

13 SECTION 3

13.1 POLICY OVERVIEW

As a Grantee of HUD CDBG-DR funds, DED will comply with Section 3 Final Rule requirements set forth at 24 CFR Part 75, effective November 30, 2020.

Section 3 is intended to direct employment and other economic opportunities to low and very low-income persons to the greatest extent feasible for activities that are funded by HUD. This chapter corresponds to the information set forth in 24 CFR Part 75, subparts A (General Provisions), C (Additional Provisions for Housing and Community Development Financial Assistance), and D (Provisions for Multiple Funding Sources, Recordkeeping, and Compliance). Subpart B contains additional information not set forth herein regarding provisions for public housing financial assistance.

13.2 SECTION 3 POLICY

Section 3 is a provision of the Housing and Urban Development Act of 1968 and is intended to ensure that preference for employment, training, and contracting opportunities generated from the expenditure of Federal financial assistance be directed to local low- and very low-income persons, particularly those who receive federal housing assistance, and businesses that are owned by or substantially employ such persons. Section 3 specifically provides guidance to providing opportunities to:

Section 3 Business Concerns:¹ A Section 3 Business Concern is a business concern meeting at least one (1) of the following criteria, documented within the last six-month period:

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

Section 3 worker:² A Section 3 worker is any worker who currently fits or when hired within the past five (5) years fit at least one (1) of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD;⁴²
- The worker is employed by a Section 3 business concern; or

¹ 24 CFR § 75.5.

² 24 CFR § 75.5.

- The worker is a YouthBuild participant.

Targeted Section 3 worker:³ A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

- A worker employed by a Section 3 business concern; or
- A worker who currently fits or when hired fit at least one (1) of the following categories, as documented within the past five (5) years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
 - A YouthBuild participant.

On April 4, 2019, HUD proposed a new rule to update the Section 3 regulations. HUD published the Final Rule on September 29, 2020. The Final Rule became effective on November 30, 2020 and is codified at 24 CFR Part 75. It is intended to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide program-specific oversight, and clarify the obligations of entities that are covered by Section 3.

DED will manage non-compliance with the Section 3 policy in accordance with the regulations set forth in 24 CFR § 570.496 and 2 CFR § 200.339. Specific monitoring and compliance practices are set forth in **Chapter 16: Monitoring and Compliance Plan**.

13.3 APPLICABILITY

Section 3 applies to housing and community development financial assistance expended for housing rehabilitation, housing construction, and other public construction⁴ projects assisted under HUD programs. Projects must exceed a threshold of \$200,000 for Section 3 to be considered applicable.⁵

The \$200,000 threshold is inclusive of total HUD assistance provided at the project level, not just the HUD assistance that is overseen by DED. For example, if a project is funded with \$101,000

³ 24 CFR § 75.21.

⁴ Public construction may include infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

⁵ 24 CFR § 75.3. 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 USC § 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 USC § 4801 et seq.); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC § 4851 et seq.).

of HOME funds and \$100,000 of CDBG funds, then it exceeds the applicability threshold of \$200,000 and the Section 3 requirements apply. However, if a project is funded with \$100,000 of CDBG funds and \$100,000 of state funds, Section 3 is not applicable.

The project is the site or sites together with any buildings and improvements located on the site(s) that are under common ownership, management, and financing. The requirements 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.⁶ Subrecipients and Successful Applicants must make all entities that they contract with aware of the need to comply with Section 3 requirements.

Section 3 requirements do not apply to projects assisted with housing and community development financial assistance that do not include housing rehabilitation, housing construction or other public construction (e.g., funds used for direct homebuyer assistance or tenant-based rental assistance). Additionally, Section 3 requirements do not apply to material supply contracts.⁷ Subrecipients and Successful Applicants not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

13.4 BENCHMARKS

For Section 3 projects, Subrecipients and Successful Applicants must report in a manner prescribed by DED the following (see also **Section 13.10: Reporting**):

- The total number of labor hours worked;
- The total number of labor hours worked by Section 3 workers; and
- The total number of labor hours worked by targeted Section 3 workers.

HUD established Section 3 benchmarks for the number of hours Section 3 workers and targeted Section 3 workers work on a project. The Section 3 benchmarks are key targets for DED, Subrecipients, and Successful Applicants. Additionally, Subrecipients and Successful Applicants are required to provide DED with a list of the qualitative efforts undertaken to remain compliant. DED will complete a report to HUD describing the qualitative efforts done to try and meet those standards per 24 CFR § 75.25(b). Examples of qualitative efforts are identified below in **Section 13.10: Section 3 Examples of Qualitative Efforts**.

⁶ 24 CFR § 75.3.

