

Request for Proposals
Newburyport Housing Authority
25 Temple Street
Newburyport, MA 01950
Environmental Review Services
Public Housing Repositioning

The Newburyport Housing Authority (the “NHA”) is requesting proposals from firms to provide consulting services related to federal environmental review under the National Environmental Policy Act and 24 CFR Part 58, HUD Environmental Review Regulations, as well as other types of environmental review services as needed.

The selected Consultant (“Consultant”) will review the scope of work of the property funded under the public housing program and converting to the Section 8 program, determine the appropriate level of environmental review, conduct the environmental review, and submit two copies of the completed review for execution by the Certifying Officer.

The Consultant will also have experience submitting the Environmental Review in HEROs.

Background and Project Description

The NHA owns and operates __50__ units of public housing located at the following sites:

- Horton Terrace - 50 units

Property Horton Terrace will be converting to Section 8 Project-Based Vouchers via HUD’s Section 18 Disposition program. There are no repairs or rehabilitation being completed as part of the conversion. The Property will be sold to an affiliate of the PHA for a nominal value. The property will continue to be used as affordable rental housing post-conversion.

All projects converting from Section 9 public housing subsidy to Section 8 subsidy must meet the requirements of the National Environmental Policy Act and 24 CFR Part 58, HUD Environmental Review Regulations prior to receiving HUD approval to use grant funds. The project will fall into one of three categories:

- Categorically Excluded not subject to statutes per 24 CFR 58.35(b)
- Categorically Excluded subject to statutes per 24 CFR 58.35(a)
- Environmental Assessment per 24 CFR 58.36

Environmental Reviews will be undertaken by the Consultant selected under this request for qualifications (RFP).



Newburyport Housing Authority
978.465.7115
nha@nhahousing.com



Scope of Services

The selected Consultant shall:

1. Review the project descriptions and contact the NHA to garner additional information as necessary to determine the appropriate level of environmental review and required timeframe for completion of the environmental review.
2. Provide the NHA with the determination of the level of environmental review, the projected start date, completion date, understanding of the project, scope of work, and fee schedule for each of the funded projects.
 - The lowest possible initial level of review for a public housing conversion is CEST. Projects at this level of review are categorically excluded from the National Environmental Policy Act (“NEPA”) but must comply with the related environmental laws and authorities listed in 24 CFR 50.4, 58.5, and 58.6, including the National Historic Preservation Act, Executive Orders 11990 and 11988 on Floodplain Management and Wetland Protection, and HUD’s toxics and contamination standards. A Phase 1 Environmental Site Assessment (or Transaction Screen – see Section 8.2, below) is required to be submitted for all CEST Reviews.
 - The Phase 1 or Transaction Screen must address Radon, Lead-Based Paint, and Asbestos.
3. The Consultant will initiate all necessary consultations and studies to complete the environmental review as described in the HUD Environmental Review Regulations. The scope of this RFP covers only the items necessary to complete that review. Separate studies (Phase I, Radon, Asbestos, Lead-Based Paint, geotechnical, biotic, archaeological, noise, traffic, etc.) that are required and known during the scoping stage shall be supplied to the Consultant by the NHA or, if not already obtained, included as an additional cost item in the Consultant's original fee schedule. Additional studies and consultations required that arise after the scoping stage may be included; only if the Consultant has notified the NHA of the need for the additional services, along with the cost, prior to initiating those services.

Section 106 review shall be conducted by the Consultant and included in the scope of work for each project. The Consultant will make a minimum of one site visit to examine and photo-document the location and surrounding environments and shall make additional visits as warranted.

4. The NHA will publish all required public notices if needed. The Consultant will provide the publication's text to NHA staff. The Consultant will also provide the NHA with the text of all correspondence with other regulatory agencies required (SHPO, COE, ACHP, etc.) and then package and mail/ship the information to the appropriate agency.
5. The Consultant will compile all necessary information in the format specified by HUD for that level of environmental review and provide the NHA with one copy for execution by the Certifying Officer. The final environmental review record will include all necessary source documentation presented in an orderly, easily understandable manner.

It may be preferable for the Consultant to submit the Part 58 Environmental Review via HEROs and assign the review to the Certifying Officer.

6. The Consultant will assist the NHA in response to any public comments or questions received from HUD or any other federal or state regulatory agencies pertaining to the environmental review process.

The Consultant will be solely responsible for all costs incurred during the environmental review process, including, but not limited to, travel time and costs, food, lodging, postage, shipping, reproductions, and subcontracts.

Submission Requirements

Responses to this RFP shall include, but need not be limited to, the following:

Cover Letter and Introduction

A letter of introduction, which includes the name, address, telephone number, and email address of the contact person(s) authorized to represent your firm. This letter should be signed by an officer of the firm authorized to bind the firm to all commitments made in the response.

