



DEPARTMENT OF
HOUSING



CDBG-DR

SECTION 3 POLICY

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR/MIT and CDBG-MIT PROGRAMS
SECTION 3 POLICY
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	March 24, 2020	Original Version
2	June 28, 2021	Revisions through the whole document to comply with new Section 3 regulations in 24 C.F.R. Part 75. Edits are highlighted in grey for ease of reference.
3	August 29, 2022	Revisions to the whole document to comply with 24 C.F.R. Part 75, clarify legacy contracts under 24 C.F.R. 135 (prior rule), clarify reporting requirements and inclusion of CDBG-MIT applicability. Minor changes through the document.
4	June 08, 2023	Minor changes through the document.

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1 Common Terminology & Definitions

The terminology and definitions contained within this Policy are adapted from 24 C.F.R. Part 75 in conjunction with other United States Department of Housing and Urban Development (HUD) requirements and best practices. Also, the Policy follows HUD guidance applicable to the “Housing and Community Development Assistance” portion of Section 3 requirements. For the purpose of the Puerto Rico Department of Housing (PRDOH) Community Development Block Grant – Disaster Recovery (CDBG-DR) and the Community Development Block Grant – Mitigation (CDBG-MIT) Programs, the following selected terms and definitions apply in this policy:

1937 Act: The United States Housing Act of 1937, 42 U.S.C. §1437 *et seq.*

Applicant: 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: 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.

CDBG-MIT: Refers to the funding authorized by HUD via Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, and Federal Register Vol. 85, No. 17 (January 27, 2020), 85 FR 4681, and HUD letters dated March 26, 2021, and June 17, 2021.

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.

Grandfathered or Legacy projects: Refers to those projects which were signed into Subrecipient Agreements or contracts prior to November 30, 2020, and thus must adhere to the Section 3 applicability found in 24 C.F.R. Part 135. This policy guide will use the term Legacy to refer to grandfathered projects.

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

Greatest extent feasible: More than customary efforts must be made to comply with regulatory requirements of Section 3, meaning Subrecipients, and their contractors of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. For instance, it could mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically Target Section 3 Workers, and businesses for these types of economic opportunities.

Housing and Community Development Assistance: Any financial assistance provided or otherwise made available through a HUD housing or community development program by way of 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, 42 U.S.C. §5308. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty. 24 C.F.R. Part 75 divides Section 3 activities into two (2) broad classes: 1) public housing financial assistance¹ and 2) Section 3 Projects (which addresses Housing and Community Development financial assistance).²

HUD: The United States Department of Housing and Urban Development.

HUD Form 60002: Refers to the data field areas form used by HUD recipients in legacy projects to report via the HUD SPEARS System (retired from use in 2021) the Section 3 performance to HUD FHEO prior to the Section 3 new rule.

Labor hours: The number of paid hours worked by an individual on a Section 3 Project.

Low-income Person: As defined in the U.S. Housing Act of 1937, 42 U.S.C. § 1437a (b)(2), this term refers to a single person, in accordance with 42 U.S.C. § 1437a (b)(3), whose income does not exceed eighty percent (80%) of the median income for the area. As per Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, and Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, for the purposes of CDBG-DR and CDBG-MIT funding, respectively, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Worker if the annual wages or salary of the worker are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

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

¹ 24 C.F.R. Part 75, Subpart B

² 24 C.F.R. Part 75, Subpart C

and office supplies. Section 3 requirements do not only apply to material supply contracts.

Metropolitan area: 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).³

New Hires: 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.

Non-construction contract:⁴ Include procurement for architectural, engineering, legal, accounting, or any other services rendered in connection with rehabilitation, construction, or infrastructure projects.

Other public construction: Includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc.

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.⁵

Professional services: Refers to 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.

Section 3: Refers to the 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

³ "[...] geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county [...]"

⁴ This term is not defined at 24 C.F.R. Part 75 but is included in this document.

⁵ 24 C.F.R. §963.5

extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents.

Section 3 Business Concern:⁶ Refers to a business concern meeting at least one (1) of the following criteria, documented within the last six (6)-month period:

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

The status of a Section 3 Business Concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. These requirements shall not be construed to require the contracting or subcontracting of a Section 3 Business Concern; however, Section 3 Business Concerns are not exempt from meeting the specifications of the contract.

Section 3 Business Concern Self-Certification Form:⁷ Refers to the form used to document a business meets the definition of a Section 3 Business.

Section 3 Clause: The contracts provisions as required under 24 C.F.R. § 75.27. *Please refer to Appendix A.*

Section 3 Covered Activity: means any activity that is funded by Section 3 Covered Housing and Community Development Assistance.

Section 3 Networking Events for Jobs and Contracting Opportunities:⁸ 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 Worker 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.

⁶ 24 C.F.R § 75.5

⁷ This form and all other Section 3 forms are available in English and Spanish on the PRDOH CDBG-DR website at <https://cdbq-dr.pr.gov/en/section-3/business-and-contractors/> and <https://cdbq-dr.pr.gov/seccion-3/negocios-y-contratistas/>.

⁸ The term is not defined in 24 C.F.R. Part 75, but it is definition provided by the Program.

Section 3 Project:⁹ means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. For publicly funded projects of Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. § 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C § 4821 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 *et seq.*), the threshold will specifically be \$100,000. The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

Section 3 Worker:¹⁰ means any worker who currently fits or when hired within the past five (5) years fit at least one of the following, as documented:

- (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- (ii) The worker is employed by a Section 3 Business Concern.
- (iii) The worker is a YouthBuild participant.

The status of a Section 3 Worker shall not be negatively affected by a prior arrest or conviction. Nothing herein shall be construed to require the employment of someone who meets this definition of a Section 3 Worker; however, Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

Section 3 Worker Self-Certification Form:¹¹ Refers to the form used to document that an individual is a Section 3 Worker or Section 3 Targeted Worker.

