

# CHAPTER L:

## SECTION 3

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) was enacted to bring economic opportunities generated by certain HUD financial assistance expenditures, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended.

The Section 3 statute establishes priorities for employment and contracting for public housing programs and for other programs that provide housing and community development assistance. For example, the prioritization as it relates to public housing assistance places an emphasis on public housing residents, in contrast to the prioritization as it relates to housing and community development assistance, which places more emphasis on residents of the neighborhood or service area in which the investment is being made.

The Section 3 statute applies to both: (1) HUD's Public Housing Program, and (2) Other HUD programs that provide housing and community development assistance. The information and guidance below are only in reference to how Section 3 applies to the Community Development Block Grant (CDBG) program.

**NOTE:** *Any entity that participates in HUD's Public Housing Program should reference Federal Register notice FR-6085-F-03 (Section 3 Final Rule) for a full delineation of the Section 3 requirements for the participants of HUD's Public Housing Program.*

As a recipient of federal funds, the Tennessee Department of Economic and Community Development (ECD) shall comply with Section 3 requirements set forth at 24 CFR 75 of the federal regulation which states that, to the greatest extent possible, businesses and employers working on HUD-funded projects must make a good faith effort to train and employ low-income individuals living in the local area and also to contract with businesses owned by or that employ Section 3 workers. As with other CDBG requirements, compliance with Section 3 is passed through to the subrecipients receiving CDBG funds from ECD.

## L.1 DEFINITIONS

*Contractor* – 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.

*Construction* – the creation of a new or replacement facility, the substantial rehabilitation of an existing facility, or the limited rehabilitation of an existing facility. This includes construction and/or rehabilitation of water and wastewater systems. The cost of acquiring new or replacement equipment may be included in the cost of construction.

*Labor hours* – the number of paid hours worked by persons on a Section 3 project.

*Low-income person* – a person who is a member of a household where the combined incomes of the household do not exceed 80% of the median family income for the area.

*Materials supply contract* – a contract entered into solely for the purchase of products or materials.

*Professional services* – non-construction services that require an advanced degree or professional licensing, including but not limited to engineering services, architectural services, and legal services.

*Section 3 Business Concern* – 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. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

*Section 3 Project* – Any housing rehabilitation, housing construction, and other public construction project 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.

*Section 3 worker* – any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

1. The worker’s income for the previous or annualized calendar year is below the income limit established by HUD (the worker is either low- or very-low income);
2. The worker is employed by a Section 3 business; or
3. The worker is a YouthBuild participant.

*Service area/neighborhood of the project* – 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.

*Subrecipient* – the local government or organization awarded CDBG funds for an activity. The subrecipient may commonly be referred to as the “grantee” or the “community” over the course of a CDBG activity.

*Targeted Section 3 worker* – any worker or who meets at least one of the following criteria:

1. is employed by a Section 3 business concern; or
2. currently fits or when hired fit at least one of the following categories, as documented within the past five years:
  - (i) Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
  - (ii) A YouthBuild participant.

*Very low-income person* – a person who is a member of a household where the combined incomes of the household do not exceed 50% of the median family income for the area.

*YouthBuild* – a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school. Created under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226)

## **L.2 SECTION 3 APPLICABILITY AND THRESHOLD**

According to 24 CFR 75.3, Section 3 applicability is determined by meeting the requirements of three criteria:

1. The project is funded in whole or in part by HUD Community Planning and Development (CPD) funding, for these purposes CDBG.
2. The funding is used for one of the following types of projects:
  - Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement)
  - Housing construction
  - Other public construction
3. The total amount of assistance cost of the project exceeds \$200,000.

Other public construction includes, but is not limited to, construction of buildings, facilities, and infrastructure such as water and wastewater system, roadways, and drainage.

If a project does not meet all three of the above criteria, Section 3 is not applicable.

Additionally, Section 3 is determined at the project level, which “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.” If a local government or organization undertakes multiple projects that include CPD funding, but are unrelated, Section 3 applicability is determined for each project.

Example: A local government receives CDBG funds and undertakes two projects: 1) Water system improvements with \$500,000 of CDBG funding and 2) Commercial façade improvements with \$100,000 of CDBG funding. These two separate projects are unrelated. Because the commercial façade improvements have a total amount of assistance less than \$200,000, Section 3 would not apply to this project, but Section 3 would still apply to the water system improvements project.

Section 3 does not apply to all project types. The following types of project are specifically exempt from complying with Section 3 requirements:

1. Contracts for materials
2. Contracts for professional services, as defined in this document
3. Procurement of equipment not related to housing rehabilitation, housing construction, or other public facilities construction, including fire trucks, ambulances, etc.

Still, recipients who undertake projects that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

### **L.3 EMPLOYMENT AND TRAINING AND CONTRACTING REQUIREMENTS**

For qualifying projects that receive Housing and Community Development assistance, Section 3 has specific requirements pertaining to employment and training. To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

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

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

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work 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.