Qualifications and Experience

Provide descriptions of your firm's role, experience, and capability in providing specific NEPA compliance services to other HUD-funded clients in the past two years. Briefly describe your firm's general business capabilities and your ability to meet the required timelines.

References

Provide a list of three clients, including the organization name, contact person, telephone number, and address as well as brief descriptions of the scope of work.

Approach

Describe your firm's approach to completing the scope of work.

Staffing

Provide a list of staff members who will work on this contract, including principals and staff-level personnel, along with the qualifications of each.

Pricing

Please provide a pricing sheet that outlines all costs associated with the project description and scope of work.

Section 3 and WMBE

The Consultant must provide documentation regarding any claimed status as a Section 3 business or Women-Owned or Minority-Owned Business Enterprise – if applicable.

Insurance

The selected Consultant will be required to provide a certificate of insurance certifying that they have insurance coverage that will cover their employees while on Horton Terrace property and will protect the Horton Terrace from liability for the actions of their employees.

Authorization

The response must be signed by an individual authorized to bind the firm and shall contain a statement to the effect that the response is valid for at least 90 days.

Due Date

Electronic responses must be received by the PHA, no later than 2:00 p.m., August 30, 2023. The due date is subject to change. If the due date is changed, all known recipients of the original RFP will be notified of the new date.

Questions/Answers

All questions must be submitted in writing no later than August 16, 2023.

Questions should be submitted to:

Contact Information

Email: tmwatson@nhahousing.com

Timeline

RFP Issued	July 26, 2023
Questions in writing due	August 16, 2023 5:00 pm
Responses to questions and addendum issued	August 23, 2023, 5:00 pm
Proposals due	August 30, 2023, 2:00 pm
Proposal evaluation	August 31 – September 11, 2023
Consultant notified of preliminary selection, pending Board of Commissioners approval	September 12, 2023

Instructions for Submission of Response

Please submit an electronic version to tmwatson@nhahousing.com

Evaluation Criteria

Selection of the most qualified Consultant will determine the final contract award and be based upon:

Understanding of the scope of work as evidenced by the approach outlined.	10 points
Competence, technical ability, and related experience	20 points
Knowledge of NEPA and other federal environmental regulations	20 points
Estimated cost projections	20 points
Responsiveness to the Request for Qualifications	10 points
References	20 points
Total	100 points

Rules and Regulations

The issuance of this RFP does not constitute an agreement by the NHA that any contract will be entered into by the NHA. The NHA expressly reserves the right at any time to:

- a. Waive or correct any defect or informality in any response, submittal, or submittal procedure.
- b. Reject any or all responses.
- c. Re-issue this RFP or change the deadline dates.
- d. Modify all or any portion of the selection procedures, before the submission deadline, including deadlines for accepting responses, the specifications or requirements for any materials, equipment, or services to be provided under this RFP, or the requirements for contents or format of the responses.

All responses shall be deemed public records. If a respondent desires to claim portions of its response exempt from disclosure, it is incumbent upon the respondent to clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. The NHA will consider a respondent's request for exemption from disclosure; however, the NHA will decide based upon applicable laws. Assertions by a respondent that the entire submittal or large portions are exempt from disclosure will not be honored. All responses to this RFP shall become the property of the PHA and will be retained or disposed of accordingly.

The NHA shall not be liable for any pre-contractual expenses incurred by any respondent. The NHA shall be held harmless and free from all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

All data and information furnished by NHA or referred to in this RFP are furnished for the respondent's convenience. The PHA does not guarantee that such data and information are accurate and assumes no responsibility whatsoever as to its accuracy or interpretation. Respondents shall satisfy themselves as to the accuracy or interpretation of all such information and data.

By submitting a response to this RFP, the respondent waives all rights to seek any legal remedies regarding any aspect of this RFP, the NHA's selection of a consultant, and the NHA's rejection of all responses.

The NHA also reserves the right to negotiate any price or provisions and accept any part, or all parts of any or all responses, whichever is in the best interest of the NHA.

The NHA may, during the evaluation process, request additional respondent information, which the NHA deems necessary to determine the respondent's ability to perform the required services. If such information is requested, the respondent shall be permitted three (3) working days to submit this information.

All respondents submit their statements to the NHA with the understanding that the final approval of any agreement is contingent upon and subject to review and final approval by the Board of Commissioners.

