



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 75

[Docket No. FR-6085-N-04]

#### **Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses**

**AGENCY:** Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

**ACTION:** Notification of benchmarks.

**SUMMARY:** Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (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, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3. Elsewhere in this issue of the Federal Register, HUD published a final rule that would amend the Section 3 regulations to, among other things, increase Section 3's impact, and streamline and update HUD's reporting and tracking requirements. The final rule includes a requirement that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the Federal Register. If a recipient complies with the statutory priorities regarding effort and meets the outcome benchmarks in this document, HUD will presume the recipient is following Section 3 requirements, absent evidence to the contrary.

**DATES:** Effective Date. **[Insert date that is 30 days after the date of publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Alastair W. McFarlane, Director, Economic

Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8216, Washington DC 20410; telephone 202-402-5845 (voice/TDD) (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, toll-free at, 800-877-8339. General email inquiries regarding Section 3 may be sent to: [section3@hud.gov](mailto:section3@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 3 of the Housing and Urban Development Act of 1968 (Public Law 90-448, approved August 1, 1968) (Section 3) (12 U.S.C. 1701u) was enacted to ensure, to the greatest extent feasible, that economic opportunities generated by certain HUD financial assistance expenditures are directed to low- and very low-income persons, particularly those who receive Federal financial assistance for housing and those residing in communities where the financial assistance is expended.

In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. Furthermore, significant legislation has been enacted that affects HUD programs that are subject to Section 3 and that are not adequately addressed in the current Section 3 regulations. On April 4, 2019, HUD proposed a rule to update the Section 3 regulations. *See* 84 FR 13177. The proposed rule incorporated a change from tracking the number of Section 3 qualified new hires in public housing financial assistance and Section 3 projects, to tracking the total labor hours worked. In connection with the proposed rule, HUD issued a proposed benchmark notification.

*See* 84 FR 13199. The proposed benchmark notification included a proposed benchmark number and the methodology for determining the benchmarks.

### Benchmarks

For public housing financial assistance, the proposed benchmark notification provided that PHAs and other recipients would meet the safe harbor in the new § 75.13 by certifying to the prioritization of effort in the new § 75.9 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. (See the definitions of these two categories of workers at the end of Section II of this preamble, below.) The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers was set at 5 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year.

For Section 3 projects, the proposed benchmark notification set the same benchmarks but with regards to the project itself rather than the recipient's fiscal year. The proposed benchmark notification provided that recipients would meet the safe harbor in the new § 75.23 by certifying to the prioritization of effort in the new § 75.19 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers was set at 5 percent or more of the total number of labor hours worked by all workers on a Section 3 project.

### Methodology

To determine these benchmarks, HUD looked at the total hours worked on a construction or development project, the total number of workers that would likely qualify as Section 3 workers, and the potential pool of Targeted Section 3 workers. In order for the Section 3 employment goal to be attainable, HUD determined a labor-hour threshold that is congruent with the labor market for low-income workers by examining the lower end of the wage distribution of the relevant industries. Based on the wage distribution data for on-site construction and building services, HUD set the threshold for Section 3 labor hours at 25 percent of all labor hours to encourage recipients, subrecipients, contractors, and subcontractors to hire more Section 3 workers for construction. For the Targeted Section 3 benchmarks, HUD estimated the number of residents of public housing or Section 8-assisted housing, of current YouthBuild participants, and of workers employed by Section 3 business concerns. HUD also examined commuting times based on U.S. Census data. Finally, HUD reviewed Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME) projects to estimate the number of potential Targeted Section 3 workers available for Section 3 projects. Based on these data, HUD determined that 5 percent of all labor hours, or, in other words, 20 percent of the Section 3 labor hour threshold, was a reasonable goal for both public housing financial assistance and for Section 3 projects.

HUD sought public comment on both the proposed rule and benchmark notification and received 187 public comments, 163 public comments on the proposed rule and 24 public comments on the proposed benchmark notification. Comments on the proposed rule and notification covered both content on the rule and the benchmark numbers. Therefore, all public comments received on both the proposed rule and the proposed benchmark notification are addressed in HUD's Section 3 final rule.