Where feasible, priority for contracting opportunities:

- 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.

All grantees, subrecipients, contractors, and subcontractors must meet the above requirement, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subrecipients/grantees receiving CDBG funds passed through TNECD must include language applying Section 3 requirements in any agreement or contract for a Section 3 project.

### **L.4 SECTION 3 AND TARGETED SECTION 3 WORKERS**

The new Section 3 Final Rule defines two subsets of workers for Section 3 projects:

1. Section 3 Worker – any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
  - The worker is employed by a Section 3 business; or
  - The worker’s income for the previous or annualized calendar year is below the income limit established by HUD (the worker is either low- or very-low income);
  - The worker is a YouthBuild participant.

2. Targeted Section 3 Worker – any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
  - The worker is employed by a Section 3 business; or
  - Low- or very low-income workers residing within a one-mile radius of the Section 3 project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached or the neighborhood of the project, as defined; or
  - The worker is a YouthBuild participant.

When comparing the two definitions above, the only difference between a Section 3 Worker and a Targeted Section 3 Worker lies in how close in proximity the worker resides to the Section 3 project. This also means that these subset classifications of worker are nested, as the graphic illustrates below:



All Targeted Section 3 Workers are also considered Section 3 workers.

The status of workers on the Section 3 project will be determined by one of the following methods:

1. **Worker income self-certification** – the use of certification forms provided to contractors and subcontractors working on the project. Each worker on the project must complete the provided certification form to be kept in the grant record for reference when tracking and aggregating labor hours worked. TNECD has provided a workbook for subrecipients/grantees and/or contractors to use to create the applicable forms based on the appropriate locations:
  - Section 3 Worker Certification (Exhibit L-1)
  - Targeted Section 3 Worker Certification (Exhibit L-2)
2. **Worker is employed by a Section 3 Business Concern** – The contractor or subcontractor is able to provide documentation that it qualifies as a Section 3 Business Concern. All employees of a qualifying business will be considered Section 3 workers.

**3. Worker is a Youthbuild participant** – Verifiable documentation must be provided by the worker or the employer showing the worker is participating in a Youthbuild program.

**4. Employer wage records** – The employer is able to provide certified documentation that the worker's income from that employer is below the income limit for the corresponding family size when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.

**NOTE:** *Documentation submitted by employers should only contain employee names, state and county of residence, annual income, and a certifying signature and date. Do not include any information such as social security numbers or bank account information.*

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.

### **L.5 SECTION 3 BUSINESS CONCERNS**

The Section 3 Final Rule has changed the definition of a Section 3 Business Concern to meet one of the following criteria, documented within the past 6 months:

- The business is at least 51 percent owned and controlled by low- or very low-income persons
- At least 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers
- The business is at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Contractors or subcontractors who wish to be identified as a Section 3 Business must complete the Section 3 Business Self-Certification form (Exhibit L-3) and provide requested backup documentation.

While contracting and subcontracting with Section 3 Business Concerns is encouraged, nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 Business Concern. Additionally, Section 3 Business Concerns are not exempt from meeting the specifications of the contract, including required licensures and certifications.

Businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above. Subrecipients are allowed distrection to determine the required documentation to verify a Section 3 Business Concern. At monitoring, TNECD will check that documentation has been received and is in the file, not for a specific type of documentation.

## L.6 PROFESSIONAL SERVICES

The Section 3 Final Rule has also redefined “professional services” to a more narrow definition of only non-construction services that require an advanced degree or professional licensing, and not just any non-construction service. HUD made this change to encourage employment opportunities for low and very-low income residents for a greater variety of positions related to HUD-funded activities, not just those that are construction-related.

## L.7 SUBRECIPIENT REQUIREMENTS AND RESPONSIBILITIES

Ultimately, subrecipients of CDBG funds are responsible for meeting the requirements of Section 3 as detailed in the 24 CFR Part 75, and all subrecipients are encouraged to review the regulations in addition to the information in the CDBG Manual. As a subrecipient of CDBG funds passed through TNECD, the requirements of Section 3 are passed through as well. The following are requirements and responsibilities of all CDBG subrecipients:

- The subrecipient must act to facilitate connecting Section 3 workers to training and employment opportunities. This can be done by documenting a list of resources and organizations that provide training and or employment opportunities in the area, including Youthbuild programs. The list should be available for dissemination to residents and should be made available to contractors and subcontractors working on CDBG-funded projects.
- The subrecipient must act to facilitate the award of contracts to Section 3 Business Concerns. This can be done by documenting a list of known Section 3 Business Concerns in the area. The list and the link to HUD’s Section 3 Business Registry (<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>) should be made available to contractors and subcontractors working on CDBG-funded projects. Additionally, the subrecipient should make known Section 3 Business Concerns aware of bidding opportunities for applicable and qualifying CDBG-funded projects.

