



CDBG-DR

SECTION 3 POLICY

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1 Common Terminology & Definitions

The terminology and definitions contained within this Policy are adapted from 24 C.F.R. §135.5 and follow HUD guidance applicable to the “Housing and Community Development Assistance” portion of Section 3 requirements. For the purpose of the PRDOH CDBG-DR program, the following selected terms and definitions apply in this policy:

Applicant: means any entity which makes an application for Section 3, covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association. For the PRDOH Program purposes, the “applicant” is PRDOH or its subrecipient.

Business Concern: means a business entity formed in accordance with the Government of Puerto Rico law, and which is licensed under Government of Puerto Rico or municipal law to engage in the type of business activity for which it was formed.

Contractor: means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Employment Opportunities Generated by Section 3 Covered Assistance: means all employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs connected with the Section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Form 60002¹: means the form used by HUD recipients to report the Section 3 performance to HUD FHEO.

Greatest extent feasible: means that more than normal efforts must be made to comply with the regulatory requirements of Section 3, meaning Recipients (and its contractors) of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, this may mean going a step beyond the normal notification procedures for employment and contracting procedures by

¹ This term is not defined in 24 C.F.R. §135.5 but appears in this policy document.

developing strategies that will specifically target Section 3 Residents and businesses for these types of economic opportunities.

HUD: means the United States Department of Housing and Urban Development.

HUD FHEO: means the HUD office of Fair Housing and Equal Opportunity. The HUD FHEO is the programmatic HUD office responsible for enforcement of Section 3.

Housing and Community Development Assistance: means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

HUD Youth build Programs: means programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. §12899) and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Metropolitan area: means a metropolitan statistical area (**MSA**), as established by the Office of Management and Budget.

Neighborhood area: An identified geographic area of operation within the jurisdiction of the recipient.

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 C.F.R. § 570.204(c)(1)².

New Hires: mean full-time employees for permanent, temporary or seasonal employment opportunities. For reporting purpose, employees are considered new hires for a term of three (3) years.

² "[...] an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county [...]"

Non-construction contract³: include procurement for architectural, engineering, legal, accounting or any other services rendered in connection with rehabilitation, construction or infrastructure projects.

Public Housing Resident: Any individual who resides in public housing as a signatory on a public housing lease, or as a member of the family of the individual(s) who is the signatory on the public housing lease. (24 C.F.R. §963.5).

Recipient: means any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, public housing agency (PHA), Indian housing authority (IHA), Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors. *For CDBG-DR, the "recipient" is PRDOH or its subrecipient.*

Section 3: means Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u. Section 3 helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents.

Section 3 Business Concern: means a business concern, (1) That is fifty-one percent (51%) or more owned by Section 3 Residents; or (2) Whose permanent, full-time employees include persons, at least thirty percent (30%) 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 (3) That provides evidence of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 Business Concern."

Section 3 Clause: means the contract provisions set forth in 24 C.F.R. §135.38. *Please refer to Appendix A.*

Section 3 Covered Activity: means any activity which is funded by Section 3 covered housing and community development assistance.

³ This term is not defined in 24 C.F.R. §135.5 but appears in this policy document.

Section 3 Covered Assistance:

For the purposes of this program, Section 3 means, “Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

- (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
- (ii) Housing construction; or
- (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).”

Section 3 Covered Contract: means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program, which are governed by the Federal Acquisition Regulation System (see 48 C.F.R., Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.

Section 3 Covered Project: means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction, which includes buildings or improvements (regardless of ownership), assisted with housing or community development assistance.

Section 3 Joint Venture: means an association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

- (i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- (ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work. (24 C.F.R. § 135.40).

Section 3 Resident:

- (1) A public housing resident⁴; or
- (2) An individual who resides in the metropolitan area in which the Section 3 covered assistance is expended, and who is:
 - (i) A *low-income person*, as defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), this term means a single person whose income does not exceed 80 per centum of the median income for the area. As per Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, for the purposes of CDBG-DR funding, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.
 - (ii) A *very low-income person*, as defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), this term means a single person whose income does not exceed 50 per centum of the median for the area. As per 83 FR 5844, for the purposes of CDBG-DR funding, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.
- (3) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 Assistance: means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 C.F.R. Part 882, Subpart G.

Service Area: means the geographical area in which the persons benefitting from the Section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the Section 3 covered assistance is expended.

Subcontractor: means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance or arising in connection with a Section 3 covered project.

Section 3 Business Concern Self-Certification Form⁵: form used to document that a business meets the definition of a Section 3 Business.