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

Service area or the neighborhood of the project:¹² means an area within one (1) mile of the Section 3 project or, if fewer than 5,000 people live within one (1) mile of a Section 3 project, an area within a circle centered around the Section 3 project that is sufficient to encompass a population of 5,000 people, according to the most recent U.S. Census.

Subrecipient: means an entity, usually but no limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal program; but does

⁹ For more information see 24 C.F.R. §75.3(2)

¹⁰ 24 C.F.R. §75.5

¹¹ This form and all other Section 3 forms are available in English and Spanish on the PRDOH CDBG-DR website at <https://cdbq-dr.pr.gov/en/section-3/business-and-contractors/> and <https://cdbq-dr.pr.gov/seccion-3/negocios-y-contratistas/>.

¹² Id.

not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.¹³

Subcontractor: means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with a Section 3 project.

Targeted Section 3 Worker:¹⁴ For Housing and Community Development financial assistance, a Targeted Section 3 Worker is defined as:

- (i) A worker employed by a Section 3 Business Concern; or
- (ii) A worker who currently fits or when hired fit at least one (1) of the following, as documented within the past five (5) years:
 - a. Living within the Service Area or the Neighborhood of the Project, as defined herein; or
 - b. A YouthBuild participant.

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 fifty percent (50%) of the median for the area. As per 83 FR 5844 and 84 FR 45838, for the purposes of CDBG-DR and CDBG-MIT funding, respectively, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Worker 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.

YouthBuild Program: means programs that receive assistance through the U.S. Department of Labor under the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. § 3226, and that provide at-risk youth with training and educational opportunities in construction and other industries.

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 and mitigation activities as part of a multifaceted effort to rebuild, restore, and stimulate economic growth in the communities of Puerto Rico. Since the recovery and mitigation activities are funded with CDBG-DR/MIT Programs, its subrecipients, contractors, subcontractors, and subrecipient contractors are subject to

¹³ 2 C.F.R. § 200.1

¹⁴ 24 C.F.R. §75.21

the requirements of Section 3 of the Housing and Urban Development Act of 1968¹⁵, as amended (**Section 3**).

It is PRDOH's policy to require its subrecipients, contractors, subcontractors, and contractors of subrecipients to provide training and equal employment opportunities to low- and very-low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent, 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 and 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 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 Act¹⁶(**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 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 Workers and Section 3 Business Concerns. Ultimately PRDOH will create a culture of compliance for identifying hiring and contracting opportunities for Section 3 Workers and Section 3 Business Concerns which begins during procurement and follows through project closeout.

¹⁵ 12 U.S.C. §1701u.

¹⁶ 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).

3 Purpose

Section 3 and its implementing regulation at 24 C.F.R. Part 75 requires PRDOH to ensure 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 subrecipients of Section 3 covered funding as well as their contractors and subcontractors comply with Section 3 responsibilities, as outlined in 24 C.F.R. Part 75, Subpart C.

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 assistance¹⁷ used for housing rehabilitation, housing construction or other public construction¹⁸ project no matter which portion of the covered project¹⁹ receives the CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, Neighborhood Stabilization Program (NSP), Section 108 guaranteed loan funds, or Recovery Housing Program (RHP) financial assistance. Once the covered project is complete, the Section 3 requirements no longer apply to subsequent contracts.

4.1 Applicability for Subrecipients

Section 3 requirements apply to subrecipients of the CDBG-DR/MIT Programs and other²⁰ Housing and Community Development program assistance for a Section 3 project(s), which by definition exceeds the \$200,000 threshold, or in the instance of designated Lead Hazard projects, \$100,000. These Section 3 Projects are held to the employment and training, contracting, and HUD established benchmarks for Section 3 Workers and Targeted Section 3 Workers.

4.2 Applicability for Contractors and Subcontractors

¹⁷ 24 C.F.R. § 75.3(a) distinguishes Section 3 applicability between two (2) types of programs: Public Housing Financial Assistance; and Housing and Community Development Assistance (which is the one applicable to our Program).

¹⁸ "Other public construction" includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc.

¹⁹ The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing (e.g., CDBG funds used to rehabilitate twenty (20) units in one building as part of an effort to rehabilitate forty (40) units in two (2) buildings on a single property. The "Section 3 project" includes the rehabilitation of all forty (40) units.

²⁰ Refers to any other HUD funding source for public or community development assistance including but not limited to CDBG funding.

The Section 3 requirements apply for all contractors and subcontractors performing work on Section 3 project(s), which by definition exceeds the \$200,000 threshold, or in the instance of designated Lead Hazard projects, \$100,000. These Section 3 projects are held to meeting the employment, training, and contracting HUD established benchmarks for Section 3 Workers and Targeted Section 3 Workers.

4.3 Conditions affecting applicability for both Contractors and Subrecipients

- Per 24 C.F.R. § 75.3, the Section 3 requirements apply based on the amount of housing and community development funding provided by one (1) or a combination of two (2) or more different applicable HUD programs exceeding the \$200,000 threshold. If a project is funded with \$101,000 of HOME funds and \$100,000 of CDBG funds, then it exceeds the applicability threshold of \$200,000 and the Section 3 requirements apply.
- Per 24 C.F.R. § 75.3(a)(iii), Section 3 requirements apply to the entire project, not just the HUD-financed portion. If a housing rehabilitation, housing construction, or other public construction project receives more than \$200,000 of HUD funding, then Section 3 requirements are triggered and apply to all employment and training opportunities and contracts for work arising in connection with the project ~~(subject to section III.B. below)~~, including efforts that are financed by other, non-HUD sources of funds. PRDOH notes that subrecipients, contractors, and subcontractors must be aware of the need to comply with Section 3 requirements.
- The Section 3 requirements also apply when a project receives less than \$200,000 in HUD housing and community development financial assistance but receives public housing financial assistance, as defined in 24 C.F.R. § 75.3(a)(1), or more than \$100,000 of Lead Hazard Control and Healthy Homes program funding, as defined in 24 C.F.R. §75.3(a)(2)(i). **If a project is funded with \$75,000 of CDBG funds and \$10,000 of public housing financial assistance funds, then Section 3 requirements apply because public housing financial assistance is provided.** Additional content can be located in 24 C.F.R. Part 75, Subpart D, for requirements that apply to projects with multiple funding sources.