**NOTE:** *Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 Business Concern. Additionally, Section 3 Business Concerns are not exempt from meeting the specifications of the contract, including required licensures and certifications.*

- The subrecipient must make contractors and subcontractors aware of the Section 3 requirements at the time of bidding and prior to the execution of a contract.
- The subrecipient must ensure contractors and subcontractors are in compliance with Section 3 requirements over the course of the project.
- The subrecipient must ensure its best efforts to meet the benchmark goals of Section 3 workers and Targeted Section 3 Workers for CDBG-funded projects as defined in 24 CFR Part 75 and this chapter.

- The subrecipient must provide Section 3-related reports to TNECD as required.
- Though not a requirement, TNECD and HUD encourage subrecipients to develop and maintain a Section 3 Plan to assist with compliance and meeting benchmarks.

## **L.8 CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES**

Just as TNECD and subrecipients of CDBG funds have requirements and responsibilities to ensure the effectiveness of Section 3, so do contractors. The following are requirements and responsibilities of all CDBG contractors:

- Prime contractors are responsible for ensuring that all subcontractors are aware of Section 3 requirements and responsibilities for a Section 3 project.
- Contractors are responsible for maintaining and providing a list of permanent employees working on the Section 3 project who were hired within the last 5 years and their Section 3 status. This will be completed as part of the Project Wage Rate and Section 3 Classification form (Exhibit I-1)
- Contractors are responsible for making a best effort to hire Section 3 or Targeted Section 3 Workers when new hires are necessary.

## **L.9 BENCHMARKS**

HUD has established benchmarks for labor hours worked for both Section 3 Workers and Targeted Section 3 Workers for qualifying Section 3 projects as part of the revised Section 3 rule:

- Section 3 Workers = 25% of total labor hours
- Targeted Section 3 Workers = 5% of total labor hours

Targeted Section 3 Workers are a subset of Section 3 Workers, and any labor hours counted toward the total for Targeted Section 3 Workers will also count toward the total for Section 3 Workers.

HUD and TNECD consider all subrecipients who are able to meet or exceed both benchmarks for Section 3 Workers and Targeted Section 3 Workers to be in compliance. If a subrecipient is unable to meet the benchmarks, the subrecipient must report on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

1. Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
2. Provided training or apprenticeship opportunities.

3. Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
4. Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
5. Held one or more job fairs.
6. Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
7. Provided assistance to apply for or attend community college, a four-year educational institution, or vocational/technical training.
8. Assisted Section 3 workers to obtain financial literacy training and/or coaching.
9. Engaged in outreach efforts to identify and secure bids from Section 3 Business Concerns.
10. Provided technical assistance to help Section 3 Business Concerns understand and bid on contracts.
11. Divided contracts into smaller jobs to facilitate participation by Section 3 Business Concerns.
12. Provided bonding assistance, guarantees, or other efforts to support viable bids from Section 3 Business Concerns.
13. Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
14. Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

## **L.10 REPORTING**

Subrecipients are required to report the following at project closeout:

- The total number of labor hours worked
- The total number of labor hours worked by Section 3 workers
- The total number of labor hours worked by Targeted Section 3 workers
- The percentage of labor hours worked by Section 3 workers
- The percentage of labor hours worked by Targeted Section 3 workers
- If benchmarks are unmet, qualitative efforts and explanation of those efforts

Section 3 projects that also require compliance with Davis-Bacon and wage-related acts are able to use the weekly payrolls in conjunction with the Project Wage Rate and Section 3 Classification form (Exhibit I-1) to calculate the number of total labor hours worked, total labor hours worked by Section 3 workers, and labor hours worked by Targeted Section 3 workers. Subrecipients with Section 3 projects that do not require weekly payrolls must develop a system for verifying and recording labor hours that allows for accurate reporting at the end of the grant.

Subrecipients should use the Section 3 Labor Hours Tracking Form (Exhibit L-5) to track the labor hours of the workers across all contracts and subcontracts involved in the Section 3 project. This form/spreadsheet will keep a running total of the labor hours, Section 3 hours, and the Targeted Section 3 hours worked. The Section 3 benchmark percentages are also automatically calculated and adjusted any time new labor hours are added, to allow the subrecipient to always know where it stands with benchmark compliance.

When TNECD monitors a CDBG-funded activity, the TNECD representative conducting the monitoring will check the grant records to verify how Section 3 requirements are being met, that the appropriate documentation, forms, and certifications are in the file, and to check the current status of meeting the benchmarks.

<b>L.11 EXHIBITS</b>
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- L-1 SECTION 3 WORKER CERTIFICATION
- L-2 TARGETED SECTION 3 WORKER CERTIFICATION
- L-3 SECTION 3 BUSINESS SELF-CERTIFICATION
- L-4 SECTION 3 BUSINESS OWNER CERTIFICATION
- L-5 SECTION 3 LABOR HOURS TRACKING FORM