

MEMORANDUM
Policy Guidance

MEMO: 21-01
Date: October 8, 2021

This Policy remains effective until it is amended, superseded, or rescinded.

Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509, opportunity.nebraska.gov

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SUBJECT: **Section 3, Final Rule¹**

PROGRAMS IMPACTED: National Housing Trust Fund (HTF)
HOME Investment Partnerships Program (HOME)
HOME American Rescue Plan Program (HOME-ARP)
Community Development Block Grant (CDBG)
Community Development Block Grant Coronavirus Response (CDBG-CV)
Community Development Block Grant Disaster Recovery (CDBG-DR)

This policy memorandum outlines an update to Section 3 of the Housing and Urban Development Act of 1968.² The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, shall be directed to low- and very low-income persons, particularly those who are recipients of public housing or residents of the community where the Section 3 covered assistance is expended.

Effective November 30, 2020, the new Section 3 final rule updates the U.S. Department of Housing and Urban Development's (HUD) Section 3 regulations.³ This update creates more effective incentives for employers to retain and invest in their low- and very low-income workers, streamlines reporting requirements by aligning them with typical business practices, provides program-specific oversight, and

¹ See [24 CFR part 75](#).

² HUD published a final rule updating requirements related to Section 3 of the Housing and Urban Development Act of 1968, as amended. HUD's regulations implementing the requirements of Section 3 had not been updated since 1994. On April 4, 2019, HUD proposed a new rule to update the Section 3 regulations. See [84 FR 13177](#). The final rule was published on September 29, 2020 and became effective on November 30, 2020.

³ HUD's regulations for implementing Section 3 mandates can be found at [24 CFR part 75](#). These administrative rules establish the requirements to be followed to ensure the objectives of Section 3 are met. Federal rules do not require subrecipients to contract or subcontract with a Section 3 business concern, nor do the rules require hiring of Section 3 workers. However, subrecipients must be able to demonstrate that, where possible, contracting, employment, and training opportunities were made available to workers and businesses meeting Section 3 designation criteria.

clarifies the obligations of entities that are covered by Section 3. These changes will increase Section 3's impact for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden.

This policy memorandum encompasses the Nebraska Department of Economic Development's (DED) interpretation of the federal rules and regulations regarding Section 3 and is intended to notify subrecipients⁴ of the Section 3, Final Rule. For additional information regarding Section 3, refer to HUD's [Section 3 Landing Page on the HUD Exchange](#).⁵ **This memorandum applies to all awards issued on or after November 30, 2020 funded with federal funds including: HTF, HOME, HOME-ARP, CDBG, CDBG-CV, and CDBG-DR.**

This memorandum shall be effective as of October 8, 2021, and any prior statements, positions, or policies by DED that conflict with this memorandum are hereby superseded by the policies contained herein. This policy remains effective until it is amended, superseded, or rescinded. **Section 3 projects with commitments made before November 30, 2020 must continue to comply with the previous Section 3 requirements of 24 CFR part 135.**

I. Overview

DED strives to help Nebraskans achieve an improved quality of life through the development of better communities. HUD's mission strives to create strong, sustainable, inclusive communities and quality affordable homes for all. In keeping with these ideals, DED wants to ensure that HUD-funded projects maximize community benefits and economic opportunities for low-income persons and households.

In many respects, Employment Opportunities for Low-Income People (Section 3) encourages subrecipients to document procedures and practices currently used, or to better utilize those currently available in order to maximize community benefits and economic opportunities for low- and very low-income persons. In addition to its compliance considerations, documentation will require actionable information to enhance the ability to meet the goals and purpose of Section 3.

Subrecipients of HUD funds, administered by DED per their subrecipient agreement,⁶ may be subject to compliance with Section 3. Furthermore, subrecipients of federal assistance that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

II. General Provisions

Section 3 projects are defined as housing rehabilitation, housing construction, and other public construction⁷ projects assisted under HUD programs that provide housing and community development

⁴ See Section VI below for the definition of Subrecipient.