5 Section 3 Employment, Training & Contracting Requirements, and Labor Hour Benchmarks

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 implementing the employment, training, and contracting requirements of 24 C.F.R. § 75.19, and meeting or exceeding the HUD established labor hour safe harbor benchmarks for Section 3 Workers and Targeted Section 3 Workers.

The employment, training, and contracting requirements for PRDOH, its contractors, subcontractors as well as subrecipients to PRDOH and their respective contractors and subcontractors, are:

5.1 Employment and Training

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this section 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 non-metropolitan county) in which the project is located.
- (2) Where feasible, priority for opportunities and training described in paragraph (1) above, should be given to:
 - a. Section 3 Workers residing within the service area or the neighborhood of the project, and
 - b. Participants in YouthBuild programs.

5.2 Evidence of Section 3 Worker / Targeted Worker

As established in HUD Notice CPD-21-09 (August 24, 2021),²¹ Grantees may count Section 3 Workers' labor hours for five (5) years from when their status as a Section 3 Worker is established, pursuant to 24 C.F.R. § 75.31. For purposes of reporting the labor hours for Section 3 Workers, an employer may choose whether to define the workers as Section 3 Workers for a five (5)-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 Worker definition. The five (5)-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 Workers hired prior to November 30, 2020, may be certified for a five (5)-year period beginning November 30, 2020.

For a worker to qualify as a **Section 3 Worker**, one (1) of the following must be maintained on file by the person, business and/or subrecipient or PRDOH:

#	Verified Condition
1	A worker's self-certification that their income is below the income limit from the prior calendar year;
2	A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

²¹ Notice CPD-21-09 establishes the requirements for Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, Final Rule Requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP Projects. See <https://www.hudexchange.info/resource/6443/notice-cpd2109-section-3-of-the-housing-and-urban-development-act-of-1968-as-amended-by-the-housing-and-community-development-act-of-1992/>

3	Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
4	An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
5	An employer's certification that the worker is employed by a Section 3 Business Concern.

For a worker to qualify as a **Targeted Section 3 Worker**, under eligible Housing and Community Development financial assistance one (1) of the following must be maintained on file by the person, business and/or subrecipient or PRDOH:

#	Verified Condition
1	An employer's confirmation that a worker's residence is within one (1) mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
2	An employer's certification that the worker is employed by a Section 3 Business Concern: or
3	A worker's self-certification that the worker is a YouthBuild participant.

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

5.3 Contracting

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this section 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 non-metropolitan county) in which the project is located.
- (2) Where feasible, priority for contracting opportunities described in paragraph (1) directly above should be given to:
 - a. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the service area or the neighborhood of the project, and
 - b. YouthBuild programs.

5.4 Section 3 Benchmarks

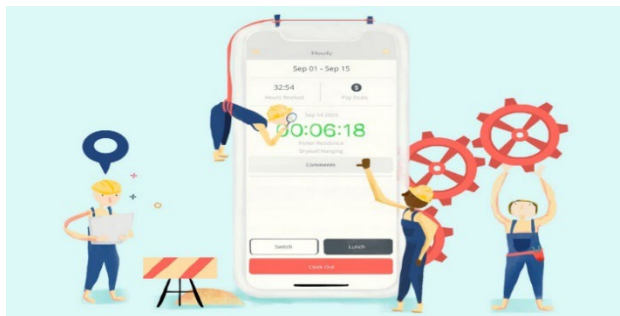
The Section 3 requirements will be considered to have been met, in the absence of evidence to the contrary if PRDOH, its contractors, subcontractors as well as subrecipients to PRDOH and their respective contractors and subcontractors:

- (1) Each certify that they have followed the prioritization of effort described above with regard to employment and training and with regard to contracting (24 C.F.R. § 75.19); and
- (2) Meet or exceed applicable Section 3 benchmarks as described below.

HUD's current Section 3 Project safe harbor benchmarks as established in accordance with the provisions of 24 C.F.R. § 75.23, are:



25% or more of all the labor hours worked by all workers on a Section 3 project should ~~must done by be~~ hours worked by Section 3 Workers; and



5% or more of all the labor hours worked on a Section 3 project must be hours worked by Targeted Section 3 Workers.

PRDOH has developed, implemented, and continues making available resources for subrecipient and direct contractors to understand their benchmark obligations for training and employment opportunities to Section 3 Workers, and Section 3 Business Concerns. **The numerical benchmarks established in the section represent minimum benchmarks and are considered safe harbor numerical targets.** PRDOH embraces the goals and strongly encourages its subrecipients and contractors to adopt numerical goals that exceed the minimum requirements and to maintain the required documentation supporting efforts taken to achieve compliance.

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low and very low-income individuals and Section 3 Business Concerns must

be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

6 Section 3 Workers, Targeted Workers & Business Concerns

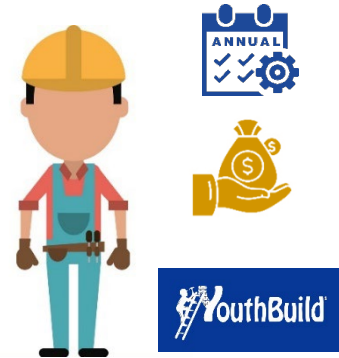
The section will discuss who are Section 3 Workers, Targeted Workers, and Business Concerns.

