

## Frequently Asked Questions

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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. This FAQ is intended to supplement the Department of Economic Development’s (DED) Policy Memo 21-01 regarding the recent update to Section 3 regulations.

### A. Compliance and Reporting

#### 1. How is the Section 3 final rule different than the prior Section 3 requirements?

HUD's regulations implementing the requirements of Section 3 had not been updated since 1994. The Section 3 final rule updates are 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. As detailed in DED’s Policy Memo 21-01, the Section 3 final rule revises the single applicability threshold, pivots from reporting new hires to labor hours, updates key definitions, and provides revised benchmarks for safe harbor compliance.

#### 2. What rules should existing projects subject to Section 3 follow?

The Section 3 Final Rule became effective November 30, 2020. As of November 30, 2020, the requirements of 24 CFR part 135 no longer apply to new commitments. Section 3 projects with commitments made **on or after November 30, 2020** must comply with 24 CFR part 75. Section 3 projects with commitments made **before November 30, 2020** must continue to comply with the requirements of 24 CFR part 135. Commitment date is program-specific. Consult with a DED representative to confirm your project’s commitment date to determine which set of rules apply.

Contract Commitment Date	Before 11/30/2020	On or After 11/30/2020
<b>Applicable Regulations</b>	24 CFR part 135	24 CFR part 75
<b>Reporting Requirements</b>	Subrecipient must retain documentation demonstrating compliance with 24 CFR part 135) in project file.	Subrecipient must retain documentation demonstrating compliance with 24 CFR part 75 in project file.

**3. What if my project does not require time and attendance reporting to calculate labor hours?**

HUD presumes most entities already track time, attendance, and labor hours. If an entity does not, there is an exemption that allows for a “good faith estimate” of time. Subrecipients can report labor hours based on the employer’s good faith assessment of the labor hours of a full-time or part-time employee, informed by the employer’s existing salary or time and attendance-based payroll systems.

**B. Compliance with Other Laws**

**1. 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).

**2. Are subrecipients 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, subrecipients 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.

**3. 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 percent 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 percent-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, HUD anticipates that Section 3 will serve to support, and not impede, contract opportunities for MBE/WBEs.

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

It depends. Section 3 is race and gender neutral. Only Minority Business Enterprises (MBEs)/Women Business Enterprises (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.

**C. Strategies to Comply with Section 3 Requirements**

**1. What are examples of “best efforts” that demonstrate commitment to comply with Section 3?**

The table below provides examples of “best efforts” to demonstrate commitment to comply with Section 3.

Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers	<ol style="list-style-type: none"><li>1. Host one or more job fairs</li><li>2. Provide training or apprenticeship opportunities</li></ol>
Provide direct support to Section 3 businesses	<ol style="list-style-type: none"><li>1. To obtain financial literacy training and/or coaching</li><li>2. To identify and secure bids from Section 3 business concerns</li><li>3. To understand and bid on contract documents</li></ol>
Provide direct assistance to Section 3 workers	<ol style="list-style-type: none"><li>1. To seek and compete for jobs (e.g., resume assistance coaching, interview prep, job placement)</li><li>2. For work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare)</li><li>3. To apply for/or attend community college, a four-year educational institution, or vocational/technical training (e.g. scholarships, test prep and fees, application support)</li></ol>
Encourage opportunities for Section 3 Business participation	<ol style="list-style-type: none"><li>1. Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns</li><li>2. Provide bonding assistance, guaranties, and other efforts to support viable bids from Section 3 business concerns</li><li>3. Promote use of business registries designed to create opportunities for disadvantaged and small businesses</li></ol>

Documentation of efforts may include:

- Copies of direct mail solicitations
- Email and internet outreach efforts
- Formal advertisements
- Flyers or brochures about meetings
- Sign-in lists from job fairs or other public meetings
- Agendas and/or meeting notes from meetings with contractors

## **D. General**

### **1. What sources of HUD financial assistance are required to comply with Section 3?**

Section 3 applies to projects with more than \$200,000 in funding from housing and community development financial assistance programs.<sup>1</sup> The following is a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnerships Program (HOME)
- HOME American Rescue Plan Program (HOME-ARP)
- 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)
- Healthy Homes Production Grants (\$100,000 threshold)
- Rental Assistance Demonstration (RAD) (see most recent RAD Notice, found through HUD's RAD website)

### **2. Are funds provided to subrecipients 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.

### **3. What is the process to become designated as a Section 3 business concern?**

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

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

A business may self-certify as a Section 3 business concern through HUD's opportunity portal: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>. This business registry is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business concern and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts. While

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<sup>1</sup> This question does not address Section 3 threshold requirements for public housing financial assistance.

<sup>2</sup> For purposes of qualifying under this criteria, you must examine the low- or very-low income person's household income.

HUD maintains the business registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide.

**4. Can a nonprofit organization be considered a business concern for the purposes of Section 3?**

Yes. A nonprofit organization can be a business concern. Nonprofit organizations must meet the criteria of a Section 3 business concern as defined at 24 CFR part 75.5 in order to receive Section 3 preference.

**5. 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.

**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. 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, subrecipients must develop procedures that are consistent with all applicable regulations.

**7. 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 (low-income) and 50 percent (very low-income) of the area median individual income. Income data is available at: [https://www.huduser.gov/portal/datasets/il.html#2021\\_query](https://www.huduser.gov/portal/datasets/il.html#2021_query).

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

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

**9. 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 because these are material-only contracts. 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.

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

Subrecipients, 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.

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

**11. 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.<sup>3</sup> However, this exclusion does not cover all non-construction services.

Professional services staff labor hours are permitted to be reported and Public Housing Authorities (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 subrecipient 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 subrecipient a bonus if they are able to report Section 3 hires in the professional services context.

**12. 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.

**Additional Resources:**

- Hud Exchange Portal/Section 3: <https://www.hudexchange.info/programs/section-3/>
- Section 3 HUD FAQs: <https://www.hudexchange.info/section-3/faqs/>
- Section 3 Federal Register Notices:
  - [Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses](#)
  - [Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses](#)

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<sup>3</sup> Professional service jobs are defined in 24 CFR 75.5 as “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.”