⁵ See <https://www.hudexchange.info/programs/section-3/>.

⁶ Also referred to as grant contract.

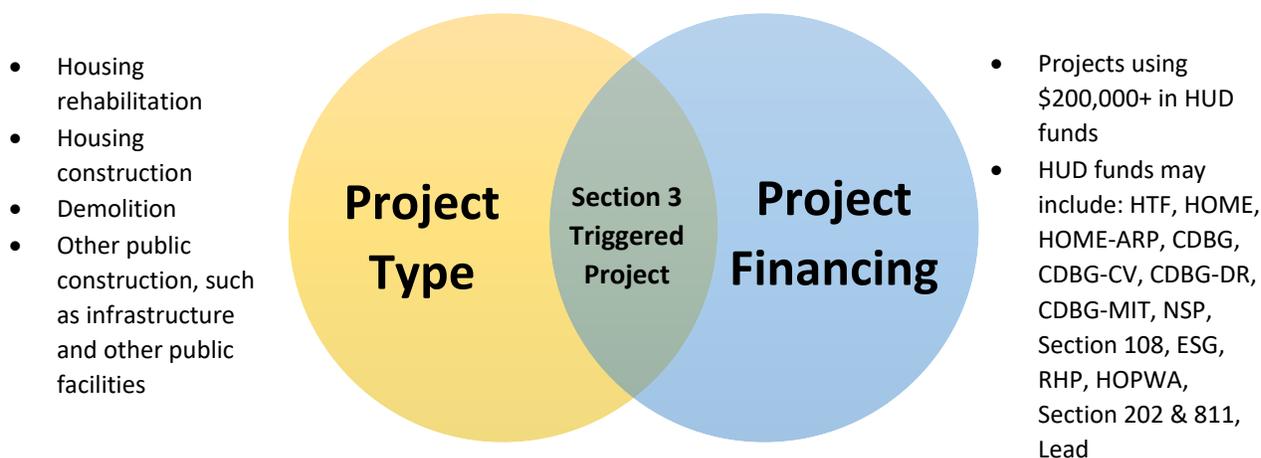
⁷ Public construction may include infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services. While Section 3 applies to public construction projects such as CDBG-funded projects, the requirements do not apply to HOME or HTF projects that do not include housing rehabilitation or new construction (e.g. funds used for direct homebuyer assistance or tenant-based rental assistance).

financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000.⁸ The threshold is inclusive of total HUD assistance provided at the project level, not just the HUD assistance overseen by DED.

For example, if a project is funded with \$101,000 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, it is *not* a Section 3 project.

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 (e.g., HOME funds used to rehabilitate 20 rental units in one building as part of an effort to rehabilitate 40 rental units in two buildings on a single property. The “Section 3 project” includes the rehabilitation of all 40 rental units.). 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. Subrecipients must make all entities that they contract with aware of the need to comply with Section 3 requirements.

Section 3 Triggered Projects⁹



Subrecipients should keep in mind that existing projects may trigger Section 3 compliance, even after the initial commitment date, if the project includes other HUD funding or additional HUD funding meeting the applicability threshold. For example, funding provided in phases such as a multifamily housing rehabilitation activity initially receiving \$150,000 of HOME assistance would trigger Section 3

⁸ See [24 CFR 75.3](#). The Section 3 requirements also apply when a project receives less than \$200,000 in HUD housing and community development financial assistance but receives public housing financial assistance, as defined in 24 CFR 75.3(a)(1), or more than \$100,000 of Lead Hazard Control and Healthy Homes program funding, as defined in 24 CFR 75.3(a)(2)(i)).

⁹ For purposes of project financing, housing and community development financial assistance includes, but is not limited to, HTF, HOME, HOME-ARP, CDBG, CDBG-CV, CDBG-DR, CDBG Mitigation (CDBG-MIT), Neighborhood Stabilization Program (NSP), Section 108, Emergency Solutions Grants (ESG), Recovery Housing Program (RHP), Housing Opportunities for Persons with AIDS (HOPWA), Section 202 Direct Loan Program for Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, Lead Abatement Grants, and other HUD Notice of Funding Opportunities grants.

requirements if it received an additional amount exceeding \$50,000 in housing and community development financial assistance.