Non-liability of NHA

The NHA shall not be liable for any pre-contractual expenses incurred by the respondent or selected Consultant or consultants. The NHA shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

Attachments

- HUD 5369-B
- HUD 2992 Certification Regarding Debarment and Suspension
- Section 3 Business Certification

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certification Regarding Debarment and Suspension

U.S. Department of Housing
and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Special Attention of:
All CPD Division Directors

Notice: CPD-21-09

Grantees and Program Managers of the following Community Planning and Development (CPD) programs: Formula Community Development Block Grant (Entitlement CDBG, State CDBG, Nonentitlement CDBG Grants in Hawaii, and Insular Area CDBG); Community Development Block Grant CARES Act (CDBG-CV); CDBG Disaster Recovery (CDBG-DR); CDBG Mitigation (CDBG-MIT); Neighborhood Stabilization Program (NSP); Recovery Housing Program (RHP); Section 108 Loan Guarantee Program (Section 108)

Issued: August 24, 2021

Expires: **This NOTICE is effective until it is amended, superseded, or rescinded.**

Cross Reference: 24 CFR part 75

Subject: 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.

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I. PURPOSE

This notice provides guidance to Community Development Block Grant (CDBG), Community Development Block Grant CARES Act (CDBG-CV), CDBG Disaster Recovery (CDBG-DR), CDBG Mitigation (CDBG-MIT), Neighborhood Stabilization Program (NSP), and Recovery Housing Program (RHP) grantees and Section 108 Loan Guarantee Program (Section 108) borrowers (collectively, “grantees”) on 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 (Section 3). These requirements apply to CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP-assisted housing rehabilitation, housing construction and other public construction projects. This notice outlines the key changes made by the notice entitled, “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” (85 FR 61524) (“Final Rule”) published in the *Federal Register* on September 29, 2020 (codified at 24 CFR part 75) and provides guidance for tracking and reporting compliance with the new requirements. Refer to 24 CFR 75 for any further updates on Section 3 requirements after the publication of this notice.

II. BACKGROUND

Section 3 contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible and consistent with existing Federal, state, and local laws and regulations, directed toward low- and very low-income persons. Section 3 applies to training or employment arising in connection with HUD-funded housing rehabilitation, housing construction, or other public construction projects, and any contracting opportunities arising in connection with both public housing and other Section 3 projects. These opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns that provide economic opportunities to low- or 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.

On September 29, 2020, HUD published the Final Rule and a companion notice, entitled “Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” (85 FR 60907) (“Benchmark Notice”), in the *Federal Register*. Prior to the publication of the Final Rule and Benchmark Notice, HUD operated under regulations (found at 24 CFR part 135) (“former regulation”) provided by the Section 3 interim rule, which HUD published in 1994.

The regulation, provided by the Section 3 Final Rule, became effective on November 30, 2020 and is codified at 24 CFR part 75. The regulation simplifies the Section 3 requirements and establishes that Section 3 requirements apply to 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 minimum funding threshold. The regulation also improves alignment with current business practices by requiring the reporting of labor hours rather than new hires. Additionally, the regulation streamlines the reporting process and establishes HUD program office oversight to reduce administrative burden and make the rule more effective. The Benchmark Notice establishes the current numeric goals for compliance with Section 3 requirements. Pursuant to the regulation at 24 CFR 75.23(b)(1) and (b)(2), HUD may adjust funding thresholds or establish new benchmarks (either a single nationwide benchmark or multiple benchmarks based on geography, type of assistance, or other variables) periodically as new information becomes available. HUD must publish all updates in the *Federal Register* and all updates are subject to public comment.

III. APPLICABILITY

A. FUNDING THRESHOLD

The regulation established an applicability threshold of \$200,000 for housing rehabilitation, housing construction, and other public construction (e.g., public facilities and improvements) projects assisted with housing and community development financial assistance. Housing and community development financial assistance includes, but is not limited to, CDBG, CDBG-DR,

CDBG-MIT, NSP, Section 108, RHP, HOME Investment Partnership (HOME), Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Section 202 Direct Loan Program for Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, Lead Abatement Grants, and other HUD Notice of Funding Opportunities (NOFO) grants.

Per 24 CFR 75.3, the Section 3 requirements apply based on the amount of housing and community development funding provided by one or a combination of two or more different applicable HUD programs exceeding the \$200,000 threshold. For example, 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 CFR 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. Grantees must make all recipients, contractors, and subcontractors 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 CFR 75.3(a)(1), or more than \$100,000 of Lead Hazard Control and Healthy Homes program funding, as defined in 24 CFR 75.3(a)(2)(i). For example, 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. See 24 CFR part 75 Subpart D for requirements that apply to projects with multiple funding sources. Also see Section V.B. below.

B. PROJECT AND ACTIVITY TYPES

Section 3 requirements apply to a housing rehabilitation, housing construction or other public construction project no matter which portion of the project receives the CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108 guaranteed loan funds, or RHP financial assistance. 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 20 units in one building as part of an effort to rehabilitate 40 units in two buildings on a single property. The "Section 3 project" includes the rehabilitation of all 40 units.). Once the project is complete, the Section 3 requirements no longer apply to subsequent contracts.