⁷ 24 CFR § 75.3.

Benchmark	Target
<p>The benchmark for Section 3 workers is currently⁸ 25% or more of the total labor hours for grant-assisted projects each year.</p>	<p>The number of labor hours worked by Section 3 workers is divided by the total number of labor hours worked by all workers on a Section 3 project in the Subrecipient or Successful Applicant’s program year.</p> $\frac{\text{Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 25\% \text{ or more}$
<p>The benchmark for targeted Section 3 workers is currently⁹ 5% or more of the total labor hours for grant-assisted projects each year.</p>	<p>The number of labor hours worked by targeted Section 3 workers is divided by the total number of labor hours worked by all workers on a Section 3 project in the Subrecipient or Successful Applicant’s program year. <i>Note this figure is included in the overall 25% numeric goal for the project (see above).</i></p> $\frac{\text{Targeted Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 5\% \text{ or more}$

13.5 ROLES AND RESPONSIBILITIES

DED and its Subrecipients and Successful Applicants will be the primary entities responsible for ensuring compliance with Section 3 requirements.

13.5.1 DED

DED maintains overall responsibility for ensuring that projects for which Section 3 is applicable are conducted in compliance with the requirements set forth in this chapter. To this effect, DED will serve the following functions to support Section 3 compliance:

- DED will lead and establish a process to support Subrecipients and Successful Applicants with completing quarterly reports that effectively capture Section 3 reporting;
- DED will lead Section 3 management for applicable programs managed directly by the State; and

⁸ HUD established the threshold set forth in the Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Federal Register Notice (September 29, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183.pdf>.

⁹ HUD established the threshold set forth in the Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Federal Register Notice (September 29, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183.pdf>.

- DED will review Section 3 reporting to ensure Subrecipient and Successful Applicant compliance.

DED has also developed a range of resources to support training and technical assistance for all cross-cutting policies and procedures, including Section 3. The methodology and delivery of these resources can be found in the [CDBG-DR Toolkit](#) and primarily focuses on delivery via the DED website.

13.5.2 SUBRECIPIENT AND SUCCESSFUL APPLICANT

Subrecipients and Successful Applicants are responsible for maintaining compliance with the requirements set forth in this chapter. This includes the following:

- Review, understand, and operate in compliance with the requirements set forth in this chapter, as described in **Section 13.6: Requirements**.
- Identify and practice best practices, as applicable, as set forth in **Section 13.10: Section 3 Examples of Qualitative Efforts**.
- Complete regular Section 3 reporting, as set forth in this chapter and **Chapter 17: Recordkeeping and Data Management**.

13.6 REQUIREMENTS

The following Section 3 requirements will be followed by DED, Subrecipients, and Successful Applicants for all projects where Section 3 is applicable (see **Section 13.3: Applicability**). DED will review Subrecipient and Successful Applicant compliance and the compliance of their contractors and subcontractors with 24 CFR Part 75 via the review process described in **Chapter 17: Monitoring and Compliance Plan**. Support will also be provided pursuant to DED's forthcoming [Section 3 Plan](#), which will provide additional detail regarding opportunities across the service areas for different projects. This chapter will be updated with additional information regarding the [Section 3 Plan](#) once it is made available.

13.6.1 CONTRACT PROVISIONS

Pursuant to 24 CFR § 75.27, DED will:

- Include language applying Section 3 requirements and regulatory documentation and terms for reporting requirements and frequency of submission in any Subrecipient Agreement, Funding Agreement, or contract for a Section 3 project (see **Chapter 13 Addendum: Section 3 Clause**); and
- Require Subrecipients, Successful Applicants, contractors, and subcontractors to meet the requirements of 24 CFR § 75.19, regardless of whether Section 3 language is included in Subrecipient Agreements, program regulatory agreements, or contracts.

13.6.2 SECTION 3 WORKER AND TARGETED SECTION 3 WORKER

DED, Subrecipients, and Successful Applicants will ensure that employment and training opportunities in connection with Section 3 projects are provided to Section 3 workers and targeted Section 3 workers (see Appendix B: Definitions). These efforts will seek to meet the benchmarks set forth in Section 13.4: Benchmarks. See DED's [Section 3 webpage](#) and the CDBG-DR Toolkit for additional information and resources to support in Section 3 compliance.

13.6.3 WORKER CERTIFICATION

For both Section 3 and Targeted Section 3 workers, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will utilize the appropriate Certification Form to document the status of the worker (see **Section 13.12: Recordkeeping**). Nothing in 24 CFR Part 75 shall be construed to require the employment of someone who meets either of the above definitions Section 3 workers or targeted Section 3 workers (see **Section 13.2: Section 3 Policy**). Such workers are not exempt from meeting the qualifications of the position to be filled and shall not be negatively affected by a prior arrest or conviction.¹⁰

13.6.4 EMPLOYMENT AND TRAINING

Pursuant to 24 CFR § 75.19, "To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients... shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located."