⁴ Any individual who resides in public housing as a signatory on a public housing lease, or as a member of the family of the individual(s) who is the signatory on the public housing lease. (24 C.F.R. §963.5).

⁵ This term is not defined in 24 C.F.R §135.5 but appears in this policy document.

Section 3 Resident Self-Certification Form⁶: form used to document a resident of a local community as a Section 3 Resident.

Section 3 Networking Events for Jobs and Contracting Opportunities⁷: Community training events of invited residents and businesses. A presentation on Section 3 will be provided along with technical assistance in completing a Section 3 Resident Self-Certification Form and the Section 3 Business Self-Certification Form. Additionally, both residents and businesses will have the opportunity to introduce themselves and network for employment, training and contracting opportunities. These events will be posted in the PRDOH Website as well as other resources in the community.

Section 3 Performance Evaluation and Registration System (SPEARS)⁸: SPEARS is the system used by HUD funds recipients to submit Form HUD 60002 reports.

2 General Policy Statement

After the devastation caused by Hurricanes Irma and María on September 6, and September 20, 2017, respectively, the Puerto Rico Department of Housing (**PRDOH**) received funding from the United States Department of Housing and Urban Development (**HUD**) for recovery activities as part of a multifaceted effort to rebuild, restore and stimulate economic growth in the communities of Puerto Rico. Since the recovery activities are funded with Community Development Block Grant - Disaster Recovery (**CDBG-DR**) the PRDOH CDBG-DR Program and its subrecipients, contractors subcontractors, and subrecipient contractors are subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968⁹, as amended (**Section 3**).

It is PRDOH's policy to require from its subrecipients, contractors, subcontractors and contractors of subrecipients to provide training and equal employment opportunity to Section 3 Residents, to the greatest extent feasible and to take affirmative action to ensure that both, job applicants and existing employees, are given fair and equal treatment. Section 3 is race and gender neutral. It seeks to ensure there will not be discrimination based on economic status.

PRDOH additionally supports the enforcement of Title VI, Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501, 504, and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (**ADA**), Title II of the Genetic Information Non-discrimination Act (**GINA**), the Age Discrimination Act and the Civil Rights Act of 1991 laws prohibit

⁶ This term is not defined in 24 C.F.R. §135.5 but appears in this policy document.

⁷ This term is not defined in 24 C.F.R. §135.5 but appears in this policy document.

⁸ This term is not defined in 24 C.F.R. §135.5 but appears in this policy document.

⁹ 12 U.S.C. §1701u.

discrimination based on race, color, sex, religion, national origin, age, disability, and genetic information, as well as reprisal for protected activity.

PRDOH also supports the enforcement of the Americans with Disabilities Act Amendments Act ¹⁰ (**ADAAA**) which prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

PRDOH implements this Section 3 Policy, through a comprehensive program, to educate the business community, provide outreach, training, programmatic resources and other opportunities here in Puerto Rico. This policy, when implemented, will provide guidance to PRDOH direct contracting and hiring as well as guidance to subrecipients and their contractors, resources to Section 3 Residents and Section 3 Business Concerns. Ultimately PRDOH will create an atmosphere of compliance for identifying hiring and contracting opportunities for Section 3 Residents and Section 3 Business Concerns which begins during procurement and follows through project closeout.

3 Purpose

Section 3 and its implementing regulation at 24 C.F.R. Part 135 requires PRDOH to ensure that employment, and other economic and business opportunities generated by HUD financial assistance be directed, to the greatest extent feasible, and consistent with existing Federal, State and Local laws and regulations, to low- and very low-income persons, particularly those who are recipients of government housing assistance, and to business concerns which provide economic opportunities to low- and very low-income persons.

PRDOH will make every effort to ensure that recipients of Section 3 covered funding as well as their contractors and subcontractors comply with the Section 3 responsibilities, as outlined in 24 C.F.R. §135.32.

4 Applicability

Section 3 applies to economic opportunities (i.e., training, employment, contracting) that arise in connection with the expenditure of housing and community development assistance that is used for housing rehabilitation; housing construction; and other public construction. ¹¹ "Other public construction" includes infrastructure work, such as

¹⁰ In 2008, the Americans with Disabilities Act Amendments Act (ADAAA) was signed into law and became effective on January 1, 2009. The ADAAA made a number of significant changes to the definition of "disability." The changes in the definition of disability in the ADAAA apply to all titles of the ADA, including Title I (employment practices of private employers with 15 or more employees, state and local governments, employment agencies, labor unions, agents of the employer and joint management labor committees); Title II (programs and activities of state and local government entities); and Title III (private entities that are considered places of public accommodation).

