



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Special Attention of:

All CPD Division Directors

Notice: CPD-21-09

Issued: August 24, 2021

Grantees and Program Managers of the following Community Planning and Development (CPD) programs: Formula Community Development Block Grant (Entitlement CDBG, State CDBG, Nonentitlement CDBG Grants in Hawaii, and Insular Area CDBG); Community Development Block Grant CARES Act (CDBG-CV); CDBG Disaster Recovery (CDBG-DR); CDBG Mitigation (CDBG-MIT); Neighborhood Stabilization Program (NSP); Recovery Housing Program (RHP); Section 108 Loan Guarantee Program (Section 108)

Expires: **This NOTICE is effective until it is amended, superseded, or rescinded.**

Cross Reference: 24 CFR part 75

Subject: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP projects.

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I. PURPOSE

This notice provides guidance to Community Development Block Grant (CDBG), Community Development Block Grant CARES Act (CDBG-CV), CDBG Disaster Recovery (CDBG-DR), CDBG Mitigation (CDBG-MIT), Neighborhood Stabilization Program (NSP), and Recovery Housing Program (RHP) grantees and Section 108 Loan Guarantee Program (Section 108) borrowers (collectively, “grantees”) on the requirements for Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3). These requirements apply to CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP-assisted housing rehabilitation, housing construction and other public construction projects. This notice outlines the key changes made by the notice entitled, “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” (85 FR 61524) (“Final Rule”) published in the *Federal Register* on September 29, 2020 (codified at 24 CFR part 75) and provides guidance for tracking and reporting compliance with the new requirements. Refer to 24 CFR 75 for any further updates on Section 3 requirements after the publication of this notice.

II. BACKGROUND

Section 3 contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible and consistent with existing Federal, state, and local laws and regulations, directed toward low- and very low-income persons. Section 3 applies to training or employment arising in connection with HUD-funded housing rehabilitation, housing construction, or other public construction projects, and any contracting opportunities arising in connection with both public housing and other Section 3 projects. These opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns that provide economic opportunities to low- or very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

On September 29, 2020, HUD published the Final Rule and a companion notice, entitled “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” (85 FR 60907) (“Benchmark Notice”), in the *Federal Register*. Prior to the publication of the Final Rule and Benchmark Notice, HUD operated under regulations (found at 24 CFR part 135) (“former regulation”) provided by the Section 3 interim rule, which HUD published in 1994.

The regulation, provided by the Section 3 Final Rule, became effective on November 30, 2020 and is codified at 24 CFR part 75. The regulation simplifies the Section 3 requirements and establishes that Section 3 requirements apply to housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a minimum funding threshold. The regulation also improves alignment with current business practices by requiring the reporting of labor hours rather than new hires. Additionally, the regulation streamlines the reporting process and establishes HUD program office oversight to reduce administrative burden and make the rule more effective. The Benchmark Notice establishes the current numeric goals for compliance with Section 3 requirements. Pursuant to the regulation at 24 CFR 75.23(b)(1) and (b)(2), HUD may adjust funding thresholds or establish new benchmarks (either a single nationwide benchmark or multiple benchmarks based on geography, type of assistance, or other variables) periodically as new information becomes available. HUD must publish all updates in the *Federal Register* and all updates are subject to public comment.

III. APPLICABILITY

A. FUNDING THRESHOLD

The regulation established an applicability threshold of \$200,000 for housing rehabilitation, housing construction, and other public construction (e.g., public facilities and improvements) projects assisted with housing and community development financial assistance. Housing and community development financial assistance includes, but is not limited to, CDBG, CDBG-DR,

CDBG-MIT, NSP, Section 108, RHP, HOME Investment Partnership (HOME), Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), 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 (NOFO) grants.

Per 24 CFR 75.3, the Section 3 requirements apply based on the amount of housing and community development funding provided by one or a combination of two or more different applicable HUD programs exceeding the \$200,000 threshold. 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.