## **II. Section 3 Final Rule**

The Section 3 final rule creates new Section 3 regulations in 24 CFR part 75; the public can find the final rule issued elsewhere in today's Federal Register. The Section 3 final rule aims to make Section 3 goals and reporting more meaningful and more aligned with statutory requirements. The final rule, consistent with HUD's Section 3 proposed rule, includes new metrics for compliance safe harbors and provides that these benchmarks will be set by notification in the Federal Register. The final rule separates out the new requirements and benchmarks by the type of funding, as follows:

(1) Public housing program: Subpart B, Additional Provisions for Public Housing Financial Assistance, covers development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act) and Operating Fund and Capital Fund assistance provided pursuant to section 9 of the 1937 Act, collectively; these are defined as public housing financial assistance in the proposed rule.

(2) Other HUD programs: Subpart C, Additional Provisions for Section 3 Projects, covers housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of \$200,000, and is defined as a Section 3 project. A \$100,000 project threshold applies to grants under HUD's Lead Hazard Control and Healthy Homes programs.

As for new metrics, the final rule provides, consistent with the Section 3 proposed rule, that HUD will establish the Section 3 benchmarks, through a Federal Register notification. The final rule provides that HUD may establish a single nationwide benchmark for work performed by Section 3 workers and a single nationwide benchmark for work performed by Targeted

Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. The final rule also provides, in establishing the benchmarks, that HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior Section 3 reports by recipients; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional services, which would be defined 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. Lastly, HUD commits to updating the benchmarks no less frequently than once every three years through notice, subject to public comment, in the Federal Register.

HUD created the Section 3 worker and Targeted Section 3 worker concepts so that HUD could track and set benchmarks to target selected categories of workers and to recognize the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very-low income persons.

In the final Section 3 rule, HUD defines a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following requirements:

- The worker's income is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

HUD defines a Targeted Section 3 worker differently for public housing financial assistance and Section 3 projects. For § 75.11, public housing financial assistance, a Targeted

Section 3 worker includes any worker who is employed by a Section 3 business concern or is a:

- Resident of public housing or Section 8-assisted housing;
- Resident of another project managed by the PHA that is expending assistance; or
- YouthBuild participant.

For § 75.21, Section 3 projects, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

HUD defines a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

For more information about the final rule, HUD refers readers to the final rule published elsewhere in this issue of the Federal Register.

### **III. Section 3 Benchmarks**

This document finalizes the benchmarks with regards to labor hours for both public housing financial assistance and Section 3 projects without changes from what was included in the proposed benchmark notification. In the final rule, HUD is not adopting the new hires formula as proposed as an alternative in the proposed rule, so the new hires formula is accordingly not reflected in this document. HUD is finalizing the same benchmarks for all

public housing financial assistance and Section 3 projects. The methodology in determining the Section 3 benchmarks, as discussed above in the Background section, did not change from what was described in the proposed benchmark notification because the definitions of Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business concerns provided in the proposed rule and adopted in the Section 3 final rule were not substantially different. Once HUD has more data, it may determine whether different benchmarks are appropriate. Please see the above summary in the Background section of this document and the proposed benchmark notification for more information.

The following benchmarks apply to recipients subject to Section 3 upon the effective date in the Section 3 final rule:

Public Housing Financial Assistance

For meeting the safe harbor in § 75.13, PHAs and other recipients that certify to following the prioritization of effort in § 75.9 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart B, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Targeted Section 3 workers, as defined at § 75.11.



$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

### Section 3 Project

For meeting the safe harbor in § 75.23, recipients that certify to following the prioritization in § 75.19 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart C, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent 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 § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

### **IV. Environmental Impact**

This document involves the establishment of new Section 3 benchmarks for creating economic opportunities for low- and very low-income persons and eligible businesses, and does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this

document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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Benjamin S. Carson, Sr.  
Secretary

**[BILLING CODE: 4210-67]**

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