**FREQUENTLY ASKED QUESTIONS**
**for**
**SECTION 3**

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*The following is a guidance document published by the Department of Housing and Urban Development Office of Field Policy and Management for the purpose of providing answers to frequently asked questions about Section 3 of the HUD Act of 1968 (12 U.S.C § 1701u) and its associated regulations (24 C.F.R. Part 75). This document is intended to provide guidance for Section 3 funding recipients, subrecipients, contractors, subcontractors, workers, and other stakeholders.*

This guidance document covers questions in several topic areas and is divided into parts that contain questions on that part's topic.

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## I. GENERAL QUESTIONS REGARDING SECTION 3:

### 1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

### 2. What Do "Best Efforts" and "to the Greatest Extent Feasible" Mean?

"Best efforts" and "greatest extent feasible" are statutory terms, used in the statute in different contexts. As such, HUD uses both terms to track compliance, and there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. *See* 12 U.S.C. 1701u(b)-(d). These terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients of HUD funding.

HUD acknowledges that some perceive "best efforts" to be the more rigorous standard, while others perceive "greatest extent feasible" to be the more rigorous standard. HUD has determined not to define the difference between these two terms but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at 24 CFR §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3

workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

### 3. What Does "Section 3 Worker" Mean?

A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD (see Question 6 of this part I of these FAQs, below);
2. The worker is employed by a Section 3 business concern (see Question 5 of part I, below); or
3. The worker is a YouthBuild participant.

### 4. What Does "Targeted Section 3 Worker" Mean?

A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or

(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

A Section 3 targeted worker for Housing and Community Development Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or

(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or

(ii) A YouthBuild participant.

### 5. What Does "Section 3 Business Concern" mean?

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

**6. How are low-income and very low-income determined?**

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

**7. What is YouthBuild?**

YouthBuild is a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality. Youth also provide community service through the required construction or rehabilitation of affordable housing for low-income or homeless families in their own neighborhoods.

The Division of Youth Services within the Employment and Training Administration's Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program. Each year, more than 6,000 youth participate in approximately 210 YouthBuild programs in more than 40 states. More information can be found here: https://www.dol.gov/agencies/eta/youth/youthbuild.

**8. As a funding recipient, what are my Section 3 reporting goals?**

Your Section 3 reporting goals depend on the type of assistance you are receiving, whether public housing financial assistance or housing and community development financial assistance.

For public housing financial assistance, the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. This means that the *5 percent* is included as part of the *25 percent* threshold.

For housing and community development financial assistance projects, the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. This means that the *5 percent* is included as part of the *25 percent* threshold.

**9. How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?**

Section 3 is both race and gender neutral. The standards provided under this regulation are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD

funding to direct employment, training, and contracting opportunities to low-income individuals, and the businesses that employ these persons within their community regardless of race and/or gender.

Minority Business Enterprise (MBE) means a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

Women's Business Enterprise (WBE) is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.

Section 3 standards are race and gender neutral. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business concern outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.

The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs and other socially and economically disadvantaged businesses.

To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD's Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at: https://www.hud.gov/program_offices/sdb.

**10. What is a Section 3 project?**

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*,; and/or the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). (See Question 12 of this part I of these FAQs for more detail regarding Lead Hazard Control and Healthy Homes programs.)

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. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

**11. Who is considered a recipient of Section 3 funding?**

A recipient is any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization. It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 worker.

## 12. What are funding thresholds and how do they apply to Section 3 covered financial assistance?

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. There are no thresholds for public housing programs. The requirements of Section 3 apply to all programs receiving public housing financial assistance regardless of the amount of assistance received from HUD. Section 3 also applies to the entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000 (Lead Hazard Control and Healthy Homes (LHCHH) assistance is not included in calculating whether the assistance exceeds the $200,000 threshold).

The threshold is $100,000 when the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LHCHH programs require Section 3 compliance if there is over $100,000 of LHCHH funding for the project (neither HUD public housing financial assistance nor HUD housing and community development financial assistance is included in calculating whether the assistance exceeds the $100,000 threshold). Recipients of LHCHH funding will also be required to comply with Section 3 regulations and report on the entirety of the project when the total amount of HUD housing and community development financial assistance to the project exceeds $200,000 (LHCHH funding is not included in calculating whether the total assistance exceeds the $200,000 threshold), or if any public housing financial assistance is provided.