Section 3 requirements do not apply to projects assisted with housing and community development financial assistance that do not include housing rehabilitation, housing construction or other public construction (e.g., funds used for direct homebuyer assistance or tenant-based rental assistance). Pursuant to 24 CFR 75.3(b), Section 3 requirements also do not apply to materials-only contracts or contracts that do not require any labor. For example, Section 3 would not apply to contracts for office or janitorial supplies because these are materials-only contracts.

CDBG, Section 108, and CDBG-CV grantees must report Section 3 data in HUD's Integrated

Disbursement and Information System (IDIS). CDBG-DR, CDBG-MIT, NSP, and RHP grantees must report Section 3 data in HUD's Disaster Recovery Grant Reporting (DRGR) system. Grantees are cautioned to not include multiple Section 3 projects under a single activity in IDIS or DRGR; this would cause a distortion in the calculation of the benchmarks, particularly if the benchmarks were not met for one of the included projects. Instead, to properly report Section 3 projects in IDIS or DRGR, each project must be established as a distinct activity. CDBG regulations use the term "activity" which is the same as "project" for the purposes of this notice.

C. TIMING

Section 3 requirements apply to new grants, commitments, contracts, or projects funded on or after the November 30, 2020 effective date. For Section 3 Projects, this means that requirements apply if a grantee or a recipient of HUD funds executes a legally binding written agreement or contract on or after November 30, 2020. For example:

- an executed subrecipient agreement, including any subsequent contracts or agreements, that has project- or activity-level details with respective budgets, schedules and/or secured financing
- an executed homeowner rehabilitation loan or grant agreement, and any subsequent procured contracts
- an agreement or contract, that includes secured financing, with a developer or for-profit entity to complete a multifamily rehabilitation project

Grantees and recipients of HUD funding should keep in mind that existing projects may trigger Section 3 compliance, even after the initial commitment date, if the project includes other HUD funding or additional HUD funding is added to the project. For example, funding provided in phases such as a multifamily housing rehabilitation activity initially receiving \$150,000 of CDBG assistance would trigger Section 3 requirements if it received an additional amount exceeding \$50,000 in housing and community development financial assistance. These requirements apply to specific Section 3 projects; a program is not a project. The former regulation and its requirements still apply to agreements entered prior to November 30, 2020, and their subsequent contracts or agreements. See Section IV for details on implementation timelines and reporting requirements.

IV. TIMELINE FOR IMPLEMENTATION

A. EFFECTIVE DATE

The regulation became effective on November 30, 2020. As of November 30, 2020, the requirements of 24 CFR part 135 no longer apply. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made on or after November 30, 2020 must comply with 24 CFR part 75. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made before November 30, 2020 must continue to comply with the requirements of 24 CFR part 135.

B. REPORTING TRANSITION

While the regulation's effective date was November 30, 2020, HUD expected grantees to

transition to the updated 24 CFR part 75 requirements, revise their policies and procedures and systems to comply with the requirements, and make necessary changes in IDIS and DRGR by July 1, 2021. Therefore, HUD will not enforce compliance with the regulation’s reporting requirements until July 1, 2021. Grantees are not required to report Section 3 data in IDIS or DRGR for any project to which CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP funds were committed before November 30, 2020, or any project that was completed before July 1, 2021. As described in the table below, grantees must keep all files associated with Section 3 projects with commitments made before November 30, 2020, or between November 30, 2020, and July 1, 2021, to demonstrate that the projects comply with the requirements of 24 CFR part 135 or part 75, depending on the commitment date.

Commitment Date	Before 11/30/2020	On or After 11/30/2020 but before 7/1/2021	On or After 7/1/2021
Applicable Regulations	24 CFR part 135	24 CFR part 75	24 CFR part 75
Reporting Requirement	Grantee must retain documentation demonstrating compliance with interim rule in project file.	Grantees must retain documentation demonstrating compliance with Final Rule in project file. Grantee will report in IDIS or DRGR for open activities starting July 1, 2021. If the IDIS or DRGR activity was set up prior to the system update, grantees will need to modify the IDIS or DRGR activity to generate the appropriate Section 3 compliance screen(s).	Grantee will report compliance data in IDIS or DRGR within the applicable reporting cycles beginning on or after July 1, 2021.

V. LABOR HOURS

The regulation introduces several new concepts and definitions to align the regulations more closely with the statutory priorities for hiring and contracting and with grantee current practices. The most significant change is the switch from tracking and reporting new hires and contracts to tracking and reporting labor hours. “Labor hours” means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance (24 CFR 75.5). The Final Rule’s focus on labor hours seeks to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to tracking labor hours captures continued and long-term employment. The focus on labor hours creates an incentive for employers to invest in and retain their newly hired workers.