Per 24 CFR 75.3(a)(iii), Section 3 requirements apply to the entire project, not just the HUD-financed portion. If a housing rehabilitation, housing construction, or other public construction project receives more than \$200,000 of HUD funding, then Section 3 requirements are triggered and apply to all employment and training opportunities and contracts for work arising in connection with the project (subject to section III.B. below), including efforts that are financed by other, non-HUD sources of funds. Grantees must make all recipients, contractors, and subcontractors aware of the need to comply with Section 3 requirements.

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). For example, if a project is funded with \$75,000 of CDBG funds and \$10,000 of public housing financial assistance funds, then Section 3 requirements apply because public housing financial assistance is provided. See 24 CFR part 75 Subpart D for requirements that apply to projects with multiple funding sources. Also see Section V.B. below.

B. PROJECT AND ACTIVITY TYPES

Section 3 requirements apply to a housing rehabilitation, housing construction or other public construction project no matter which portion of the project receives the CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108 guaranteed loan funds, or RHP financial assistance. The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing (e.g., CDBG funds used to rehabilitate 20 units in one building as part of an effort to rehabilitate 40 units in two buildings on a single property. The “Section 3 project” includes the rehabilitation of all 40 units.). Once the project is complete, the Section 3 requirements no longer apply to subsequent contracts.

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). Pursuant to 24 CFR 75.3(b), Section 3 requirements also do not apply to materials-only contracts or contracts that do not require any labor. For example, Section 3 would not apply to contracts for office or janitorial supplies because these are materials-only contracts.

CDBG, Section 108, and CDBG-CV grantees must report Section 3 data in HUD’s Integrated

Disbursement and Information System (IDIS). CDBG-DR, CDBG-MIT, NSP, and RHP grantees must report Section 3 data in HUD's Disaster Recovery Grant Reporting (DRGR) system. Grantees are cautioned to not include multiple Section 3 projects under a single activity in IDIS or DRGR; this would cause a distortion in the calculation of the benchmarks, particularly if the benchmarks were not met for one of the included projects. Instead, to properly report Section 3 projects in IDIS or DRGR, each project must be established as a distinct activity. CDBG regulations use the term "activity" which is the same as "project" for the purposes of this notice.

C. TIMING

Section 3 requirements apply to new grants, commitments, contracts, or projects funded on or after the November 30, 2020 effective date. For Section 3 Projects, this means that requirements apply if a grantee or a recipient of HUD funds executes a legally binding written agreement or contract on or after November 30, 2020. For example:

- an executed subrecipient agreement, including any subsequent contracts or agreements, that has project- or activity-level details with respective budgets, schedules and/or secured financing
- an executed homeowner rehabilitation loan or grant agreement, and any subsequent procured contracts
- an agreement or contract, that includes secured financing, with a developer or for-profit entity to complete a multifamily rehabilitation project

Grantees and recipients of HUD funding 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 is added to the project. For example, funding provided in phases such as a multifamily housing rehabilitation activity initially receiving \$150,000 of CDBG assistance would trigger Section 3 requirements if it received an additional amount exceeding \$50,000 in housing and community development financial assistance. These requirements apply to specific Section 3 projects; a program is not a project. The former regulation and its requirements still apply to agreements entered prior to November 30, 2020, and their subsequent contracts or agreements. See Section IV for details on implementation timelines and reporting requirements.

IV. TIMELINE FOR IMPLEMENTATION

A. EFFECTIVE DATE

The regulation became effective on November 30, 2020. As of November 30, 2020, the requirements of 24 CFR part 135 no longer apply. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made on or after November 30, 2020 must comply with 24 CFR part 75. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made before November 30, 2020 must continue to comply with the requirements of 24 CFR part 135.

B. REPORTING TRANSITION

While the regulation's effective date was November 30, 2020, HUD expected grantees to

transition to the updated 24 CFR part 75 requirements, revise their policies and procedures and systems to comply with the requirements, and make necessary changes in IDIS and DRGR by July 1, 2021. Therefore, HUD will not enforce compliance with the regulation’s reporting requirements until July 1, 2021. Grantees are not required to report Section 3 data in IDIS or DRGR for any project to which CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP funds were committed before November 30, 2020, or any project that was completed before July 1, 2021. As described in the table below, grantees must keep all files associated with Section 3 projects with commitments made before November 30, 2020, or between November 30, 2020, and July 1, 2021, to demonstrate that the projects comply with the requirements of 24 CFR part 135 or part 75, depending on the commitment date.

