and documented to adequately corroborate all efforts and attempts. Documented justifications should describe the efforts that were taken; any barriers, roadblocks, or impediments encountered; and any other relevant information that will enable OHCS to make the most accurate, informed compliance determination.



### 7.3.3 Record Keeping to Support Section 3 Worker Categorizations and Certifications

#### 7.3.3.1 Workers

Subrecipients must maintain documentation or ensure that a contractor or subcontractor that employs any Section 3 Worker maintains documentation to show that workers meet the definition of a Section 3 Worker, or a Targeted Section 3 Worker, at the time of hire or the first reporting period, as follows:

1. **Section 3 Worker** — For a worker to qualify as a Section 3 Worker, one of the following must be maintained:
  - a. Self-Certification of Income — A worker's self-certification that their income is below the income limit from the prior calendar year
  - b. Self-Certification of Program Participation — A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing
  - c. Program Management Certification of Program Participation — Certification from a Public Housing Agency, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs
  - d. Employer Certification of Income — An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis
  - e. Employer Certification of Section 3 Business Concern Employment — An employer's certification that the worker is employed by a Section 3 Business Concern
2. **Targeted Section 3 Worker** — For a worker to qualify as a Targeted Section 3 Worker, one of the following must be maintained:
  - a. Employer Confirmation of Worker Residence — An employer's confirmation that a worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census

- b. Employer Certification of Section 3 Business Concern Employment — An employer's certification that the worker is employed by a Section 3 Business Concern
- c. Self-Certification of YouthBuild Participation — A worker's self-certification that the worker is a YouthBuild participant

Subrecipients and contractors may report on Section 3 Workers and Targeted Section 3 Workers for 5 years from when their certification as a Section 3 Worker or Targeted Section 3 Worker is established. The 5-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 workers hired prior to November 30, 2020, may be certified for a 5-year period beginning November 30, 2020.

OHCS, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate an individual's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements include but are not limited to evidence of receipt of federal housing assistance; evidence of receipt of other federal subsidies or participation in federal assistance programs; federal tax returns; or proof of residence in a neighborhood, ZIP code, census tract, or other area that has officially been identified by HUD.

### 7.3.3.2 Business Concerns

A **Section 3 Business Concern** is defined as a business concern that meets at least one of the following criteria, documented within the last 6-month period:

1. It is at least 51% owned and controlled by Low- or Very-Low-Income Persons.
2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers
3. It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-Assisted housing.

Subrecipients, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate a business concern's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements may include federal tax returns for workers, owners, or businesses; payroll data; employee statements of self-certification; articles of business organization, ownership, or incorporation; partnership or operating agreements; or evidence that owners or employees received housing or other federal subsidies.

Section 3 standards are both race and gender neutral. A women’s business enterprise (WBE) and/or minority business enterprise (MBE) must provide evidence that it meets at least one criterion of a Section 3 Business Concern as outlined above in order to receive preference under Section 3. More information regarding WBE or MBE programs can be found through HUD’s Office of Small and Disadvantaged Business Utilization at the following website: [https://www.hud.gov/program\\_offices/sdb](https://www.hud.gov/program_offices/sdb).

The documentation outlined in this subsection must be maintained for the time period required for records retention in accordance with applicable program regulations and 2 CFR 200. For further guidance regarding Section 3 Recordkeeping — including additional considerations specific to Public Housing Agencies — see 24 CFR 75.31.

## 7.4 Section 3 Contracting Requirements

### 7.4.1 Contract Provisions

Per 24 CFR 75.27, OHCS must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 Project. Additionally, CDBG-DR subrecipients with projects where Section 3 applies must also require contractors and subcontractors to meet the overall requirements regardless of whether Section 3 language is included in the subrecipient agreements, program regulatory agreements, or contracts.

#### 7.4.1.1 Recommended Section 3 Contract Clause

All Section 3 covered contracts and subcontracts must include the following clause:

- I. 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 USC.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.
- II. 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.

- III. 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; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- IV. 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 actions, 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.
- V. 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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- VI. 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.
- VII. 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 USC 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).

## 7.4.2 Contract and Subcontracting Strategies

The following examples are provided to help subrecipients ensure that the contracting objectives of Section 3 are met and that the established Section 3 Benchmarks are ultimately achieved. These methods and strategies can be undertaken to assist in reaching Section 3 Workers and Section 3 Business Concerns for contracting opportunities; and when utilized effectively, can supplement some of the qualitative efforts outlined in the Additional Quality Efforts section above. This list should not be considered all inclusive; for additional information regarding contracting, see Chapter 5 Procurement.

1. Small Purchase Procurement — The use of small purchase procedures (contract may not exceed the Simplified Acquisition Threshold) such as soliciting quotations from a minimum of three qualified sources. At the time of solicitation, inform the parties of the Section 3 Covered Contract to be awarded with sufficient specificity, the time within which quotations must be submitted, and the information that must be submitted. A valid attempt to obtain at least three quotes from qualified sources must be made and documented.
2. Section 3 Compliance History — In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract.
3. Contractors Associations and Community Organizations — Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4. Housing Development Publicity — Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. Formalized Notices — Provide written notice to all known Section 3 Business Concerns of the contracting opportunities.
6. Maintain Contact — Follow up with Section 3 Business Concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7. Pre-Bid Meetings — Coordinate pre-bid meetings at which Section 3 Business Concerns could be informed of the upcoming contracting opportunities.
8. Section 3 Workshops — Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 Business Concerns can take advantage of upcoming contracting opportunities.

9. Assisting with Barriers to Entry — Advise Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
10. Bidding Facilitation — Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 Business Concerns.
11. Contract Sizing — Break out contract work items into economically feasible units to facilitate participation of Section 3 Business Concerns.
12. YouthBuild Programs — Contact agencies administering HUD YouthBuild programs and notifying these agencies of the contracting opportunities.
13. Advertisement / Publication — Advertise contracting opportunities through trade association papers and local media such as television, newspapers, radio, and websites.
14. Business Concern Listing — Develop and maintain a list of eligible Section 3 Business Concerns.
15. Advance Goal Setting — Establish concrete numerical goals (dollar amounts, and number of awards) for contracts to Section 3 Business Concerns.