## 13. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?

For public housing financial assistance, Public Housing Authorities (PHAs), regardless of size or number of public housing units, are required to comply with Section 3 and its reporting requirements. However, small PHAs (fewer than 250 units) are permitted to report qualitatively as permitted under 24 CFR § 75.15(d). Some examples of those qualitative efforts are listed in the answer to Question 15.

As previously stated, Section 3 also applies to projects with more than $200,000 in funding from housing and community development financial assistance programs. The following is a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnership
- Housing Trust Fund (HTF)
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grants (ESG)
- University Partnership Grants

- Economic Stimulus Funds
- 202/811 Grants
- Lead Hazard Control Grants ($100,000 threshold; see Question 12, above, in this part I of these FAQs)
- Healthy Homes Production Grants ($100,000 threshold; see Question 12, above, in this part I)
- Rental Assistance Demonstration (RAD) (see most recent RAD Notice, found through HUD's RAD website, www.hud.gov/rad/)

*Note: The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact Section3@hud.gov to determine applicability to a particular project/activity.

**14. Can a non-profit organization be considered a business concern for the purposes of Section 3?**

Yes. A non-profit organization can be a business concern. Non-profit organizations must meet the criteria of a Section 3 business concern as defined at 24 CFR § 75.5 in order to receive Section 3 preference. See response to Question 5 above.

**15. What is a "Service Area" or "Neighborhood of the project"?**

"Service area" or the "neighborhood of the project" means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

**16. What if my agency does not meet all benchmark goals for employment or contracting?**

If reporting indicates that the agency has not met the Section 3 benchmarks, the agency must report in a method prescribed by HUD program offices on the qualitative nature of its activities and those its contractors and subcontractors pursued per 24 CFR § 75.15(b) and § 75.25(b).

Such qualitative efforts may, for example, include but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

**17. My agency has met all benchmark goals for employment and contracting, does this mean that we are considered in compliance with Section 3?**

Yes. Recipients will be considered to have complied with Section 3 requirements, in the absence of evidence to the contrary, if they meet all benchmark goals and certify compliance with prioritization requirements found in 24 CFR § 75.9 or §75.19. However, if subsequent HUD enforcement activities reveal that the recipient has failed to comply with the recipient responsibilities set forth at 24 CFR §75.13 or §75.23, this compliance determination may be rescinded.

## II. APPLICABILITY:/

### 1. What HUD assistance does Section 3 apply to?

Section 3 applies to both:

a) Public Housing Financial Assistance –

(i) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to Section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in subsections (i) through (iii).

b) Housing and Community Development Financial Assistance expended for housing rehabilitation, housing construction, or other public construction. See Question #2 below for applicability thresholds.

### 2. Do the requirements of Section 3 apply to grantees on a per project basis?

Yes, for housing and community development financial assistance projects. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs. See Question 12 of part I of these FAQs.

Section 3 applies to all public housing financial assistance funds, regardless of the amount of assistance from HUD.

### 3. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the regulatory thresholds (listed in Section I, Question #11).

For RAD projects, Section 3 applies regardless of what money is used to pay for repairs. Per the RAD Notice, "While most RAD conversions do not utilize funding covered by Section 3, HUD has established the alternative requirement that any Work required by the conversion after the RAD Closing that involves housing rehabilitation or housing construction is subject to the Section 3 requirements applicable to housing and community development activities as set forth in 12 U.S.C. 1701u(c)(2) and (d)(2) and the regulations derived from such provisions except that, with the exception of transactions receiving HUD housing and community development assistance, such as CDBG (24 CFR part 570) or HOME (24 CFR part 92), first priority for employment and other economic

opportunities shall be given to residents of public housing or Section 8 assisted housing. Otherwise, the receipt of Section 8 rental assistance does not, in itself, trigger the applicability of Section 3."