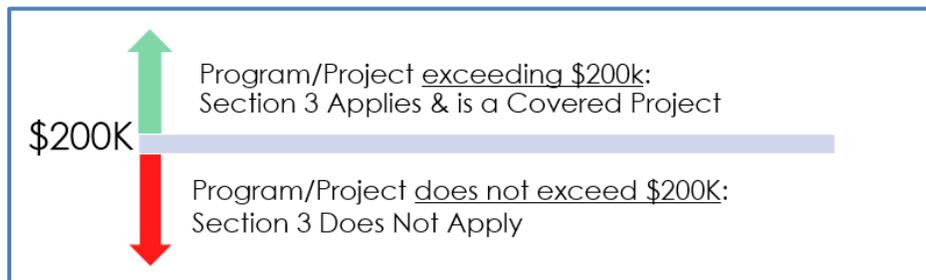
¹¹ 24 C.F.R. §135.3 (2) (24 C.F.R. part 135) distinguishes its applicability between two types of programs for Public and Indian Housing Assistance; and Housing and Community Development Assistance (which is the one applicable to our Program).

extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc. The requirements apply to all construction and rehabilitation activities that are funded with Section 3 covered assistance.

There are two funding thresholds for Section 3 covered housing and community development assistance. These thresholds pertain to an entities' role as either a *recipient* of housing and/or community development assistance or a *contractor* and/or *subcontractor*.

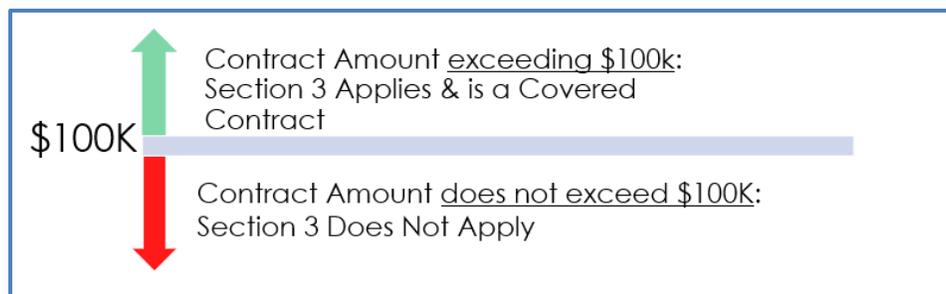
4.1 Applicability for Recipients

Section 3 requirements apply to recipients of other¹² housing and community development program assistance for a Section 3 covered project(s) for which the amount of the assistance exceeds two hundred thousand dollars (\$200,000). These covered projects are held to the goals for hiring Section 3 Residents and contracting goals for non-construction and construction projects, as applicable.



4.2 Applicability for Contractors and Subcontractors

For contractors and subcontractors performing work on Section 3 covered project(s), the requirements apply if the covered contract or subcontract exceeds one hundred thousand dollars (\$100,000).¹³ All contractors or subcontractors with contracts in excess of one hundred thousand dollars (\$100,000) shall comply with the requirements of Section 3 hiring and contracting goals for non-construction and construction projects as applicable.



¹² Refers to any other HUD funding source for public or community development assistance including but not limited to CDBG funding.

¹³ 24 C.F.R. §135.3 (3)(ii)

5 Section 3 Employment, Training & Contracting Goals

PRDOH, its contractors, subcontractors as well as subrecipients to PRDOH and their respective contractors and subcontractors must demonstrate compliance, to the greatest extent feasible, with Section 3 by meeting HUD's numerical goals for providing training¹⁴, employment¹⁵, and contracting opportunities to Section 3 Residents and Section 3 Business Concerns.

Recipients, contractors, and subcontractors are held to all applicable Section 3 goals including hiring and contracting goals that pertain to construction and/or non-construction contracts under the entity's purview. Per 24 C.F.R. §135.30, the minimum numerical goals are:

¹⁴ In accordance with 24 C.F.R. §135.30 and §135.40, contract funds spent on training can be counted toward the 10% and 3% contract goals.

¹⁵ Efforts to employ Section 3 Residents should be made at all job levels.



- **Thirty percent (30%)** of the aggregate number of new hires annually must be Section 3 Residents;

**A Section 3 Resident must meet the qualifications for the position to be filled.*



- **Ten percent (10%)** of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction;

** A Section 3 business concern should have the ability and capacity to perform the scope of work.*



- **Three percent (3%)** of the total dollar amount of all other Section 3 non-construction covered contracts.