6.1 Identifying Section 3 Workers

Section 3 Worker

Any worker who currently fits or when hired within the past **five (5) years** fit at least one (1) of the following categories, as documented:

- (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- (ii) The worker is employed by a Section 3 Business Concern.
- (iii) The worker is a YouthBuild participant.



Targeted Section 3 Worker:

For Housing and Community Development Financial Assistance, a Targeted Section 3 Worker is defined as:

- (i) A worker employed by a Section 3 Business Concern; or
- (ii) A worker who currently fits or when hired fit at least one (1) of the following, as documented within the past five (5) years:
 - a. Living within the Service Area or the Neighborhood of the Project, as defined herein; or
 - b. A YouthBuild participant.

Section 3 Workers and Targeted Section 3 Workers are not exempt from meeting the qualifications of the position to be filled.

6.2 Identifying Section 3 Business Concerns

A Section 3 Business Concern 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. A Section 3 Business Concern is a business that

can be one which meets at least one (1) of the following three (3) conditions, documented within the last six (6) month period:

1. LMI Owned and Controlled Business

Business Concerns that are fifty-one percent **(51%) or more owned and controlled** by low- or very-low income persons;



2. Public Housing/Section 8 Ownership

Business Concerns that are at least fifty-one percent **(51%) or more owned and controlled** by current public housing residents or residents who currently live in Section 8-assisted housing.



3. Labor Hours

Businesses with over seventy-five percent **(75%) of the labor hours** performed for the business over the prior three-month period are performed by Section 3 workers.



Subrecipients and contractors are responsible for meeting Section 3 Worker and Targeted Section 3 Worker goals on applicable contracts. Sourcing Section 3 Business Concerns may begin by using HUD's database and performing a query for Section 3 businesses located here in Puerto Rico and beyond. Subrecipients and contractors are responsible for verifying that a business in fact qualifies under HUD's 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 found on the PRDOH website as listed in Appendix B.

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

1. Contractor Section 3 Plan available online as listed in 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 accordingly;²²
3. Suggest qualifying Section 3 Business Concerns 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; and
5. Comply with quarterly reporting to PRDOH for information which will be reported to HUD for Section 3.

6.3 Notifications to Section 3 Workers and Targeted Section 3 Workers

After the award of contracts but prior to beginning work, the contractor must perform outreach to potential Section 3 Workers and Targeted Section 3 Workers, advising them 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 rates²³;
4. Projected number of subcontracts, to include contracting description and contact information; and
5. Efforts that will be utilized to seek Section 3 Workers and Section 3 Business Concerns.

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.

7 Preference for Section 3 Workers & Business Concerns

7.1 Section 3 Worker Preference

HUD requires that to the greatest extent feasible, and consistent with Federal, state, and local laws and regulations, employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 Workers within the metropolitan area (or non-metropolitan county) in which the project is located, and where feasible that priority for these opportunities and training should be given to Section 3 Workers residing within

²² 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.

²³ To be compliant with Davis Bacon when applicable.

the service area or the neighborhood of the project, and participants of YouthBuild programs.

7.2 Section 3 Business Concerns Preference

HUD requires that preference be given to Section 3 Business Concerns as discussed in the Section 3 Employment, Training & Contracting Requirements, and Labor Hour Benchmarks Section of this policy.

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 Business Concerns and make them accessible to contractors or subrecipients as needed.

Other program subrecipients, their contractors and subcontractors will be encouraged to post new hire opportunities flagged as Section 3 job opportunities on the PRDOH CDBG-DR/MIT webpage by contacting PRDOH, HUD Section 3 Opportunity Portal²⁵ and at local Workforce Development Partner locations.

Subrecipients and Contractors are encouraged to consider the following:

- Entering into first source hiring agreements with organizations representing Section 3 Workers.
- Consulting resident organizations, YouthBuild administrators, vocational education institutions, and job training organizations to recruit qualified workers.
- Contacting business assistance agencies, local chambers of commerce, and community organizations to advertise contracting opportunities and solicit bids from Section 3 Business Concerns.
- Actively supporting joint ventures with Section 3 Business Concerns
- Pursuant to competitive procurement methods authorized in 2 C.F.R. § 200.320 or for contracts awarded based on lowest price, award contracts to Section 3 Business Concerns with reasonable and responsive bids within ten percent (10%) of the lowest bid or for contracts based on a competitive proposal method, incorporate evaluative factors to award preference for Section 3 Business Concerns.

The CDBG-DR/MIT Programs, subrecipients, general contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, contracting opportunities

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

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

generated from the expenditure of Section 3 covered assistance to Section 3 Business Concerns.

8 PRDOH Implementation & Outreach

PRDOH will conduct vigorous outreach, which includes a social media campaign, website resources, 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/MIT 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 Virtual flyers via mass email distribution lists to subrecipients and contractors;
- Offering written guidance to subrecipients and contractors participating in bidding process about ~~the~~ **Section 3** requirements ~~of Section 3~~ and the importance of developing a Section 3 Plan;
- Provide training and resources to contractors at Pre-Bid Conferences;
- Provide training and resources to subrecipients at Pre-Submission Meetings;
- Providing copies of this Section 3 Plan to contractors and have them certify receipt;
- 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** for covered projects and covered contracts as set forth in 24 C.F.R. § 75.27;²⁶ and
- Maintaining a database of Section 3 Workers, which can be made available to contractors and subrecipients as requested.

8.1 Using a Section 3 Plan

Subrecipients and direct contractors should designate compliance staff who will actively work on a Section 3 Plan which includes outreach and efforts. These plans are created and implemented throughout the life of the federally funded project and are expected to be maintained and updated as necessary. Subrecipients are expected to create their own Section 3 Plan and ensure oversight for their contractors on covered projects. Subrecipient contractors working on covered projects are expected to implement these Plans to ensure compliance with the policy. PRDOH offers sample Section 3 plans on the

²⁶ Subrecipients, contractors, and subcontractors are required to meet the requirements of 24 C.F.R. § 75.19, regardless of whether the Section 3 Clause is included in contracts or agreements.