24 CFR 75.25 requires grantees to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers. The definitions in 24 CFR 75.5 for a “Section 3 worker,” “Targeted Section 3 worker,” and “Section 3 business concern” simplify grantee reporting and better align with statutory priorities. Benchmarks that apply to each of these categories of workers will serve as safe harbors for compliance, as discussed in Section VI of this notice.

Pursuant to 24 CFR 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.

A. SECTION 3 WORKER

The new definition of Section 3 worker, at 24 CFR 75.5, implements the statutory requirement that grantees ensure that job and contracting opportunities arising in connection with a HUD-funded housing rehabilitation, housing construction, or other public construction project are provided to Section 3 workers or Section 3 business concerns to the greatest extent feasible. In accordance with the regulation, a Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

1. Is a low- or very low-income worker that fell below HUD income limits for the previous or annualized calendar year. Low- and very-low-household income limits may be obtained from: <http://www.huduser.org/portal/datasets/il.html>
2. Is employed by a Section 3 business concern (defined in Section C).
3. Is a YouthBuild participant. YouthBuild is a community-based pre-apprenticeship program administered by the U.S. Department of Labor that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

Grantees may count Section 3 workers’ labor hours for five years from when their status as a Section 3 worker is established, pursuant to 24 CFR 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-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-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-year period beginning November 30, 2020.

Pursuant to 24 CFR 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.

A worker may qualify as a Section 3 worker through one of the following certifications, in accordance with 24 CFR 75.31:

1. A worker’s self-certification that their income is below HUD’s 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.
3. Certification from a public housing authority (PHA), or an owner or property manager of project-based Section 8-assisted housing, or an 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 a worker's income from that employer is below HUD's 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.
5. An employer's certification that the worker is employed by a Section 3 business concern.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, the grantee must maintain (or ensure that the subrecipient, contractor, or subcontractor that employs the worker maintains) one of the listed records above from the time the worker is certified as meeting the Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years). Pursuant to 24 CFR 75.31(c), the documentation described above must be maintained for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

Special Case: Professional Services

Professional service jobs are defined in 24 CFR 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 CFR 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.

B. TARGETED SECTION 3 WORKER

The Section 3 statute requires certain recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The new definition of Targeted Section 3 worker reflects both statutory and policy priorities that HUD wishes to specifically track. Pursuant to 24 CFR 75.21, a Targeted Section 3 worker for housing and community development financial assistance is a worker who meets the definition of a Section 3 worker, plus one of the following:

1. A worker employed by a Section 3 business concern (defined below), or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within the service area or the neighborhood of the project (defined below).
 - b. A YouthBuild participant.

The regulation defines the service area or the neighborhood of the project in 24 CFR 75.5 as “an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.”

For a worker to qualify as a Targeted Section 3 worker under housing and community development assisted Section 3 projects (pursuant to 24 CFR 75 Subpart C), the grantee and/or its recipients must maintain source documentation that the worker meets the definition of a Section 3 worker and at least one of the following (per 24 CFR 75.31(b)(2)(ii)):

1. An employer’s confirmation that a worker’s residence is within one 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.

(HUD’s Office of Policy Development and Research (PD&R) is coordinating the development of a webtool that will assist in determining employee eligibility under the Section 3 requirements. Using project site locations specified by the user, the tool will analyze surrounding geographies to verify that an individual employee’s address aligns with the eligibility criteria outlined under the rule. PD&R anticipates releasing the tool in 2021.)

However, per 24 CFR 75.29, if a CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP-assisted Section 3 project receives also public housing financial assistance, the grantee may instead choose to follow the public housing definition of Targeted Section 3 worker at 24 CFR 75.11 to simplify project reporting.

Per 24 CFR 75.11, a Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. A resident of public housing or Section 8-assisted housing.
 - b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance.
 - c. A YouthBuild participant.

For a worker to qualify as a Targeted Section 3 worker under the public housing financial assistance definition, the grantee and/or its recipients must maintain documentation that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, a grantee and/or its recipients must maintain documentation for at least one of the following (per 24 CFR 75.31(b)(2)(i)):

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs,
2. A 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,
3. An employer's certification that the worker is employed by a Section 3 business concern, or
4. A worker's self-certification that the worker is a YouthBuild participant.

In accordance with 24 CFR 75.29, for projects with multiple sources of funding, the recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

In all cases, as with a Section 3 worker, a prior arrest of conviction cannot negatively affect the status of a Targeted Section 3 worker (24 CFR 75.5). Additionally, grantees must certify that they are making efforts to prioritize training and opportunities for Targeted Section 3 workers (see Subsection D below).