**4. What recordkeeping responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?**

Recordkeeping requirements for recipients are found at 24 CFR § 75.31. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors/subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 CFR §75.31.

**5. Do the Section 3 requirements apply to material only contracts?**

No. Section 3 does not apply to material only contracts or those that do not require any labor. For example, a contract for office or janitorial supplies would not be covered by Section 3. In this example, Section 3 would be encouraged but not required. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered due to the involvement of labor.

**6. Do the Section 3 requirements apply to Section 8 project-based rental assistance contracts?**

No. Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute, including properties converted through the Rental Assistance Demonstration (RAD).

**7. Are maintenance projects covered by Section 3?**

Yes, but only for PIH funded programs administered by Public Housing Authorities.

**8. Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?**

No, reduction and abatement of lead-based paint hazards focuses on mitigating lead paint hazards only, not conducting general rehabilitation activities.

**9. Are demolition projects covered by the requirements of Section 3?**

Yes. Recipients of assistance covered by Section 3 should, where feasible, comply with Section 3 benchmarks.

### 10. Are professional service contracts required to be reported under Section 3?

No, professional service 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, this exclusion does not cover all non-construction services.

However, professional services staff labor hours are permitted to be reported and PHAs will be given credit for reporting opportunities created for professional services by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The reporting structure in the rule allows a recipient to count any work performed by a professional services Section 3 worker or Targeted Section 3 worker as Section 3 labor hours and as Targeted Section 3 labor hours (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hires in the professional services context.

### 11. Does Section 3 apply to labor hours by a CDBG-Entitlement recipient?

Yes. If the recipient intends to use its HUD grant to perform housing construction, rehabilitation, or other public construction and the total HUD assistance to the project exceeds $200,000, then Section 3 applies to the project.

### 12. Does Section 3 apply to labor hours by a Public Housing Authority?

Yes. Section 3 applies to all Public Housing capital, operating, or development funds.

## III. CONSISTENCY WITH OTHER LAWS:

### 1. Are recipients required to comply with Federal/state/local laws in addition to Section 3?

Yes. Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, recipients of Section 3-covered assistance are required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations.

### 2. What is the relationship between Section 3 and Davis Bacon requirements?

Compliance with Section 3 must be achieved consistent with the requirements of Davis-Bacon. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and implementing U.S. Department of Labor regulations in 29 CFR Part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public housing projects are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. (24 CFR § 965.101).

### 3. What does the new rule mean for Tribes and Tribally Designated Housing Entities?

After the Section 3 new rule went into effect on November 30, 2020, Tribes and Tribally Designated Housing Entities under the Indian Housing Block Grant and Indian Community Development Block Grant programs are no longer required comply with Section 3 requirements.

The new rule at 24 CFR part 75 provides that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) 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(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

## IV. RECIPIENT RESPONSIBILITIES:

### 1. What are the responsibilities of recipient agencies under Section 3?

Recipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR part 75. These responsibilities include but are not limited to the following:

Designing and implementing procedures to comply with the requirements of Section 3: Recipient agencies must take an ***active role*** in ensuring Section 3 compliance. The first step is implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3 and maintain records verifying that compliance.

Facilitating the training and employment of Section 3 workers: The recipient agency must act as a facilitator, connecting Section 3 workers to training and employment opportunities.

Facilitating the award of contracts to Section 3 business concerns: The recipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity-building training.

Ensuring Contractor and Subcontractor Awareness of and Compliance with Section 3 Benchmarks and responsibilities: The recipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.

Ensuring Compliance and Meeting Numerical Benchmarks: Recipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; penalizing non-compliance; providing incentives for good performance; and refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

Reporting Requirements: Recipient agencies must document all actions taken to comply with the requirements of Section 3 and report these activities either through the Section 3 Performance Evaluation and Registration System (SPEARS), for Public Housing financial assistance, or any reporting system designated by program areas overseeing other funding.