Regulations specifically prioritize opportunities and training to Section 3 workers residing within the Section 3 service area or the neighborhood of the project¹¹ and participants in YouthBuild programs.

13.6.5 PROFESSIONAL SERVICES

Professional Services hours are excluded from the reporting requirement for Section 3 and targeted Section 3 workers.¹² The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) should not include labor hours worked for professional services jobs in the total labor hours worked on the project. However, if employees in the professional services roles meet the definition of a Section 3 worker or targeted Section 3 worker, Subrecipients and Successful Applicants can report their labor hours in the applicable worker hour category. The effect of this reporting structure is to give a Subrecipient or Successful Applicant a bonus if they can report Section 3 labor hours in the professional services context.

13.7 SECTION 3 BUSINESS CONCERN

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will ensure contracts for work awarded in connection with Section 3 projects are provided to business

¹⁰ 24 CFR § 75.5.

¹¹ See **Manual Appendix B: Definitions**, for a description of the service area or the neighborhood of a Section 3 project.

¹² 24 CFR § 75.23.

concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located. Where feasible, priority for contracting opportunities described herein should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the Section 3 service area or the neighborhood¹³ of the project and YouthBuild Programs.¹⁴

Businesses may seek Section 3 preference for contracts where Section 3 is applicable. HUD's Section 3 Business Registry is a registry of businesses that have self-certified their status as a Section 3 business. Businesses who self-certify that they meet one (1) of the regulatory definitions of a Section 3 business are included in a searchable online database.¹⁵ The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the notification about HUD-funded contracts to eligible firms. Section 3 workers are also encouraged to use the registry to identify businesses that may have HUD-funded employment opportunities.

The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will perform due diligence by verifying Section 3 eligibility before awarding contracts to businesses that are self-certified as a Section 3 business. The status of a Section 3 business concern will not be negatively affected by a prior arrest or conviction of its owner(s) or employees.¹⁶ Nothing in 24 CFR Part 75 will be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.¹⁷

Qualifying as a Section 3 business does not mean that the business is selected if it meets the technical requirements of the bid, regardless of the bid price. Section 3 businesses must still compete for local HUD-funded contracts. Section 3 requirements at 24 CFR Part 75 provide a preference for contracts and subcontracts to these firms but not a guarantee.

13.8 CONTRACTOR REQUIREMENTS

As provided in 2 CFR § 200.318, contract awards will only be made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed contract. These requirements are provided in additional detail under **Chapter 16: Monitoring and Compliance Plan**. Section 3 recordkeeping requirements for DED and its Subrecipients and Successful Applicants are found at 24 CFR § 75.31 (see **Section 13.12: Recordkeeping**). The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) must maintain documentation or ensure that a contractor maintains documentation to demonstrate compliance with the regulations (see **Section 13.12.1: Documentation**). A contractor is responsible for requiring their subcontractors to maintain or provide any documentation that assists Subrecipients and Successful Applicants in demonstrating compliance, including documentation that shows hours worked by Section 3 workers and targeted Section 3 workers.

¹³ See **Manual Appendix B: Definitions**, for a description of the service area or the neighborhood of a Section 3 project.

¹⁴ 24 CFR § 75.19.

¹⁵ Section 3 Business Registry may be accessed at: <https://hudapps.hud.gov/OpportunityPortal/>.

¹⁶ 24 CFR §75.5.

¹⁷ 24 CFR § 75.5.

13.9 BIDDING

During the bidding process for activities associated with the CDBG-DR Program, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) must perform due diligence by verifying Section 3 eligibility and collect and maintain documentation related to Section 3 certification.

13.10 REPORTING

Section 3 requirements apply to housing rehabilitation, housing construction or other public construction funded by CDBG-DR or other applicable Federal sources. Once the project is complete, the Section 3 requirements no longer apply to subsequent contracts using funding from other sources.

Section 3 requires tracking and reporting of labor hours performed by Subrecipients, Successful Applicants, contractors, and subcontractors on a Section 3 project, including the total number of labor hours worked, the total number of labor hours worked by Section 3 workers, and the total number of labor hours worked by targeted Section 3 workers. Labor hours must be tracked for all persons who are working on an assisted project.