Commitment Date	Before 11/30/2020	On or After 11/30/2020 but before 7/1/2021	On or After 7/1/2021
Applicable Regulations	24 CFR part 135	24 CFR part 75	24 CFR part 75
Reporting Requirement	Grantee must retain documentation demonstrating compliance with interim rule in project file.	Grantees must retain documentation demonstrating compliance with Final Rule in project file. Grantee will report in IDIS or DRGR for open activities starting July 1, 2021. If the IDIS or DRGR activity was set up prior to the system update, grantees will need to modify the IDIS or DRGR activity to generate the appropriate Section 3 compliance screen(s).	Grantee will report compliance data in IDIS or DRGR within the applicable reporting cycles beginning on or after July 1, 2021.

V. LABOR HOURS

The regulation introduces several new concepts and definitions to align the regulations more closely with the statutory priorities for hiring and contracting and with grantee current practices. The most significant change is the switch from tracking and reporting new hires and contracts to tracking and reporting labor hours. “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 (24 CFR 75.5). The Final Rule’s focus on labor hours seeks to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to tracking labor hours captures continued and long-term employment. The focus on labor hours creates an incentive for employers to invest in and retain their newly hired workers.

24 CFR 75.25 requires grantees to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers. The definitions in 24 CFR 75.5 for a “Section 3 worker,” “Targeted Section 3 worker,” and “Section 3 business concern” simplify grantee reporting and better align with statutory priorities. Benchmarks that apply to each of these categories of workers will serve as safe harbors for compliance, as discussed in Section VI of this notice.

Pursuant to 24 CFR 75.27, grantees must include language applying Section 3 requirements in any agreement or contract for a Section 3 project and must require contractors and subcontractors to meet the regulation’s requirements, regardless of whether their agreements or contracts include Section 3 language.

A. SECTION 3 WORKER

The new definition of Section 3 worker, at 24 CFR 75.5, implements the statutory requirement that grantees ensure that job and contracting opportunities arising in connection with a HUD-funded housing rehabilitation, housing construction, or other public construction project are provided to Section 3 workers or Section 3 business concerns to the greatest extent feasible. In accordance with the regulation, a Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

1. Is a low- or very low-income worker that fell below HUD income limits for the previous or annualized calendar year. Low- and very-low-household income limits may be obtained from: <http://www.huduser.org/portal/datasets/il.html>
2. Is employed by a Section 3 business concern (defined in Section C).
3. Is a YouthBuild participant. YouthBuild is a community-based pre-apprenticeship program administered by the U.S. Department of Labor that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

Grantees may count Section 3 workers’ labor hours for five years from when their status as a 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.

Pursuant to 24 CFR 75.5, a prior arrest or conviction cannot negatively affect the status of a Section 3 worker. Furthermore, Section 3 workers are not exempt from meeting position qualification requirements nor do the regulations require the employment of an individual meeting the definition of a Section 3 worker.

A worker may qualify as a Section 3 worker through one of the following certifications, in accordance with 24 CFR 75.31:

1. A worker’s self-certification that their income is below HUD’s income limit from the prior calendar year.

2. A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing.
3. Certification from a public housing authority (PHA), or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs.
4. An employer's certification that a worker's income from that employer is below HUD's 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.
5. An employer's certification that the worker is employed by a Section 3 business concern.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, the grantee must maintain (or ensure that the subrecipient, contractor, or subcontractor that employs the worker maintains) one of the listed records above from the time the worker is certified as meeting the Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years). Pursuant to 24 CFR 75.31(c), the documentation described above must be maintained for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

Special Case: Professional Services

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." These jobs are excluded from the reporting requirement for Section 3 and Targeted Section 3 workers because it is very difficult for grantees and contractors to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Grantees should not include the labor hours worked for professional services jobs in the total labor hours worked on the project (pursuant to 24 CFR 75.25(a)(4)) and HUD did not consider such jobs when developing the benchmarks. However, if employees in professional services roles meet the definition of a Section 3 worker or Targeted Section 3 worker, grantees can report their labor hours in the applicable worker hour category. By structuring the requirements in this way, the regulation incentivizes grantees and contractors to hire Section 3 or Targeted Section 3 workers for professional services jobs without creating undue burden if qualified Section 3 workers are not available to fill these roles.