PRDOH will develop and implement resources to provide training and employment opportunities to Section 3 Individuals, Section 3 Business Concerns, recipients and contractors by implementing the following:

For Section 3 Residents:

- Advertise training opportunities by distributing flyers, creating mass mailings or posting the necessary information in PRDOH CDBG-DR webpage.
- Contact neighborhood community organizations to request their assistance in notifying residents of the available training and employment opportunities.
- Advertise employment opportunities by posting job vacancies on the PRDOH CDBG-DR webpage and in other locations where resident may access community information such as common areas of PRDOH Headquarter Offices and Regional Offices as well as in facilities of resident councils, resident management corporations, and neighborhood community organizations.
- Develop and maintain a database of eligible Section 3 Residents who can list their information to be contacted by other program recipients and contractors.
- Invite Section 3 Residents to participate in Networking events with recipients and contractors working with CDBG-DR funding.
- Provide Section 3 Individual self-certification forms and instructions for supporting documentation to be provided for review.
- Provide a listing of contractors and their contact information/ website who are working on CDBG-DR projects for Individuals to submit their resumes and self-certification forms and supporting documentation.

For Section 3 Business Concerns:

- Develop, maintain and make available a database of self-identified Section 3 Residents with copies of their resume.
- A database will be made available of eligible qualified Section 3 Business Concerns for recipients and contractors to contact with new contract opportunities.
- Facilitate and encourage ongoing engagement with local area employers, PRDOH Contractors and recipients through implementation of Section 3 Networking Events for Jobs and Contracting Opportunities and other training opportunities.
- Require and provide templates for *Section 3 Plans* for all awarded contractors, review those plans for compliance and convey the documentation of efforts they are required to meet.
- A provision for a specific number of public housing or Section 3 program participants to be trained or employed by the contractor will be incorporated into the contract.

PRDOH must ensure that, to the greatest extent feasible, contractors and subcontractors provide training, employment, and contracting opportunities to Section 3 Residents and Section 3 businesses.

As set forth in the **Documentation of Section 3 Hiring and Contracting Efforts** section of this Policy, contractors must document and provide status of their compliance efforts through the *Contractor's & Subrecipient's Section 3 Quarterly Report*.

The numerical goals established in this section represent minimum goals and are considered safe harbor numerical targets. PRDOH embraces these goals and strongly encourages its subrecipients and contractors to adopt numerical goals that exceed the minimum requirements and to maintain evidence of efforts taken to achieve compliance.

If a recipient fails to meet the Section 3 minimum numerical goals, it bears the burden of reporting the barriers encountered in all efforts to satisfy the minimum numerical goals. Supporting evidence of efforts may include but is not limited to job ads to which Section 3 Residents did not apply, or reasons for determining a Section 3 Resident as unqualified for open positions, among other barriers to meeting the minimum numerical goals. PRDOH will examine the contractor's documented efforts and provide technical assistance, as necessary.

6 Section 3 Business Concerns

A Section 3 business concern¹⁶ can be any type of business, such as a sole proprietorship, partnership or a corporation, properly licensed that meets all legal requirements to perform the contract under consideration.¹⁷

Identifying Section 3 Businesses

Business Ownership

Business concerns that are fifty-one percent **(51%) or more owned** by residents of the housing development for which the Section 3 covered assistance is expended or a verified Section 3 Resident.



¹⁶ Business concerns that are 51% or more owned by residents of the housing development for which the Section 3 covered assistance is expended; Whose full-time, permanent workforce includes 30% of these persons as employees; or within 3 years of the date of first employment; or Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet one of the first two qualifications above. 24 C.F.R. §135.36

¹⁷ HUD Section 3 Frequently Asked Questions. For more information visit <https://www.hud.gov/sites/documents/11SECFAQS.PDF>

Employees for the Business

Businesses whose **full-time, permanent workforce includes thirty percent (30%) of these persons as employees;** or within three (3) years of the date of first employment;



Subcontracting

Businesses who **provide evidence of a commitment to subcontract in excess of twenty-five percent (25%)** of the dollar award of all subcontracts to be awarded to other Section 3 businesses



Recipients and contractors are responsible for meeting contracting goals on both non-construction contracts and construction contracts. Sourcing Section 3 businesses may begin by using HUD's database and performing a query for Section 3 businesses located here in Puerto Rico and beyond. Recipients and contractors are responsible for verifying that a business in fact qualifies under HUDs definition of a Section 3 Business Concern, regardless of how they source a Section 3 business. The PRDOH will offer a Section 3 Self-Business Concern Self-Certification, which can be viewed in *Appendix B*.