C. SECTION 3 BUSINESS CONCERN

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. To implement this priority, the regulation includes labor hours worked by Section 3 business concern employees to count towards benchmarks for Section 3 workers and Targeted Section 3 workers. HUD also created a new Section 3 business concern definition that incorporates the change to labor hours and increases the threshold of work performed by a business by low- and very low-income workers. Grantees must certify that they are making efforts to prioritize contracting with Section 3 business concerns (see Subsection D below) and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons,
2. More than 75 percent of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
3. At least 51 percent owned and controlled by current residents of public housing or Section 8-assisted housing.

Additionally, pursuant to 24 CFR 75.5, 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. Furthermore,

Section 3 business concerns are not exempt from meeting contract specifications nor do the regulations require the contracting or subcontracting of a Section 3 business concern.

HUD's Section 3 Business Registry is a searchable online database of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business concern. Agencies that receive HUD funds, developers, contractors, and others can use this registry to facilitate the award of certain HUD-funded contracts. While the Department maintains the Business Registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, grantees must verify that each business meets the definition of a Section 3 business concern before awarding contracts to any firm that has self-certified on this registry.

D. EMPLOYMENT, TRAINING, AND CONTRACTING PRIORITIZATION

Pursuant to 24 CFR 75.19(a), grantees must, to the greatest extent feasible, ensure Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Section 3 project is located are provided with employment and training opportunities arising in connection with the project. Where feasible, a grantee and its recipients should give priority for opportunities and training to:

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

Pursuant to 24 CFR 75.19(b), grantees must, to the greatest extent feasible, ensure business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Section 3 projects are located are provided with contracts for work awarded in connection with Section 3 projects. Where feasible, a grantee and its recipients should give priority for contracting opportunities to:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
2. YouthBuild programs.

All employment and training opportunities, and contracting awards provided in accordance with 24 CFR 75.19 must be consistent with Federal, state, and local laws and regulations. Ultimately, in addition to meeting prescribed benchmarks, grantees and recipients will need to certify that they have followed the prioritization of effort in 24 CFR 75.19 to demonstrate compliance (see Section VI).

VI. DOCUMENTING COMPLIANCE

Grantees must maintain or ensure that a subrecipient, contractor, or subcontractor maintains adequate records demonstrating Section 3 compliance. The regulation requires HUD to establish Section 3 benchmarks by publishing a notification, subject to public comment, in the *Federal Register* (see 24 CFR 75.23(b)). The notice must include proposed benchmarks and the methodology for determining the benchmarks. These benchmarks provide grantees a "safe harbor" by defining the percentage of labor hours worked by Section 3 workers and Targeted

Section 3 workers on a project to comply with Section 3 requirements.

HUD will consider the grantee to have complied with the requirements in the regulation, by meeting the safe harbor, in the absence of evidence to the contrary, if a grantee certifies to the prioritization of effort in 24 CFR 75.19 and meets or exceeds the applicable Section 3 benchmarks referenced in 24 CFR 75.23(b). This “Section 3 Safe Harbor” is codified at 24 CFR 75.23. If a grantee does not meet requirements of 24 CFR 75.23’s Section 3 safe harbor, HUD will require additional qualitative reporting to demonstrate compliance with the regulation (see Subsection C below).

A. LABOR HOURS AND BENCHMARKS

The regulation requires grantees to track and report the labor hours worked on Section 3 projects (see 24 CFR 75.25). In accordance with 24 CFR 75.23(b), HUD published the Benchmark Notice to establish initial numeric goals, or benchmarks, to measure grantee compliance with the regulation. Publishing the numeric benchmarks in a separate notice from the regulation provides HUD with the flexibility to update the goals as needed. HUD plans to review and update the benchmarks at least once every three years through notice in the *Federal Register*.

In accordance with 24 CFR 75.25(a), grantees must report 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.

If the project does not require time and attendance reporting, grantees may report to HUD using a good faith assessment. Grantees can report their own labor hours or that of a subrecipient, contractor or subcontractor based on the employer’s good faith assessment of the labor hours of a full-time or part-time employee, informed by the employer’s existing salary or time and attendance-based payroll systems.

Per the Benchmark Notice, the current benchmarks that apply for a Section 3 project (assisted under HUD programs that provide housing and community development financial assistance where the amount of assistance to the project exceeds a threshold of \$200,000) are:

- a. **Benchmark 1:** Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers

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

and

- b. **Benchmark 2:** Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers

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

Example

Springfield commits \$300,000 of CDBG funds to ABC Developers to rehabilitate a multifamily rental building. By committing an amount above the \$200,000 threshold, the Section 3 requirements apply to this project. To comply with 24 CFR 75.25(a), Springfield must require ABC Developers to report the following accomplishments to Springfield within the applicable reporting cycles: (1) the total *Labor Hours*, (2) the total *Section 3 Labor Hours*, and (3) the total *Targeted Section 3 Labor Hours* on the Section 3 project.