B. TARGETED SECTION 3 WORKER

The Section 3 statute requires certain recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The new definition of Targeted Section 3 worker reflects both statutory and policy priorities that HUD wishes to specifically track. Pursuant to 24 CFR 75.21, a Targeted Section 3 worker for housing and community development financial assistance is a worker who meets the definition of a Section 3 worker, plus one of the following:

1. A worker employed by a Section 3 business concern (defined below), 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:
 - a. Living within the service area or the neighborhood of the project (defined below).
 - b. A YouthBuild participant.

The regulation defines the service area or the neighborhood of the project in 24 CFR 75.5 as “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.”

For a worker to qualify as a Targeted Section 3 worker under housing and community development assisted Section 3 projects (pursuant to 24 CFR 75 Subpart C), the grantee and/or its recipients must maintain source documentation that the worker meets the definition of a Section 3 worker and at least one of the following (per 24 CFR 75.31(b)(2)(ii)):

1. 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,
2. An employer’s certification that the worker is employed by a Section 3 business concern, or
3. A worker’s self-certification that the worker is a YouthBuild participant.

(HUD’s Office of Policy Development and Research (PD&R) is coordinating the development of a webtool that will assist in determining employee eligibility under the Section 3 requirements. Using project site locations specified by the user, the tool will analyze surrounding geographies to verify that an individual employee’s address aligns with the eligibility criteria outlined under the rule. PD&R anticipates releasing the tool in 2021.)

However, per 24 CFR 75.29, if a CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP-assisted Section 3 project receives also public housing financial assistance, the grantee may instead choose to follow the public housing definition of Targeted Section 3 worker at 24 CFR 75.11 to simplify project reporting.

Per 24 CFR 75.11, a Targeted Section 3 worker for public housing financial assistance 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:
 - a. A resident of public housing or Section 8-assisted housing.
 - b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance.
 - c. A YouthBuild participant.

For a worker to qualify as a Targeted Section 3 worker under the public housing financial assistance definition, the grantee and/or its recipients must maintain documentation that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, a grantee and/or its recipients must maintain documentation for at least one of the following (per 24 CFR 75.31(b)(2)(i)):

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs,
2. A 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,
3. An employer's certification that the worker is employed by a Section 3 business concern, or
4. A worker's self-certification that the worker is a YouthBuild participant.

In accordance with 24 CFR 75.29, for projects with multiple sources of funding, the recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

In all cases, as with a Section 3 worker, a prior arrest of conviction cannot negatively affect the status of a Targeted Section 3 worker (24 CFR 75.5). Additionally, grantees must certify that they are making efforts to prioritize training and opportunities for Targeted Section 3 workers (see Subsection D below).

C. SECTION 3 BUSINESS CONCERN

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. To implement this priority, the regulation includes labor hours worked by Section 3 business concern employees to count towards benchmarks for Section 3 workers and Targeted Section 3 workers. HUD also created a new Section 3 business concern definition that incorporates the change to labor hours and increases the threshold of work performed by a business by low- and very low-income workers. Grantees must certify that they are making efforts to prioritize contracting with Section 3 business concerns (see Subsection D below) and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons,
2. More than 75 percent of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
3. At least 51 percent owned and controlled by current residents of public housing or Section 8-assisted housing.

Additionally, pursuant to 24 CFR 75.5, 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. Furthermore,

Section 3 business concerns are not exempt from meeting contract specifications nor do the regulations require the contracting or subcontracting of a Section 3 business concern.

HUD's Section 3 Business Registry is a searchable online database of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business concern. Agencies that receive HUD funds, developers, contractors, and others can use this registry to facilitate the award of certain HUD-funded contracts. While the Department maintains the Business Registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, grantees must verify that each business meets the definition of a Section 3 business concern before awarding contracts to any firm that has self-certified on this registry.