Contractors and their subcontractors, using CDBG-DR Funding in the projects they are participating and meeting the contract applicability thresholds will be required to complete:

1. Contractor Section 3 Plan (see *Appendix B*)
2. All Section 3 qualifying contractors and their subcontractors will be required to self-certify using the Section 3 Business Self-Certification form (*Appendix B*) and submit evidence, to support their status accordingly¹⁸
3. Suggest qualifying Section 3 businesses additionally register on the HUD Section 3 Business Registry, if not already registered there
4. Document their efforts to ensure Section 3 Plans are being enforced and completed
5. Comply with quarterly reporting to PRDOH for information on the HUD 60002 form

¹⁸ PRDOH will determine if a business qualifies for Section 3 designation. PRDOH will verify the certification in order to ensure that the business concern has the ability and capacity to perform.

6.1 Notifications to Section 3 Residents

After the award of contracts but prior to beginning work, the contractor must inform Section 3 participants of the development at which the work will be performed, by providing:

1. Names and contact information of the contractors to be utilized on the project;
2. Estimates of the number of positions available to be utilized for contract;
3. Projected number of available new positions, to include job descriptions, wage rates¹⁹;
4. Projected number of subcontracts, to include contracting description and contact information; and
5. Efforts that will be utilized to seek Section 3 Residents and Section 3 Businesses.

Businesses, including those designated as a Section 3 Business Concerns will be vetted for violations identified by HUD or those listed on the federal listing of debarred contractors. Such identified businesses will not be allowed to participate in any part of this federally assisted project.

6.2 Section 3 Plan

PRDOH will evaluate Section 3 Plans to ensure they contain the following:

1. Contractor Basic Information: Name, Address, Contact Information, Website
2. Identification of a Section 3 Coordinator
3. Identification of the Project Area
4. Specific information about the contractor's current workforce and any foreseeable hiring needs
5. Specific strategies for hiring Section 3 eligible residents
6. Specific strategies for training Section 3 eligible residents
7. Specific strategies for subcontracting Section 3 businesses
8. Specific plan for engaging Section 3 designated businesses and, if applicable, each HUD Section 3 certified business that will participate in the contract
9. A description of work each named Section 3 Business will perform with the dollar amount of participation
10. A firm commitment to include the PRDOH "Model Contract Section 3 Clause"²⁰ in all sub-contracts
11. A firm commitment to conduct outreach and notification to potential Section 3 Residents and businesses of hiring opportunities using site signage, flyers, etc.
12. A firm commitment to document and report efforts that will be made to notify Section 3 Business Concerns of contracting opportunities generated by HUD

¹⁹ To be compliant with Davis Bacon when applicable.

²⁰ Section 3 clause language must adhere to the language in 24 C.F.R. §135.38 and as required by PRDOH policy

financial assistance for housing and community development programs, to the greatest extent feasible

13. A firm commitment to review any Section 3 Self certification forms and review and request supporting documentation
14. Provide a process for any Section 3 Complaints to be filed and addressed and agree to notify PRDOH in the event of such complaints²¹
15. Indicate ability to complete required reporting for Section 3 hiring and contracting at least on a quarterly basis²²

7 Preference for Section 3 Residents & Business Concerns

7.1 Section 3 Resident Preference

HUD requires that preference be given to Section 3 Residents in training and employment opportunities. Preference is based on income and location.

The CDBG-DR Program, its subrecipients, contractors, and subcontractors shall direct all efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 Residents in the following order of priority²³:

- (1) Section 3 Residents residing in the service area or neighborhood in which the Section 3 covered project is located
- (2) Participants in HUD Youth build programs
- (3) Other Section 3 Residents

Recipients of housing assistance programs administered by the PRDOH, at their own discretion, provide preference to residents of the housing development receiving the Section 3 covered assistance within the service area or neighborhood where the Section 3 covered project is located.

Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 Housing Assistance Program, within the service area or neighborhood where the Section 3 covered project is located.

7.2 Section 3 Business Concerns Preference

HUD requires that preference be given to Section 3 Business Concerns.

²¹ Complaint procedures must meet the requirements set forth in 24 C.F.R. § 135.76 and should include an email or contact person with whom they can file a grievance and indicate they will share information with PRDOH.

²² Recipients, contractors, and subcontractors should be conscientious that reporting on Section 3 contracts, hiring and efforts is an obligation that must meet without exception.