PRDOH website for both subrecipients and contractors in English and Spanish. PRDOH will evaluate direct contractor and subrecipient Section 3 Plans to ensure they contain the following:

Item	Section 3 Plan Components
1	Contractor Basic Information: Name, Address, Contact Information, Website.
2	Identification of a Section 3 Coordinator.
3	Identification of the Service Area or the Neighborhood of the Project
4	Specific information about the contractor's current workforce and any foreseeable hiring needs.
5	Specific strategies for hiring eligible Section 3 Workers and Targeted Section 3 Workers.
6	Specific strategies for training Section 3 Workers and Targeted Section 3 Workers.
7	Specific strategies for subcontracting Section 3 Business Concerns.
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 the work each named Section 3 Business Concern will perform with the dollar amount of participation and estimated labor hours for Section 3 Workers and Targeted Section 3 Workers.
10	A firm commitment to include the PRDOH "Model Contract Section 3 Clause" ²⁷ in all sub-contracts.
11	A firm commitment to conduct outreach and notifications to potential Section 3 Workers and potential Targeted Section 3 Workers 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 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 complaints. ²⁸
15	Indicate ability to maintain and complete required labor hour reporting for Section 3 Workers and Targeted Section 3 Workers on a quarterly basis using the form and process set forward by PRDOH. ²⁹

²⁷ Section 3 clause language must adhere to the language specified in Appendix A and as required by PRDOH policy.

²⁸ Complaint procedures requirements were set forth in 24 C.F.R. §135.76 originally but are amended as per 24 C.F.R. § 75.33 (b). See Complaint Section in Policy Guide.

²⁹ Subrecipients, contractors, and subcontractors should be conscientious that reporting on Section 3 labor hours and efforts is an obligation that must be completed without exception and there is no waiver process.

8.2 Section 3 Worker Self Certification Form

PRDOH offers template self-certifications for both subrecipients and contractors to use and direct contractors to PRDOH. The template documents allow for customization and flags the responsibilities of subrecipients and contractors in reviewing completed forms.

A resident seeking Section 3 Worker or Targeted Section 3 Worker preference shall submit a Section 3 Worker Self-Certification Form with supporting documentation to subrecipients, contractors or PRDOH respectively. See Appendix B of this policy. Direct contractors and subrecipients should maintain on file the completed form(s) with supporting documentation after completing a verification their Section 3 status. The contractor or subcontractor is directly responsible for confirming the eligibility of any employee and whose annual income places the employee in the low and very low-income range.³⁰

This documentation must be maintained in accordance with 2 C.F.R. § 200.334 on Retention Requirements for Records and 24 C.F.R. § 570.490(d) on Record Keeping Requirements.³¹

8.3 PRDOH Documentation of Efforts & Recordkeeping Standards

PRDOH shall maintain documentation and ensure its subrecipients, contractors, or subcontractors who employ workers maintain documentation to ensure workers meet the definition of a Section 3 Worker or Targeted Section 3 Worker at the time of hire or the first reporting period.

To enable the subrecipient and contractor to document and maintain accurate records of efforts taken for Section 3, PRDOH offers a template on its website to provide for compliance teams performing actions as outlined in the Documentation of Section 3 Hiring and Contracting Efforts section of this policy. Subrecipients and direct contractors are also required to provide a report ~~out~~ of their efforts within the quarterly report to ensure PRDOH has adequate information about ongoing efforts to report to HUD for respective programs on a quarterly basis in DRGR.

³⁰ At 83 FR 5844 and 84 FR 45838, HUD authorizes grantees to determine that an individual is eligible to be considered a Section 3 Worker 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.

³¹ The PRDOH CDBG-DR/MIT and CDBG-MIT Recordkeeping, Management and Accessibility Policy (RKMA Policy) is available in English and Spanish at <https://cdbq-dr.pr.gov/en/download/record-keeping-management-and-accessibility-policy-rkma-policy/> and <https://cdbq-dr.pr.gov/download/politica-sobre-manejo-administracion-y-accesibilidad-de-documentos/>

Additionally, ~~as mentioned above~~, eligibility verification for Section 3 Workers and Targeted workers must follow guidance provided at: 2 C.F.R. § 200.334 on Retention Requirements for Records and 24 C.F.R. § 570.490(d) on Record Keeping Requirements.

9 PRDOH Led Procurements

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 PRDOH with HUD funds.

PRDOH shall:

- Incorporate Section 3 language in PRDOH procurement document instructions, and in the Evaluation Criteria for reviewing and accepting initially submitted Section 3 Plans. Subsequent contractors and subcontractors with executed contracts will be required to create a Section 3 Plan. See PRDOH Procurement templates and Evaluation Criteria.
- Incorporate the Section 3 language for project contracts for covered Section 3 Projects. See Appendix A.
- Through the Evaluation Criteria, bidding contractors who provide a Section 3 Plan and/or Section 3 Self Certification will be evaluated using PRDOH developed criteria to determine the effectiveness of the plan to ensure that: employment, training, and contracting requirements are appropriately addressed, and that the safe harbor benchmarks for Section 3 Workers and Targeted Section 3 Workers are met and exceeded.
- PRDOH Guidelines and SOPS/checklists will outline criteria if a business will be awarded preference for having a Section 3 verified business status in accordance with definition for Section 3 business in 24 C.F.R. Part 75. For more information on preference during PRDOH procurement processes, please refer to the PRDOH Procurement Manual available at <https://cdbg-dr.pr.gov/en/cdbg-dr-procurement/> (English) and <https://cdbg-dr.pr.gov/adquisiciones-cdbg-dr/> (Spanish).
- PRDOH Federal Compliance and Subrecipient Management (FCSM) Team will be available to coordinate with Procurement staff to offer Section 3 training workshops for bidding contractors to increase awareness of Section 3 and the contracting requirements for qualified Section 3 Business Concerns as well as the training and employment opportunities made available to Section 3 Workers.