D. EMPLOYMENT, TRAINING, AND CONTRACTING PRIORITIZATION

Pursuant to 24 CFR 75.19(a), grantees must, to the greatest extent feasible, ensure Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Section 3 project is located are provided with employment and training opportunities arising in connection with the project. Where feasible, a grantee and its recipients should give priority for opportunities and training to:

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

Pursuant to 24 CFR 75.19(b), grantees must, to the greatest extent feasible, ensure business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Section 3 projects are located are provided with contracts for work awarded in connection with Section 3 projects. Where feasible, a grantee and its recipients should give priority for contracting opportunities 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.

All employment and training opportunities, and contracting awards provided in accordance with 24 CFR 75.19 must be consistent with Federal, state, and local laws and regulations. Ultimately, in addition to meeting prescribed benchmarks, grantees and recipients will need to certify that they have followed the prioritization of effort in 24 CFR 75.19 to demonstrate compliance (see Section VI).

VI. DOCUMENTING COMPLIANCE

Grantees must maintain or ensure that a subrecipient, contractor, or subcontractor maintains adequate records demonstrating Section 3 compliance. The regulation requires HUD to establish Section 3 benchmarks by publishing a notification, subject to public comment, in the *Federal Register* (see 24 CFR 75.23(b)). The notice must include proposed benchmarks and the methodology for determining the benchmarks. These benchmarks provide grantees a "safe harbor" by defining the percentage of labor hours worked by Section 3 workers and Targeted

Section 3 workers on a project to comply with Section 3 requirements.

HUD will consider the grantee to have complied with the requirements in the regulation, by meeting the safe harbor, in the absence of evidence to the contrary, if a grantee certifies to the prioritization of effort in 24 CFR 75.19 and meets or exceeds the applicable Section 3 benchmarks referenced in 24 CFR 75.23(b). This “Section 3 Safe Harbor” is codified at 24 CFR 75.23. If a grantee does not meet requirements of 24 CFR 75.23’s Section 3 safe harbor, HUD will require additional qualitative reporting to demonstrate compliance with the regulation (see Subsection C below).

A. LABOR HOURS AND BENCHMARKS

The regulation requires grantees to track and report the labor hours worked on Section 3 projects (see 24 CFR 75.25). In accordance with 24 CFR 75.23(b), HUD published the Benchmark Notice to establish initial numeric goals, or benchmarks, to measure grantee compliance with the regulation. Publishing the numeric benchmarks in a separate notice from the regulation provides HUD with the flexibility to update the goals as needed. HUD plans to review and update the benchmarks at least once every three years through notice in the *Federal Register*.

In accordance with 24 CFR 75.25(a), grantees must report the following labor hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

1. The total number of labor hours worked by all workers,
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.

If the project does not require time and attendance reporting, grantees may report to HUD using a good faith assessment. Grantees can report their own labor hours or that of a subrecipient, contractor or subcontractor 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.

Per the Benchmark Notice, the current benchmarks that apply for a Section 3 project (assisted under HUD programs that provide housing and community development financial assistance where the amount of assistance to the project exceeds a threshold of \$200,000) are:

- a. Benchmark 1: Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers

Section 3 Labor Hours/Total Labor Hours = 25%

and

- b. Benchmark 2: Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

Example

Springfield commits \$300,000 of CDBG funds to ABC Developers to rehabilitate a multifamily rental building. By committing an amount above the \$200,000 threshold, the Section 3 requirements apply to this project. To comply with 24 CFR 75.25(a), Springfield must require ABC Developers to report the following accomplishments to Springfield within the applicable reporting cycles: (1) the total *Labor Hours*, (2) the total *Section 3 Labor Hours*, and (3) the total *Targeted Section 3 Labor Hours* on the Section 3 project.

Springfield is responsible for reporting labor hour data from all contractors and subcontractors hired by ABC Developers to rehabilitate the multifamily rental building. During the first quarter (July – September), ABC Developers reports to Springfield 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. Springfield has met the project-level Section 3 Benchmarks and reports the following data in DRGR at the next reporting cycle:

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

As stated above, per 24 CFR 75.23, HUD will consider grantees to have complied with Section 3 benchmarks, in the absence of evidence to the contrary, if they certify to the prioritization of effort in 24 CFR 75.19 and meet or exceed the applicable Section 3 benchmarks. See Section C. below for details on how to report qualitative efforts if the benchmarks are not met.