²³ 24 C.F.R. § 135.34

For direct contracts with PRDOH, PRDOH will notify businesses within Puerto Rico who are listed on the HUD Business Registry, to the extent feasible, of bid opportunities and provide access to communicate with existing contractors already working with PRDOH. PRDOH will also post contracting opportunities on the HUD Section 3 opportunity Portal²⁴ under the contracting tab. Additionally, PRDOH will create and maintain a local database of Section 3 businesses and make them accessible to contractors or recipients as needed.

Other program recipients, their contractors and subcontractors will be encouraged to post new hire opportunities flagged as Section 3 job opportunities on the PRDOH CDBG-DR webpage by contacting PRDOH, HUD Section 3 opportunity portal²⁵ and at local Workforce Development Partner locations.

The CDBG-DR Program, subrecipients, general contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, contracting opportunities generated from the expenditure of Section 3 covered assistance to Section 3 Business Concerns.

7.3 Section 3 Individual Self Certification Form

A resident seeking Section 3 preference shall submit a Section 3 Resident Self-Certification Form with supporting documentation. See *Appendix B* of this policy. The completed form with supporting documentation should be submitted to PRDOH, other recipients, contractors or subcontractors to verify the eligibility for preference. The contractor or subcontractor can also confirm the eligibility of any employee who is the only resident in their home and whose wages on the job places the employee in the low and very low-income range.²⁶

PRDOH will maintain a database of Section 3 Residents and offer contractors and subrecipients access to this database, access to which shall be posted to the PRDOH website at www.cdbg-dr.pr.gov/.

8 Documentation of Section 3 Hiring and Contracting Efforts

All contractors, subcontractors and recipients will be required to provide evidence of efforts taken to fulfill the minimum goals for Section 3. Efforts should include the type of action taken whether outreach, direct solicitation or training, the audience intended to reach, any contact with Section 3 businesses or residents and the outcome for that hiring or contracting opportunity.

²⁴ <https://hudapps.hud.gov/OpportunityPortal/search.action#contract-search>

²⁵ <https://hudapps.hud.gov/OpportunityPortal/search.action#job-search>

²⁶ At 83 FR 5844, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

The following non-exhaustive list is provided as guidance on the acceptable type of efforts which should be documented:

Efforts to Offer Training and Employment Opportunities to Section 3 Residents

- Sponsor or establish training and employment programs for Section 3 Residents
- Advertise employment and training positions in the project service area or neighborhood by distributing flyers (positions to be filled/qualifications/resource for information)
- Advertise in the common areas or other prominent areas of the housing development
- Contact resident councils, community organizations, state-local agencies, probation-parole agencies, unemployment compensation programs, and other applicable officials or organizations to assist with recruiting Section 3 Residents
- Sponsor a job fair or informational meeting for residents
- Provide assistance in job-seeking skills to Section 3 Residents
- Consult with local employment service providers
- Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 Residents in the building trades
- Coordinate activities with local educational institutions
- Maintain file of eligible, interested applicants

Efforts to Award Contracts to Section 3 Businesses Concerns

- Contact business assistance agencies, minority contracting associations and community organizations to inform them of opportunities and seek assistance in identifying eligible businesses
- Bid and solicitations: Provide bid notices to all known Section 3 businesses, Develop a Section 3 business communication network
- Emphasize Section 3 at pre-bid conferences, coordinate pre-bid meetings at which Section 3 Business Concerns can be informed of upcoming contracting and subcontracting opportunities
- Conduct contractor workshops
- Provide small business technical assistance
- Provide Section 3 Business Concerns with resources for seeking assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance
- Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, radio, or PRDOH
- Notify Youth build agencies of contracting opportunities

- Establish numerical goals for award of contracts to Section 3 businesses
- Encourage financial institutions to comply with their Corporate Responsibility Act requirements by making loans to Section 3 businesses
- Actively support joint ventures with Section 3 businesses
- Support business incubators which assist Section 3 businesses
- In determining the responsibility of potential contractors, consider their past record of Section 3 compliance and their current plans for the pending contract.
- Following up with Section 3 Business Concerns that have expressed interest in the contracting opportunities
- Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 Business Concerns
- Supporting businesses which provide economic opportunities to low income persons by linking them to the support services such as the (SBA), the Department of Commerce and comparable agencies

If there were any limitations or impediments in the program or project, recipients and contractors are responsible for documenting and providing a narrative to explain.

PRDOH will make available the documentation of efforts template²⁷ for contractors and recipients to use via an excel template.