Where Section 3 is applicable to a particular project (see **Section 13.3: Applicability**), Subrecipients and Successful Applicants must report Section 3 labor hours as a part of quarterly reporting in DED's grants management system, AmpliFund (see **Section 3 Compliance Report Form**). DED utilizes the Subrecipient and Successful Applicant reporting information to report Section 3 data in HUD's Disaster Recovery Grant Reporting (DRGR) system.

Section 13.12: Recordkeeping further describes the documentation Subrecipients and Successful Applicants are required to collect as a part of Section 3 compliance.

13.11 SECTION 3 EXAMPLES OF QUALITATIVE EFFORTS

Subrecipients and Successful Applicants must adequately document the qualitative efforts taken to meet the numerical goals. Such qualitative efforts may include, but are not limited to, the following:¹⁸

- Engage in outreach efforts to generate job applicants who are targeted Section 3 workers, including:
 - Engagement via online platforms such as Subrecipient and Successful Applicant websites and social media platforms;

¹⁸ 24 CFR § 75.25.

- Announcing opportunities related to Section 3 jobs in community meetings and public hearings;
 - Posting notices in public buildings and in high traffic areas; and
 - Posting advertisements through traditional methods such as television, radio, billboards, and other signage.
- Provide training or apprenticeship opportunities.
 - Provide technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
 - Provide or connect Section 3 workers with assistance in seeking employment including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
 - Hold one or more job fairs.
 - Provide or refer Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
 - Provide assistance to apply for, or attend, community college, a four-year educational institution, or vocational or technical training.
 - Assist Section 3 workers to obtain financial literacy training and coaching.
 - Engage in outreach efforts to identify and secure bids from Section 3 business concerns.
 - Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
 - Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns.
 - Provide bonding assistance, guarantees, or other efforts to support viable bids from Section 3 business concerns.
 - Promote the 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.¹⁹

HUD's Section 3 Opportunity Portal found at: <https://hudapps.hud.gov/OpportunityPortal> is available to support Grantees (i.e., DED), Subrecipients, and Successful Applicants with meeting

¹⁹ Section 121(e)(2) of WIOA, Public Law No. 113-128 (2014).
<https://www.congress.gov/113/plaws/publ128/PLAW-113publ128.pdf>

their Section 3 benchmarks. Section 3 workers, targeted Section 3 workers, or employers may also use the website to identify jobs and training and contracting opportunities.

As a rule, it is important to document all actions taken to comply with requirements: if an activity is not documented, it is difficult to conclude that it ever happened. Documenting who, what, when, why, and how is helpful when capturing details of qualitative efforts, including dates, events, print or e-communication advertisements.

13.12 RECORDKEEPING

13.12.1 DOCUMENTATION

Pursuant to 24 CFR § 75.31, documentation must be retained by the Subrecipient or Successful Applicant or its contractor to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

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

- A worker's self-certification that their income is below the income limit from the prior calendar year (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#));
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#));
- 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;
- 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 (see [Contractor Permanent Workforce Certification Form](#)); or
- An employer's certification that the worker is employed by a Section 3 business concern (see [Section 3 Business Concern Certification](#)).

For a worker to qualify as a Targeted Section 3 worker for housing and community development financial assistance:

- 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 (see [Contractor Permanent Workforce Certification Form](#));
- An employer's certification that the worker is employed by a Section 3 business concern (see [Section 3 Business Concern Certification](#)); or

- A worker's self-certification that the worker is a YouthBuild participant (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#)).

The above documentation must be maintained for the time period required for record retentions in accordance with the terms provided in the Subrecipient Agreement or contract for a Section 3 project and applicable program regulations or, in the absence of applicable program regulations, in accordance with 24 CFR § 570.490 and applicable provisions of 2 CFR Part 200.

13.12.2 ACCESS

HUD and DED will have access to all records, reports, and other documents or items of the Subrecipient and Successful Applicant that are maintained to demonstrate compliance with the requirements of 24 CFR Part 75 or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed.

TOOLKIT LIST

The following documents for **Chapter 13: Section 3** are available on the [Toolkit section of DED's website](#):

- Section 3 Business Concern Certification
- Section 3 Compliance Report Form
- Section 3 Contractor Permanent Workforce Certification Form
- Section 3 Worker and Targeted Section 3 Worker Self-Certification Form

CHAPTER 13 ADDENDUM: SECTION 3 CLAUSE

**THIS CLAUSE MUST BE INCLUDED IN ALL SECTION 3 COVERED RFPs, RFQs, BIDS
AND CONTRACTS**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that the 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 in the project area.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implements 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 24 CFR Part 75 regulations.

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 contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor agrees to submit appropriate Section 3 documentation of total labor hours performed per contractor/subcontractor, certification of Section 3 worker eligibility, and confirmation of Section 3 business concerns and Youthbuild participants.

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.