

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT

STATE OF NEBRASKA
Section 3 Final Rule (24 CFR Part 75)
Informational Webinar




NEBRASKA
Good Life. Great Opportunity.

November 1, 2021

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Agenda

- Purpose of Section 3
- Section 3 Final Rule Goals
- Overview of Section 3 Final Rule
 - Section 3 Projects
 - Key New and Revised Definitions
 - Section 3 Requirements
 - Section 3 Benchmarks
 - Reporting
 - Recordkeeping Requirements
- Section 3 Final Rule: Changes Summary
- What's Next: Process Updates and Considerations
- Section 3 Resources



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SPECIAL NOTE

The Section 3 Final Rule has different triggers and benchmarks for public housing programs than for other types of community development projects. This presentation focuses only on compliance for housing and community development financial assistance.

For purposes of this presentation, the term “subrecipient” is intended to describe the entity that has an agreement with DED.

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Nebraska Department of Economic Development: 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)

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Section 3 Purpose

To ensure that economic opportunities, most importantly employment, shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community where Section 3 covered assistance is expended.

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Origins and Purpose

PROVIDE A PATH TO SELF SUFFICIENCY


- Authorized by the Housing and Urban Development Act of 1968
- Prior Regulations located at 24 CFR Part 135
- New Regulations located at 24 CFR Part 75
- Directs economic opportunities to low- and very low-income people who will be served by HUD-funded projects such as housing and infrastructure
- Creates a “double win” in communities receiving HUD funds

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Section 3 Final Rule Goals



1. Create more effective incentives for employers to retain and invest in their low- and very low-income workers.



2. Streamline reporting requirements by aligning them with typical business practices.



3. Provide program-specific oversight.



4. Clarify the obligations of entities covered by Section 3.

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Effective Date of “Final Rule”

The Section 3 Final Rule became effective of November 30, 2020.

| Contract Commitment Date | Before 11/30/2020 | On or After 11/30/2020 |
|-------------------------------|---|--|
| Applicable Regulations | 24 CFR Part 135 | 24 CFR Part 75 |
| Reporting Requirements | 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. |

NOTE: Commitment date is program-specific. Consult with a DED representative to confirm your project’s commitment date to determine which set of rules apply.

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Section 3 Projects

- Section 3 projects are defined as **housing rehabilitation, housing construction, and other public construction projects** 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 inclusive of total HUD assistance provided at the project level, not just the HUD assistance overseen by DED.

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.

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Section 3 Triggers

APPLICABILITY IS BASED ON PROJECT TYPE AND FUNDING

- Housing rehabilitation
- Housing construction
- Demolition
- Other public construction, such as infrastructure and other public facilities

- Projects using \$200,000+ in HUD funds
- HUD funds may include:
 - HTF, HOME, HOME-ARP, CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, ESG, RHP, HOPWA, Section 202 & 811, Lead Abatement Grant

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Project Definition

- A “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. See [24 CFR § 75.3](#).

Example: 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.

- Section 3 requirements apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs.

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Key Revised Definitions

- **Section 3 Worker:** Any worker who currently fits, or when hired within the past **five** years fit, at least one of the following categories:
 - Worker’s income for the previous or annualized calendar year is below the HUD-established income limit.
 - Worker is employed by a Section 3 business concern.
 - Worker is a YouthBuild participant.
- **Section 3 Business Concern:** A business concern documented within the last six-month period to be:
 - At least 51% owned and controlled by low-or very low-income persons;
 - >75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
 - At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing.


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.

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Key New Definitions

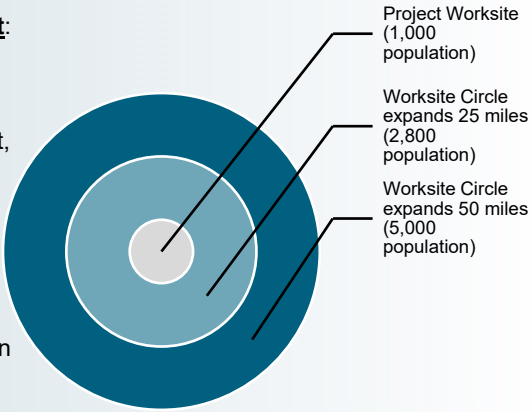
- **Targeted Section 3 Worker:** A Section 3 worker who is:
 - A worker employed by a Section 3 business concern; or
 - A worker who currently fits or when hired fit at least one of the following categories, as documented within the past **five** years:
 - Living within the service area or the neighborhood of the project; or
 - A YouthBuild participant.



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Key New Definitions

- **Service Area or the Neighborhood of the Project:** 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.
- HUD is currently developing an online tool to assist with determining service areas.



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Section 3 Requirements: Employment and Training

- 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) where the project is located.
- Priorities for opportunities and training should be given to:
 - Section 3 workers residing within the service area or the neighborhood of the project, and
 - Participants in YouthBuild programs.

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Section 3 Requirements: Contracting

- Ensure contracts for work are awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.
- Priority for contracting opportunities should be given to:
 - Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
 - YouthBuild programs.