B. REPORTING

HUD will no longer require grantees to report Section 3 compliance data annually in the Section 3 Performance Evaluation and Reporting System (SPEARS) for Section 3 projects. HUD will decommission the previous reporting modules in SPEARS in 2021. The regulation requires each grantee to report on Section 3 compliance per the reporting requirements for each applicable program. Grantees will report project or activity level data in IDIS and DRGR. This also means that grantees will report Section 3 data for each applicable HUD program in IDIS and DRGR instead of into one SPEARS annual report that measures grantees efforts across all HUD programs. In instances where there are multiple funding sources, grantees must collect and report the same data across programs for consistency.

IDIS

The Section 3 reporting data fields are available on the IDIS activity setup and accomplishment screens for CDBG, Section 108, and CDBG-CV activities and will be available in the Consolidated Annual Performance and Evaluation Report (CAPER). Beginning July 1, 2021, grantees must enter Section 3 applicability and data before they can mark a CDBG, Section 108

or CDBG-CV rehabilitation or construction activity complete in IDIS. The data reported at the activity level in IDIS will be populated into the CAPER and a Section 3 MicroStrategy report (available through IDIS), eliminating the need for a separate annual Section 3 reporting system. When grantees submit their CAPER, they will fulfill the requirement for annual reporting. Grantees can also use the Section 3 MicroStrategy report to track compliance at the project level.

For CDBG, CDBG-CV, and Section 108 activities that are funded on or after November 30, 2020 and have “Open” status on or after July 1, 2021, the grantee must indicate whether the activity is subject to Section 3. Failure to indicate Section 3 applicability at activity set-up in IDIS may result in reporting noncompliance with Section 3 and program requirements in the future. If a grantee indicates that the activity is subject to Section 3 requirements, IDIS will generate Section 3 reporting fields on the activity accomplishments screen (CDBG Accomplishment Detail Page 1). The grantee shall report Section 3 labor hours (even it is 0) for every program year the activity remains open. The Section 3 reporting fields include total labor hours worked, Section 3 labor hours worked, and Targeted Section 3 labor hours worked. When a grantee enters labor hour data, IDIS will calculate the percentage of Section 3 labor hours worked and the percentage of Targeted Section 3 labor hours worked out of all labor hours worked. IDIS will also indicate whether the activity met the established benchmarks (25% Section 3 worker hours, 5% Targeted Section 3 worker hours).

Example

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	25	25%	Yes
Targeted Section 3 Worker Hours	5	5%	Yes

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	20	20%	No
Targeted Section 3 Worker Hours	1	1%	No

If the activity meets both benchmarks, HUD will consider the activity to be in full compliance with Section 3, in the absence of evidence to the contrary, and require no further reporting on that activity. If the activity does not meet one of the Section 3 benchmarks, IDIS will require further reporting on the qualitative efforts that the grantee made to try to reach the benchmarks (see Section C).

DRGR

The Section 3 reporting data fields for CDBG-DR, CDBG-MIT, NSP and RHP activities in DRGR are available to be entered as projected accomplishments when setting up activities with applicable Section 3 activity types in the DRGR Action Plan using the Activity ‘Measures’ tab. The Section 3 reporting fields in DRGR include the number of total labor hours, number of labor hours worked by Section 3 workers, and number of labor hours worked by Targeted Section 3 workers. Whether a grantee reports quarterly or annually in DRGR is determined by the grant’s rules and requirements concerning reporting. Generally, RHP grantees report in DRGR annually while CDBG-DR, CDBG-MIT, and NSP grantees report quarterly. Grantees should continue to follow these required reporting cycles for Section 3 activities.