III. Requirements¹⁰

A. Employment and Training

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, subrecipients shall ensure that employment and training opportunities 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.

Where feasible, priority for opportunities and training described herein should be given to:

1. Section 3 workers residing within the service area or the neighborhood of the project, and
2. Participants in YouthBuild programs.¹¹

B. Contracting

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, subrecipients shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns¹² 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:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
2. YouthBuild programs.

C. Section 3 Benchmarks

HUD has established Section 3 benchmarks for the number of hours Section 3 workers and Targeted Section 3 workers work on a project.¹³ The Section 3 benchmarks are minimum targets that must be reached for the subrecipient to be considered in compliance with Section 3 requirements.

¹⁰ See [24 CFR 75.19](#).

¹¹ See Section VI below for the definition of Youthbuild.

¹² See Section VI below for the definition of a Section 3 Business Concern.

¹³ See *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>. HUD may establish new benchmarks periodically as new information becomes available. Any updates will be published in a Federal Register Notice.

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| 1. The benchmark for Section 3 workers is currently ¹⁴ 25% or more of the total labor hours for assisted projects each year. | $\frac{\text{Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 25\% \text{ or more}$ |
| 2. The benchmark for Targeted Section 3 workers is currently ¹⁵ 5% or more of the total labor hours for assisted projects each year. ¹⁶ | $\frac{\text{Targeted Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 5\% \text{ or more}$ |

A subrecipient may calculate if it falls within the Section 3 benchmarks by utilizing the following ratios:

1. Benchmark for Section 3 Workers: The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the subrecipient’s program year.
2. Benchmark for Targeted Section 3 Workers: The number of labor hours worked by Targeted Section 3 workers, divided by the total number of labor hours worked by all workers on a Section 3 project in the subrecipient’s program year.

Example:

DED awards City of Anytown \$300,000 of CDBG funds for street improvements. Because the total amount of assistance to the project exceeds the threshold of \$200,000, the Section 3 requirements apply to this project. To comply with 24 CFR 75.25(a), DED must require City of Anytown to report the following accomplishments to DED within the applicable reporting cycles:¹⁷ (1) the total labor hours, (2) the total labor hours worked by Section 3 workers, and (3) the total labor hours worked by Targeted Section 3 workers on the Section 3 project.

City of Anytown is responsible for reporting labor hour data related to the street improvements. During the first reporting period, City of Anytown reports to DED a total of 5,000 labor hours worked on the project. Of that total, 1,300 were worked by employees who self-certified as Section 3 workers. Additionally, 300 of those 1,300 hours were performed by workers who lived within a one-mile radius of the work site (e.g., Targeted Section 3 workers). City of Anytown has met the project-level Section 3 benchmarks and reports the following data at the next reporting cycle:

Total Labor Hours	5,000	
Section 3 Labor Hours	1,300	26%
Targeted Section 3 Labor Hours	300	6%

¹⁴ 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>.

¹⁵ See footnote 14.

¹⁶ This means that the 5% applicable to Target Section 3 workers is included as a part of the larger 25% threshold required for Section 3 workers.

¹⁷ Reporting of labor hours must be submitted to DED as described within the subrecipient agreement between the subrecipient and DED and the associated manuals and instructional guidance.

If benchmarks are met, subrecipients fall under the safe harbor and are considered to be in compliance with Section 3 requirements, in the absence of evidence to the contrary.¹⁸

Subrecipients 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. Subrecipients **must adequately document the qualitative efforts taken** to meet the numerical goals. Such qualitative efforts may, for example, include but are not limited to:¹⁹

1. Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers.
2. Provide training or apprenticeship opportunities.
3. Provide technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
4. 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.
5. Hold one or more job fairs.
6. Provide or refer Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
7. Provide assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
8. Assist Section 3 workers to obtain financial literacy training and/or coaching.
9. Engage in outreach efforts to identify and secure bids from Section 3 business concerns.
10. Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
11. Divide contracting opportunities into smaller jobs to facilitate participation by Section 3 business concerns.
12. Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
13. Promote use of business registries designed to create opportunities for disadvantaged and small businesses.
14. Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

As a rule, it is important to document any and all actions taken to comply with requirements: if you do not document action taken, it is difficult to conclude that it ever happened. Be careful to capture all actions taken to comply. Documenting who, what, when, why, and how is helpful when capturing details of qualitative efforts. Identify dates, events, print or e-communication advertisement.