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Section 3 Benchmarks

- **25%** or more of total number of labor hours worked by all workers on a Section 3 project are from Section 3 workers.
- **5%** or more of total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- Excludes material only contracts.
- Excludes “professional services” that may still be counted in the numerator.

$$\frac{\text{Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 25\% \text{ or more}$$

$$\frac{\text{Targeted Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 5\% \text{ or more}$$

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Example: 21-01 Policy Memo

- DED awards City of Anytown \$300,000 of CDBG funds for street improvements.
- DED requires City of Anytown to report the following accomplishments:
 - the total labor hours,
 - the total labor hours worked by Section 3 workers, and
 - the total labor hours worked by Targeted Section 3 workers.
- City of Anytown reports a total of 5,000 labor hours worked on the project.
 - 1,300 worked by employees who self-certified as Section 3 workers.
 - 300 of those 1,300 hours 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 hours | |
| Section 3 Labor Hours | 1,300 hours | 26% |
| Targeted Section 3 Labor Hours | 300 hours | 6% |

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Evidence of Best Efforts

Examples of “best efforts” that demonstrate a commitment to comply with Section 3 include:

Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers

- Host one or more job fairs
- Provide training or apprenticeship opportunities

Provide direct assistance to Section 3 workers

- To seek and compete for jobs (e.g., resume assistance, coaching, interview prep, job placement)
- For work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare)
- 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)
- To obtain financial literacy training and/or coaching

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Evidence of Best Efforts

Examples of “best efforts” that demonstrate a commitment to comply with Section 3 include:

Provide direct support to Section 3 Businesses

- To identify and secure bids from Section 3 business concerns
- To understand and bid on contracts

Encourage opportunities for Section 3 Business participation

- Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns
- Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
- Promote use of business registries designed to create opportunities for disadvantaged and small businesses

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HUD Section 3 Opportunity Portal

HUD's [Section 3 Opportunity Portal](#) is intended to help subrecipients meet their Section 3 benchmarks. It may be used by Section 3 workers, Targeted Section 3 workers, or employers to identify jobs and training and contracting opportunities.

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HUD Section 3 Business Registry

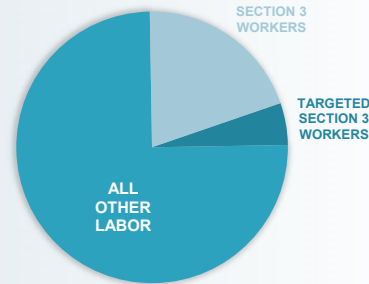
- HUD's [Section 3 Business Registry](#) is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors.
- The database can also be used by Section 3 workers to identify businesses that may have HUD-funded employment opportunities.

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Section 3 Reporting

COUNTING LABOR HOURS

- Information to be submitted includes total number of labor hours worked by the subrecipients, contractors, and subcontractors:
 - 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.
- Subrecipients must make all entities that they contract with aware of the need to comply with Section 3 requirements.



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Professional Service Hours

- Professional Services hours are excluded from the reporting requirement.
 - Subrecipients should not include labor hours worked for professional services jobs in the *total labor hours* worked on the project.
- However, if professional services employees 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.
 - Gives subrecipient a bonus if they are able to report Section 3 labor hours in the professional services context.
- *Examples of professional services: legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services*

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Recordkeeping Requirements

Subrecipient must maintain documentation to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker:

| SECTION 3 WORKER RECORDS | TARGETED SECTION 3 WORKER RECORDS |
|---|--|
| <ul style="list-style-type: none"> • Worker's self-certification from prior calendar year. • Worker's self-certification of participation in 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 of the worker's income. • 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. • Employer's certification that the worker is employed by a Section 3 business concern. • Worker's self-certification as a YouthBuild participant. |

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Section 3 Final Rule: Changes Summary

| Previous Requirement (24 CFR Part 135) | New Requirement (24 CFR Part 75) |
|--|--|
| Measures hiring and contracting | Measures labor hours |
| 30% of new hires must be Section 3 residents | 25% of total project hours must be worked by Section 3 workers |
| No preference for Section 3 workers who live in a project's service area or work for a Section 3 business concern over other Section 3 workers | Creates category of Targeted Section 3 workers; 5% of total project hours must be worked by Targeted Section 3 workers |
| Businesses could be Section 3 if subcontracting 25% of work to other Section 3 firms | Subcontracting to Section 3 firms no longer qualifies an enterprise as Section 3, but subcontractor hours are included in meeting benchmarks |
| Businesses owned by residents of public housing or Section 8 units were given no special status | Business can be Section 3 if 51% owned and controlled by residents of public housing or Section 8 units (two other ways to qualify) |
| 10% of construction costs contracted to Section 3 firms | No monetary benchmark for contracting to Section 3 firms |
| 3% of non-construction costs contracted to Section 3 firms | Professional services not subject to Section 3 |
| Fixed outcome benchmarks | Outcome benchmarks updated every 3 years by Federal Register Notice |

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What's Next: Process Updates and Considerations

- **HUD Action:** HUD is currently developing additional resources intended to help subrecipients, contractors, and Section 3 businesses who manage or implement the Section 3 provisions.
- **DED Action:** DED is currently developing certification forms, updating administration manuals, revising monitoring and reporting forms, and preparing trainings in connection with the Section 3 Final Rule.

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What's Next: Process Updates and Considerations

- **Subrecipient Action:** Subrecipients should be proactive in updating Section 3-related processes and procedure and communicating expectations related to the Section 3 Final Rule.
 - Assess current active agreements with DED to determine which set of Section 3 rules apply (24 CFR Part 135 v. 24 CFR Part 75).
 - Take inventory of solicitation package templates and other relevant documents to update Section 3-applicable language.
 - Relay Section 3 Final Rule changes to contractor(s) or prospective proposer(s) and ensure contractor understanding of Section 3 reporting.
 - Communicate clear recordkeeping duties to contractors.
 - Continue outreach efforts after winning bidder/proposer is awarded.

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Section 3 Resources

- Hud Exchange Portal/Section 3:
<https://www.hudexchange.info/programs/section-3/>
- Section 3 HUD FAQs: <https://www.hudexchange.info/section-3/faqs/>
- HUD Income Limits:
https://www.huduser.gov/portal/datasets/il.html#2021_query
- 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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Question & Answer

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NOTE: Please include
"Section 3" in the subject
line of any emails regarding
the Section 3 Final Rule
and this presentation.