Beginning July 1, 2021, if an activity type is selected in the DRGR Action Plan where Section 3 compliance is required, grantees will have the option to propose accomplishments for each Section 3 performance measure where appropriate. In instances where projections are unavailable at the time of activity type selection, a grantee may enter “0” as a placeholder until projections are available for entry. Grantees must also indicate that the activity is subject to Section 3 requirements by selecting the “Subject to Section 3 Requirements” field under the DRGR Action Plan – Activity ‘Details’ tab. Grantees shall report actual Section 3 labor hours worked (even if it is 0 hours) for each reporting cycle the activity remains open in the DRGR Performance Report. To report actuals on these proposed Section 3 accomplishments, a grantee must access the DRGR Performance Report Activity ‘Measures’ tab to enter actual accomplishments in the Performance Report. Grantees can review proposed measures entered in the DRGR Action Plan for each applicable Section 3 activity in the Performance Report when entering actual accomplishments as a tool for grantees to track benchmark requirements and Section 3 compliance. The data reported at the activity level in the DRGR Action Plan and DRGR Performance Report will be populated on those applicable system screens and in a Section 3 MicroStrategy report (available through the DRGR Reports Module as another option to track compliance), eliminating the need for a separate annual Section 3 reporting system.

C. QUALITATIVE EFFORTS

If an activity does not meet the benchmarks, but the grantee can provide evidence that it has made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then HUD will consider the grantee compliant with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

IDIS

The Section 3 regulations at 24 CFR 75.25 provide a list of qualitative efforts that demonstrate what HUD considers to be efforts to comply with the Section 3 benchmarks. If a grantee did not meet benchmarks for a CDBG, Section 108, or CDBG-CV activity, IDIS will display a checklist of the qualitative efforts from 24 CFR 75.25 on the activity accomplishment screen (CDBG Accomplishment Detail Page 1). The grantee must select at least one option from the list that best describes their efforts, and/or describe their efforts in a box labeled “other” to proceed to the next activity completion screen. Grantees and/or its recipients must also maintain records in their project files to document the efforts reported in IDIS.

The checklist displayed in IDIS for qualitative efforts includes the following options:

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical training such as arranging for, contracting for, or paying tuition for, off-site training.
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment, including drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding childcare.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:

IDIS provides an empty text box next to “Other” to give grantees the option of entering a description about efforts taken that are not included in the list of qualitative efforts provided. Examples of qualitative efforts not included in the checklist displayed in IDIS are:

- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Promoted the use of a business registry designed to create opportunities for disadvantaged and small business.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

DRGR

The Section 3 benchmarks are minimum targets grantees must reach in order to meet the safe harbor. Grantees must, to the greatest extent feasible, work to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers.

If a grantee did not meet numeric benchmarks for a CDBG-DR, CDBG-MIT, NSP or RHP activity, grantees should enter at least one of the qualitative efforts listed in 24 CFR 75.25 within the DRGR Performance Report at the activity level. The grantee must clearly identify (enter) at least one option from the list that best describes their efforts or enter “Other:” followed by narrative describing efforts not included in the list of qualitative efforts.

The qualitative efforts listed at 24 CFR 75.25 are the same for grantees reporting in DRGR.

A Section 3 MicroStrategy report (available through the DRGR Reports Module) will include all reported qualitative efforts at the activity level for the grantee and HUD to review. Grantees and their recipients should also maintain records in their project files to document the qualitative efforts reported in DRGR.

VII. HUD MONITORING

The regulation establishes that the HUD program offices providing the financial assistance will perform Section 3 oversight. As part of this new oversight responsibility, Community Planning and Development (CPD) representatives and other grant managers in HUD field offices and HUD Headquarters will monitor Section 3 compliance as part of the existing CPD onsite or remote monitoring process using exhibits in the CPD Monitoring Handbook. HUD may make findings and impose appropriate remedies and sanctions in accordance with the programs’ regulations.

To prepare for potential monitoring, grantees must keep records demonstrating compliance with Section 3 requirements on a project-level basis. Grantees must establish and maintain (or ensure that a subrecipient, contractor, or subcontractor maintains) documentation to demonstrate that workers on Section 3 projects meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. This includes requiring written reports from developers or contractors summarizing the totals for labor hours, including Section 3 worker and Targeted Section 3 worker labor hours, and documentation from employees or employers certifying that the employee met the requirements to receive Section 3 worker status (see Section V). Any information that a grantee enters in IDIS or DRGR must have supporting documentation demonstrating the accuracy of the data. Additionally, grantees must retain documentation that ensures 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. Grantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention.