



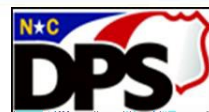
ReBUILD NC

Version 1.2 | 1 January 9, 2023

Section 3 of the Housing and Urban Development Act of 1968 Policy Manual

State of North Carolina

For U.S. Department of Housing and Urban Development Funds



Version	Date	
Number	Updated	Summary of Changes
1.0	10 March 2022	Policy Published
1.1	1 April 2022	Updated Project Implementation Plan Form 6 to include forecasting as well as reporting labor hours.
1.2	9 January 2023	Clarified sections related to designated staff, procurement processes, and required reporting documentation. Updated forms and processes.

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1. Overview of Section 3 Requirements

A. WHAT IS SECTION 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) regulated by 24 CFR 75. Section 3 regulations ensure that employment and other economic opportunities generated by certain Housing and Urban Development (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.

B. PURPOSE OF THIS DOCUMENT

This policy outlines how NCORR and its subrecipients, contractors and subcontractors will comply with HUD's Section 3 requirements during implementing NCORR's HUD funded programs.

NCORR may amend this Section 3 policy as necessary to ensure continued compliance with HUD's requirements and/or to reflect updated Section 3 guidance.

C. APPLICABILITY

Section 3 applies in different ways dependent upon the context of the financial assistance. Applicability of Section 3 is determined at the project level. For public housing financial assistance, all funding is covered regardless of the amount of expenditure or size of a contract. This policy applies to development assistance, operating funds, capital funds, and all mixed- finance development.

For housing and community development financial assistance, this policy applies to housing rehabilitation, housing construction, housing reconstruction and other public construction projects that exceed \$200,000 or more of housing and community development financial assistance from one or more HUD programs.

Section 3 requirements do not apply to:

- 1) Material Supply Contracts – 24 CFR § 75.3(b)
- 2) Indian and Tribal Preferences – 24 CFR § 75.3(c), and
- 3) Other HUD assistance and other Federal assistance not subject to Section 3 24 CFR §75.3 (d).¹

However, for financial assistance that is not subject to Section 3, recipients are encouraged to consider ways to support the purpose of Section 3.

¹ 24 CFR Part 75 – Economic Opportunities for low- and very low-income persons, available at: <https://www.ecfr.gov/current/title-24/subtitle-A/part-75>.

2. Designated Section 3 Staff

NCORR's Compliance Department employs designated Section 3 staff that serve as the central point of contact for Section 3 compliance. Subrecipients, contractors, subcontractors and other organizations are encouraged to contact NCORR's Designated Section 3 Staff with questions regarding Section 3 compliance:

NCORR Designated Section 3 Staff

E-mail section3@rebuild.nc.gov

3. Employment, Training, and Contracting Goals

A. SAFE HARBOR COMPLIANCE

Grantees (NCORR) can meet the Safe Harbor determination by certifying they have followed the required prioritization of effort and have met or exceeded the applicable Section 3 benchmarks. NCORR will comply with the Section 3 benchmark requirements to attain Safe Harbor Compliance.

At the time of contract execution, NCORR's vendors (also known as contractors and/or subcontractors) and Subrecipients are required to certify that they will follow the prioritization of effort requirements for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns. Successful execution of the contract or Subrecipient Agreement indicates the vendor and Subrecipient's acceptance of the Section 3 regulations at 24 CFR Part 75.

If NCORR's subrecipients, contractors or subcontractors do not meet the safe harbor requirements, they must provide evidence demonstrating they have made qualitative efforts to assist low and very low-income persons with employment and training opportunities. The NCORR Compliance Department will monitor all qualitative efforts reported by contractors and Subrecipients.

SAFE HARBOR BENCHMARKS

NCORR has adopted HUD's employment and training benchmarks. These benchmarks are applicable to all subrecipients, contractors, and subcontractors. The safe harbor benchmark goals are as follows:

Public housing financial assistance (24 CFR Part 75.9)²

The benchmarks for Section 3 projects (housing rehabilitation, housing construction, and other public construction projects, such as demolitions, assisted under HUD programs that provide public housing financial assistance where the amount of assistance to the project exceeds a threshold of \$200,000) are:

- 1) Twenty-five percent (25%) or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the Public Housing Authority's (PHA) fiscal year are Section 3 workers. This percentage is calculated as follows:

² 24 CFR § 75.9 Requirements, available at: <https://www.ecfr.gov/current/title-24/subtitle-A/part-75/subpart-B/section-75.9>.