¹⁸ See [24 CFR 75.23](#).

¹⁹ See [24 CFR 75.25](#).

HUD's Section 3 Opportunity Portal²⁰ is intended to help subrecipients meet their Section 3 benchmarks. The website may be used by Section 3 workers, Targeted Section 3 workers, or employers to identify jobs and training and contracting opportunities.

IV. Reporting²¹

Section 3 requires tracking and reporting of labor hours. Labor hours must be tracked for all persons who are working on an assisted project. Reporting of labor hours must be submitted to DED as described within the subrecipient agreement between the subrecipient and DED and the associated manuals and instructional guidance.

Information to be submitted includes total number of labor hours worked by the subrecipients, contractors, and subcontractors:

1. The total number of labor hours worked;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

Workers who qualify under Section 3 and Targeted Section 3 qualifications may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to 24 CFR 75.31. For purposes of reporting the labor hours for Section 3 workers, an employer may choose whether to define the workers as Section 3 workers for a five-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 worker definition. The five-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 five-year period beginning November 30, 2020.²²



Professional Services²³ hours are excluded from the reporting requirement for Section 3 and Targeted Section 3 workers because it is very difficult to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Subrecipients 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 can report their labor hours in the applicable worker hour category. The effect of this

²⁰ See <https://hudapps.hud.gov/OpportunityPortal/>.

²¹ See [24 CFR 75.25](#).

²² See [HUD CPD Notice 21-09](#).

²³ See Section VI below for the definition of a Professional Services.

reporting structure is to give a subrecipient a bonus if they are able to report Section 3 labor hours in the professional services context.

As described in Section III.C above, subrecipients must adequately document the qualitative efforts taken to meet the numerical goals and convey such efforts to DED in the reporting process.

V. Recordkeeping²⁴

Documentation must be retained by the subrecipient 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:

SECTION 3 WORKER RECORDS	TARGETED SECTION 3 WORKER RECORDS ²⁵
<ul style="list-style-type: none"> • Worker’s self-certification that their income is below the income limit from the prior calendar year. • Worker’s self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing. • 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. • 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. • Employer’s certification that the worker is employed by a Section 3 business concern. 	<ul style="list-style-type: none"> • 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. • Employer’s certification that the worker is employed by a Section 3 business concern. • Worker’s self-certification that the worker is a YouthBuild participant.

A subrecipient 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.

The documentation described in this section 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 part 200.²⁶

²⁴ See [24 CFR 74.31](#).

²⁵ [24 CFR 75.29](#) contains additional flexibility in instances where a project receiving housing and community development assistance is also receiving public housing financial assistance to simplify project reporting. If your project is receiving both housing and community development assistance and public housing financial assistance, contact a DED representative.

²⁶ For HOME and HTF projects, documentation must be maintained for five years following receipt of certificate of completion.

VI. Definitions

This section provides definitions of the relevant terms used throughout this policy memorandum.

- a. Contractor means any entity entering a contract with:
 1. A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
 2. A subrecipient for work in connection with a Section 3 project.²⁷
- b. Persons and families is defined as:
 1. Single persons.—The term “families” includes families consisting of a single person in the case of (i) an elderly person, (ii) a disabled person, (iii) a displaced person, (iv) the remaining member of a tenant family, (v) a youth described in section 1437f(x)(2)(B) of the United States Housing Act of 1937, and (vi) any other single persons.
 2. Families.—The term “families” includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.²⁸
- c. Labor Hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.²⁹
- d. Low-Income Person means a person as defined in Section 3(b)(2) of the United States Housing Act of 1937.³⁰ The term “low-income families” means those families whose incomes do not exceed 80 percent of the median income for the area.³¹
- e. Professional Services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. The Professional Services exclusion does not apply to all non-construction services. Regarding the Nebraska CDBG Certified Administrator Program, the hiring of a CDBG Administrator does not fall under this provision when tracking labor hours.³²
- f. Program Year is defined as the period between July 1 through June 30.