- PRDOH may sponsor workshops to provide Section 3 technical assistance in the preparation of reporting, subrecipient or contractor outreach, and work with program areas in preparation for Subrecipient and PRDOH Monitoring Visits.

10 Documentation of Section 3 Hiring and Contracting Efforts

Contractors, and subrecipients will be required to provide documentation supporting efforts taken to fulfill employment, training, and contracting requirements for Section 3. Efforts should include the type of action taken, whether outreach, direct solicitation or training, the intended audience ~~intended to reach~~, any contact with Section 3 Business Concerns, Section 3 Workers, or Targeted Section 3 Workers, and the outcome for that hiring or contracting opportunity.

If a subrecipient or contractor fails to meet the Section 3 minimum numerical goals, it bears the burden of documenting and reporting the barriers encountered in all efforts to satisfy the minimum numerical goals. Qualitative efforts must be provided, along with supporting evidence, to demonstrate efforts by the subrecipient or contractor to meet the minimum numeric benchmarks. Below is a non-exhaustive list of examples of the qualitative efforts that are acceptable efforts which should be documented. PRDOH will examine the contractor's documented efforts and provide technical assistance, as necessary.

10.1 Efforts to be performed by Subrecipients and Contractors to engage Potential Section 3 Workers and Targeted Section 3 Workers:

Item #	List of Sample Efforts to Offer Training and Employment Opportunities to Section 3 Workers
1	Sponsor or establish training and/or employment opportunities for Section 3 Workers and/or Targeted Section 3 Workers and apprenticeship opportunities.
2	Advertise employment and training positions in the project service area or neighborhood and housing development by distributing flyers (positions to be filled/qualifications/resource for information), creating mass mailings and posting the information in PRDOH CDBG-DR/MIT webpage and PRDOH Headquarter Offices.
3	Advertise employment opportunities by posting job vacancies on locations where resident may access community information such as common areas of Regional Offices as well as in facilities of resident councils, resident management corporations, and neighborhood community organizations.
4	Contact neighborhood community organizations to request their assistance in notifying residents of the available training and employment opportunities.
5	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 Workers and Targeted Section 3 Workers.

6	Sponsor job fairs or informational meetings for residents.
7	Provide technical assistance to help Section 3 Workers and Targeted Section 3 Workers compete for jobs and in job-seeking skills (e.g., resume assistance, coaching).
8	Invite potential Section 3 Workers and Targeted Section 3 Workers to participate in Networking events or job fairs with subrecipients and contractors working with CDBG-DR/MIT funding.
9	Provide Section 3 Worker Self-certification forms and instructions for supporting documentation to be provided for review.
10	Connected Section 3 Workers and Targeted Section 3 Workers with assistance in seeking employment and competing for jobs including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
11	Consult with local employment service providers.
12	Develop and maintain a database of eligible potential Section 3 Workers and Targeted Section 3 Workers who can list their information to be contacted by other program subrecipients and contractors.
13	Establishing training programs, which are consistent with the requirements of the U.S. Department of Labor, for public and Indian housing residents and other Section 3 Workers and Targeted Section 3 Workers in the building trades.
14	Coordinate activities and provided assistance to apply for/or attend community college, a four (4) -year educational institution, or vocational/technical training.
15	Maintain file of eligible, interested applicants.
16	Provided or refer Section 3 Workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare, etc.).
17	Assist Section 3 Workers to obtain financial literacy training and/or coaching.
18	Provide a list of contractors and their contact information/website, who are working on CDBG-DR/MIT projects for Individuals to submit their resumes and self-certification forms and supporting documentation.

10.2 Efforts to be performed by Subrecipients and Contractors to engage Potential Section 3 Business Concerns:

Item #	List of Sample Efforts to Award Contracts to section 3 Businesses Concerns
1	Contact business assistance agencies, minority contracting associations and community organizations to inform them of opportunities and seek assistance in identifying eligible businesses.
2	Bid and solicitations: Provide bid notices to all known Section 3 Business Concerns as part of your outreach efforts to identify and secure bids and develop a Section 3 business communication network.

3	Provide technical assistance to help Section 3 Business Concerns understand and bid on contracts.
4	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.
5	A database will be made available of eligible qualified Section 3 Business Concerns for subrecipients and contractors to contact with new contract opportunities.
6	Provide Section 3 Business Concerns with resources for seeking assistance to overcome limitations such as inability to obtain bonding, guarantees, lines of credit, financing, insurance, or other efforts to support viable bids.
7	Conduct contractor workshops.
8	Provide small business technical assistance.
9	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.
10	Facilitate and encourage ongoing engagement with local area employers, PRDOH contractors and subrecipients through implementation of Section 3 Networking Events for Jobs and Contracting Opportunities and other training opportunities.
11	Notify YouthBuild agencies of contracting opportunities.
12	Establish numerical goals for award of contracts to Section 3 Business Concerns.
13	Encourage financial institutions to comply with their Corporate Responsibility Act requirements by making loans to Section 3 Business Concerns.
14	Actively support joint ventures with Section 3 Business Concerns.
15	Support business incubators which assist Section 3 Business Concerns.
16	In determining the responsibility of potential contractors, consider their past record of Section 3 compliance and their current plans for the pending contract.
17	Following up with Section 3 Business Concerns that have expressed interest in the contracting opportunities.
18	Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 Business Concerns.
19	Supporting businesses which provide economic opportunities to low income persons by linking them to the support services such as the Small Business Administration (SBA), the Department of Commerce, and comparable agencies.