### 2. What are the reporting requirements for legacy contracts entered into under the old Part 135 rule?

On and after November 30, 2020, Section 3 regulations codified at 24 CFR Part 135 (the old rule) have not applied and will not apply to new grants, commitments, contracts, or projects. Contracts executed or projects for which assistance or funds were committed prior to November 30, 2020 are still required to adhere to the requirements of the old rule. Recipients of such assistance or funds will still be expected to maintain records of Section 3 statutory, regulatory, and contractual compliance but will no longer be required to report Section 3 compliance to HUD in SPEARS.

HUD does not require funding recipients to change or alter contracts that were in place prior to the new Section 3 requirements becoming effective on November 30, 2020.

### 3. What are the reporting requirements for Section 3 projects for which assistance or funds are committed during the transition period?

Projects for which assistance or funds are committed between November 30, 2020 and July 1, 2021 are subject to the new Section 3 regulations found in 24 CFR part 75, and HUD expects that funding recipients will begin following this final rule's requirements for new grants, commitments, and contracts. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 for these projects but will not be required to report to HUD on the requirements found in 24 CFR part 75.

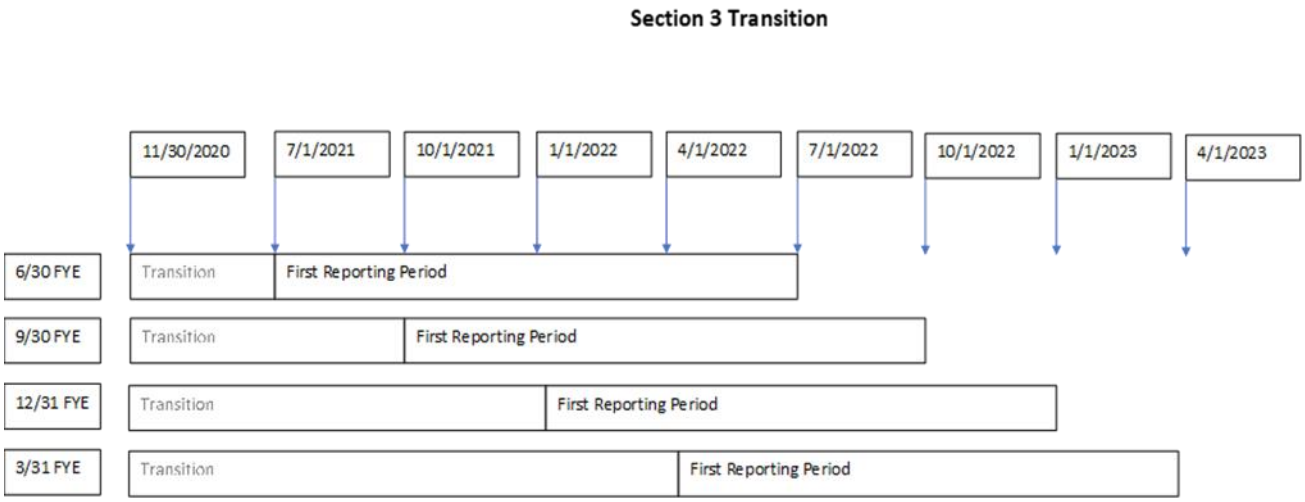
During the transition period between November 30, 2020 and July 1, 2021, recipients are expected to plan and revise processes, systems, and documents to comply with the new rule's requirements. During this time, funding recipients are still required to comply with Section 3's statutory requirements by ensuring that, to the greatest extent feasible, recipients continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons and businesses that provide economic opportunities to low- and very low-income persons.

Recipients and employers should use this time to update policies and procedures for tracking labor hours and other requirements to ensure compliance with the new rules for projects for which funds are committed on or after July 1, 2021.

### 4. What is the reporting timeline for Public Housing Authorities and other recipients of public housing financial assistance?

As of November 30, 2020, PHAs' requirement to report their Section 3 activities and efforts starts 60 days after the end of their first fiscal year that begins after July 1, 2021. Please see the charts below for examples of PHA reporting schedules:

| Fiscal Year End | New Reporting Period Begins | New Reporting Period Ends |
|---|---|---|
| 6/30/21 | 7/1/21 | 6/30/22 |
| 9/30/21 | 10/1/21 | 9/30/22 |
| 12/31/21 | 1/1/22 | 12/13/22 |
| 3/31/22 | 4/1/22 | 3/31/23 |




## 5. What are the reporting requirements for Public Housing Authorities and other recipients of public housing financial assistance during the transition period?

All recipients of public housing financial assistance are required to follow the new Section 3 regulations found in 24 CFR part 75 beginning on November 30, 2020, and HUD expects that funding recipients and employers will begin following this final rule's requirements for new grants, commitments, and contracts on and after this date. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 but will not be required to report in SPEARS on the requirements found in 24 CFR part 75 until the recipient's first full fiscal year after July 1, 2021, as indicated in Question #4 above.

During the transition period between November 30, 2020 and a PHA or other recipient's required reporting start date, employers and grantees are expected to plan and revise processes, systems, and documents to comply with the new rule's requirements. During this time, PHAs and other recipients are still required to comply with Section 3's statutory requirements by ensuring that, to the greatest extent feasible, PHA's continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons, tenants of public and assisted housing, and businesses that provide economic opportunities to low- and very low-income persons.

## 6. What are good strategies for targeting Section 3 workers and businesses?

In order to successfully target Section 3 workers and businesses for employment and contracting opportunities, recipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities is instrumental in reaching Section 3's employment and contracting goals.

It is recommended that recipient agencies establish procedures to certify Section 3 workers and Section 3 business concerns for employment and contracting opportunities. Thereafter, they should maintain a list of eligible workers and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available. Refer to the Section 3 regulations at 24 CFR § 75.15(b) and § 75.25(b) for a listing of qualitative efforts.

**7. Are funds provided to recipients so that they can comply with the requirements of Section 3?**

No. Funding has not been appropriated for Section 3 compliance. Section 3 requirements are only triggered when the normal expenditure of covered funds results in employment, training, or contracting opportunities.

**8. Are Section 3 workers or business concerns guaranteed employment or contracting opportunities under Section 3?**

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income individuals 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.

**9. Are recipients, developers, and contractors required to provide long- term employment opportunities, and not simply seasonal or temporary employment?**

Recipients, developers, and contractors are required, to the greatest extent feasible, to direct employment opportunities to low- and very low-income persons, including seasonal and temporary employment opportunities. Benchmark goals include the calculation of all Section 3 worker and Targeted Section 3 Worker labor hours as a percentage of all labor hours worked on a project.

Recipients, developers, and contractors are encouraged to provide long-term employment to ensure that they meet the benchmark goals.

**10. When might a recipient agency be exempt from the quantitative reporting requirements of Section 3?**

A Small Public Housing Agency (less than 250 units) may elect to not report on labor hours. If the agency does elect not to report on labor hours, it is required to report solely on qualitative efforts as permitted in 24 CFR § 75.15(d).

**11. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?**

No. Recipients are not required to request contractors to make payments into a fund.

## V. SECTION 3 CERTIFICATION:

### 1. How can a prospective Section 3 worker or business concern certify that they meet the eligibility requirements?

The individual or business must contact the agency or developer from which they are seeking employment or contracting opportunities (e.g.., the PHA, city, or local government). They should identify themselves as a Section 3 worker, Targeted Section 3 worker, or Section 3 business concern and provide whatever documentation that the recipient agency requires under their certification procedures. Prospective Section 3 workers and business concerns may self-certify that they meet the requirements as defined in the regulations. HUD recipients, contractors and subcontractors may also establish their own system to certify Section 3 workers and business concerns.

### 2. What documentation must be maintained by HUD recipients, subrecipients, contractors, and/or subcontractors certifying that low- and very-low individuals and business concerns meet the regulatory definitions under Section 3?

There are many ways that a worker can be certified as either a Section 3 Worker or Targeted Section 3 Worker under 24 CFR part 75:

For a worker to qualify as a *Section 3 worker*, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;
(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
(iii) Certification from a PHA, 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;
(iv) 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; or
(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a *Targeted Section 3 worker*, one of the following must be maintained:

**For Public Housing Financial Assistance projects:**

(i) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
(ii) Certification from a PHA, 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;
(iii) An employer's certification that the worker is employed by a Section 3 business concern; or
(iv) A worker's certification that the worker is a YouthBuild participant.