9 Outreach

PRDOH will conduct vigorous outreach, which includes a social media campaign and other efforts to educate the public on Section 3 employment opportunities, training, and contracting opportunities provided through the financial assistance of HUD CDBG-DR funding by:

- Conducting internal trainings of PRDOH staff
- Training residents and businesses in the community through Section 3 networking events for jobs and contracting, community job fairs and/or community partnerships
- Contacting resident organizations and local community development
- Distributing flyers and posting flyers
- Offering written guidance to recipients and contractors participating in bidding process about the requirements of Section 3 and the importance of developing a Section 3 Plan
- Provide training and resources to contractors at all Pre-Bid Conferences
- Provide training and resources to subrecipients at all Pre-Submission Meetings
- Providing copies of this Section 3 Plan to Contractors and have them certify receipt

²⁷ See Section 3 Documentation of Efforts Template on the PRDOH website: www.cdbg-dr.pr.gov/

- Offering one on one Section 3 Orientation on implementing their Section 3 Plan, documentation of efforts and reporting obligations before start of a new contract
- Incorporating the Section 3 Clause in every new contract (24 C.F.R. §135.38)

10 Monitoring

All CDBG-DR Recipients, Contractors and Subcontractors shall cooperate fully and promptly with the PRDOH in monitoring reviews, investigations of noncompliance allegations made under 24 C.F.R. § 135.76, and with the distribution and collection of data and information that PRDOH may require in connection with achieving the economic objectives of Section 3.

PRDOH will be responsible for conduct monitoring of their contractor's and recipient's Section 3 efforts. Bi-Annually, PRDOH will conduct a Section 3 Monitoring Visit to review documentation of Section 3 compliance, hiring records and documentation, Quarterly reporting, contracting and subcontracting documents and Section 3 Business documentation. The PRDOH may utilize enhanced monitoring visits or more frequent reporting in response to non-compliance from subrecipients or contractors.

- CDBG-DR Contractors and Subcontractors shall refrain from entering into a contract with any contractor after notice by HUD or knowledge that the contractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- Noncompliance with HUD's regulations established in 24 C.F.R. Part 135 may result in sanctions, termination of contract for default, and debarment or suspension from future HUD assisted contracts. The provision also applies to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

11 Procurement

PRDOH fully embraces the spirit and intent of Section 3 and sets forth the development and publication of policies and procedures in accordance therewith. Such policies are applicable to contractors, subcontractors and others engaged in projects funded through the PRDOH with HUD funds.

PRDOH shall:

- Incorporate Section 3 language in Section 3.8 of the PRDOH procurement documents and in the Evaluation Criteria for reviewing and accepting Section 3 plan initially submitted. Subsequent executed contracts with contractors and

subcontractors will be required to create a Section 3 Plan. See PRDOH Procurement templates and Evaluation Criteria.

- Incorporate the Section 3 Clause for covered project contracts of more than \$100,000.²⁸ See *Appendix A*.
- Through its Evaluation Criteria bidding contractors who provide a Section 3 plan will be evaluated using PRDOH developed criteria to determine the effectiveness of the plan to ensure all new hires can meet the 30% Section 3 Resident hiring goal and for Section 3 Business Concerns to meet the non-construction 3% or construction 10% subcontracting goal. PRDOH procurement guidelines and SOPS will outline additional incentives for providing an acceptable Section 3 Plan.
- PRDOH will host Section 3 training workshops for bidding contractors to increase awareness of Section 3 and the contracting goal for qualified Section 3 Business Concerns as well as the training and employment opportunities made available to Section 3 Residents.
- PRDOH will sponsor one on one workshops with PRDOH staff to provide additional guidance for determining Section 3 eligibility and technical assistance in the preparation of all reporting, contractor outreach, and preparation for Subrecipient Monitoring Visits.

12 Section 3 Reporting

12.1 PRDOH Direct Reporting

Pursuant to 24 C.F.R. Part 135.90, direct recipients of HUD financial assistance should submit reports to HUD for determining the effectiveness of Section 3 utilizing the Performance Evaluation and Registry System (SPEARS)

To that end, PRDOH must document all efforts to comply with Section 3 in employment, training and contracting opportunities, as well as the results of actions taken, and obstacles encountered.

PRDOH will be responsible for the Annual Form HUD 60002 submission through SPEARS. All submissions must be completed electronically. It is required from PRDOH to be registered through HUD's Secure Systems portal – Web Access Secure System (**WASS**), in order to access SPEARS and submit Form HUD 60002.

²⁸ In accordance with 24 C.F.R. §135.38, PRDOH will incorporate the Section 3 Contract Clause into solicitations and any contracts or subcontracts in excess of \$100,000.

Instructions for accessing the Section 3 reporting system as well as the Form HUD 60002 submission steps can be found at:

www.hud.gov/program_offices/fair_housing_equal_opportunity/section3/section3/spears

PRDOH will maintain a close relationship with HUD to ensure guidelines for Section 3 are followed for the successful compliance of Title 24 C.F.R. Part 135.