20	Promote use of business registries designed to create opportunities for disadvantaged and small businesses.
21	Outreach, engagement, or referrals with the state One-Stop system as defined in Section 121 (e)(2) of the Workforce Innovation and Opportunity Act.
22	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.

PRDOH shall ensure that, to the greatest extent feasible, contractors and subcontractors provide training, employment, and contracting opportunities in accordance with requirements contained herein.

Project or Program limitations or impediments in the outreach, contracting efforts, or other technical aspects, the designated compliance personnel should document and provide the documentation of efforts and a narrative to explain the nature of these constraints for successful implementation.

PRDOH provides contractors and subrecipients a template in Excel³² format to document efforts and submit to PRDOH via an online form.

11 Quarterly Reporting

Quarterly Reporting on Section 3 usage of Section 3 workers and Section 3 Targeted workers occurs in alignment with HUD's required DRGR quarterly reporting. 24 C.F.R. § 75.25(a), indicates the following reporting data required for the following labor hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

1. The total number of labor hours worked by all workers;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

PRDOH has set forward a quarterly report, made available on PRDOH's site to allow for subrecipients and direct contractors to access, complete and submit the form accounting for: Section 3 worker and Section 3 targeted worker utilization during the quarter period.

HUD's guidance on applicability for those contractors performing work in contracts executed prior to November 30, 2020, and thus subject to the Section 3 requirements under 24 C.F.R. Part 135 should adhere to the Legacy Projects section for the reporting

³² See Section 3 Documentation of Efforts Template on the PRDOH website: <https://cdbg-dr.pr.gov/en/section-3/recipients/template-to-document-efforts/> (English) and <https://cdbg-dr.pr.gov/seccion-3/recipientes/borrador-para-documentar-esfuerzos/> (Spanish).

requirements. PRDOH will continue to maintain a close relationship with HUD to ensure guidelines for the revised Section 3 rule are followed for the successful compliance of Title 24 C.F.R. Part 75 and 24 C.F.R. Part 135 for legacy contracts.

Given the dates for funding, it is possible for a contractor or subrecipient to have to use both legacy reporting and/or 24 C.F.R. Part 75 reporting templates to accurately capture all activity for Section 3 utilization when engaged on multiple programs and overseeing multiple projects where contractors' applicability under 24 C.F.R. Part 135 is still ongoing and new activities or contracts are active under 24 C.F.R. Part 75. Subrecipients and contractors are expected to maintain accurate records of all their agreements/contracts with PRDOH and understand applicability for Section 3 reporting.

11.1 PRDOH Direct Contractor Reporting

Contracts and agreements made after November 30, 2020, are subject to 24 C.F.R. Part 75. *"Projects for which assistance or funds are committed between November 30, 2020, and July 1, 2021, are subject to the new Section 3 regulations found in 24 CFR Part 75, and HUD expects that funding recipients will begin following this final rule's requirements for new grants, commitments, and contracts. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 for these projects but will not be required to report to HUD on the requirements found in 24 CFR Part 75."*³³ In alignment with HUD quarterly reporting in DRGR, contractors must submit their data for the quarterly reporting periods and months as identified below. The quarterly report collects data that reflects the three (3)-month period as identified below. For example, the report submitted on April 5 will contain information gathered during the months of January 1 thru March 31. Information that was unable to be gathered in a timely fashion during that reporting period must be included in the following reporting period until the final quarterly report is submitted prior to project closeout.

³³ <https://www.hud.gov/sites/documents/11SECFAQS.PDF>



Figure 1

Direct contractors working on covered projects are expected to report utilization of Section 3 worker hours, Section 3 targeted worker hours, overall project hours and Section 3 efforts to comply with employment, training, and contracting opportunities, as well as the results of actions taken, and obstacles encountered. The PRDOH FCSM Division reserves the right to issue non-compliance notifications and/or referrals to legal or monitoring units for additional action for those contractors who fail to submit their quarterly reports.

11.2 Subrecipient Reporting

Subrecipients administering covered programs are expected to report to PRDOH using the Quarterly Report template and process established by PRDOH as a uniform method for collecting information on the respective Section 3 benchmarks discussed earlier in this document.



Figure 2

The documentation should demonstrate efforts taken towards meeting Section 3 requirements and should be provided with the quarterly reporting to PRDOH through the established process.

11.3 Professional Services reporting under 24 C.F.R. Part 75

Professional service jobs are defined in 24 C.F.R. § 75.5 as “non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.” These jobs are excluded from the reporting requirement for Section 3 and Targeted Section 3 Workers because it is very difficult for grantees and contractors to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Grantees should not include the labor hours worked for professional services jobs in the total labor hours worked on the project (pursuant to 24 C.F.R. § 75.25(a)(4)) and HUD did not consider such jobs when developing the benchmarks. **However, if employees in professional services roles meet the definition of a Section 3 worker or Targeted Section 3 Worker, grantees can report their labor hours in the applicable worker hour category.** By structuring the requirements in this way, the regulation incentivizes grantees and contractors to hire Section 3 or Targeted Section 3 workers for professional services jobs without creating undue burden if qualified Section 3 workers are not available to fill these roles.

11.4 Legacy Project Reporting 24 C.F.R. Part 135

Entities implementing programs and contractors executing projects prior to November 30, 2020, must continue to adhere to the requirements of 24 C.F.R. Part 135 for those contracts. They will continue to report on the goals outlined in 24 C.F.R. Part 135 and will also report their efforts to continue including Section 3 residents and businesses.³⁴ PRDOH's quarterly report contains specific sections for reporting under the old rule as required by HUD. PRDOH will use the data gathered to support continued efforts to include Section 3 residents and businesses. The reporting dates are indicated below.