Section 3 Labor Hours/Total Labor Hours = 25%

and

- 2) Five percent (5%) or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year are Targeted Section 3 workers, as defined at 24 CFR Part 75.11.³ This percentage is calculated as follows:

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

Housing and Community Development financial assistance –

The benchmarks for Section 3 projects (housing rehabilitation, housing construction, and other public construction projects, such as demolitions, 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:

- 1) Twenty-five percent (25%) or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers. This percentage is calculated as follows:

Section 3 Labor Hours/Total Labor Hours = 25%

and

- 2) Five percent (5%) or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.⁴ This percentage is calculated as follows:

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

B. CERTIFICATION OF PRIORITIZATION OF EFFORT FOR EMPLOYMENT, TRAINING, AND CONTRACTING

EMPLOYMENT AND TRAINING

To meet the benchmarks outlined above, subrecipients, contractors and subcontractors are required to make best efforts to provide employment and training opportunities to Section 3 workers in the priority order listed below:

1. Persons residing in public or assisted housing;
2. Persons in the area where HUD financial assistance is expended;
3. Participants in HUD Youthbuild programs; or
4. Homeless persons.

³ 24 CFR § 75.11 - Targeted Section 3 worker for public housing financial assistance, available at <https://www.law.cornell.edu/cfr/text/24/75.11>.

⁴ 24 CFR § 75.21 - Targeted Section 3 worker for housing and community development financial assistance. <https://www.law.cornell.edu/cfr/text/24/75.21>.

CONTRACTING

In an effort to meet the benchmarks outlined above, subrecipients, contractors and subcontractors must make their best efforts to award contracts and subcontracts to business meeting the definition of a Section 3 business concern.

A business:

- That is at least fifty-one (51%) percent or more owned by Section 3 residents,
- Whose permanent, full-time employees include persons, at least thirty (30%) percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- That provides evidence of a commitment to subcontract in excess of twenty-five (25%) percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

4. Section 3 Eligibility and Certifications

Individuals and businesses that meet Section 3 criteria may seek Section 3 certification from NCORR for training, employment, or contracting opportunities generated by public housing financial assistance or housing and community development financial assistance. To qualify as a Section 3 worker, Targeted Section 3 worker, or a Section 3 business concern, each must certify that they meet the applicable criteria.

A. SECTION 3 WORKER AND TARGETED SECTION 3 WORKER CERTIFICATION

An individual seeking certification from NCORR to be designated a Section 3 worker or Targeted Section 3 worker shall submit the Section 3 Worker Self-Certification form (linked here: [Section 3 Worker Self-Certification](#)) to NCORR. The Compliance Department will review all submissions and determine if the information provided qualifies the individual as a Section 3 worker or Targeted Section 3 Worker. NCORR will not review submissions for individuals with a hire date greater than five (5) years ago, at the time of certification submission.

The NCORR Compliance Department may reach out to the employer listed on the self-certification to confirm an individual's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of the work site.

The NCORR Compliance Department may also contact the individual to obtain the following documentation if needed:

- Proof of occupancy
- Proof of Income
 - Most recent W-2
 - Recent paystubs (within the most recent 30 days of certification))
 - Proof of public assistance
 - Completed Zero Income Statement
- Proof of public assistance
- Proof of participation in a federally assisted program such as YouthBuild.
- Proof of participation in a state or local assistance program, or other program that assists low-or very-low-income persons

If the NCORR Compliance Department certifies an individual as a Section 3 worker or Targeted worker, the Designated Section 3 Staff will contact the individual and confirm certification. A letter may be sent for the individual's records, if requested.

All individuals submitting their information into the self-certification form understand their basic information (name, email and phone number) will be shared with subrecipients, contractors and other entities seeking to hire Section 3 certified individuals.

One certified, NCORR also provides Section 3 and Targeted Section 3 Workers with a list of NCORR approved contractors to contact regarding possible employment.

PROJECTS INVOLVING MULTIPLE SOURCES OF FUNDING

In cases where Section 3 covered projects include multiple sources of funds, including public housing financial assistance, and housing and community development assistance, the PHA is required to follow the definition of Targeted Section 3 worker and priorities as outlined in subpart B of 24 CFR Part 75. For housing and community development financial assistance.