PRDOH will maintain records of its hiring, training, job vacancies, solicitation of bids or proposals, selection materials and contracting documents (including scope of work and contract amount), in accordance with Federal and Puerto Rican procurement laws and regulations. The documentation should demonstrate efforts taken towards the achievement of the Section 3 numerical goals.

12.2 Subrecipient and Contractor Reporting

PRDOH will collect from all subrecipients, direct contractors and contractors of subrecipients a Quarterly Section 3 Report of all hiring and contracting.

PRDOH will additionally require all subrecipients, direct contractors and contractors of subrecipients with contractual amounts who meet Section 3 Applicability to maintain records of its hiring, training, job vacancies, solicitation of bids or proposals, selection materials and contracting documents (including scope of work and contract amount), in accordance with Federal and Puerto Rican procurement laws and regulations. The documentation should demonstrate efforts taken towards the achievement of the Section 3 numerical goals.

The PRDOH Section 3 Coordinator will review Section 3 Plan updates and quarterly reports to compile metrics to determine the project progress toward Section 3 goals and outreach efforts.

13 Filing and Processing Complaints

For purposes of this section, these definitions apply:

- Complaint: means an allegation of noncompliance with regulations of this part made in the form described in § 135.76(d).
 - Noncompliance with Section 3: means failure by a recipient or contractor to comply with the requirements of Section requirements.
- Complainant: means the party which files a complaint with the HUD Regional Office FHEO alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

- Respondent: means the recipient or contractor against which a complaint of noncompliance has been filed. The term “recipient” shall have the meaning set forth in §135.7, which includes PHA and IHA.

If you believe that, as a low-income person or a Section 3 business concern, the responsibilities to provide economic opportunities under Section 3 have been violated, you have a right to file a complaint within 180 days of the last alleged occurrences of noncompliance.

Complaints alleging violations of the Section 3 regulatory requirements must be submitted to the HUD Regional Office of Fair Housing and Equal Opportunity where the alleged violation took place by filling out Form 958. <https://www.hud.gov/sites/documents/958.PDF>

Complaints must be in writing, signed by the complainant and should include the following:

- Complainant's name and address;
- Name and address of the respondent; and
- A description of the acts or omissions by the respondent that is sufficient to inform the FHEO of the nature and date of the alleged noncompliance.

HUD will send the complaint to the appropriate HUD recipient for resolution. If resolution by the recipient fails, HUD will investigate. If HUD finds that the complaint has merit, it will try to end the violation by informal resolution. If conciliation fails, HUD may initiate other steps to enforce the law, including but not limited to suspension and debarment of the recipient or contractors as applicable.

A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature. 24 C.F.R. §135.76 (d)(iv).

14.1 FHEO

The Atlanta Regional Office, IV Region, covers the following states: Alabama, Puerto Rico, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and the Virgin Islands.

ATLANTA REGIONAL OFFICE ADDRESS
U.S. Department of Housing and Urban Development Southeast Office
40 Marietta Street
Atlanta, GA 30303
Phones: (404) 331-5140 /(800) 440-8091
Fax: (404) 331-1021

Email: complaints_office_04@hud.gov

For additional information about the complaint's process, please refer to <https://www.cdbg-dr.pr.gov/en/citizen-assistance/section-3>.

14 Project & Program Closeout

PRDOH will perform a review of the project file and notify the respective recipient or contractor on the project file containing all the appropriate documentation including:

1. Section 3 Plan
2. Quarterly Reporting
3. Documentation of Efforts
4. Self-identification Forms

All recipients and contractors will comply with providing documentation needed to close their respective project files.

END OF POLICY.

Appendix A: Section 3 Clause

All Section 3 covered contracts and subcontracts shall include the Section 3 Clause set forth at 24 C.F.R. §135.38 as set forth below:

SECTION 3 CLAUSE

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section7(b).

H. As per 24 C.F.R. §135.90, the Contractor agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

Appendix B: PRDOH Section 3 Program Templates, Forms, and Resources

The following documents are available for recipient and contractor use in the administration of Section 3 compliant training, hiring, and documentation efforts.

These templates, forms, and other resources can be found on the PRDOH website at the following address: <https://www.cdbg-dr.pr.gov/>.

- Section 3 Business Self-Certification Form
- Section 3 Resident Self-Certification Form
- Contractor Section 3 Plan Template
- Recipient Section 3 Plan Template
- Section 3 Documentation of Efforts Template