²⁷ See [24 CFR 75.5](#).

²⁸ See [42 USC 1437a\(b\)\(3\)](#).

²⁹ See [24 CFR 75.5](#).

³⁰ See [24 CFR 75.5](#).

³¹ See [42 USC 1437a\(b\)\(2\)](#). Median income data is available at: https://www.huduser.gov/portal/datasets/il.html#2021_query.

³² See [24 CFR 75.5](#).

- g. Section 3 Business Concern means a business concern meeting at least one of the following criteria, documented within the last six month period:
1. It is 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. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing.³³

Section 3 business concerns are not exempt from meeting the specifications of the contract. The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

- h. Section 3 worker means 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.³⁴
 2. The worker is employed by a Section 3 business concern.
 3. The worker is a YouthBuild participant.

Section 3 workers are not exempt from meeting the qualifications of the position to be filled. The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.³⁵

- i. Section 8 Assisted Housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the United States Housing Act of 1937.³⁶
- j. 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.³⁷
- k. Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure for a Section 3 project.³⁸
- l. Subrecipient³⁹ means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity (Nebraska Department of Economic Development) to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. For purposes of this memorandum, a

³³ See [24 CFR 75.5](#).

³⁴ Median income data is available at: https://www.huduser.gov/portal/datasets/il.html#2021_query.

³⁵ See [24 CFR 75.5](#).

³⁶ See [24 CFR 75.5](#).

³⁷ See [24 CFR 75.5](#). HUD is currently developing an online tool to assist with determining service areas.

³⁸ See [24 CFR 75.5](#).

³⁹ In prior contractual agreements, DED defines the subrecipient as "grantee".

subrecipient may include a local unit of government, developer, non-profit organization, or other entity as described based on the Federal rules and regulations.⁴⁰

- m. Targeted Section 3 worker⁴¹ means a Section 3 worker who is:
 - 1. A worker employed by a Section 3 business concern; or
 - 2. A worker who 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; or
 - ii) A YouthBuild participant
- n. Very low-income person means the definition for this term set forth in section 3(b)(2) of the United States Housing Act of 1937. The Act defines the term “very low-income families” as low-income families whose incomes do not exceed 50 percent of the median family income for the area.⁴²
- o. 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.⁴³

VII. Conclusion

This policy memorandum outlines an update to Section 3 of the Housing and Urban Development Act of 1968 and encompasses DED’s interpretation of the federal rules and regulations regarding Section 3 and is intended to notify subrecipients of Section 3, Final Rule. For additional information regarding Section 3, refer to HUD’s [Section 3 Landing Page on the HUD Exchange](#).

For questions regarding Section 3, please contact a DED representative.

⁴⁰ Subrecipient has different meanings in different programs, which is why HUD defined it as either the meaning as is applied in the specific program or 2 CFR 200.93. Contact a DED representative for clarification.

⁴¹ See [24 CFR 75.21](#). If public housing financial assistance is combined with a HOME- or HTF-assisted Section 3 project, for purposes of the HOME or HTF reporting, the subrecipient has the option of following the public housing definition of Targeted Section 3 worker at [24 CFR 75.11](#) to simplify project reporting. If your project is receiving both housing and community development assistance and public housing financial assistance, contact a DED representative.

⁴² See [42 USC 1437a\(b\)\(2\)](#). Median income data is available at: https://www.huduser.gov/portal/datasets/il.html#2021_query.

⁴³ Additional information regarding Youthbuild is available at <https://www.dol.gov/agencies/eta/youth/youthbuild>.