³⁴ <https://www.hud.gov/sites/documents/11SECFAQS.PDF>



Figure 3

Subrecipients and direct contractors working on legacy covered projects are expected to report utilization of Section 3 ~~24 C.F.R. Part 135~~ benchmarks³⁵, as identified in the quarterly report and Section 3 efforts to comply with employment, training, and contracting opportunities, as well as the results of actions taken, and obstacles encountered.

PRDOH emphasizes it is possible for a contractor or subrecipient to have to use both legacy reporting and/or 24 C.F.R. ~~Part 75~~ reporting templates to accurately capture all activity for Section 3 utilization when engaged on multiple programs and overseeing multiple projects where contractors' applicability under the 24 C.F.R. ~~Part 135~~ is still ongoing and new activities or contracts are applicable under 24 C.F.R. ~~Part 75~~. Subrecipients and contractors are expected to maintain accurate records of all their agreements/contracts with PRDOH and understand applicability for Section 3 reporting.

11.5 DRGR Reporting

In accordance with required HUD reporting for Section 3 under 24 C.F.R. Part 75, HUD guidance provided in their DRGR Guidance on Reporting Section 3 Labor Hours, Section 3 reporting Fact Sheet, and discussions with the local HUD office Compliance personnel, PRDOH will report in DRGR the following:

- Number of total labor hours gathered
- Number of Section 3 Labor Hours
- Number of Targeted ~~Workers~~ Section 3 ~~Workers~~ Labor Hours

PRDOH in coordination with the Finance Division will use the quarterly reporting data provided by program areas and finance on identified programs, activity types, and

³⁵ 24 C.F.R. ~~Part 135~~ identifies benchmarks of 30% new hires to be Section 3 residents, 10% of total contract should be utilization by a section 3 business for construction contracting, 3% of non-construction contracts should be utilization by Section 3 businesses.

breakdown of national objectives to provide summary data collected from direct contracting and subrecipient led activities as part of the overall grantee federal reporting obligation.

12 Monitoring

All CDBG-DR/MIT subrecipients, contractors, and subcontractors shall cooperate fully and promptly with the PRDOH in monitoring reviews, investigations of Section 3 noncompliance allegations, 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 conducting monitoring of their contractor's and subrecipient's Section 3 efforts. PRDOH Monitoring team may conduct Section 3 Monitoring Visits to review documentation of Section 3 compliance, including but not limited to outreach efforts, labor hour 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/MIT 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 75.
- Noncompliance with HUD's regulations established in 24 C.F.R. Part 75 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.
- PRDOH, Subrecipients, their contractors and direct PRDOH contracts must maintain and make available as applicable records of 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 PRDOH Section 3 Coordinator may additionally review Section 3 Plan updates and quarterly reports to compile metrics to determine the project progress toward Section 3 goals and outreach efforts and provide verbal and written notifications for contractor and subrecipient regarding corrective actions. Instances of noncompliance will be referred to the PRDOH Legal or Monitoring Divisions in accordance with established processes.

13 Filing and Processing Complaints

Complaints alleging failure to comply with the provisions of 24 C.F.R. § 75.33(b) may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. HUD mentions in the final rule that:

“The local HUD field office is part of the FPM organizational structure, and also provides individuals with a complaint venue when the complainant does not know which program office would be responsible. There will be variation in what guidance and/or compliance looks like for each program office, but HUD will provide support to the extent it is standardized across program offices.”³⁶

For Puerto Rico and the U. S. Virgin Islands, you may contact your local HUD office by any of the following methods:

- **Email:** PR_Webmanager@hud.gov
- **Online:** https://www.hud.gov/states/puerto_rico_virgin_islands/offices
- **Postal Mail:** U. S. Department of Housing and Urban Development.
San Juan Field Office
235 Federico Costa Street, Suite 200
San Juan, PR 00918
- **Phone:** (787) 274-5846, TTY: (787) 274-5898
Fax: (787) 766-5995
- **Director:** Efraín Maldonado
- **Office Hours:** Monday through Friday from 8:00am to 4:30pm

14 Project & Program Closeout

As programs and projects come to a close, PRDOH will perform a final review of the project file in coordination with direct program teams and/or subrecipients. Notifications based on the review of each respective subrecipient and/or contractor for the program/project file containing relevant documentation include but are not limited to:

1. Section 3 Plans submitted
2. Quarterly PRDOH Reporting submitted
3. Annual HUD Report(s)
4. Documentation of Efforts submitted
5. Self-certification ~~identification~~ Forms submitted

³⁶ Federal Register Vol. 85, No. 189 (September 29, 2020), 85 FR 61524, 61554.

6. Labor hours documentation for Section 3 Workers and Targeted Section 3 Workers
7. Specific Program/Project information that may assist with program closeout

All subrecipients and contractors will comply with providing documentation needed to close their respective project files. The PRDOH FCLS Division may refer subrecipients or contractors for legal or additional monitoring actions as deemed necessary and appropriate.

END OF POLICY.

Appendix A: Section 3 Clause

All Section 3 covered contracts and subcontracts shall include the Section 3 Clause set forth in Section 3 requirements in any subrecipient agreement or contract as required under 24 C.F.R. § 75.27 and 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 75, 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 75 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 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause³⁷, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. 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 75.
- E.** The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 C.F.R. § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
- F.** 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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 75.
- G.** Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- H.** 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 subcontracts 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 section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- I.** The Contractor agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 Workers and Targeted Section 3 Workers.

³⁷ Pursuant to 24 C.F.R. § 75.27, grantees must include language applying Section 3 requirements in any agreement or contract for a Section 3 project and must require contractors and subcontractors to meet the regulation's requirements, regardless of whether their agreements or contracts include Section 3 language.

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

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

These templates, forms, and other resources can be found, in English and Spanish, on the PRDOH website at <https://cdbg-dr.pr.gov/en/section-3/> and <https://cdbg-dr.pr.gov/seccion-3/>.

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