B. SECTION 3 BUSINESS CONCERN CERTIFICATION

NCORR will encourage contractors and subcontractors to make best efforts to award contracts and subcontracts to Section 3 business concerns. Businesses that believe they meet the Section 3 Business requirements may self-register in the HUD Business registry:

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

Businesses may also seek a Section 3 Business Concern certification by completing the NCORR Section 3 Business Concern Certification (linked here: [Section 3 Business Concern Certification](#))

A Section 3 business concern meets one or more of the following criteria:

- At least fifty-one percent (51%) of the business is owned and controlled by low- or very low-income persons; or
- At least fifty-one percent (51%) of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing; or
- Over seventy-five percent (75%) of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers.

In an effort for NCORR to obtain greater participation from HUD registered Section 3 Businesses, the Compliance Department may perform independent outreach to HUD registered businesses and seek their completion of the NCORR Section 3 certification.

5. Assisting Contractors with Achieving Section 3 Goals

To assist contractors with meeting or exceeding the Section 3 goals, NCORR will do the following:

- 1) Provide all subrecipients, contractors and subcontractors with Section 3 Technical Assistance Training.
- 2) Review Section 3 benchmarks and prioritization of effort requirements with contractors and subcontractors to ensure that the goals are understood.
- 3) Maintain a local Section 3 worker/Targeted Section 3 worker database and provide the contractor with a list of interested and qualified Section 3 and Targeted Section 3 workers and businesses, including contact information
- 4) Inform contractors about the HUD Section 3 Opportunity Portal
<https://hudapps.hud.gov/OpportunityPortal/>

Section 3 regulations are not intended to influence termination of existing employees to satisfy Section 3 benchmark requirements. NCORR encourages contractors and/or subcontractors to make every effort to meet Section 3 benchmarks by utilizing existing qualified employees and by giving hiring priority to qualified eligible Section 3 workers and Targeted Section 3 workers.

6. Section 3 Outreach

A. OUTREACH EFFORTS FOR EMPLOYMENT AND TRAINING

In order to educate and inform subrecipients, contractors and subcontractors, NCORR's Compliance Department will provide training and technical assistance on a regular basis.

Contractors and subcontractors should employ several active outreach strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

- 1) Clearly indicating Section 3 eligibility on all job postings
- 2) Including the Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings (linked here: [Section 3 Worker Self-Certification](#))
- 3) Working with the Designated Section 3 Staff to connect Section 3 worker and Targeted Section 3 workers listed in NCORR's database with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates
- 4) Establish and maintain a current list of Section 3 eligible applicants
- 5) Contact and provide local community organizations with job postings for Section 3 eligible applicants; and
- 6) Coordinate a programmatic ad campaign, which results in widespread job posting across diverse ad networks including, but not limited to:
 - a. Advertising job opportunities via social media, such as LinkedIn and Facebook;
 - b. Advertising job opportunities via flyer distributions, mass mailings and posting ad in common areas of public housing developments and area public housing management offices;
 - c. Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities

B. OUTREACH EFFORTS FOR CONTRACTING

When contracting opportunities arise in connection with the use of HUD provided funds, such as CDBG-DR or CDBG-MIT, NCORR will notify Section 3 Business Concerns of Section 3 contracting opportunities by Including Section 3 language to all RFPs, procurement documents, bid offerings and contracts. Moreover, NCORR also sends all contracting opportunities to the NC DPS Historically Underutilized Businesses (HUB) Liaison who sends the procurement opportunities out to registered HUB businesses, which often overlap with contractors and subcontractors that meet Section 3 Business requirements.

7. Section 3 Language Requirement for all Contract, Subrecipient, and/or other agreements

NCORR will include Section 3 language in all its agreements and contracts to ensure compliance with regulations in 24 CFR Part 75. Furthermore, NCORR has elected to require at least one contractor or subcontractor on every applicable contract be a Section 3 business. Failure to include a Section 3 business may render the bid non-responsive. On a periodic basis the Designated Section 3 Staff will audit NCORR contractors for compliance with the minimum Section 3 requirements outlined in the Section 3 Plan.