Springfield is responsible for reporting labor hour data from all contractors and subcontractors hired by ABC Developers to rehabilitate the multifamily rental building. During the first quarter (July – September), ABC Developers reports to Springfield a total of 5,000 labor hours worked on the project. Of that total, 1,300 were worked by employees who self-certified as Section 3 workers. Additionally, 300 of those 1,300 hours were performed by workers who lived within a one-mile radius of the work site. Springfield has met the project-level Section 3 Benchmarks and reports the following data in DRGR at the next reporting cycle:

Total Labor Hours	5,000	
Section 3 Labor Hours	1,300	26%
Targeted Section 3 Labor Hours	300	6%

As stated above, per 24 CFR 75.23, HUD will consider grantees to have complied with Section 3 benchmarks, in the absence of evidence to the contrary, if they certify to the prioritization of effort in 24 CFR 75.19 and meet or exceed the applicable Section 3 benchmarks. See Section C. below for details on how to report qualitative efforts if the benchmarks are not met.

B. REPORTING

HUD will no longer require grantees to report Section 3 compliance data annually in the Section 3 Performance Evaluation and Reporting System (SPEARS) for Section 3 projects. HUD will decommission the previous reporting modules in SPEARS in 2021. The regulation requires each grantee to report on Section 3 compliance per the reporting requirements for each applicable program. Grantees will report project or activity level data in IDIS and DRGR. This also means that grantees will report Section 3 data for each applicable HUD program in IDIS and DRGR instead of into one SPEARS annual report that measures grantees efforts across all HUD programs. In instances where there are multiple funding sources, grantees must collect and report the same data across programs for consistency.

IDIS

The Section 3 reporting data fields are available on the IDIS activity setup and accomplishment screens for CDBG, Section 108, and CDBG-CV activities and will be available in the Consolidated Annual Performance and Evaluation Report (CAPER). Beginning July 1, 2021, grantees must enter Section 3 applicability and data before they can mark a CDBG, Section 108

or CDBG-CV rehabilitation or construction activity complete in IDIS. The data reported at the activity level in IDIS will be populated into the CAPER and a Section 3 MicroStrategy report (available through IDIS), eliminating the need for a separate annual Section 3 reporting system. When grantees submit their CAPER, they will fulfill the requirement for annual reporting. Grantees can also use the Section 3 MicroStrategy report to track compliance at the project level.

For CDBG, CDBG-CV, and Section 108 activities that are funded on or after November 30, 2020 and have "Open" status on or after July 1, 2021, the grantee must indicate whether the activity is subject to Section 3. Failure to indicate Section 3 applicability at activity set-up in IDIS may result in reporting noncompliance with Section 3 and program requirements in the future. If a grantee indicates that the activity is subject to Section 3 requirements, IDIS will generate Section 3 reporting fields on the activity accomplishments screen (CDBG Accomplishment Detail Page 1). The grantee shall report Section 3 labor hours (even it is 0) for every program year the activity remains open. The Section 3 reporting fields include total labor hours worked, Section 3 labor hours worked, and Targeted Section 3 labor hours worked. When a grantee enters labor hour data, IDIS will calculate the percentage of Section 3 labor hours worked and the percentage of Targeted Section 3 labor hours worked out of all labor hours worked. IDIS will also indicate whether the activity met the established benchmarks (25% Section 3 worker hours, 5% Targeted Section 3 worker hours).

<u>Example</u>			
		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	25	25%	Yes
Targeted Section 3 Worker Hours	5	5%	Yes

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	20	20%	No
Targeted Section 3 Worker Hours	1	1%	No

If the activity meets both benchmarks, HUD will consider the activity to be in full compliance with Section 3, in the absence of evidence to the contrary, and require no further reporting on that activity. If the activity does not meet one of the Section 3 benchmarks, IDIS will require further reporting on the qualitative efforts that the grantee made to try to reach the benchmarks (see Section C).

DRGR

The Section 3 reporting data fields for CDBG-DR, CDBG-MIT, NSP and RHP activities in DRGR are available to be entered as projected accomplishments when setting up activities with applicable Section 3 activity types in the DRGR Action Plan using the Activity 'Measures' tab. The Section 3 reporting fields in DRGR include the number of total labor hours, number of labor hours worked by Section 3 workers, and number of labor hours worked by Targeted Section 3 workers. Whether a grantee reports quarterly or annually in DRGR is determined by the grant's rules and requirements concerning reporting. Generally, RHP grantees report in DRGR annually while CDBG-DR, CDBG-MIT, and NSP grantees report quarterly. Grantees should continue to follow these required reporting cycles for Section 3 activities.