**For Housing and Community Development Financial Assistance projects:**

(i) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one 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;
(ii) An employer's certification that the worker is employed by a Section 3 business concern; or
(iii) A worker's self-certification that the worker is a YouthBuild participant.

The documentation must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR § 200.334, Retention Requirements for Records (www.ecfr.gov/cgi-bin/retrieveECFR?n=se2.1.200_1334), which provides for retaining records for at least three years, as described in detail in that regulation..

A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

### 3. What are examples of acceptable evidence to determine eligibility as a Section 3 worker?

HUD does not prescribe that any specific forms of evidence to establish Section 3 eligibility. Acceptable documentation includes, but is not limited to the following:

- Proof of residency in a public housing project; or
- Evidence of participation in the YouthBuild program.

### 4. What are examples of acceptable evidence for determining eligibility as a Section 3 business concern?

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

### 5. Are all public housing residents considered Section 3 workers regardless of their income?

No. To qualify as a Section 3 Worker, an individual must meet one of the following criteria:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

**6. Does qualifying as a Section 3 businesses mean that the business will be selected if it meets the technical requirements of the bid, regardless of bid price?**

No. As provided in 2 CFR 200.318, contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. In order to meet the requirements of Section 3 and Federal and state procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

**7. Can contracting with MBE/WBE businesses count towards Section 3 benchmarks?**

It depends. Section 3 is race and gender neutral. Only MBEs/WBEs that meet the eligibility criteria as a Section 3 business concern set forth in the regulation can be counted towards the Section 3 labor hour calculation.

**8. Does a business have to be incorporated to be considered a Section 3 eligible business?**

No. A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership, or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.

## VI. ECONOMIC OPPORTUNITIES NUMERICAL BENCHMARKS:

### 1. How can low- and very low-income persons and businesses locate recipient agencies that are required to comply with Section 3 in their area?

To find local recipients' agencies, Section 3 residents or businesses should contact their local HUD office. To find your closest office, visit: www.hud.gov/localoffices.

### 2. How can I find Section 3 business concerns in my area?

Contact local recipient agencies to find Section 3 business concerns in your area. Section 3 business concerns that have registered in the Section 3 Business Registry are also available at: https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome.

### 3. Do the benchmark requirements only count toward new hires?

No, the rule does not apply to only new hires, but if someone is currently on staff and qualifies as a Section 3 resident under 24 CFR part 135, they will need to re-certify as either a Section 3 worker or Targeted Section 3 worker under 24 CFR part 75.

### 4. Should PHA's report on staff hours?

Yes, but not all PHA staff qualify as Section 3 workers. Only PHA staff that meet the definition of a Section 3 worker or Targeted Section 3 worker would qualify to be counted toward total Section 3 or Targeted Section 3 labor hours. Once a PHA determines that a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with public housing financial assistance as the denominator.

### 5. What category of PHA Staff should be included?

Both salaried and hourly workers need to be reported. There is a limited good faith assessment exception for PHAs and other recipient employers of hourly and salaried workers that are not subject to requirements specifying time and attendance reporting and do not have systems already in place to track labor hours. This exception is to address employers that do not already track labor hours without making changes in time and attendance or payroll.

### 6. Are recipient agencies required to meet the Section 3 benchmarks, or are they optional?

The Section 3 benchmarks are minimum targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make best efforts, or to the greatest extent feasible, to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers. If an agency fails to fully meet the Section 3 benchmarks, they must adequately document the efforts taken to meet the numerical goals (see Question #9 for a discussion of safe harbor.)

### 7. Will there be changes to the benchmark requirements?

The Secretary of Housing and Urban Development is required in the Benchmark Notice published in the Federal Register to review and update the Benchmarks by Federal Register notice no less frequently than once every three years.

### 8. What is considered "other" public construction?

Other public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

### 9. What is the meaning of the safe harbor determination?

Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks.

If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

## VII. SECTION 3 COMPLAINTS:

### 1. How should complaints be made?

Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

### 2. Where else can I file complaints alleging denied employment and contracting opportunities?

You may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/.