8. Reporting Requirements

For Section 3 covered contracts (construction exceeding \$200,000), subrecipients and contractors must submit the Section 3 Report to NCORR's Designated Section 3 Staff monthly, using the following link:

[NCORR Section 3 - Contractor Reporting](#).

A. MONTHLY REPORTING

All contractors and Subrecipients are required to submit monthly activity reports to NCORR's Designated Section 3 Staff by the 10th day of each month for the previous month using the following link: [NCORR Section 3 - Contractor Reporting](#).

B. ANNUAL REPORTING

- 1) Once a project is completed, contractors must submit a final Section 3 cumulative report for the program year using the following link: [NCORR Section 3 - Contractor Reporting](#)
- 2) Upon the completion of any project valued at more than \$200,000, NCORR's Designated Section 3 staff will conduct a final review of the project's overall performance and compliance.
- 3) NCORR's Designated Section 3 Staff will submit the Section 3 data quarterly to NCORR Finance Department's HUD Disaster Recovery Grant Reporting System (DRGR) team to make quarterly submissions to HUD using DRGR.

9. NCORR Section 3 Complaint Procedure

NCORR, in compliance with HUD regulations, has established the following process for resolution of complaints regarding Section 3 non-compliance. Complaints should be submitted to NCORR's Designated Section 3 Staff as follows:

- 1) Designated Section 3 Staff Complaints of non-compliance should be filed in writing to Section3@rebuild.nc.gov and must contain the name of the complainant and brief description of the alleged violation
- 2) Complaints must be filed within ninety (90) calendar days after the complainant becomes aware of the alleged violation.
- 3) A review will be conducted of all complaints.
- 4) NCORR will provide written documentation detailing the findings of the review. The findings will be made available no later than ninety (90) days after the filing of complaint.

10. Federal Section 3 Complaint Procedure

Complainants, also, have an external option for complaint resolution. A complaint may be filed with the area HUD program office responsible for public housing financial assistance and Section 3 regulated projects or with the other Federal entities listed below.

HUD

NORTH CAROLINA REGIONAL FIELD OFFICE FHEO

Intake Branch Officer or Designee

U.S. Department of Housing and Urban Development, Region IV Asheville Federal Building

1500 Pinecroft Road, Suite 401

Greensboro, NC 27407-3838

A written complaint to HUD must contain:

- Name and address of the person filing the complaint
- Name and address of the subject of complaint (HUD Recipient or Contractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective actions sought

The U.S. Equal Employment Opportunity Commission (EEOC)

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP)

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>.

11. Appendices

APPENDIX A: DEFINITIONS

The terms HUD, Public housing, and Public Housing Agency (PHA) are defined in 24 CFR part 5.

The following definitions also apply to 24 CFR Part 75 HUD's Economic Opportunities for Low-and Very Low-Income Persons:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 et seq. activities related to Public Housing

Best Efforts means the contractor provides their best effort and greatest extent feasible to meet Section 3 plan goals. Reported results will be compared to the outcome metrics defined in the benchmark notice. NCORR program staff will evaluate the level of effort expended by contractors that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. NCORR has decided not to distinguish between the two terms, but rather focus on the outcomes produced toward meeting the Section 3 benchmarks and goals.

Contractor means any entity entering into 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.

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).

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act, at or below 80% AMI. Note that Section 3 worker eligibility uses individual income rather than family/household income.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services mean 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.

Public housing financial assistance means assistance as defined in 24 CFR Part 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

- 1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - a. It is at least 51 percent owned and controlled by low- or very low-income persons;
 - b. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
 - c. 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.
- 2) 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.
- 3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Designated Section 3 Staff is person tasked with overseeing all Section 3 responsibilities for the PHA/CD office.

Section 3 project means a project defined in 24 CFR Part 75.3(a)(2) including 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 threshold of \$200,000. 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. The requirements of Part 75 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.

Section 3 Utilization Plan means a comprehensive document that identifies the goals, objectives, and actions that will be implemented by Awardees and/or Contractors to ensure compliance with the requirements of Section 3. The plan identifies a list of strategies to be adopted for compliance with the stated employment, training, and contracting goals.

Section 3 worker means:

- 1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - a. The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
 - b. The worker is employed by a Section 3 business concern.
 - c. The worker is a YouthBuild participant.
- 2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
- 3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

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.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

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 of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in 24 CFR Part 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act (at or below 50% AMI).

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).