Beginning July 1, 2021, if an activity type is selected in the DRGR Action Plan where Section 3 compliance is required, grantees will have the option to propose accomplishments for each Section 3 performance measure where appropriate. In instances where projections are unavailable at the time of activity type selection, a grantee may enter "0" as a placeholder until projections are available for entry. Grantees must also indicate that the activity is subject to Section 3 requirements by selecting the "Subject to Section 3 Requirements" field under the DRGR Action Plan – Activity 'Details' tab. Grantees shall report actual Section 3 labor hours worked (even if it is 0 hours) for each reporting cycle the activity remains open in the DRGR Performance Report. To report actuals on these proposed Section 3 accomplishments, a grantee must access the DRGR Performance Report Activity 'Measures' tab to enter actual accomplishments in the Performance Report. Grantees can review proposed measures entered in the DRGR Action Plan for each applicable Section 3 activity in the Performance Report when entering actual accomplishments as a tool for grantees to track benchmark requirements and Section 3 compliance. The data reported at the activity level in the DRGR Action Plan and DRGR Performance Report will be populated on those applicable system screens and in a Section 3 MicroStrategy report (available through the DRGR Reports Module as another option to track compliance), eliminating the need for a separate annual Section 3 reporting system.

C. QUALITATIVE EFFORTS

If an activity does not meet the benchmarks, but the grantee can provide evidence that it has made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then HUD will consider the grantee compliant with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

IDIS

The Section 3 regulations at 24 CFR 75.25 provide a list of qualitative efforts that demonstrate what HUD considers to be efforts to comply with the Section 3 benchmarks. If a grantee did not meet benchmarks for a CDBG, Section 108, or CDBG-CV activity, IDIS will display a checklist of the qualitative efforts from 24 CFR 75.25 on the activity accomplishment screen (CDBG Accomplishment Detail Page 1). The grantee must select at least one option from the list that best describes their efforts, and/or describe their efforts in a box labeled "other" to proceed to the next activity completion screen. Grantees and/or its recipients must also maintain records in their project files to document the efforts reported in IDIS.

The checklist displayed in IDIS for qualitative efforts includes the following options:

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical training such as arranging for, contracting for, or paying tuition for, off-site training.
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment, including drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding childcare.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:

IDIS provides an empty text box next to “Other” to give grantees the option of entering a description about efforts taken that are not included in the list of qualitative efforts provided. Examples of qualitative efforts not included in the checklist displayed in IDIS are:

- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Promoted the use of a business registry designed to create opportunities for disadvantaged and small business.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

DRGR

The Section 3 benchmarks are minimum targets grantees must reach in order to meet the safe harbor. Grantees must, to the greatest extent feasible, work to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers.

If a grantee did not meet numeric benchmarks for a CDBG-DR, CDBG-MIT, NSP or RHP activity, grantees should enter at least one of the qualitative efforts listed in 24 CFR 75.25 within the DRGR Performance Report at the activity level. The grantee must clearly identify (enter) at least one option from the list that best describes their efforts or enter "Other:" followed by narrative describing efforts not included in the list of qualitative efforts.

The qualitative efforts listed at 24 CFR 75.25 are the same for grantees reporting in DRGR.

A Section 3 MicroStrategy report (available through the DRGR Reports Module) will include all reported qualitative efforts at the activity level for the grantee and HUD to review. Grantees and their recipients should also maintain records in their project files to document the qualitative efforts reported in DRGR.

VII. HUD MONITORING

The regulation establishes that the HUD program offices providing the financial assistance will perform Section 3 oversight. As part of this new oversight responsibility, Community Planning and Development (CPD) representatives and other grant managers in HUD field offices and HUD Headquarters will monitor Section 3 compliance as part of the existing CPD onsite or remote monitoring process using exhibits in the CPD Monitoring Handbook. HUD may make findings and impose appropriate remedies and sanctions in accordance with the programs' regulations.

To prepare for potential monitoring, grantees must keep records demonstrating compliance with Section 3 requirements on a project-level basis. Grantees must establish and maintain (or ensure that a subrecipient, contractor, or subcontractor maintains) documentation to demonstrate that workers on Section 3 projects meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. This includes requiring written reports from developers or contractors summarizing the totals for labor hours, including Section 3 worker and Targeted Section 3 worker labor hours, and documentation from employees or employers certifying that the employee met the requirements to receive Section 3 worker status (see Section V). Any information that a grantee enters in IDIS or DRGR must have supporting documentation demonstrating the accuracy of the data. Additionally, grantees must retain documentation that ensures that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. Grantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention.